

Case No. 18-6102/ 18-6165

In the United States Court of Appeals for the Tenth Circuit

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

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
AND
REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA,
Defendants-Appellees/Cross-Appellants

On Appeal from the United States District Court for the Western District
of Oklahoma, Case No. 5:15-cv-324-C, Hon. Robin Cauthron

**PLAINTIFF-APPELLANT/CROSS-APPELLEEDR. RACHEL TUDOR'S
APPENDIX VOLUME 1 OF 9**

EZRA ISHMAEL YOUNG
LAW OFFICE OF EZRA YOUNG
30 Devoe Street, #1A
Brooklyn, NY 11211
(949) 291-3185
ezra@ezrayoung.com

BRITTANY M. NOVOTNY
NATIONAL LITIGATION LAW GROUP
PLLC
2401 NW 23rd St., Ste. 42
Oklahoma City, OK 73107
(405) 896-7805
bnovotny@nationlit.com

MARIE EISELA GALINDO
LAW OFFICE OF MARIE E. GALINDO
Wells Fargo Bldg.
1500 Broadway, Ste. 1120
Lubbock, TX 79401
(806) 549-4507
megalindo@thegalindofirm.com

Attorneys for Plaintiff-Appellant/Cross-Appellee

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15-CV-324-C – Relevant Docket Entries

Appendix Pg. #	Filer	Date of Filing	Doc #	Title of Pleading
001-029	Court	NA	NA	15-CV-324 Docket
030-050	Plaintiff	03/30/2015	1	Complaint
051-064	Defendants	04/27/2015	21	Answer to Complaint by SEOSU
065-070	Defendants	04/28/2015	22	Answer to Complaint by RUSO
071-105	Plaintiff	05/05/2015	24	First Intervenor Complaint
106-125	Defendants	05/26/2015	28	Answer to Intervenor Complaint by SEOSU
126-146	Defendants	05/26/2015	29	Answer to Intervenor Complaint by RUSO
147-153	Court	07/10/2015	34	Order Striking Defendants Motion to Dismiss
154-157	Defendants	07/24/2015	37	Answer to Intervenor Complaint Ct. 1 by SEOSU
158-161	Defendants	07/24/2015	38	Answer to Intervenor Complaint Ct. 1 by RUSO
162-194	Defendants	10/10/2017	196	Defendants' Proposed Jury Instructions
195-213	Plaintiff	10/13/2017	205-1	Response to Motion for Summary Judgment Exhibit 1 Expert Report by Dr. Brown
214-226	Plaintiff	10/13/2017	205-17	Response to Motion for Summary Judgment Exhibit 17 Althoff Declaration

**U.S. District Court
Western District of Oklahoma[LIVE] (Oklahoma City)
CIVIL DOCKET FOR CASE #: 5:15-cv-00324-C**

United States of America v. Southeastern Oklahoma State
University et al
Assigned to: Honorable Robin J. Cauthron
Case in other court: Tenth Circuit, 18-06102
Tenth Circuit, 18-06165
Cause: 42:2000e Job Discrimination (Employment)

Date Filed: 03/30/2015
Date Terminated: 06/06/2018
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

United States of America

represented by **Allan K Townsend**
c/o Kay Sewell, Assistant US Attorney
210 West Park Ave
Suite 400
Oklahoma City, OK 73102
202-619-9100
Fax: 202-514-1005
Email: Allan.Townsend@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Delora L Kennebrew
US Dept of Justice Civil Rights Division-
DC
950 Pennsylvania Avenue NW
Rm 4928 PHB
Washington, DC 20530
202-514-3831
Fax: 202-514-1005
Email: delora.kennebrew@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jennifer L Arendes
Equal Employment Opportunity
Commission-ST LOUIS
1222 Spruce St
Room8.10
St Louis, MO 63103
314-539-7916
Fax: 314-539-7895
Email: jennifer.arendes@eeoc.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Meredith L Burrell
US Dept of Justice Civil Rights Division-
DC

950 Pennsylvania Avenue NW
Rm 4928 PHB
Washington, DC 20530
202-305-9053
Fax: 202-514-1005
Email: meredith.burrell@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Shayna M Bloom
US Dept of Justice Empl Litigation-601-DC
Civil Rights Division - Employment
Litigation Section
601 D St NW
Office 4615
Washington, DC 20004
202-305-1450
Fax: 202-514-1005
Email: shayna.bloom@usdoj.gov
ATTORNEY TO BE NOTICED

Valerie L Meyer
US Dept of Justice Criminal Div-950-DC
950 Pennsylvania Ave NW
Suite 7651
Washington, DC 20530
202-305-3179
Fax: 202-514-1005
Email: valerie.meyer@usdoj.gov
ATTORNEY TO BE NOTICED

V.

Intervenor Plaintiff

Dr Rachel Tudor

represented by **Brittany M Novotny**
401 N Hudson Ave
Oklahoma City, OK 73102
405-420-5890
Fax: 888-320-6749
Email: brittany.novotny@gmail.com
ATTORNEY TO BE NOTICED

Ezra I Young
Law Office of Ezra Young
30 Devoe 1a
Brooklyn, NY 11211
949-291-3185
Fax: 917-398-1849
Email: ezraiyoung@gmail.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Jillian T Weiss

Transgender Legal Defense and Education
Fund Inc
20 West 20th Street
Suite 705
New York, NY 10011
646-862-9396
Fax: 646-930-5654
Email: jweiss@jtweisslaw.com
TERMINATED: 05/24/2017

Marie E Galindo
Law Office of Marie E Galindo
1500 Broadway
Suite 1120
Wellsfargo Bldg
Lubbock, TX 79401
806-549-4507
Fax: 806-370-2703
Email: megalindo@thegalindolawfirm.com
ATTORNEY TO BE NOTICED

V.

Defendant

Southeastern Oklahoma State University

represented by **Dixie L Coffey**
Attorney General's Ofc-NE 21STREET-
OKC
313 NE 21st St
Oklahoma City, OK 73105
405-521-3921
Fax: 405-521-4518
Email: dixie.coffey@oag.ok.gov
ATTORNEY TO BE NOTICED

Jeb E Joseph
Attorney General's Ofc-NE 21STREET-
OKC
313 NE 21st St
Oklahoma City, OK 73105
405-521-3921
Fax: 405-521-4518
Email: jeb.joseph@oag.ok.gov
ATTORNEY TO BE NOTICED

Kindanne C Jones
Attorney General's Ofc-NE 21STREET-
OKC
313 NE 21st St
Oklahoma City, OK 73105
405-521-4274
Fax: 405-521-4518
Email: kindanne.jones@oag.ok.gov
ATTORNEY TO BE NOTICED

Mithun S Mansinghani
Attorney General's Ofc-NE 21STREET-
OKC
313 NE 21st St
Oklahoma City, OK 73105
405-522-4392
Email: Mithun.Mansinghani@oag.ok.gov
ATTORNEY TO BE NOTICED

Timothy M Bunson
James E Dunn & Associates PLLC
1215 Classen Drive
Oklahoma City, OK 73103
405-239-1000
Fax: 405-239-1003
Email: tim.bunson@oag.ok.gov
ATTORNEY TO BE NOTICED

Zachary P West
Attorney General's Ofc-NE 21STREET-
OKC
313 NE 21st St
Oklahoma City, OK 73105
405-521-3021
Fax: 405-521-4518
Email: zach.west@oag.ok.gov
ATTORNEY TO BE NOTICED

Defendant

Regional University System of Oklahoma

represented by **Dixie L Coffey**
(See above for address)
ATTORNEY TO BE NOTICED

Jeb E Joseph
(See above for address)
ATTORNEY TO BE NOTICED

Kindanne C Jones
(See above for address)
ATTORNEY TO BE NOTICED

Mithun S Mansinghani
(See above for address)
ATTORNEY TO BE NOTICED

Timothy M Bunson
(See above for address)
ATTORNEY TO BE NOTICED

Zachary P West
(See above for address)
ATTORNEY TO BE NOTICED

Defendant
**former attorney for Transgender Legal
 Defense & Education Fund**

represented by **Charles J Watts**
 Charles J Watts Attorney at Law
 600 N Walker
 Suite 101
 Oklahoma City, OK 73102
 405-842-5022
 Fax: 405-842-4993
 Email: cjwattslaw@yahoo.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/30/2015	<u>1</u>	COMPLAINT against All Defendants filed by United States of America. (Attachments: # <u>1</u> Civil Cover Sheet)(cps) (Entered: 03/30/2015)
03/31/2015	<u>2</u>	ENTRY of Appearance by Allan K Townsend on behalf of United States of America (Townsend, Allan) (Entered: 03/31/2015)
04/02/2015	<u>3</u>	ENTRY of Appearance by Meredith L Burrell on behalf of United States of America (Burrell, Meredith) (Entered: 04/02/2015)
04/02/2015	<u>4</u>	ENTRY of Appearance by Delora L Kennebrew on behalf of United States of America (Kennebrew, Delora) (Entered: 04/02/2015)
04/03/2015	<u>5</u>	Summons Issued Electronically as to Regional University System of Oklahoma, Southeastern Oklahoma State University. (cla) (Entered: 04/03/2015)
04/09/2015	<u>6</u>	ENTRY of Appearance by Brittany M Novotny on behalf of Rachel Tudor (Novotny, Brittany) (Entered: 04/09/2015)
04/09/2015	<u>7</u>	MOTION to Intervene as of Right and Join Claims as Plaintiff by Rachel Tudor. (Attachments: # <u>1</u> Exhibit Complaint in Intervention, # <u>2</u> Exhibit EEOC Complaint of Dr. Tudor)(Novotny, Brittany) (Entered: 04/09/2015)
04/09/2015	<u>8</u>	MOTION for Leave to Appear Pro Hac Vice of Jillian T. Weiss by Rachel Tudor. (Novotny, Brittany) (Entered: 04/09/2015)
04/09/2015	<u>9</u>	MOTION for Leave to Appear Pro Hac Vice of Ezra I. Young by Rachel Tudor. (Novotny, Brittany) (Entered: 04/09/2015)
04/10/2015	<u>10</u>	Receipt for Money Received from Rachel Tudor in the amount of \$50.00, receipt number OKW500045918 regarding <u>8</u> MOTION for Leave to Appear Pro Hac Vice of Jillian T. Weiss. (njr) (Entered: 04/10/2015)
04/10/2015	<u>11</u>	Receipt for Money Received from Rachel Tudor in the amount of \$50.00, receipt number OKW500045920 regarding <u>9</u> MOTION for Leave to Appear Pro Hac Vice of Ezra I. Young. (njr) (Entered: 04/10/2015)
04/13/2015	<u>12</u>	ORDER granting <u>9</u> Motion to Appear Pro Hac Vice - Ezra I. Young. Signed by Honorable Robin J. Cauthron on 4/13/15. (lg) (Entered: 04/13/2015)
04/13/2015	<u>13</u>	ORDER granting <u>8</u> Motion to Appear Pro Hac Vice - Jillian T. Weiss. Signed by Honorable Robin J. Cauthron on 4/13/15. (lg) (Entered: 04/13/2015)
04/15/2015	<u>14</u>	SUMMONS Returned Executed by United States of America. Southeastern Oklahoma State University served on 4/6/2015. (Townsend, Allan) (Entered: 04/15/2015)
		15-cv-324 OPENING BRIEF - TUDOR - Vol. 1 - 005

04/21/2015	15	SUMMONS Returned Executed by United States of America, Regional University System of Oklahoma served on 4/7/2015. (Townsend, Allan) (Entered: 04/21/2015)
04/21/2015	16	ENTRY of Appearance by Dixie L Coffey on behalf of All Defendants (Coffey, Dixie) (Entered: 04/21/2015)
04/21/2015	17	ENTRY of Appearance by Kindanne C Jones on behalf of All Defendants (Jones, Kindanne) (Entered: 04/21/2015)
04/21/2015	18	ENTRY of Appearance by Ezra I Young on behalf of Rachel Tudor (Young, Ezra) (Entered: 04/21/2015)
04/22/2015	19	ENTRY of Appearance by Jeb E Joseph on behalf of All Defendants (Joseph, Jeb) (Entered: 04/22/2015)
04/22/2015	20	ENTRY of Appearance by Jillian T Weiss on behalf of Rachel Tudor (Weiss, Jillian) (Entered: 04/22/2015)
04/27/2015	21	ANSWER to Complaint by Southeastern Oklahoma State University .(Coffey, Dixie) (Entered: 04/27/2015)
04/28/2015	22	ANSWER to Complaint by Regional University System of Oklahoma.(Coffey, Dixie) (Entered: 04/28/2015)
05/04/2015	23	ORDER granting 7 Motion and Brief of Dr. Rachel Tudor to Intervene as of Right and Join Claims as Plaintiff. Signed by Honorable Robin J. Cauthron on 5/4/15. (lg) (Entered: 05/04/2015)
05/05/2015	24	FIRST INTERVENOR COMPLAINT filed by Rachel Tudor.(Young, Ezra) (Entered: 05/05/2015)
05/12/2015	25	ENTRY of Appearance by Shayna M Bloom on behalf of United States of America (Bloom, Shayna) (Entered: 05/12/2015)
05/26/2015	26	ENTRY of Appearance by Mithun S Mansinghani on behalf of All Defendants (Mansinghani, Mithun) (Entered: 05/26/2015)
05/26/2015	27	MOTION to Dismiss by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 05/26/2015)
05/26/2015	28	ANSWER to 24 Intervenor Complaint by Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 05/26/2015)
05/26/2015	29	ANSWER to 24 Intervenor Complaint by Regional University System of Oklahoma. (Coffey, Dixie) (Entered: 05/26/2015)
05/26/2015	30	AMENDED MOTION to Dismiss by All Defendants. (Attachments: # 1 Exhibit DOE Correspondence)(Mansinghani, Mithun) (Entered: 05/26/2015)
06/16/2015	31	RESPONSE in Opposition re 30 AMENDED MOTION to Dismiss filed by Rachel Tudor. (Attachments: # 1 Affidavit of Dr. Rachel Tudor in Opposition)(Young, Ezra) (Entered: 06/16/2015)
06/23/2015	32	REPLY to Response to Motion re 30 AMENDED MOTION to Dismiss filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 06/23/2015)
07/09/2015	33	STATUS/SCHEDULING CONFERENCE DOCKET (lg) (Entered: 07/09/2015)
07/10/2015	34	ORDER striking 27 Defendants Southeastern Oklahoma State University and The Regional University System of Oklahomas Motion to Dismiss Plaintiff/Intervenors

		Complaint in Part, denying 30 Defendants Southeastern Oklahoma State University and The Regional University System of Oklahomas Amended Motion to Dismiss Plaintiff/Intervenors Complaint in Part. Signed by Honorable Robin J. Cauthron on 7/10/15. (lg) (Entered: 07/10/2015)
07/21/2015	35	JOINT STATUS REPORT AND DISCOVERY PLAN by Intervenor Plaintiff Rachel Tudor. (Attachments: # 1 Attachment Proposed Order)(Weiss, Jillian) (Entered: 07/21/2015)
07/24/2015	36	CONSENT ORDER Regarding Inadvertent Disclosure of Privileged Documents. Signed by Honorable Robin J. Cauthron on 7/24/15. (lg) (Entered: 07/24/2015)
07/24/2015	37	ANSWER to 24 Intervenor Complaint Count One by Regional University System of Oklahoma.(Coffey, Dixie) (Entered: 07/24/2015)
07/24/2015	38	ANSWER to 24 Intervenor Complaint Count One by Southeastern Oklahoma State University.(Coffey, Dixie) (Entered: 07/24/2015)
07/28/2015	39	SCHEDULING ORDER: Discovery due by 8/1/2016. Jury Trial set for 10/11/2016 09:00 AM before Honorable Robin J. Cauthron. Motions due by 8/1/2016.. Signed by Honorable Robin J. Cauthron on 7/28/15. (lg) (Entered: 07/28/2015)
11/12/2015	40	CONSENT MOTION for Protective Order by United States of America. (Attachments: # 1 Proposed Consent Confidentiality Order)(Townsend, Allan) (Entered: 11/12/2015)
11/17/2015	41	PROTECTIVE ORDER, granting 40 Consent Motion for Protective Order. Signed by Honorable Robin J. Cauthron on 11/17/15. (lg) (Entered: 11/17/2015)
02/05/2016	42	FIRST MOTION for Protective Order and Stay of Deposition by Rachel Tudor. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Weiss, Jillian) (Entered: 02/05/2016)
02/05/2016	43	FIRST MOTION to Expedite Motion for Protective Order and Stay of Deposition by Rachel Tudor. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Weiss, Jillian) (Entered: 02/05/2016)
02/08/2016	44	ORDER granting 43 Plaintiff/Intervenor Dr. Rachel Tudor Motion to Expedite her Motion for a Protective Order. Signed by Honorable Robin J. Cauthron on 2/8/16. (lg) (Entered: 02/08/2016)
02/09/2016	45	NOTICE (other) by Rachel Tudor re 42 FIRST MOTION for Protective Order and Stay of Deposition Withdrawal of Motion (Weiss, Jillian) (Entered: 02/09/2016)
02/10/2016	46	ORDER stricken as moot 42 Motion for Protective Order. Signed by Honorable Robin J. Cauthron on 2/10/16. (lg) (Entered: 02/10/2016)
03/01/2016	47	NOTICE of Subpoena by Regional University System of Oklahoma, Southeastern Oklahoma State University (Joseph, Jeb) (Entered: 03/01/2016)
03/08/2016	48	NOTICE of Subpoena by Regional University System of Oklahoma, Southeastern Oklahoma State University (Joseph, Jeb) (Entered: 03/08/2016)
03/30/2016	49	JOINT MOTION for Extension of Time for Expert Reports by Regional University System of Oklahoma, Southeastern Oklahoma State University, Rachel Tudor. (Coffey, Dixie) (Entered: 03/30/2016)
03/31/2016	50	ORDER granting 49 Joint Motion for Extension of Expert Report Deadline. Signed by Honorable Robin J. Cauthron on 3/31/16. (lg) (Entered: 03/31/2016)
04/01/2016	51	NOTICE to Take Deposition of James Habas and Kathy Nusz by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 04/01/2016)

04/18/2016	52	MOTION to Compel Defendants' Production of Electronically Stored Information with Incorporated Brief by United States of America. (Attachments: # 1 Exhibit January 15, 2016 letter, # 2 Exhibit February 17, 2016 letter, # 3 Exhibit February 25 and March 21, 2016, emails, # 4 Exhibit April 8, 2016 letter)(Townsend, Allan) (Entered: 04/18/2016)
04/25/2016	53	ENTRY of Appearance by Jennifer L Arendes on behalf of All Plaintiffs (Arendes, Jennifer) (Entered: 04/25/2016)
04/26/2016	54	ENTRY of Appearance by Valerie L Meyer on behalf of United States of America (Meyer, Valerie) (Entered: 04/26/2016)
04/26/2016	55	JOINT MOTION for Extension of Time to Complete Discovery and Modify the Scheduling Order by United States of America. (Attachments: # 1 Proposed Scheduling Order)(Townsend, Allan) (Entered: 04/26/2016)
04/27/2016	56	MOTION to Quash Subpoenas and for Protective Order by All Plaintiffs. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8)(Arendes, Jennifer) (Entered: 04/27/2016)
04/27/2016	57	ORDER granting 55 JOINT MOTION to Modify the Scheduling Order filed by United States of America. Signed by Honorable Robin J. Cauthron on 4/27/16. (lg) (Entered: 04/27/2016)
04/28/2016	58	ORDER denying 56 EEOC's Motion to Quash Subpoenas and for Protective Order to Prohibit Depositions of James Habas and Former EEOC Investigator Kathy Nusz. Signed by Honorable Robin J. Cauthron on 4/28/16. (lg) (Entered: 04/28/2016)
05/09/2016	59	RESPONSE to Motion re 52 MOTION to Compel Defendants' Production of Electronically Stored Information with Incorporated Brief filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - USA's 1st RFP to Defs)(Joseph, Jeb) (Entered: 05/09/2016)
05/12/2016	60	NOTICE to Take Deposition of James Habas and Kathy Nusz by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 05/12/2016)
05/12/2016	61	UNOPPOSED MOTION for Extension of Time to File Response/Reply as to 59 Response to Motion, 52 MOTION to Compel Defendants' Production of Electronically Stored Information with Incorporated Brief by United States of America. (Attachments: # 1 Proposed Order)(Townsend, Allan) (Entered: 05/12/2016)
05/16/2016	62	ORDER granting 61 Unopposed Motion to Extend Deadline to File Reply Brief in Support of Motion to Compel. Signed by Honorable Robin J. Cauthron on 5/16/16. (lg) (Entered: 05/16/2016)
05/23/2016	63	REPLY to Response to Motion re 52 MOTION to Compel Defendants' Production of Electronically Stored Information with Incorporated Brief filed by United States of America. (Townsend, Allan) (Entered: 05/23/2016)
06/06/2016	64	NOTICE to Take Deposition of Feleshia Porter, MS, LPC by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 06/06/2016)
06/07/2016	65	ORDER granting 52 Plaintiffs Motion to Compel Defendants Production of Electronically Stored Information. Signed by Honorable Robin J. Cauthron on 6/7/16. (lg) (Entered: 06/07/2016)
06/15/2016	66	ORDER governing privilege with respect to defendant's anticipated production of

		electronically stored information. Signed by Honorable Robin J. Cauthron on 6/15/16. (Attachments: # 1 Exhibit 1)(lg) (Entered: 06/15/2016)
06/23/2016	67	MOTION to Compel by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - USA's Rsp to RUSO's 1st Disc Requ, # 2 Exhibit 2 - DLC ltr to DOJ re insufficient disc rsps dated 1/5/16, # 3 Exhibit 3 - Townsend ltr in rsp to DLC ltr of 1/5/16 dated 1/28/16, # 4 Exhibit 4 - DLC ltr to DOJ re 2/2 discussion of insufficient disc rsps, # 5 Exhibit 5 - USA's Supp Rsp to RUSO 1st ROGS, # 6 Exhibit 6 - USA's ltr re Supp Rsp to ROGS, # 7 Exhibit 7 - USA's Privilege Log - Rsp to RUSO's 1st Disc Requ, # 8 Attachment EEOC v BCI, # 9 Attachment EEOC v BNSF Ry. Co., # 10 Attachment In re App of Michael Wilson and Partners, # 11 Attachment LeFave v Symbios, # 12 Attachment Millennium v Simonton, # 13 Attachment Morris v City of Colo. Springs, # 14 Attachment United Food v Chesapeake, # 15 Attachment US Info Sys v Int's Broth of Elec Workers)(Coffey, Dixie) (Entered: 06/23/2016)
06/24/2016	68	MOTION to Compel Deposition Testimony of Charles Babb and for Sanctions with Incorporated Brief by United States of America. (Attachments: # 1 Exhibit A - E-mail from D. Coffey to A. Townsend dated Apr. 12, 2016, # 2 Exhibit B - Letter from A. Townsend to D. Coffey and J. Joseph dated May 6, 2016, # 3 Exhibit C - Babb transcript, # 4 Exhibit D - Conway transcript excerpts, # 5 Exhibit E - Pl. Ex. 26, # 6 Exhibit F - Weiner transcript excerpts, # 7 Exhibit G - Pl. Ex. 46, # 8 Exhibit H - Pl. Ex. 47, # 9 Exhibit I - Pl. Ex. 50, # 10 Exhibit J - Clark transcript excerpts, # 11 Exhibit K - Pl. Ex. 15, # 12 Exhibit L - Pl. Ex. 74, # 13 Exhibit M - Pl. Ex. 121)(Bloom, Shayna) (Entered: 06/24/2016)
07/06/2016	69	JOINT MOTION for Extension of Time to File Response/Reply as to 68 MOTION to Compel Deposition Testimony of Charles Babb and for Sanctions with Incorporated Brief, 67 MOTION to Compel by United States of America. (Attachments: # 1 Proposed Order)(Meyer, Valerie) (Entered: 07/06/2016)
07/07/2016	70	ORDER granting 69 Joint Motion to Extend Deadlines to File Response Briefs in Opposition to Parties' Motions to Compel. Signed by Honorable Robin J. Cauthron on 7/7/16. (lg) (Entered: 07/07/2016)
07/18/2016	71	NOTICE OF RELATED OR COMPANION CASE by Rachel Tudor re 64 Notice to Take Deposition of Ms. Feleshia Porter (Attachments: # 1 Exhibit Motion to Quash, # 2 Exhibit Exhibit A, # 3 Exhibit Exhibit B, # 4 Exhibit Exhibit C, # 5 Exhibit Exhibit D, # 6 Exhibit Exhibit E, # 7 Exhibit Exhibit F, # 8 Exhibit Exhibit G, # 9 Exhibit Exhibit H, # 10 Exhibit Exhibit I, # 11 Exhibit Exhibit J, # 12 Exhibit Exhibit K, # 13 Exhibit Exhibit L, # 14 Exhibit Exhibit M)(Young, Ezra) (Entered: 07/18/2016)
07/21/2016	72	JOINT MOTION for Extension of Time to File Response/Reply as to 68 MOTION to Compel Deposition Testimony of Charles Babb and for Sanctions with Incorporated Brief, 67 MOTION to Compel, 70 Order on Motion for Extension of Time to File Response/Reply by United States of America. (Attachments: # 1 Proposed Order) (Townsend, Allan) (Entered: 07/21/2016)
07/21/2016	73	ORDER granting 72 Joint Motion to Extend Deadlines to File Response Briefs in Opposition to Parties' Motions to Compel. Signed by Honorable Robin J. Cauthron on 7/21/16. (lg) (Entered: 07/21/2016)
07/22/2016	74	NOTICE (other) by Rachel Tudor re 71 Notice of Related or Companion Case,, Order of the Northern District of Texas (Attachments: # 1 Exhibit)(Young, Ezra) (Entered: 07/22/2016)
07/26/2016	75	RESPONSE in Opposition re 67 MOTION to Compel Discovery Responses filed by

		United States of America. (Attachments: # 1 Exhibit First Amended Privilege Log, # 2 Exhibit Feb. 16, 2016 email, # 3 Exhibit July 16, 2015 email, # 4 Exhibit Declaration of Vanita Gupta, # 5 Exhibit Declaration of Jenny R. Yang, # 6 Exhibit Plaintiff/Intervenor Dr. Rachel Tudor's Responses to Regional University System of Oklahoma's Third Set of Discovery Requests)(Townsend, Allan) (Entered: 07/26/2016)
07/27/2016	76	RESPONSE to Motion re 68 MOTION to Compel Deposition Testimony of Charles Babb and for Sanctions with Incorporated Brief filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - Depo of Charlie Babb, # 2 Exhibit 2 - Depo of Bryon Clark, # 3 Exhibit 3 - Depo of Cathy Conway)(Coffey, Dixie) (Entered: 07/27/2016)
07/28/2016	77	NOTICE to Take Deposition of (Amended) Dr. Felicia Porter by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 07/28/2016)
07/28/2016	78	NOTICE to Take Deposition of Plaintiff USA pursuant to Fed. R. Civ. P. 30(b)(6) by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 07/28/2016)
07/28/2016	79	NOTICE to Take Deposition of EEOC pursuant to Fed. R. Civ. P. 30(b)(6) by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 07/28/2016)
07/28/2016	80	NOTICE (other) by Rachel Tudor re 77 Notice to Take Deposition Order Issued by the N.D. Texas & Related Motion Practice (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2, # 3 Exhibit Exhibit 3, # 4 Exhibit Exhibit 4, # 5 Exhibit Exhibit 5, # 6 Exhibit Exhibit 6, # 7 Exhibit Exhibit 7)(Young, Ezra) (Entered: 07/28/2016)
08/02/2016	81	NOTICE of Subpoena by Rachel Tudor Notice to Take Deposition of Mr. Richard Ogden (Young, Ezra) (Entered: 08/02/2016)
08/02/2016	82	NOTICE OF RELATED OR COMPANION CASE by Rachel Tudor re 77 Notice to Take Deposition (Attachments: # 1 Exhibit Motion to Quash, # 2 Exhibit Exhibit A, # 3 Exhibit Exhibit B, # 4 Exhibit Exhibit C, # 5 Exhibit Exhibit D, # 6 Exhibit Exhibit E, # 7 Exhibit Exhibit F, # 8 Exhibit Exhibit G, # 9 Exhibit Exhibit H, # 10 Exhibit Exhibit I, # 11 Exhibit Exhibit J, # 12 Exhibit Exhibit K, # 13 Exhibit Exhibit L, # 14 Exhibit Exhibit M, # 15 Exhibit Exhibit N, # 16 Exhibit Exhibit O, # 17 Exhibit Exhibit P, # 18 Exhibit Exhibit Q, # 19 Exhibit Exhibit R, # 20 Exhibit Exhibit S, # 21 Exhibit Exhibit T, # 22 Exhibit Exhibit U, # 23 Exhibit Exhibit V, # 24 Exhibit Exhibit W, # 25 Exhibit Exhibit X, # 26 Exhibit Exhibit Y, # 27 Exhibit Exhibit Z)(Young, Ezra) (Entered: 08/02/2016)
08/02/2016	83	REPLY to Response to Motion re 67 MOTION to Compel filed by Regional University System of Oklahoma. (Joseph, Jeb) (Entered: 08/02/2016)
08/03/2016	84	REPLY to Response to Motion re 68 MOTION to Compel Deposition Testimony of Charles Babb and for Sanctions with Incorporated Brief filed by United States of America. (Attachments: # 1 Exhibit 1 - Feb. 19, 2016 letter, # 2 Exhibit 2 - Feb. 29, 2016 email, # 3 Exhibit 3 - Apr. 8, 2016 letter, # 4 Exhibit 4 - Plaintiffs Deposition Ex 30, # 5 Exhibit 5 - Redaction ESI Production Log)(Meyer, Valerie) (Entered: 08/03/2016)
08/03/2016	85	NOTICE of Subpoena by All Defendants (Coffey, Dixie) (Entered: 08/03/2016)
08/04/2016	86	NOTICE of Change of Address by Allan K Townsend (Townsend, Allan) (Entered: 08/04/2016)
08/04/2016	87	NOTICE (other) by Rachel Tudor re 82 Notice of Related or Companion Case,,, Order from Eastern District of Oklahoma, Transferring Subpoena Related Motions (Attachments: # 1 Exhibit ED Okla Order)(Young, Ezra) (Entered: 08/04/2016)

08/09/2016	88	MOTION in Limine Request for Expedited Briefing and Ruling by All Defendants. (Attachments: # 1 Exhibit 1 - Depo of Rachel Tudor, # 2 Exhibit 2 - Excerpts of EEOC Interview of Cathy Conway, # 3 Exhibit 3 - Depo of Cathy Conway, # 4 Exhibit 4 - Excerpts of EEOC Interview of Jane McMillan, # 5 Exhibit 5 - Excerpts of EEOC Interview of Doug McMillan)(Joseph, Jeb) (Entered: 08/09/2016)
08/10/2016	89	MOTION to Quash or, in the Alternative, for a Protective Order Regarding Defendants' Notice of Deposition Under Fed. R. Civ. 30(b)(6) by United States of America. (Attachments: # 1 Exhibit (Declaration of Vanita Gupta), # 2 Exhibit (Proposed Order)) (Bloom, Shayna) (Entered: 08/10/2016)
08/10/2016	90	RESPONSE re 88 MOTION in Limine Request for Expedited Briefing and Ruling , Opposing Request for Expedited Briefing and Ruling filed by United States of America. (Meyer, Valerie) (Entered: 08/10/2016)
08/10/2016	91	ORDER denying 88 Defendants' First Motion in Limine and Request for Expedited Briefing and Ruling. Signed by Honorable Robin J. Cauthron on 8/10/16. (lg) (Entered: 08/10/2016)
08/10/2016	92	ORDER denying 67 Defendant Regional University System of Oklahoma's Motion to Compel Discovery Responses. Signed by Honorable Robin J. Cauthron on 8/10/16. (lg) (Entered: 08/10/2016)
08/10/2016	93	ORDER staying deposition of Feleshia Porter, re 82 Dr. Rachel Tudor's Motion to Quash Subpoena filed by Rachel Tudor (filed in ED/OK 8/1/16). Signed by Honorable Robin J. Cauthron on 8/10/16. (lg) (Entered: 08/10/2016)
08/10/2016	94	NOTICE to Take Deposition of USA 30(b)(6) Representative by All Defendants. (Coffey, Dixie) (Entered: 08/10/2016)
08/11/2016	95	ORDER for Response, re 89 MOTION to Quash or, in the Alternative, for a Protective Order Regarding Defendants' Notice of Deposition Under Fed. R. Civ. 30(b)(6) filed by United States of America. Signed by Honorable Robin J. Cauthron on 8/11/16. (lg) (Entered: 08/11/2016)
08/11/2016	96	ORDER granting 68 United States' Motion to Compel Deposition Testimony of Charles Babb and for Sanctions. Signed by Honorable Robin J. Cauthron on 8/11/16. (lg) (Entered: 08/11/2016)
08/11/2016	97	MOTION for Extension of Time to Categorize Electronically Stored Information by All Defendants. (Joseph, Jeb) (Entered: 08/11/2016)
08/11/2016	98	SECOND MOTION in Limine by All Defendants. (Attachments: # 1 Exhibit 1 - Parker Expert Report, # 2 Attachment Babbar v Ebadi (unpublished case))(Mansinghani, Mithun) (Entered: 08/11/2016)
08/11/2016	99	NOTICE (other) by United States of America re 89 MOTION to Quash or, in the Alternative, for a Protective Order Regarding Defendants' Notice of Deposition Under Fed. R. Civ. 30(b)(6) (Bloom, Shayna) (Entered: 08/11/2016)
08/12/2016	100	RESPONSE in Opposition re 97 MOTION for Extension of Time to Categorize Electronically Stored Information filed by United States of America. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Meyer, Valerie) (Entered: 08/12/2016)
08/15/2016	101	MOTION for Leave to File Expert Witness List by United States of America. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Proposed Order)(Townsend, Allan) (Entered: 08/15/2016)
08/15/2016	102	RESPONSE in Opposition re 89 MOTION to Quash or, in the Alternative, for a

		Protective Order Regarding Defendants' Notice of Deposition Under Fed. R. Civ. 30(b)(6) filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 08/15/2016)
08/15/2016	103	ORDER stricken as moot 97 Motion for Extension of Deadline to Categorize Electronically Stored Information. Signed by Honorable Robin J. Cauthron on 8/15/16. (lg) (Entered: 08/15/2016)
08/15/2016	104	ORDER granting 101 United States' Motion for Leave to File its List of Expert Witnesses with Incorporated Brief. Signed by Honorable Robin J. Cauthron on 8/15/16. (lg) (Entered: 08/15/2016)
08/15/2016	105	ORDER granting 89 Plaintiff United States' Opening Motion to Quash or, in the Alternative, for a Protective Order Regarding Defendants' Notice of Deposition Under Fed. R. Civ. P. 30(b)(6); Defendants' Notice of Deposition 78 and Amended Notice of Deposition 94 are quashed without prejudice as set forth herein.. Signed by Honorable Robin J. Cauthron on 8/15/16. (lg) (Entered: 08/15/2016)
08/15/2016	106	NOTICE to Take Deposition of Plaintiff/Intervenor Rachel Tudor by All Defendants. (Coffey, Dixie) (Entered: 08/15/2016)
08/16/2016	107	Expert Witness List by Plaintiff United States of America. (Townsend, Allan) (Entered: 08/16/2016)
08/19/2016	108	Witness List by Plaintiff United States of America. (Townsend, Allan) (Entered: 08/19/2016)
08/19/2016	109	Exhibit List by Plaintiff United States of America. (Attachments: # 1 ESI list)(Townsend, Allan) (Entered: 08/19/2016)
08/19/2016	110	Exhibit List / Witness List by Intervenor Plaintiff Rachel Tudor. (Young, Ezra) (Entered: 08/19/2016)
08/22/2016	111	RESPONSE re 82 Notice of Related or Companion Case,,, in Objection to Motion quash Subpoena Issued to Feleshia Porter filed by All Defendants. (Attachments: # 1 Exhibit 1 - Porter letter of 4/4/2007, # 2 Exhibit 2 - Cathy Conway Depo Excerpts, # 3 Exhibit 3 - Brown Expert Report)(Coffey, Dixie) (Entered: 08/22/2016)
08/25/2016	112	UNOPPOSED MOTION for Extension of Time to File Motion to Compel Related to Privilege Claims Over ESI by United States of America. (Attachments: # 1 Exhibit One, # 2 Proposed Order)(Townsend, Allan) (Entered: 08/25/2016)
08/26/2016	113	ORDER granting 112 Unopposed Motion to Extend Deadline to File Motion to Compel Related to Privilege Claims Over ESI. Signed at direction of Honorable Robin J. Cauthron on 8/26/16. (lg) (Entered: 08/26/2016)
08/29/2016	114	Exhibit List (Final) by Defendants Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 08/29/2016)
08/29/2016	115	REPLY by Intervenor Plaintiff Rachel Tudor re 111 Response, filed by Rachel Tudor. (Attachments: # 1 Exhibit Exhibit C, # 2 Exhibit Exhibit D)(Young, Ezra) (Entered: 08/29/2016)
08/30/2016	116	SEALED EXHIBIT by Intervenor Plaintiff Rachel Tudor Re: 115 Reply (Young, Ezra) (Entered: 08/30/2016)
08/31/2016	117	UNOPPOSED MOTION to Stay Case by United States of America. (Attachments: # 1 Exhibit One, # 2 Proposed Order)(Townsend, Allan) (Entered: 08/31/2016)
08/31/2016	118	NOTICE (other) by Rachel Tudor Change of Law Firm of Mr. Young (Young, Ezra)

		(Entered: 08/31/2016)
08/31/2016	119	NOTICE (other) by Rachel Tudor Change of Law Firm of Ms. Weiss (Weiss, Jillian) (Entered: 08/31/2016)
08/31/2016	120	FIRST MOTION for Extension of Time to File Motion to Compel Redeposition of Judge Richard Ogden and for Sanctions by Rachel Tudor. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Proposed Order)(Young, Ezra) (Entered: 08/31/2016)
09/01/2016	121	ORDER granted in part and denied in part [82-1] Motion to Quash of Plaintiff, originally filed in the ED/OK; quashed 77 Defendants' Amended Notice to Take Deposition of Feleshia Porter. Signed by Honorable Robin J. Cauthron on 9/1/16. (lg) (Entered: 09/01/2016)
09/02/2016	122	NOTICE (other) by Rachel Tudor re 120 FIRST MOTION for Extension of Time to File Motion to Compel Redeposition of Judge Richard Ogden and for Sanctions Delay of Receipt of Deposition Transcript (Attachments: # 1 Exhibit Exhibit A)(Young, Ezra) (Entered: 09/02/2016)
09/06/2016	123	ORDER granting 117 Unopposed Motion to Stay Deadlines and Discovery; moot 120 Dr. Rachel Tudor's Motion to Extend Deadline to File a Motion to Compel Redeposition of Judge Richard Ogden and for Sanctions. Signed by Honorable Robin J. Cauthron on 9/6/16. (lg) (Entered: 09/06/2016)
09/13/2016	124	NOTICE OF RELATED OR COMPANION CASE by Rachel Tudor Notice of Dr. Tudor's Motion to Intervene in ND Texas Litigation (Attachments: # 1 Exhibit Motion to Intervene ND Tex, # 2 Exhibit Putative Complaint in Intervention ND Tex)(Young, Ezra) (Entered: 09/13/2016)
10/25/2016	125	MOTION to Lift Stay by United States of America. (Attachments: # 1 Exhibit One, # 2 Exhibit Two, # 3 Exhibit Three, # 4 Exhibit Four, # 5 Exhibit Five, # 6 Exhibit Six, # 7 Exhibit Seven, # 8 Proposed Order)(Townsend, Allan) (Entered: 10/25/2016)
10/31/2016	126	ORDER for Response, re 125 MOTION to Lift Stay filed by United States of America. Signed by Honorable Robin J. Cauthron on 10/31/16. (lg) (Entered: 10/31/2016)
11/04/2016	127	RESPONSE to Motion re 125 MOTION to Lift Stay filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 11/04/2016)
11/04/2016	128	NOTICE OF RELATED OR COMPANION CASE by Rachel Tudor re 124 Notice of Related or Companion Case, Notice of Related Appeal (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2, # 3 Exhibit Exhibit 3, # 4 Exhibit Exhibit 4)(Young, Ezra) (Entered: 11/04/2016)
11/14/2016	129	REPLY to Response to Motion re 125 MOTION to Lift Stay filed by United States of America. (Townsend, Allan) (Entered: 11/14/2016)
11/16/2016	130	ORDER denying 125 Plaintiff's Motion to Lift Stay. Signed by Honorable Robin J. Cauthron on 11/16/16. (lg) (Entered: 11/16/2016)
03/07/2017	131	JOINT MOTION for Settlement Conference by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 03/07/2017)
03/08/2017	132	ORDER granting 131 Joint Motion for Settlement Conference. Signed by Honorable Robin J. Cauthron on 3/8/17. (lg) (Entered: 03/08/2017)
03/27/2017	133	ORDER SETTING SETTLEMENT CONFERENCE Settlement Conference set for 5/5/2017 09:30 AM in Room 1305 before Magistrate Judge Charles B Goodwin. Signed

05/08/2017	134	ENTER ORDER: A settlement conference was held on May 5, 2017, before Magistrate Judge Charles B. Goodwin. The case did not settle. Signed by Magistrate Judge Charles B Goodwin on 05/08/2017. (jb) (Entered: 05/08/2017)
05/12/2017	135	UNOPPOSED MOTION for Extension of Time to File Proposed Schedule by United States of America. (Attachments: # 1 Attachment Proposed Order)(Meyer, Valerie) (Entered: 05/12/2017)
05/16/2017	136	ORDER granting 135 Unopposed Motion to Extend Deadline for Parties to File Proposed Schedule. Signed by Honorable Robin J. Cauthron on 5/16/17. (lg) (Entered: 05/16/2017)
05/22/2017	137	NOTICE (other) by Rachel Tudor Change of Firm Affiliation (Young, Ezra) (Entered: 05/22/2017)
05/23/2017	138	FIRST MOTION to Withdraw as Attorney by Jillian T. Weiss by Rachel Tudor. (Attachments: # 1 Exhibit 1: Email from Dr. Rachel Tudor, # 2 Exhibit 2: Email from Mr. Ezra Young, # 3 Exhibit 3: Email to Defendants' Counsel)(Weiss, Jillian) (Entered: 05/23/2017)
05/24/2017	139	ORDER granting 138 Motion to Withdraw as Attorney. Attorney Jillian T Weiss terminated. Signed by Honorable Robin J. Cauthron on 5/24/17. (lg) (Entered: 05/24/2017)
06/01/2017	140	NOTICE (other) by Regional University System of Oklahoma, Southeastern Oklahoma State University re 136 Order on Motion for Extension of Time to File (Joint) Regarding Status of Settlement Negotiations (Joseph, Jeb) (Entered: 06/01/2017)
06/08/2017	141	NOTICE (other) by United States of America of Proposed Schedule (Attachments: # 1 Exhibit Proposed Schedule)(Bloom, Shayna) (Entered: 06/08/2017)
06/13/2017	142	SCHEDULING ORDER: Jury Trial set for 11/7/2017 09:00 AM in Courtroom 501 before Honorable Robin J. Cauthron.. Signed by Honorable Robin J. Cauthron on 6/13/17. (lg) (Entered: 06/13/2017)
06/26/2017	143	ORDER SETTING SETTLEMENT CONFERENCE Settlement Conference set for 7/25/2017 10:00 AM in Room 1305 before Magistrate Judge Charles B Goodwin. Signed by Magistrate Judge Charles B Goodwin on 06/26/2017. (jb) (Entered: 06/26/2017)
07/27/2017	144	ENTER ORDER. A second settlement conference with respect to the United States claims against Defendants was held on July 25, 2017, before Magistrate Judge Charles B. Goodwin. The United States' claims against Defendants did not settle. Signed by the direction of Magistrate Judge Charles B Goodwin on 07/27/2017. (jb) (Entered: 07/27/2017)
08/04/2017	145	ENTRY of Appearance by Timothy M Bunson on behalf of Regional University System of Oklahoma, Southeastern Oklahoma State University (Bunson, Timothy) (Entered: 08/04/2017)
08/14/2017	146	MOTION to Compel Production of ESI Withheld on the Basis of Privilege by United States of America. (Attachments: # 1 Exhibit 1 (E-mails from August 2016), # 2 Exhibit 2 (Townsend letter dated 8 17 2016), # 3 Exhibit 3 (Bloom letter dated 8 19 2016), # 4 Exhibit 4 (Joseph letter dated 8 14 2017), # 5 Exhibit 5 (Dep. Ex. 111), # 6 Exhibit 6 (List of disputed items))(Bloom, Shayna) (Entered: 08/14/2017)
08/14/2017	147	RESPONSE in Opposition re 98 SECOND MOTION in Limine to Exclude the Testimony of Dr. Robert Parker filed by United States of America. (Attachments: # 1 Exhibit Stubblefield Dep., # 2 Exhibit Dep. Ex. 111, # 3 Exhibit Dep. Ex. 7, # 4 Exhibit Snowden

		Dep., # 5 Exhibit Parker CV, # 6 Exhibit Miscno Dep., # 7 Exhibit Dep. Ex. # 8 Exhibit McMillan Dep., # 9 Exhibit Prus Dep., # 10 Exhibit Scoufos Dep., # 11 Exhibit Minks Dep.)(Bloom, Shayna) (Entered: 08/14/2017)
08/18/2017	148	MOTION for Extension of Time to File Reply by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 08/18/2017)
08/18/2017	149	MOTION to Quash /Partially Quash Plaintiff's Second Amended Notice of Oral Deposition Under Fed. R. Civ. P. 30(b)(6) by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - Plaintiff's 2nd Amended Notice of 30(b)(6) Depo, # 2 Exhibit 2 - Objection Table, # 3 Exhibit 3 - Stubblefield Depo, # 4 Exhibit 4 - 2016-08-22 - KCJ email to DOJ-Tudor Counsel re 30(b)(6) Considerations, # 5 Exhibit 5 - 2017-08-17 - VMeyer email to JEJ re Stipulations for 30(b)(6))(Bunson, Timothy) (Entered: 08/18/2017)
08/21/2017	150	RESPONSE to Motion re 148 MOTION for Extension of Time to File Reply filed by United States of America. (Townsend, Allan) (Entered: 08/21/2017)
08/22/2017	151	ORDER granting 148 Motion for Extension of Time to File. Signed by Honorable Robin J. Cauthron on 8/21/17. (lg) (Entered: 08/22/2017)
08/24/2017	152	OBJECTIONS re 110 Exhibit List / Witness List filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Jones, Kindanne) (Entered: 08/24/2017)
08/24/2017	153	OBJECTIONS re 109 Exhibit List filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Jones, Kindanne) (Entered: 08/24/2017)
08/24/2017	154	Witness List (Final) by Defendants Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 08/24/2017)
08/28/2017	155	REPLY to Response to Motion re 98 SECOND MOTION in Limine filed by All Defendants. (Coffey, Dixie) (Entered: 08/28/2017)
08/30/2017	156	MOTION for Protective Order by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 08/30/2017)
08/31/2017	157	MOTION for Temporary Restraining Order and Preliminary Injunction by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 08/31/2017)
08/31/2017	158	TEMPORARY RESTRAINING ORDER, granting 157 Defendants Southeastern Oklahoma State University and the Regional University System of Oklahoma's Motion for Temporary Restraining Order. Signed by Honorable Robin J. Cauthron on 8/31/17. (lg) (Entered: 08/31/2017)
09/01/2017	159	UNOPPOSED MOTION for Extension of Time to File Response Brief in Opposition to Plaintiff's Motion to Compel Production of ESI [Doc. 146] by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 09/01/2017)
09/05/2017	160	ORDER granting 159 Unopposed Motion to Extend Deadline to File Response Brief in Opposition to Plaintiff's Motion to Compel Production of Electronically Stored Information. Signed by Honorable Robin J. Cauthron on 9/5/17. (lg) (Entered: 09/05/2017)
09/05/2017	161	FIRST MOTION for Reconsideration re 158 Order on Motion for TRO by Rachel Tudor. (Young, Ezra) (Entered: 09/05/2017)

09/06/2017	162	ORDER denying 161 Plaintiff-Intervenor Dr. Rachel Tudor's Request for Clarification of the August 31, 2017 Temporary Restraining Order. Signed by Honorable Robin J. Cauthron on 9/6/17. (lg) (Entered: 09/06/2017)
09/06/2017	163	ORDER denying 98 Defendants' Second Motion in Limine. Signed by Honorable Robin J. Cauthron on 9/6/17. (lg) (Entered: 09/06/2017)
09/07/2017	164	JOINT MOTION to Dismiss United States' Complaint by United States of America. (Meyer, Valerie) (Entered: 09/07/2017)
09/07/2017	165	BRIEF IN SUPPORT re 164 JOINT MOTION to Dismiss United States' Complaint by United States of America. (Meyer, Valerie) (Entered: 09/07/2017)
09/08/2017	166	JOINT MOTION to Stay Case (Unopposed Motion to Stay Deadlines) by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 09/08/2017)
09/11/2017	167	ORDER granting 166 Unopposed Joint Motion to Stay Deadlines Pending the Court's Ruling on Plaintiff's and Defendants' Joint Motion to Dismiss. Signed by Honorable Robin J. Cauthron on 9/11/17. (lg) (Entered: 09/11/2017)
09/18/2017	168	UNOPPOSED MOTION for Leave to File Ex Parte and Under Seal by United States of America. (Bloom, Shayna) (Entered: 09/18/2017)
09/18/2017	169	UNOPPOSED MOTION for Leave to File Ex Parte and Under Seal by Rachel Tudor. (Young, Ezra) (Entered: 09/18/2017)
09/19/2017	170	ORDER granting 169 Dr. Rachel Tudor's Motion to File Ex Parte and Under Seal. Signed by Honorable Robin J. Cauthron on 9/19/17. (lg) (Entered: 09/19/2017)
09/19/2017	171	ORDER granting 168 Unopposed Motion for Leave to File Ex Parte and Under Seal. Signed by Honorable Robin J. Cauthron on 9/19/17. (lg) (Entered: 09/19/2017)
09/20/2017	172	JOINT MOTION to Stay Case re 142 Scheduling Order Deadlines as they Relate to Litigation between Plaintiff and Defendants by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 09/20/2017)
09/20/2017	173	EX PARTE DOCUMENT by United States of America (Attachments: # 1 Exhibit 1 (Settlement Agreement))(Bloom, Shayna) (Entered: 09/20/2017)
09/20/2017	174	EX PARTE DOCUMENT by Rachel Tudor (Attachments: # 1 Exhibit 1, # 2 Exhibit 2) (Young, Ezra) (Entered: 09/20/2017)
09/21/2017	175	ORDER granting 172 Joint Motion to Stay Deadlines Pending the Courts Ruling on Plaintiff's and Defendants' Joint Motion to Dismiss. Signed by Honorable Robin J. Cauthron on 9/21/17. (lg) (Entered: 09/21/2017)
09/22/2017	176	OBJECTIONS re 114 Exhibit List filed by Rachel Tudor. (Young, Ezra) (Entered: 09/22/2017)
09/22/2017	177	MOTION for Summary Judgment by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - Intervenor Depo, # 2 Exhibit 2 - Intervenor's Rsp to RUSO's ROG #2, # 3 Exhibit 3 - Snowden Depo, # 4 Exhibit 4 - Scoufus Depo, # 5 Exhibit 5 - Prus Depo, # 6 Exhibit 6 - McMillan Depo, # 7 Exhibit 7 - Pl's Depo Ex 102 - 2010-04-30 McMillan Memo to Tudor, # 8 Exhibit 8 - Sept. 2010 DOE Charge, # 9 Exhibit 9 - Excerpts frm SEOSU Rsp to EEOC Requ for Info, # 10 Exhibit 10 - Intervenor's Rsp to RUSO's ROG #11, # 11 Exhibit 11 - Collin College Excerpts frm Tudor Personnel File, # 12 Exhibit 12 - SEOSU Anti-Sexual Harrassment Policy w-grievance procedure, # 13 Exhibit 13 - SEOSU Equal Opportunity

		and Anti-Discrimination Policy, # 14 Exhibit 14 Conway Depo, # 15 Attachment 2017-07-26 - Amicus Curiae Brf of CLD&EF)(Coffey, Dixie) (Entered: 09/22/2017)
09/27/2017	178	MOTION for Leave to File Reply Ex Parte and Under Seal by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Jones, Kindanne) (Entered: 09/27/2017)
09/28/2017	179	ORDER granting 178 Defendants' Motion for Leave to File Reply Ex parte and Under Seal. Signed by Honorable Robin J. Cauthron on 9/28/17. (lg) (Entered: 09/28/2017)
09/28/2017	180	EX PARTE DOCUMENT by Regional University System of Oklahoma, Southeastern Oklahoma State University (Attachments: # 1 Exhibit 1 - 8/31/2017 JEJ email to EYoung attach Stlmnt Agrmnt)(Bunson, Timothy) (Entered: 09/28/2017)
09/28/2017	181	RESPONSE to Motion re 164 JOINT MOTION to Dismiss United States' Complaint filed by Rachel Tudor. (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2)(Young, Ezra) (Entered: 09/28/2017)
10/02/2017	182	UNOPPOSED MOTION for Extension of Time to File Response/Reply as to 181 Response to Motion to Dismiss by United States of America. (Townsend, Allan) (Entered: 10/02/2017)
10/03/2017	183	MOTION for Extension of Time to File Reply Brief in Support of Joint Motion to Dismiss by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 10/03/2017)
10/03/2017	184	ORDER granting 182 Unopposed Motion to Extend Deadline to File Reply Brief in Support of Motion to Dismiss. Signed by Honorable Robin J. Cauthron on 10/3/17. (lg) (Entered: 10/03/2017)
10/03/2017	185	ORDER granting 183 Defendants' Unopposed Motion to Extend Deadline to File Reply Brief in Support of Joint Motion to Dismiss. Signed by Honorable Robin J. Cauthron on 10/3/17. (lg) (Entered: 10/03/2017)
10/08/2017	186	MOTION for Leave to Appear Pro Hac Vice of Marie Galindo by Rachel Tudor. (Novotny, Brittany) (Entered: 10/08/2017)
10/10/2017	187	Receipt for Money Received from Rachel Tudor in the amount of \$50.00, receipt number OKW500063360 regarding 186 MOTION for Leave to Appear Pro Hac Vice of Marie Galindo (em) (Entered: 10/10/2017)
10/10/2017	188	ORDER granting 186 Motion to Appear Pro Hac Vice - Marie E. Galindo. Signed by Honorable Robin J. Cauthron on 10/10/17. (lg) (Entered: 10/10/2017)
10/10/2017	189	MOTION in Limine to Exclude Tudor's Collin College Personnel File by Rachel Tudor. (Novotny, Brittany) (Entered: 10/10/2017)
10/10/2017	190	MOTION in Limine to Exclude Defendants' Witness Holly Newell by Rachel Tudor. (Novotny, Brittany) (Entered: 10/10/2017)
10/10/2017	191	MOTION in Limine to Exclude Defendants' Witness Dr. Don Weasenforth by Rachel Tudor. (Novotny, Brittany) (Entered: 10/10/2017)
10/10/2017	192	TRIAL BRIEF by Intervenor Plaintiff Rachel Tudor. (Young, Ezra) (Entered: 10/10/2017)
10/10/2017	193	Proposed Voir Dire by Intervenor Plaintiff Rachel Tudor. (Young, Ezra) (Entered: 10/10/2017)
10/10/2017	194	ENTRY of Appearance by Marie E Galindo on behalf of Rachel Tudor (Galindo, Marie) (Entered: 10/10/2017)

10/10/2017	195	MOTION in Limine and Brief in Support by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - Depo of Rachel Tudor, # 2 Exhibit 2 - Transcript of EEOC Interview of Cathy Conway, # 3 Exhibit 3 - Transcript of EEOC Interview of Jane McMillan, # 4 Exhibit 4 - Transcript of EEOC Interview of Doug McMillan, # 5 Exhibit 5 - Depo of Cathy Conway, # 6 Exhibit 6 - Depo of Doug McMillan, # 7 Exhibit 7 - Expert Report of George Brown)(Coffey, Dixie) (Entered: 10/10/2017)
10/10/2017	196	Proposed Jury Instructions by Defendants Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/10/2017)
10/10/2017	197	Proposed Voir Dire by Defendants Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/10/2017)
10/10/2017	198	MOTION for Leave to Have Limited Attorney Conducted Voir Dire by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/10/2017)
10/10/2017	199	Proposed Jury Instructions by Intervenor Plaintiff Rachel Tudor. (Galindo, Marie) (Entered: 10/10/2017)
10/10/2017	200	MOTION for Leave to Have Limited Attorney Conducted Voir Dire by Rachel Tudor. (Galindo, Marie) (Entered: 10/10/2017)
10/12/2017	201	ORDER granting 198 Defendants' Motion for Attorney Conducted Voir Dire; granting 200 Plaintiff/Intervenor's Motion for Attorney Conducted Voir Dire. Signed by Honorable Robin J. Cauthron on 10/12/17. (lg) (Entered: 10/12/2017)
10/12/2017	202	TRIAL DOCKET: Docket Call set for 11/1/2017 09:30 AM in Courtroom 501 before Honorable Robin J. Cauthron. Jury Trial set for 11/8/2017 09:00 AM in Courtroom 501 before Honorable Robin J. Cauthron. (lg) (Entered: 10/12/2017)
10/12/2017	203	REPLY to Response to Motion re 164 JOINT MOTION to Dismiss United States' Complaint filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 -US Atty Gen Memorandum dated 10/4/2017)(Jones, Kindanne) (Entered: 10/12/2017)
10/12/2017	204	REPLY to Response to Motion re 164 JOINT MOTION to Dismiss United States' Complaint filed by United States of America. (Bloom, Shayna) (Entered: 10/12/2017)
10/13/2017	205	RESPONSE in Opposition re 177 MOTION for Summary Judgment filed by Rachel Tudor. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13--placeholder under seal, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit 31, # 32 Exhibit 32, # 33 Exhibit 33, # 34 Exhibit 34, # 35 Exhibit 35, # 36 Exhibit 36, # 37 Exhibit 37, # 38 Exhibit 38, # 39 Exhibit 39, # 40 Exhibit 40, # 41 Exhibit 41, # 42 Exhibit 42, # 43 Exhibit 43, # 44 Exhibit 44, # 45 Exhibit 45, # 46 Exhibit 46, # 47 Exhibit 47, # 48 Exhibit 48, # 49 Exhibit 49, # 50 Exhibit 50, # 51 Exhibit 51, # 52 Exhibit 52, # 53 Exhibit 53, # 54 Exhibit 54, # 55 Exhibit 55, # 56 Exhibit 56, # 57 Exhibit 57, # 58 Exhibit 58, # 59 Exhibit 59, # 60 Exhibit 60, # 61 Exhibit 61, # 62 Exhibit 62, # 63 Exhibit 63, # 64 Exhibit 64, # 65 Exhibit 65, # 66 Exhibit 66, # 67 Exhibit 67, # 68 Exhibit 68)(Young, Ezra) (Main Document 205 replaced on 10/16/2017) (lg). (Entered: 10/13/2017)
10/17/2017	206	ORDER stricken as moot 146 United States' Motion to Compel Production of ESI

		Withheld on the Basis of Privilege, stricken as moot 149 Defendants Southeastern Oklahoma State University and the Regional University System of Oklahoma's Motion to Partially Quash Plaintiff's Second Amended Notice of Oral Deposition Under Fed. R. Civ. P. 30(b)(6); denying 156 Defendants Southeastern Oklahoma State University and the Regional University System of Oklahomas Motion for Entry of Protective Order; granting in part 164 Stipulation and Joint Motion for Dismissal of Plaintiff United States' Complaint with Prejudice. Signed by Honorable Robin J. Cauthron on 10/17/17. (lg) (Entered: 10/17/2017)
10/17/2017	207	FINAL PRETRIAL REPORT. (Young, Ezra) (Entered: 10/17/2017)
10/18/2017	208	MOTION for Leave to File Daubert Motion Regarding Plaintiff/Intervenor's Expert, George R. Brown, M.D. by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/18/2017)
10/19/2017	209	ORDER granting 208 Defendants' Motion for Leave to File Daubert Motion Regarding Plaintiff-Intervenor's Expert, George R. Brown, M.D.. Signed by Honorable Robin J. Cauthron on 10/19/17. (lg) (Entered: 10/19/2017)
10/19/2017	210	ORDER approving, re 207 Final Pretrial Report. Signed by Honorable Robin J. Cauthron on 10/19/17. (lg) (Entered: 10/19/2017)
10/20/2017	211	MOTION to Exclude (Daubert) Regarding George R. Brown M.D. by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - Brown's Expert Report)(Coffey, Dixie) (Entered: 10/20/2017)
10/20/2017	212	REPLY to Response to Motion re 177 MOTION for Summary Judgment and Brief in Support filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - Conway Depo, # 2 Exhibit 2 - Tudor Depo) (Joseph, Jeb) (Entered: 10/20/2017)
10/23/2017	213	RESPONSE in Opposition re 190 MOTION in Limine to Exclude Defendants' Witness Holly Newell, 191 MOTION in Limine to Exclude Defendants' Witness Dr. Don Weasenforth, 189 MOTION in Limine to Exclude Tudor's Collin College Personnel File filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - 8/22/2016 Email to Plaintiff and Intervenor, # 2 Exhibit 2 - 8/29/2016 Ltr to USA and Intervenor transmitting CC Personnel File)(Bunson, Timothy) (Entered: 10/23/2017)
10/24/2017	214	OBJECTIONS re 193 Proposed Voir Dire filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/24/2017)
10/24/2017	215	OBJECTIONS re 199 Proposed Jury Instructions filed by All Defendants. (Coffey, Dixie) (Entered: 10/24/2017)
10/24/2017	216	OBJECTIONS re 196 Proposed Jury Instructions filed by Rachel Tudor. (Young, Ezra) (Entered: 10/24/2017)
10/24/2017	217	RESPONSE to Motion re 195 MOTION in Limine and Brief in Support filed by Rachel Tudor. (Attachments: # 1 Exhibit 1 - McMillan Dep, # 2 Exhibit 2 - Amd Stub Cmplt) (Novotny, Brittany) (Entered: 10/24/2017)
10/25/2017	218	DESIGNATION OF DEPOSITION TESTIMONY by Rachel Tudor . (Young, Ezra) (Entered: 10/25/2017)
10/26/2017	219	ORDER denying 177 Defendants' Motion for Summary Judgment. Signed by Honorable Robin J. Cauthron on 10/26/17. (lg) (Entered: 10/26/2017)

10/26/2017	220	MOTION to Unseal Document 186 Ex Parte Document filed by Regional University System of Oklahoma, Southeastern Oklahoma State University, 173 Ex Parte Document filed by United States of America, 174 Ex Parte Document filed by Rachel Tudor, 205 Response in Opposition to Motion,,,,, filed by Rachel Tudor by Rachel Tudor. (Young, Ezra) (Entered: 10/26/2017)
10/30/2017	221	REPLY to Response to Motion re 190 MOTION in Limine to Exclude Defendants' Witness Holly Newell, 191 MOTION in Limine to Exclude Defendants' Witness Dr. Don Weasenforth, 189 MOTION in Limine to Exclude Tudor's Collin College Personnel File filed by Rachel Tudor. (Attachments: # 1 Exhibit 1 - Decl of BMN)(Novotny, Brittany) (Entered: 10/30/2017)
10/31/2017	222	MOTION to Strike 218 Designation of Deposition Testimony by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/31/2017)
10/31/2017	223	COUNTER DESIGNATION OF DEPOSITION TESTIMONY by Regional University System of Oklahoma, Southeastern Oklahoma State University . Related document: 218 Designation of Deposition Testimony filed by Rachel Tudor.(Coffey, Dixie) (Entered: 10/31/2017)
11/02/2017	224	ORDER denying 189 Plaintiff's Motion in Limine to Exclude Dr. Rachel Tudor's Personnel File from Collin College; denying 190 Plaintiff's Motion in Limine to Exclude Defendants' Witness Holly Newell; denying 191 Plaintiff's Motion in Limine to Exclude Defendants' Witness Dr. Don Weasenforth ; granting in part and denying in part 195 Defendants' Motion in Limine; granting 211 Defendants' Motion to Exclude Dr. George R. Brown ; granting in part 220 Plaintiff's Motion to Unseal Documents ; granting 222 Defendants' Motion to Strike Plaintiff's Deposition Designations. Signed by Honorable Robin J. Cauthron on 11/2/17. (lg) (Entered: 11/02/2017)
11/06/2017	225	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 1, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Docket Call Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/27/2017. Redacted Transcript Deadline set for 12/7/2017. Release of Transcript Restriction set for 2/5/2018. (sg) (Entered: 11/06/2017)
11/06/2017	226	NOTICE of Subpoena by Rachel Tudor Charles Weiner (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	227	NOTICE of Subpoena by Rachel Tudor Dan Althoff (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	228	NOTICE of Subpoena by Rachel Tudor James Knapp (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	229	NOTICE of Subpoena by Rachel Tudor John Mischo (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	230	NOTICE of Subpoena by Rachel Tudor Mark Spencer (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	231	NOTICE of Subpoena by Rachel Tudor Meg Cotter-Lynch (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	232	NOTICE of Subpoena by Rachel Tudor Mindy House (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	233	NOTICE of Subpoena by Rachel Tudor Randy Prus (Young, Ezra) (Entered: 11/06/2017)

11/06/2017	234	NOTICE of Subpoena by Rachel Tudor Richard Ogden (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	235	NOTICE of Subpoena by Rachel Tudor William Fridley (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	236	NOTICE of Subpoena by Rachel Tudor re 226 Notice of Subpoena Amended Charles Weiner (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	237	NOTICE of Subpoena by Rachel Tudor re 227 Notice of Subpoena Amended Dan Althoff (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	238	NOTICE of Subpoena by Rachel Tudor re 228 Notice of Subpoena Amended James Knapp (Young, Ezra) (Entered: 11/06/2017)
11/08/2017	239	ORDER REFERRING CASE to Magistrate Judge Bernard M. Jones for Settlement Conference. Signed by Honorable Robin J. Cauthron on 11/8/17. (lg) (Entered: 11/08/2017)
11/08/2017	244	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Selection held on 11/8/2017. (lg) (Entered: 11/13/2017)
11/09/2017	240	ENTER ORDER ~ A settlement conference was held on Wednesday, November 8, 2017, before Magistrate Judge Bernard M. Jones. The settlement conference was continued, telephonically, on Thursday, November 9, 2017. Lead trial counsel Ezra Young and additional counsel Brittany Novotny and Marie Galindo appeared on behalf of Plaintiff. Lead trial counsel Dixie Coffey and Jeb Joseph and additional counsel Timothy Bunson appeared on behalf of Defendant. The case did not settle. Signed by Magistrate Judge Bernard M. Jones on 11/9/2017. (dwl) (Entered: 11/09/2017)
11/11/2017	241	MOTION in Limine and Related Motions to Strike Affirmative Defenses by Rachel Tudor. (Attachments: # 1 Exhibit Exhibit 1)(Young, Ezra) (Entered: 11/11/2017)
11/11/2017	242	DESIGNATION OF DEPOSITION TESTIMONY by Rachel Tudor Admit Testimony of Cathy Conway Pursuant to Rule 32(a)(4)(D). (Young, Ezra) (Entered: 11/11/2017)
11/12/2017	243	MOTION to Strike Plaintiff's Trial Exhibits by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - 11/7/2017 email to EYoung re Pl's Trial Ex Notebooks, # 2 Exhibit 2 - 11/9/2017 TMB-EYoung string re Pl's trial exhs)(Coffey, Dixie) (Entered: 11/12/2017)
11/13/2017	245	MOTION to Quash Plaintiff's Trial Subpoenas to Non-Party Witnesses by William Fridley, Richard Ogden. (Coffey, Dixie) (Entered: 11/13/2017)
11/13/2017	246	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 13, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/4/2017. Redacted Transcript Deadline set for 12/14/2017. Release of Transcript Restriction set for 2/12/2018. (sg) (Entered: 11/13/2017)
11/13/2017	247	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial begun on 11/13/2017. (lg) (Entered: 11/14/2017)
11/14/2017	248	COUNTER DESIGNATION OF DEPOSITION TESTIMONY by All Defendants and Objections. Related document: 242 Designation of Deposition Testimony filed by Rachel Tudor.(Coffey, Dixie) (Entered: 11/14/2017)
11/14/2017	249	COUNTER DESIGNATION OF DEPOSITION TESTIMONY by Regional University

		System of Oklahoma, Southeastern Oklahoma State University (AMENDED). Related document: 242 Designation of Deposition Testimony filed by Rachel Tudor.(Coffey, Dixie) (Entered: 11/14/2017)
11/14/2017	252	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial held on 11/14/2017. (lg) (Entered: 11/15/2017)
11/15/2017	250	NOTICE of Subpoena by Rachel Tudor (Galindo, Marie) (Entered: 11/15/2017)
11/15/2017	251	DESIGNATION OF DEPOSITION TESTIMONY by Rachel Tudor Honorable Judge Richard Ogden. (Galindo, Marie) (Entered: 11/15/2017)
11/15/2017	253	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial held on 11/15/2017. (lg) (Entered: 11/16/2017)
11/16/2017	254	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial held on 11/16/2017. (lg) (Entered: 11/17/2017)
11/17/2017	255	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial held on 11/17/2017. (lg) (Entered: 11/20/2017)
11/20/2017	256	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial completed on 11/20/2017. (lg) (Entered: 11/20/2017)
11/20/2017	257	Jury Instructions. (lg) (Entered: 11/20/2017)
11/20/2017	258	Jury Note No. 1. (lg) (Entered: 11/20/2017)
11/20/2017	259	Jury Instruction No. 1. (lg) (Entered: 11/20/2017)
11/20/2017	260	Jury Note No. 2. (lg) (Entered: 11/20/2017)
11/20/2017	261	Jury Instruction No. 2. (lg) (Entered: 11/20/2017)
11/20/2017	262	JURY VERDICT. (lg) (Entered: 11/20/2017)
11/28/2017	263	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 14, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Volume: 2 of 6 Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2017. Redacted Transcript Deadline set for 12/29/2017. Release of Transcript Restriction set for 2/26/2018. (sg) (Entered: 11/28/2017)
11/28/2017	264	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 15, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Volume: 3 of 6 Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2017. Redacted Transcript Deadline set for 12/29/2017. Release of Transcript Restriction set for 2/26/2018. (sg) (Entered: 11/28/2017)
11/28/2017	265	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 16, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Volume: 4 of 6 Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2017. Redacted Transcript Deadline set

		for 12/29/2017. Release of Transcript Restriction set for 2/26/2018. (sg) (Entered: 11/28/2017)
11/28/2017	266	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 17, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Volume: 5 of 6 Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2017. Redacted Transcript Deadline set for 12/29/2017. Release of Transcript Restriction set for 2/26/2018. (sg) (Entered: 11/28/2017)
11/28/2017	267	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 20, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri S Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Volume: 6 of 6 Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2017. Redacted Transcript Deadline set for 12/29/2017. Release of Transcript Restriction set for 2/26/2018. (sg) (Entered: 11/28/2017)
12/11/2017	268	MOTION for Order for Reinstatement by Rachel Tudor. (Attachments: # 1 Exhibit Tudor Declaration, # 2 Exhibit Cotter-Lynch Declaration, # 3 Exhibit Compromise Agreement, # 4 Exhibit Insurance Changes)(Young, Ezra) (Entered: 12/11/2017)
12/20/2017	269	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 8, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Voir Dire Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/10/2018. Redacted Transcript Deadline set for 1/22/2018. Release of Transcript Restriction set for 3/20/2018. (sg) (Entered: 12/20/2017)
12/20/2017	270	RESPONSE in Opposition re 268 MOTION for Order for Reinstatement filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - Trial Transcript Vol 3, # 2 Exhibit 2 - Trial Transcript Vol 1, # 3 Exhibit 3 - Trial Transcript Vol 2, # 4 Exhibit 4 - Trial Transcript Vol 4, # 5 Exhibit 5 - Trial Transcript Vol 5, # 6 Exhibit 6 - Excerpts from Tudor's Collin College Personnel File, # 7 Exhibit 7 - CC Faculty Performance Appraisal 2014-15, # 8 Exhibit 8 - Tudor's CC Complaint, # 9 Exhibit 9 - CC Hearing Officer Findings, # 10 Exhibit 10 - Tudor's CC Appeal, # 11 Exhibit 11 - CC Review Panel Decision, # 12 Exhibit 12 - CC Student Evaluations, # 13 Exhibit 13 - Declaration of Holly Newell, # 14 Exhibit 14 - Seminole State College Committee Ranking Sheet, # 15 Exhibit 15 - Declaration of Dr. Randy Prus, # 16 Exhibit 16 - 3/25/2016 Email frm Tudor to Mallett w/attachments)(Joseph, Jeb) (Entered: 12/20/2017)
12/29/2017	271	REPLY to Response to Motion re 268 MOTION for Order for Reinstatement filed by Rachel Tudor. (Attachments: # 1 Exhibit Tudor Declaration, # 2 Exhibit Tudor Dec Exhibits, # 3 Exhibit Cotter-Lynch Declaration, # 4 Exhibit Fridley Declaration, # 5 Exhibit Weier Declaration, # 6 Exhibit RateMyProfessors Evaluations, # 7 Exhibit Classroom Observations, # 8 Exhibit Southeastern Letters)(Young, Ezra) (Entered: 12/29/2017)
01/04/2018	272	MOTION for Leave to File Surreply by All Defendants. (Coffey, Dixie) (Entered: 01/04/2018)
01/08/2018	273	ORDER granting 272 Defendants' Motion for Leave to File Surreply to Plaintiff's Reply t

		Defendants' Opposition to Reinstatement. Signed by Honorable Robin J. Cauthron on 1/8/18. (lg) (Entered: 01/08/2018)
01/16/2018	274	SURREPLY re 271 Reply to Response to Motion, 268 MOTION for Order for Reinstatement filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 01/16/2018)
01/29/2018	275	ORDER denying 268 Plaintiff Dr. Rachel Tudor's Motion for Reinstatement. Signed by Honorable Robin J. Cauthron on 1/29/18. (lg) (Entered: 01/29/2018)
02/09/2018	276	MOTION for Reconsideration re 275 Order on Motion for Order by Rachel Tudor. (Young, Ezra) (Entered: 02/09/2018)
02/10/2018	277	FIRST MOTION for Extension of Time on Briefing Front Pay by Rachel Tudor. (Young, Ezra) (Entered: 02/10/2018)
02/12/2018	278	ORDER denying 276 Plaintiff's Motion for Reconsideration ; granting in part 277 Plaintiff's Motion to Extend Briefing Deadline. Signed by Honorable Robin J. Cauthron on 2/12/18. (lg) (Entered: 02/12/2018)
02/27/2018	279	MOTION for Order Reconsideration of Reinstatement or, Alternatively, Front Pay by Rachel Tudor. (Attachments: # 1 Exhibit AAUP Proposal, # 2 Exhibit AAUP Program, # 3 Exhibit Tudor Dec, # 4 Exhibit Cotter-Lynch Dec, # 5 Exhibit Tudor ROGS, # 6 Exhibit BLS Report, # 7 Exhibit Treasury Rates, # 8 Exhibit Front Pay Worksheet, # 9 Exhibit Trial Testimony, # 10 Exhibit Tudor Teaching Evals, # 11 Exhibit Scoufos Backdated Letter, # 12 Exhibit Scoufos Worksheet, # 13 Exhibit McMillan Worksheet, # 14 Exhibit McMillan EEOC Transcript, # 15 Exhibit Prus Dep, # 16 Exhibit Ds Reps re After-Acquired Ev, # 17 Exhibit Trial Testimony, # 18 Exhibit Trial Testimony, # 19 Exhibit Trial Testimony)(Young, Ezra) (Entered: 02/27/2018)
03/12/2018	280	FIRST MOTION to Supplement Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay (ECF No. 279) by Rachel Tudor. (Attachments: # 1 Exhibit Tudor Dec, # 2 Exhibit Photo--Tudor Presentation, # 3 Exhibit Photo--Tudor at Conference) (Young, Ezra) (Entered: 03/12/2018)
03/19/2018	281	SECOND MOTION to Supplement Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay (ECF No. 279) by Rachel Tudor. (Attachments: # 1 Exhibit Tudor Article, # 2 Exhibit Tdor Certificate, # 3 Exhibit SEOSU Job Post)(Young, Ezra) (Entered: 03/19/2018)
03/19/2018	282	AMENDED MOTION to Supplement SECOND MOTION to Supplement Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay (ECF No. 279) by Rachel Tudor. (Attachments: # 1 Exhibit Tudor Article, # 2 Exhibit Tudor Certificate, # 3 Exhibit SEOSU Job Post)(Young, Ezra) (Entered: 03/19/2018)
03/20/2018	283	RESPONSE in Opposition re 279 MOTION for Order Reconsideration of Reinstatement or, Alternatively, Front Pay filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - Affidavit of Bryon Clark, # 2 Exhibit 2 - SEOSU Base Salary in 2011, # 3 Exhibit 3 - OESC Docs, # 4 Exhibit 4 - Responses from Colleges, # 5 Exhibit 5 - List from Higherjobs, # 6 Exhibit 6 - List from Higherjobs)(Joseph, Jeb) (Attachment 4 replaced on 3/22/2018) (lg). (Entered: 03/20/2018)
03/20/2018	284	AMENDED RESPONSE in Opposition re 279 MOTION for Order Reconsideration of Reinstatement or, Alternatively, Front Pay (Amended) filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - Affidavit of Bryon Clark, # 2 Exhibit 2 - SEOSU Base Salary in 2011, # 3 Exhibit 3 - OESC Docs, # 4 Exhibit 4 - Response of Colleges Subpoened, # 5 Exhibit 5 - Cotter-

		Lynch Testimony, # 6 Exhibit 6 - Higheredjobs Listings, # 7 Exhibit 7 - Higheredjobs Listings)(Joseph, Jeb) (Attachment 4 replaced on 3/22/2018) (lg). (Entered: 03/20/2018)
03/27/2018	285	REPLY to Response to Motion re 279 MOTION for Order Reconsideration of Reinstatement or, Alternatively, Front Pay filed by Rachel Tudor. (Attachments: # 1 Exhibit Book Chapter, # 2 Exhibit Cotter-Lynch Award, # 3 Exhibit Mitigation Trial Ruling, # 4 Exhibit Tudor Dep, # 5 Exhibit Tudor SEOSU Application, # 6 Exhibit Untimely Production)(Young, Ezra) (Entered: 03/27/2018)
04/13/2018	286	MEMORANDUM OPINION AND ORDER granting in part and denying in part 279 PLAINTIFF'S MOTION for Order Reconsideration of Reinstatement or, Alternatively, Front Pay; and striking as moot Plaintiff's 280 FIRST MOTION to Supplement Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay, 281 SECOND MOTION to Supplement Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay, and 282 AMENDED MOTION to Supplement SECOND MOTION to Supplement Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay. Signed by Honorable Robin J. Cauthron on 04/13/18. (wh) (Entered: 04/13/2018)
04/13/2018	287	ORDER. Signed by Honorable Robin J. Cauthron on 04/13/18. (wh) (Entered: 04/13/2018)
05/02/2018	288	FIRST MOTION for Reconsideration re 286 Memorandum Opinion, Terminate Motions,,, by Rachel Tudor. (Attachments: # 1 Exhibit Mitigation post-discovery to present)(Young, Ezra) (Entered: 05/02/2018)
05/03/2018	289	BRIEF IN SUPPORT re 287 Order (Brief on the Measure of Damages Awarded by the Jury) by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 05/03/2018)
05/24/2018	290	RESPONSE re 289 Brief filed by Rachel Tudor. (Young, Ezra) (Entered: 05/24/2018)
05/31/2018	291	REPLY by Defendants Regional University System of Oklahoma, Southeastern Oklahoma State University re 289 Brief, 290 Response filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Attachment McInerney v United Air Lines (unpublished case), # 2 Attachment Nelson v Rehabilitation Enterprises (unpublished case))(Coffey, Dixie) (Entered: 05/31/2018)
06/06/2018	292	MEMORANDUM OPINION AND ORDER. Signed by Honorable Robin J. Cauthron on 06/06/18. (wh) (Entered: 06/06/2018)
06/06/2018	293	JUDGMENT in favor of Rachel Tudor against Regional University System of Oklahoma, Southeastern Oklahoma State University. Signed by Honorable Robin J. Cauthron on 06/06/18. (wh) (Entered: 06/06/2018)
06/06/2018	294	NOTICE OF APPEAL by Rachel Tudor. Filing fee \$ 505, receipt number 1087-2715485. (Young, Ezra) (Entered: 06/06/2018)
06/07/2018	295	PRELIMINARY RECORD LETTER - Electronic Transmission of Notice of Appeal with Preliminary Record sent to Tenth Circuit Court of Appeals re 294 Notice of Appeal (em) (Entered: 06/07/2018)
06/07/2018	296	Tenth Circuit USCA Case Number 18-6102 for 294 Notice of Appeal filed by Rachel Tudor. (em) (Entered: 06/08/2018)
06/18/2018	297	TRANSCRIPT Order Form by Rachel Tudor re 294 Notice of Appeal that transcripts are necessary. See order form for dates and proceedings. (Young, Ezra) (Entered: 06/18/2018)
06/19/2018	298	TRANSCRIPT LETTER advising transcripts are already on file re 294 Notice of Appeal

		filed by Rachel Tudor. The record is ready for appeal purposes. (em) (Entered: 06/19/2018)
06/20/2018	299	MOTION for Costs by Rachel Tudor. (Attachments: # 1 Exhibit Addendum to BOC, # 2 Exhibit EY Affidavit)(Young, Ezra) (Entered: 06/20/2018)
06/20/2018	300	BRIEF IN SUPPORT re 299 MOTION for Costs by Rachel Tudor. (Young, Ezra) (Entered: 06/20/2018)
06/20/2018	301	FIRST MOTION for Attorney Fees Law Office Jillian Weiss by Rachel Tudor. (Weiss, Jillian) (Entered: 06/20/2018)
06/20/2018	302	FIRST MOTION for Attorney Fees DECLARATION IN SUPPORT OF LAW OFFICE JILLIAN WEISS by Rachel Tudor. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Weiss, Jillian) (Entered: 06/20/2018)
06/20/2018	303	FIRST MOTION for Attorney Fees by Rachel Tudor. (Attachments: # 1 Exhibit EY Dec, # 2 Exhibit BN Dec, # 3 Exhibit MG Dec)(Young, Ezra) (Entered: 06/20/2018)
06/21/2018	304	NOTICE OF BILL OF COSTS HEARING, Bill of Costs Hearing set for 8/16/2018 09:00 AM in Court Clerk's Office (em) (Entered: 06/21/2018)
06/21/2018	305	ENTRY of Appearance by Charles J Watts on behalf of Transgender Legal Defense & Education Fund (Watts, Charles) (Entered: 06/21/2018)
06/21/2018	306	MOTION for Attorney Fees by Transgender Legal Defense & Education Fund. (Attachments: # 1 Exhibit Ex 1-Retainer Agreement, # 2 Exhibit Ex 2-TGLDF notice of atty's lien, # 3 Exhibit Ex 2A-TGLDF Proof of Svc-atty lien, # 4 Exhibit Ex 2B-TGLDF Attorney's Lien, # 5 Exhibit Ex 3-TGLDF 6.20.18 Demand to P's Counsel, # 6 Exhibit Ex 4-Ezra Young's time 4.5.17-5.16.17, # 7 Exhibit Ex 5-Ezra Young's Time 8.31.16 - 1.31.17, # 8 Exhibit Ex 6-TLDEF Expense spreadsheet, # 9 Exhibit Ex 7-Levinsohn Declaration)(Watts, Charles) (Entered: 06/21/2018)
06/22/2018	307	ENTRY of Appearance by Zachary P West on behalf of Regional University System of Oklahoma, Southeastern Oklahoma State University (West, Zachary) (Entered: 06/22/2018)
06/28/2018	308	MOTION for Extension of Time to File Response/Reply as to 306 MOTION for Attorney Fees , 301 FIRST MOTION for Attorney Fees Law Office Jillian Weiss, 303 FIRST MOTION for Attorney Fees by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 06/28/2018)
06/28/2018	309	AMENDED MOTION for Extension of Time to File Response/Reply as to 306 MOTION for Attorney Fees , 301 FIRST MOTION for Attorney Fees Law Office Jillian Weiss, 303 FIRST MOTION for Attorney Fees by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 06/28/2018)
07/03/2018	310	UNOPPOSED MOTION for Leave to File Oversized Brief by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 07/03/2018)
07/03/2018	311	MOTION to Alter Judgment to Include Prejudgment and Post-Judgment Interest and Tax Offset by Rachel Tudor. (Attachments: # 1 Exhibit 1 - Prejudgment Interest, # 2 Exhibit 2 - IRS Tax Tables)(Novotny, Brittany) (Entered: 07/03/2018)
07/05/2018	312	ORDER granting 309 Motion for Extension of Time to File Response. Response due by 10/3/2018. Signed by Honorable Robin J. Cauthron on 07/05/18. (wh) (Main Document 312 replaced on 7/5/2018) (wh). (Entered: 07/05/2018)
07/05/2018	313	ORDER granting 310 Motion for Leave to File Oversized Brief. Signed by Honorable

		Robin J. Cauthron on 07/05/18. (wh) (Entered: 07/05/2018)
07/05/2018	314	FIRST MOTION to Amend/Correct 311 MOTION to Alter Judgment to Include Prejudgment and Post-Judgment Interest and Tax Offset by Rachel Tudor. (Attachments: # 1 Exhibit IRS Notice 1036)(Young, Ezra) (Entered: 07/05/2018)
07/05/2018	315	OBJECTIONS re 299 MOTION for Costs filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 07/05/2018)
07/05/2018	316	MOTION for Judgment NOV and, in the Alternative, MOTION for New Trial by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # 1 Exhibit 1 - Excerpt of Pl's Trial Ex. 4 - Rule 4.6.3)(Coffey, Dixie) (Entered: 07/05/2018)
07/12/2018	317	MOTION for Extension of Time to File Response/Reply as to 302 FIRST MOTION for Attorney Fees DECLARATION IN SUPPORT OF LAW OFFICE JILLIAN WEISS, 306 MOTION for Attorney Fees , 301 FIRST MOTION for Attorney Fees Law Office Jillian Weiss by Rachel Tudor. (Novotny, Brittany) (Entered: 07/12/2018)
07/18/2018	318	FIRST MOTION to Strike 316 MOTION for Judgment NOV and, in the Alternative MOTION for New Trial by Rachel Tudor. (Young, Ezra) (Entered: 07/18/2018)
07/18/2018	319	ORDER of USCA as to 294 Notice of Appeal filed by Rachel Tudor. Order filed by Clerk of the Court abating case. A review of the district court docket has revealed a pending motion to alter or amend the judgment filed by the appellant. The deadline for appellant to file the opening brief and appendix is vacated. Status report due 09/04/2018 by Rachel Tudor. If the district court rules on the motion before that time, appellant shall promptly notify this court in writing. The district court is directed to supplement the preliminary record with the order. See attached order for additional information. Served on 07/18/2018. (em) (Entered: 07/19/2018)
07/19/2018	320	NOTICE (other) by Rachel Tudor re 319 USCA Order., 318 FIRST MOTION to Strike 316 MOTION for Judgment NOV and, in the Alternative MOTION for New Trial (Attachments: # 1 Exhibit EX1-Tudor Motion, # 2 Exhibit EX2-10th Cir Order)(Young, Ezra) (Entered: 07/19/2018)
07/20/2018	321	OBJECTIONS re 314 FIRST MOTION to Amend/Correct 311 MOTION to Alter Judgment to Include Prejudgment and Post-Judgment Interest and Tax Offset filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 07/20/2018)
07/23/2018	322	FIRST MOTION for Extension of Time to File Response/Reply as to 316 MOTION for Judgment NOV and, in the Alternative MOTION for New Trial , 318 FIRST MOTION to Strike 316 MOTION for Judgment NOV and, in the Alternative MOTION for New Trial by Rachel Tudor. (Young, Ezra) (Entered: 07/23/2018)
07/25/2018	323	ORDER. Signed by Honorable Robin J. Cauthron on 07/25/18. (wh) (Entered: 07/25/2018)
07/26/2018	324	RESPONSE in Opposition re 316 MOTION for Judgment NOV and, in the Alternative MOTION for New Trial , 322 FIRST MOTION for Extension of Time to File Response/Reply as to 316 MOTION for Judgment NOV and, in the Alternative MOTION for New Trial , 318 FIRST MOTION to Strike 316 MOTION for Judgment NOV and, in the Alternative< filed by Rachel Tudor. (Attachments: # 1 Exhibit Tudor Trial Exhibit 79, # 2 Exhibit Tudor Trial Exhibit 35, # 3 Exhibit Tudor Trial Exhibit 84)(Young, Ezra) (Entered: 07/26/2018)
08/01/2018	325	RESPONSE in Opposition re 322 FIRST MOTION for Extension of Time to File

		Response/Reply as to 316 MOTION for Judgment NOV and, in the Alternative MOTION for New Trial , 318 FIRST MOTION to Strike 316 MOTION for Judgment NOV and, in the Alternative< filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 08/01/2018)
08/01/2018	326	REPLY by Intervenor Plaintiff Rachel Tudor re 325 Response in Opposition to Motion, filed by Rachel Tudor. (Young, Ezra) (Entered: 08/01/2018)
08/02/2018	327	REPLY to Response to Motion re 316 MOTION for Judgment NOV and, in the Alternative MOTION for New Trial filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 08/02/2018)
08/03/2018	328	NOTICE of Subpoena by Regional University System of Oklahoma, Southeastern Oklahoma State University (Attachments: # 1 Attachment 1 - SDT - Jillian Weiss, # 2 Attachment 2 - SDT - TLDF)(Coffey, Dixie) (Entered: 08/03/2018)
08/07/2018	329	RESPONSE re 304 Bill of Costs Hearing set filed by Rachel Tudor. (Young, Ezra) (Entered: 08/07/2018)
08/07/2018	330	ORDER of USCA as to 294 Notice of Appeal filed by Rachel Tudor. Appellants Motion to Vacate Abatement Order is denied. The abatement of this appeal shall continue. In accordance with the order of July 18, 2018, no later than September 4, 2018, Appellant shall file a written report regarding the status of all three post-judgment motions (Doc. Nos. 311, 314, 316). (em) (Entered: 08/08/2018)
08/08/2018	331	RESPONSE in Opposition re 318 FIRST MOTION to Strike 316 MOTION for Judgment NOV and, in the Alternative MOTION for New Trial filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 08/08/2018)
08/08/2018	332	ORDER granting 322 Motion for Extension of Time to File Response/Reply. Signed by Honorable Robin J. Cauthron on 08/08/18. (wh) (Entered: 08/08/2018)
08/15/2018	333	REPLY by Intervenor Plaintiff Rachel Tudor re 331 Response in Opposition to Motion, filed by Rachel Tudor. (Young, Ezra) (Entered: 08/15/2018)
08/17/2018	334	MOTION for Protective Order Regarding Defendants Post-Judgment Subpoenas Duces Tecum and Request for Production of Documents by United States of America. (Attachments: # 1 Exhibit A - OK OAG RFP to Tudor)(Bloom, Shayna) (Entered: 08/17/2018)
08/23/2018	335	SUPPLEMENT re 300 Brief, 299 MOTION for Costs by Rachel Tudor. (Young, Ezra) (Entered: 08/23/2018)
08/30/2018	336	RESPONSE re 335 Supplement Brief in Support of Bill of Costs filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 08/30/2018)
09/06/2018		ORDER of USCA as to 294 Notice of Appeal filed by Rachel Tudor. Order filed by Clerk of the Court on receipt of appellant's status report. The abatement of this appeal is continued. Appellant shall file another report advising this court as to the status of the postjudgment motions within 30 days. If the district court rules before that time, Appellant shall promptly notify this court in writing. When the dispositive order is entered by the district court, the clerk of the district court is directed to supplement the preliminary record. Served on 09/06/2018. Text only entry - no attachment. [18-6102] (em) (Entered: 09/10/2018)
09/18/2018	337	ORDER denying 316 Motion for Judgment as a Matter of Law; and granting 318 Plaintiff's Motion to Strike. Signed by Honorable Robin J. Cauthron on 9/18/18. (wh)

09/19/2018	338	ORDER of USCA as to 294 Notice of Appeal filed by Rachel Tudor. Order filed by Clerk of the Court. The abatement of this appeal shall continue. The district court has not addressed Appellant's two postjudgment motions, Doc. Nos. 311 and 314. Status report due 10/19/2018 by Rachel Tudor. Served on 09/19/2018. (em) (Entered: 09/21/2018)
09/21/2018	339	Costs Taxed in amount of \$ \$11,117.94 against Defendants (em) (Entered: 09/21/2018)
09/25/2018	340	ORDER striking 311 Motion to Alter Judgment; denying 314 Motion to Amend/Correct. Signed by Honorable Robin J. Cauthron on 9/25/18. (wh) (Entered: 09/25/2018)
09/25/2018	341	ORDER granting 334 Motion for Protective Order Regarding Defendants' Post-Judgment Subpoenas Duces Tecum and Request for Production of Documents. Signed by Honorable Robin J. Cauthron on 9/25/18. (wh) (Entered: 09/25/2018)
09/25/2018	342	MOTION for Extension of Time to Respond to Motions for Attorney Fees, Costs and Expenses by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 09/25/2018)
09/28/2018	343	NOTICE OF APPEAL as to 293 Judgment, 337 Order on Motion for Judgment NOV, Order on Motion for New Trial, Order on Motion to Strike by Regional University System of Oklahoma, Southeastern Oklahoma State University. Filing fee \$ 505, receipt number 1087-2782465. (West, Zachary) (Entered: 09/28/2018)
10/01/2018	344	PRELIMINARY RECORD LETTER - Electronic Transmission of Notice of Appeal with Preliminary Record sent to Tenth Circuit Court of Appeals re 343 Notice of Appeal. (em) (Entered: 10/01/2018)
10/01/2018	345	ORDER. Signed by Honorable Robin J. Cauthron on 10/01/18. (wh) (Entered: 10/01/2018)
10/02/2018	346	Tenth Circuit USCA Case Number 18-6165 for 343 Notice of Appeal, filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (ml) (Entered: 10/02/2018)
10/10/2018	347	TRANSCRIPT Order Form by Regional University System of Oklahoma, Southeastern Oklahoma State University re 343 Notice of Appeal, that transcripts are necessary. See order form for dates and proceedings. (West, Zachary) (Entered: 10/10/2018)
10/10/2018	348	TRANSCRIPT LETTER advising transcripts are already on file re 343 Notice of Appeal, filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. The record is ready for appeal purposes. (em) (Entered: 10/10/2018)

PACER Service Center			
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PACER Login:	mgalindo9:3025151:0	Client Code:	tudor
Description:	Docket Report	Search Criteria:	5:15-cv-00324-C Start date: 1/1/1970 End date: 11/13/2018
Billable Pages:	26	Cost:	2.60

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

1. UNITED STATES OF AMERICA,

Plaintiff,

v.

1. SOUTHEASTERN OKLAHOMA
STATE UNIVERSITY, and

2. THE REGIONAL UNIVERSITY
SYSTEM OF OKLAHOMA,

Defendants.

Case No. CIV-15-324-C

Jury Trial Demanded

COMPLAINT

Plaintiff, the United States of America, alleges:

1. This action is brought on behalf of the United States to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”). As set forth below, the United States alleges that Defendants Southeastern Oklahoma State University (“Southeastern”) and the Regional University System of Oklahoma (“RUSO”) subjected Dr. Rachel Tudor, a professor who is transgender, to unlawful sex discrimination and retaliation in violation of Title VII.

PARTIES

2. Dr. Rachel Tudor is a male-to-female transgender English professor who worked for Southeastern as a tenure track Assistant Professor from 2004 to 2011.

3. Defendant Southeastern is a member of the Oklahoma state system of higher education and is part of the Regional University System of Oklahoma (“RUSO”).

4. Defendant RUSO's Board of Regents is the governing board for several Oklahoma state universities, including Southeastern. RUSO's Policy Manual explains how the operations of RUSO and Southeastern interrelate. RUSO has the power to fix compensation and duties of personnel at its regional universities, including Southeastern. RUSO has the power and duty to adopt rules and regulations to govern its regional universities, including Southeastern. Southeastern's President has to report to RUSO on all matters related to employment, discipline, and termination of faculty. For these reasons, Southeastern and RUSO are a single employer for all relevant purposes.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345.

6. Venue is proper in this judicial district under 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1391(b). Both Southeastern and RUSO are agencies of the State of Oklahoma. At all relevant times, RUSO's principal place of business has been in Oklahoma City, Oklahoma, and Southeastern's principal place of business has been in Durant, Oklahoma.

7. Southeastern and RUSO are "persons" within the meaning of 42 U.S.C. § 2000e(a) and "employers" within the meaning of 42 U.S.C. § 2000e(b).

8. On or about September 9, 2010, Dr. Tudor filed a timely charge of discrimination alleging, among other things, that Southeastern subjected her to sex discrimination when it denied her application for promotion and tenure during the 2009-10 academic year. Dr. Tudor filed this charge with the U.S. Department of Education

Office for Civil Rights (“DOE”). After notifying Southeastern of the charge, DOE referred the charge to the U.S. Equal Employment Opportunity Commission (“EEOC”) for investigation of Dr. Tudor’s Title VII claim.

9. On or about July 12, 2011, Dr. Tudor supplemented her charge of discrimination filed with the EEOC. She alleged, among other things, that Southeastern subjected her to sex discrimination and retaliated against her because she complained about Southeastern’s discrimination. Specifically, Dr. Tudor alleged that Southeastern unlawfully refused to permit her to re-apply for promotion and tenure during the 2010-11 academic year. Dr. Tudor’s supplemented charge was simultaneously filed with the EEOC and with the Oklahoma Human Rights Commission.

10. Pursuant to Section 706 of Title VII, the EEOC notified the Defendants of Dr. Tudor’s supplemented charge of discrimination. After conducting an investigation of Dr. Tudor’s charges, the EEOC found reasonable cause to believe that Southeastern discriminated against Dr. Tudor because of her sex and retaliated against her because she engaged in protected activity. The EEOC notified the Defendants of its reasonable cause findings, unsuccessfully attempted to conciliate the charges, and subsequently referred the charges to the U.S. Department of Justice.

11. All conditions precedent to the filing of suit have been performed or have occurred.

FACTS

Dr. Tudor's Employment at Southeastern

12. In 2004, Dr. Tudor began working at Southeastern as a tenure track Assistant Professor in the Department of English, Humanities, and Languages (the “English Department”). At that time, she presented as a man and went by a traditionally male name.

13. Dr. Tudor was the first transgender professor ever to work at Southeastern.

14. In the summer of 2007, Dr. Tudor notified Southeastern that she planned to transition from male to female and begin to present as a woman at work during the 2007-08 academic year.

15. After she informed Southeastern about her transition, Dr. Tudor received a phone call from an employee of Southeastern’s human resources office to discuss various issues related to her gender transition. During that time, the human resources employee warned Dr. Tudor that Southeastern’s Vice President for Academic Affairs, Dr. Douglas McMillan, had inquired whether Dr. Tudor could be fired because her “transgender lifestyle” offended his religious beliefs. The human resources employee told Dr. Tudor that Vice President McMillan had been told that Southeastern could not fire her because she was transgender.

16. During the 2007-08 academic year, Dr. Tudor began to present as a woman at work by, among other things, wearing women’s clothing, styling her hair in a feminine manner, and going by the traditionally female name Rachel.

17. After Dr. Tudor began presenting as a woman, Jane McMillan, the director of Southeastern's Counseling Center, told her that she should take safety precautions because some people were openly hostile towards transgender people. She also told Dr. Tudor that Vice President McMillan (who is her brother) considered transgender people to be a "grave offense to his [religious] sensibilities."

Southeastern's Process for Promotion and Tenure

18. At Southeastern, Assistant Professors must obtain tenure before the end of their seventh year as an Assistant Professor or else their employment is terminated.

19. The process governing applications for promotion and tenure is set forth in Southeastern's "Procedure for Granting Promotion and Tenure." First, the applicant must submit a written application to her Department Chair, along with a portfolio that contains documentation pertinent to an assessment of her qualifications. Second, the applicant is reviewed by a Promotion and Tenure Review Committee ("P&T Review Committee") comprised of tenured faculty in the applicant's Department. Next, the application is reviewed sequentially by the Department Chair, the Dean of the applicant's school, and the Vice President for Academic Affairs, each of whom must consider whether to recommend the applicant to receive promotion and tenure and then forward his or her recommendation to the next reviewing official. Following the Vice President for Academic Affairs' review, the President of SOSU decides whether to approve or deny the application for promotion and tenure and, if the President approves the application, he submits his recommendation to the RUSO Board of Regents for their approval.

20. It is Southeastern's policy to notify applicants of the intermediate decisions

in the process as they occur. On a candidate's request, administrators may provide explanations of negative recommendations so that candidates for promotion and tenure can address deficiencies before the next level of review.

21. According to Southeastern's Academic Policies and Procedures, to attain a promotion to the position of Associate Professor an applicant must have: (1) an earned doctorate relevant to the teaching field awarded by a regionally accredited or internationally recognized institution of higher learning; (2) five years of successful higher education teaching experience in full-time appointments; (3) five years of experience at the Assistant Professor rank; (4) demonstrated effective classroom teaching, research/scholarship, contributions to the institution and profession (also referred to as "service"), and, in appropriate instances, successful performance of non-teaching or administrative duties; and (5) noteworthy achievement in classroom teaching, research/scholarship, and service, or, in appropriate instances, performance of non-teaching or administrative duties.

22. According to Southeastern's Academic Policies and Procedures, to attain tenure a professor must have: (1) five years of service at Southeastern in a tenure-track appointment as an Assistant Professor, Associate Professor, or Professor; (2) demonstrated effective classroom teaching, research/scholarship, service, and, in appropriate instances, successful performance of non-teaching or administrative duties; (3) demonstrated ability to work cooperatively to strengthen the academic quality of the institution; and (4) noteworthy achievement in classroom teaching and on at least one

other criterion: research/scholarship, service, or, in appropriate instances, performance of non-teaching or administrative duties.

23. Southeastern's Academic Policies and Procedures state that, "[f]aculty status and related matters are primarily faculty responsibility; this area includes...promotions [and] the granting of tenure." The Academic Policies and Procedures further state that, in considering applications for promotion and tenure, the "governing board and president should...concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail."

Dr. Tudor Prepares to Apply for Promotion and Tenure

24. In the summer of 2009, as Dr. Tudor was about to enter her sixth year as an Assistant Professor, she made preparations to apply for tenure and promotion to the position of Associate Professor.

25. At the end of August 2009, Dr. Tudor met with the Dean of the School of Arts and Sciences, Dr. Lucretia Scoufos. It was Dean Scoufos's customary practice to meet with professors applying for promotion and tenure to discuss the format and content of the portfolio that they had to prepare in support of their applications.

26. At this meeting, Dean Scoufos learned for the first time that Dr. Tudor was a transgender woman. Despite being informed of this fact, Dean Scoufos intentionally referred to Dr. Tudor by male pronouns such as "he" and "him."

27. During this meeting, Dr. Tudor told Dean Scoufos that she believed another faculty member in her Department had been discriminating against her since she had begun to present as a woman at work. Dr. Tudor said that she would prefer if this faculty

member did not serve on the Faculty Committee that would review her portfolio. Dean Scoufos did not report Dr. Tudor's concern to Southeastern's Affirmative Action Officer—the person at Southeastern responsible for investigating discrimination complaints.

Dr. Tudor's Application for Promotion and Tenure

28. In October 2009, Dr. Tudor submitted her application for tenure and promotion to the position of Associate Professor to the Chair of the English Department, Dr. John Mischo.

29. Both the P&T Review Committee assigned to review Dr. Tudor's application and portfolio as well as Dr. Mischo recommended that she receive promotion and tenure.

30. On or about November 29, 2009, Dr. Mischo notified Dean Scoufos that he and the P&T Review Committee recommended that Dr. Tudor receive a promotion to the tenured position of Associate Professor.

31. In January 2010, Dean Scoufos sent Dr. Tudor a letter informing her that, despite the recommendations of Dr. Tudor's Department Chair and the P&T Review Committee, she had decided to oppose Dr. Tudor's application for promotion and tenure. Dean Scoufos's letter contained no explanation for her decision.

32. Dean Scoufos passed her recommendation that tenure and promotion be denied and Dr. Tudor's portfolio along to Vice President McMillan.

33. In February 2010, Vice President McMillan sent Dr. Tudor a letter informing her that he also had decided to oppose her application for promotion and

tenure. Like Dean Scoufos's letter, Vice President McMillan's letter contained no explanation for his decision.

34. Shortly afterwards, Vice President McMillan forwarded Dr. Tudor's portfolio to the President of Southeastern, Dr. Larry Minks. He also forwarded to President Minks his own negative recommendations for Dr. Tudor's promotion and tenure, as well as the recommendations of the P&T Review Committee, the Chair of the English Department, and Dean Scoufos.

35. Dr. Tudor asked Vice President McMillan and Dean Scoufos to explain why they had decided to oppose her application. That information would have enabled Dr. Tudor to supplement her portfolio before the President reviewed it.

36. Both Vice President McMillan and Dean Scoufos refused to explain to Dr. Tudor why they decided to oppose her application.

37. In refusing to discuss with Dr. Tudor why he opposed her application, Vice President McMillan treated Dr. Tudor differently than a similarly-situated, non-transgender male English professor. Vice President McMillan met with the other professor to discuss how that professor could strengthen his portfolio. The other professor followed Vice President McMillan's advice and supplemented his portfolio before it was submitted to the President of Southeastern for a final decision on his application. Based on his supplemented portfolio—and the guidance that he received from Vice President McMillan—the non-transgender professor received promotion and tenure.

38. In February 2010, Dr. Tudor filed a grievance with President Minks and requested a hearing before Southeastern's Faculty Appellate Committee ("FAC"). In her grievance, she alleged that Dean Scoufos and Vice President McMillan had denied her the due process provided by Southeastern's policies when they refused to explain why they had opposed her application for promotion and tenure.

39. The following month, the FAC ruled in Dr. Tudor's favor and recommended to President Minks's designee that Vice President McMillan and Dean Scoufos explain to Dr. Tudor why they had opposed her application.

40. Pursuant to Southeastern policy, President Minks designated the Assistant Vice President for Academic Affairs ("Assistant Vice President") to communicate to Dr. Tudor both the FAC's recommendation and his decision whether to comply with that recommendation. Southeastern policy also required that Dr. Tudor receive this information within ten workdays. Dr. Tudor would have the right to appeal the Assistant Vice President's decision to President Minks.

41. The Assistant Vice President decided not to follow the FAC's recommendation. Vice President McMillan directed the Assistant Vice President to wait until after President Minks made his decision on Dr. Tudor's promotion and tenure application before informing her that he had decided not to follow the FAC's recommendation. Thus, Dr. Tudor received no notification within the ten workday deadline.

42. By violating Southeastern policy and withholding timely notification of the Assistant Vice President's decision, Southeastern denied Dr. Tudor the ability to appeal

Vice President McMillan’s and Dean Scoufos’s refusals to provide explanation of their negative recommendations prior to President Minks’s ultimate decision on her tenure and promotion application. Thus, she was deprived of the opportunity to supplement her portfolio to address their reasoning prior to President Minks’s decision.

43. In April 2010, President Minks sent Dr. Tudor a letter informing her that he had decided to deny her application for promotion and tenure. In that letter, President Minks did not explain why Dr. Tudor’s application was denied, but he did let her know that Vice President McMillan would inform her of the reasons for the denial in a separate communication.

44. President Minks’s decision was the first time Southeastern had denied an English professor’s application for tenure and promotion after he or she had obtained a favorable tenure recommendation from a P&T Review Committee and the Department Chair.

45. In June 2010, Dr. Tudor received a letter from Vice President McMillan. That letter—which purported to be dated over a month earlier, on April 30, 2010—stated that President Minks had denied Dr. Tudor’s application because her record in the areas of “research/scholarship” and “university service” were deficient.

46. Dr. Tudor’s qualifications for promotion and tenure were comparable, if not superior to, the qualifications of at least three other similarly-situated, non-transgender English professors who were considered for, and received, tenure during Dr. Tudor’s time at Southeastern. For example, the number of publications Dr. Tudor had in her portfolio was greater than the number of publications that another successful applicant

had in hers. One applicant received promotion and tenure even though she, unlike Dr. Tudor, had no peer-reviewed publications. Likewise, in the area of university service, Dr. Tudor's performance was also comparable to her non-transgender departmental peers who successfully applied for promotion and tenure.

47. Vice President McMillan's criticisms of Dr. Tudor's record in the area of scholarship also rested on his assertion that the Southeastern administration had been unable to verify that Dr. Tudor had served as an editor for two symposia listed in her portfolio. However, no one in the Southeastern administration ever requested that Dr. Tudor provide additional documentation to verify that she had served as an editor of the symposia. Moreover, copies of the published proceedings from the symposia were available in a reading room on Southeastern's campus and Dr. Tudor's role as editor was prominently displayed on the covers of both publications.

Dr. Tudor's Re-application and Grievances

48. Southeastern permits faculty members who have been denied promotion or tenure to reapply as long as they remain within their seven year term of initial employment. In at least one other RUSO institution, professors have re-applied for promotion and tenure the year after the President denied their applications.

49. In August 2010, Dr. Tudor informed her Department Chair that she intended to re-apply for promotion and tenure during the 2010-11 academic year.

50. That same month, Dr. Tudor also filed a grievance in which she requested a hearing with the FAC so that she could dispute Southeastern's decision to deny her 2009-10 application for promotion and tenure. In September 2010, the FAC informed Dr.

Tudor that it had no authority to overrule the President's decision to deny her promotion and tenure.

51. A few weeks later, in October 2010, Vice President McMillan sent Dr. Tudor a letter stating that Southeastern would not permit her to re-apply for promotion and tenure during the 2010-11 academic year. In the letter, which had been approved by President Minks, Vice President McMillan recognized that Southeastern policy did not prohibit Dr. Tudor from re-applying. But he nevertheless announced that he had decided that it was not in the "best interests of the university" to permit her to re-apply.

52. In his letter, Vice President McMillan offered several explanations for denying Dr. Tudor's request to re-apply for promotion and tenure. Among his reasons was his belief that deficiencies in Dr. Tudor's application from the prior academic year could not be corrected that quickly. Vice President McMillan also expressed concern that if the administration once again overruled positive recommendations from the P&T Review Committee and the Department Chair, its action would potentially "inflame the relationship between faculty and administration."

53. In October 2010, Dr. Tudor filed a grievance with the FAC and President Minks challenging Southeastern's decision not to let her re-apply for promotion and tenure during the 2010-11 academic year.

54. In response to Dr. Tudor's grievance, Vice President McMillan sent a letter to the FAC stating that he had opposed Dr. Tudor's 2009-10 application for promotion and tenure because she had submitted "the poorest portfolio [he had] ever reviewed in the

20 years” he worked at Southeastern, and there was “very little chance” that Dr. Tudor could have corrected the deficiencies in the period since the initial decision.

55. In support of her grievance, Dr. Tudor submitted four letters of recommendation from tenured English professors at Southeastern detailing their positive assessments that Dr. Tudor was qualified for promotion and tenure.

56. Another tenured English professor submitted a letter to the FAC, in support of Dr. Tudor’s grievance, which pointed out that “Dr. Tudor ha[d] published more research than any other member of the [English] department, tenured or untenured.” The letter writer therefore maintained that Vice President McMillan was “clearly mistaken in his opinion that consideration of Dr. Tudor’s tenure file would be a waste of time.”

57. In December 2010, the FAC recommended that Southeastern permit Dr. Tudor to re-apply for promotion and tenure during the 2010-11 academic year.

58. President Minks designated Southeastern’s Vice President for Business Affairs, Ross Walkup, to respond to the FAC’s decision. In January 2011, Vice President Walkup sent a letter to the FAC stating that Southeastern would not comply with the FAC’s recommendation because Southeastern policy prohibited professors from re-applying for promotion and tenure after the President denied their applications. In his letter, Vice President Walkup indicated that President Minks agreed with this interpretation of Southeastern policy.

Dr. Tudor’s Discrimination Complaint

59. In August 2010—at the same time she was seeking to re-apply for promotion and tenure—Dr. Tudor also filed a written discrimination complaint with

Southeastern's Affirmative Action Officer, Dr. Claire Stubblefield. In that complaint, she alleged, among other things, that Southeastern had discriminated against her on the basis of her sex when it denied her 2009-10 application for promotion and tenure. Dr. Tudor filed a similar discrimination complaint with DOE; and DOE informed Southeastern of the complaint in a letter dated September 15, 2010.

60. In October 2010, Dr. Tudor supplemented the discrimination complaint that she had filed with Dr. Stubblefield. She alleged that Southeastern had retaliated against her because of her discrimination complaints when it refused to permit her to re-apply for promotion and tenure during the 2010-11 academic year.

61. Dr. Stubblefield issued a report ostensibly addressing Dr. Tudor's discrimination and retaliation complaints in January 2011. Dr. Stubblefield found that Southeastern had not discriminated against or retaliated against Dr. Tudor.

62. Dr. Stubblefield's report did not address all of Dr. Tudor's allegations of discrimination and retaliation. For example, the report did not mention Southeastern's decision not to permit Dr. Tudor to re-apply for promotion and tenure during the 2010-11 academic year, even though Dr. Tudor had expressly complained that this decision to not let her re-apply was retaliatory. Similarly, Dr. Stubblefield's report did not address Dr. Tudor's allegation that Vice President McMillan had treated her differently from one of her peers by meeting with a non-transgender English professor to discuss his portfolio before the President rendered a decision on his application for promotion and tenure, while denying Dr. Tudor the opportunity to have such a meeting.

Dr. Tudor's Employment with Southeastern is Terminated

63. Since Dr. Tudor failed to attain tenure before the end of her seventh year as an Assistant Professor, Southeastern terminated her employment on May 31, 2011.

64. Before Dr. Tudor's employment ended, Southeastern's Faculty Senate awarded her with the Faculty Senate Recognition Award for Excellence in Scholarship for the 2010-11 academic year.

Sex and gender identity

65. Individuals are typically assigned a sex at birth solely on the basis of the appearance of the external genitalia. Only in cases of infants born with ambiguous genitalia are any of the additional aspects of sex (for example, an individual's chromosomal makeup) assessed and considered at that time.

66. An individual's "sex" consists of multiple factors. Beyond an individual's genitalia (external or internal) and chromosomes, sex includes, among other things, a variety of hormonal factors, sexual differentiation within the brain, the sex of assignment and rearing, and an individual's gender identity.

67. Although there is not yet one definitive explanation for what determines gender identity, recent research points to the influence of biological factors, most notably the role of sexual differentiation in the brain in gender identity development.

68. Transgender individuals are persons who have a gender identity (that is, an internal sense of being male or female) that does not match the sex they were assigned at birth.

69. Transgender individuals will often undertake some level of gender transition, which is the process of bringing external manifestations of their gender into conformity with their gender identity. A core aspect of gender transition is that individuals present themselves in the gender role that is consistent with their gender identity.

COUNT ONE
Title VII, 42 U.S.C. § 2000e-2(a)
Unlawful Discrimination Based on Sex (Gender Identity, Gender Transition, and Gender Stereotypes)

70. The United States repeats and re-alleges each and every allegation contained in paragraphs 1-69 as if fully set forth herein.

71. Defendants denied Dr. Tudor's application for promotion and tenure during the 2009-10 academic year and refused to permit her to re-apply during the 2010-11 academic year because of Dr. Tudor's gender and gender identity, which constitutes unlawful sex discrimination in violation of Title VII. The Defendants also denied Dr. Tudor's 2009-10 application for promotion and tenure and refused to permit her to re-apply during the 2010-11 academic year because she changed her gender, which constitutes sex discrimination in violation of Title VII.

72. In addition, Defendants denied Dr. Tudor's application for promotion and tenure during the 2009-10 academic year and refused to permit her to re-apply during the 2010-11 academic year because Dr. Tudor did not conform to traditional gender stereotypes, which constitutes unlawful sex discrimination in violation of Title VII.

73. Defendants' purported reasons for denying Dr. Tudor's application for promotion and tenure during the 2009-10 academic year and for refusing to allow her to re-apply in the 2010-11 academic year are a pretext for sex discrimination.

74. As a direct and proximate result of Defendants' unlawful sex discrimination, Dr. Tudor incurred damages including, but not limited to, lost income, loss of enjoyment of life, and damage to her professional reputation.

COUNT TWO
Title VII, 42 U.S.C. § 2000e-3(a)
Unlawful Retaliation

75. The United States repeats and re-alleges each and every allegation contained in paragraphs 1-74 as if fully set forth herein.

76. By refusing to permit Dr. Tudor to re-apply for promotion and tenure during the 2010-11 academic year, Defendants retaliated against Dr. Tudor in violation of Title VII because she (a) opposed their discrimination against her that she reasonably believed violated Title VII; and (b) participated in a Title VII proceeding by filing a complaint with DOE.

77. Defendants' purported reasons for not allowing Dr. Tudor to re-apply for promotion and tenure in the 2010-11 academic year are a pretext for unlawful retaliation.

78. As a direct and proximate result of Defendants' unlawful retaliation, Dr. Tudor incurred damages including, but not limited to, lost income, loss of enjoyment of life, and damage to her professional reputation.

PRAYER FOR RELIEF

WHEREFORE, the United States requests that the Court grant the following relief:

- (a) enjoin Defendants from subjecting employees to unlawful sex discrimination (including on the basis of gender identity) and retaliation that violates Title VII;
- (b) order Defendants to institute and carry out new policies, practices, and programs to prevent unlawful sex discrimination (including on the basis of gender identity) and retaliation that violates Title VII;
- (c) order Defendants to institute and carry out policies, practices, and programs to report, investigate, and effectively address complaints about unlawful sex discrimination (including on the basis of gender identity) and/or retaliation that violates Title VII;
- (d) order Defendants to train their employees on Title VII's prohibitions against unlawful sex discrimination (including on the basis of gender identity) and retaliation;
- (e) order Defendants to train their employees who investigate complaints of Title VII violations on how to conduct effective investigations;
- (f) order Defendants and their managers and supervisory employees to refrain from engaging in retaliation against any individual for giving testimony in this matter or participating in this matter in any way;

- (g) order Defendants to compensate Dr. Tudor with monetary relief for the damages she has suffered including, but not limited to, lost income, loss of enjoyment of life, and damage to her professional reputation;
- (h) order Defendants to award Dr. Tudor the position of Associate Professor with tenure;
- (i) order any further relief necessary to make Dr. Tudor whole; and
- (j) award such additional relief as justice may require, together with the United States' costs and disbursements in this action.

JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and § 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

Respectfully Submitted,

Date: March 30, 2015

VANITA GUPTA
Acting Assistant Attorney General
Civil Rights Division

By:

/s/ Delora L. Kennebrew
DELORA L. KENNEBREW (GA Bar No. 414320)
Chief
Employment Litigation Section

/s/ Meredith L. Burrell
MEREDITH L. BURRELL (MD no number issued)
Deputy Chief
Employment Litigation Section

/s/ Allan K. Townsend
ALLAN K. TOWNSEND (ME Bar No. 9347)
Senior Trial Attorney
Employment Litigation Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Patrick Henry Building, Fourth Floor
Washington, DC 20530
Telephone: (202) 616-9100
Facsimile: (202) 514-1005
Allan.Townsend@usdoj.gov

Attorneys for Plaintiff United States

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) **Case No. CIV-15-324-C**
)
 1. SOUTHEASTERN OKLAHOMA)
 STATE UNIVERSITY, and)
)
 2. THE REGIONAL UNIVERSITY)
 SYSTEM OF OKLAHOMA)
)
 Defendant.)

**ANSWER OF DEFENDANT SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, TO PLAINTIFF’S COMPLAINT**

Defendant, Southeastern Oklahoma State University, (“SEOSU”), for its answer to Plaintiff’s Complaint, admits Plaintiff’s allegations contained in the Complaint only to the extent specifically set forth below. To the extent any matters are not explicitly admitted, they are denied. SEOSU hereby provides its Answer as follows:

1. SEOSU admits Plaintiff has brought this action to enforce Title VII, but denies SEOSU or the Regional University System of Oklahoma (“RUSO”) subjected Dr. Rachael Tudor to unlawful sex discrimination and retaliation or that either defendant violated Title VII. SEOSU denies that it made any employment decision regarding Dr. Tudor based on gender or on her transgendered status.

2. SEOSU admits Dr. Tudor worked for Southeastern as a tenure track (ADMIT?) assistant professor from 2004 to 2011, but is without sufficient knowledge to admit or deny the remaining allegations in Paragraph 2.
3. SEOSU admits the allegations in Paragraph 3.
4. In response to Paragraph 4, SEOSU denies that SEOSU and RUSO are a single employer for all relevant purposes. SEOSU admits RUSO's Board of Regents is the governing board for SEOSU, and that RUSO's Policy Manual addresses the manner in which RUSO's and SEOSU's operations interrelate. SEOSU admits RUSO has the power to fix compensation and personnel duties at SEOSU, but RUSO has the power to delegate that power to the respective presidents pursuant to 70 O.S. §3510(d), which it has done. SEOSU denies its President must report to RUSO on all matters related to employment, discipline, and termination of faculty.
5. SEOSU admits the allegations in Paragraph 5.
6. SEOSU admits the allegations in Paragraph 6.
7. SEOSU admits the allegations in Paragraph 7.
8. In response to Paragraph 8, SEOSU admits Dr. Tudor filed a charge of discrimination, but denies the allegations contained in such charge. SEOSU is without knowledge sufficient to admit or deny the allegations regarding DOE's alleged referral to EEOC.
9. In response to Paragraph 9, SEOSU admits Dr. Tudor supplemented her charge of discrimination, but denies the allegations contained in the supplemental charge.
10. In response to Paragraph 10, SEOSU admits the EEOC notified Defendants of the supplemental charge of discrimination, that EEOC allegedly investigated these

charges, and that EEOC contends the investigation revealed Dr. Tudor was subjected to sex discrimination and retaliation (as well as religious discrimination, which is not alleged in this lawsuit). SEOSU admits that EEOC subsequently referred the case to the U.S. Department of Justice. SEOSU denies that reasonable cause was found to believe SEOSU discriminated or retaliated against Dr. Tudor. SEOSU also denies the EEOC notified Defendants of its reasonable cause or its findings. Specifically, EEOC continually refused to provide Defendants with any facts or evidence that allegedly supported EEOC's findings. SEOSU denies EEOC attempted to conciliate the charges in good faith, and further states that EEOC refused SEOSU's request for mediation, notifying SEOSU that this charge was not eligible for mediation.

11. SEOSU denies the allegations in Paragraph 11.

12. In response to the allegations in Paragraph 12, SEOSU admits Dr. Tudor began working at SEOSU in 2004 pursuant to a tenure track one year appointment, which had to be renewed on an annual basis for Dr. Tudor to continue employment at SEOSU. SEOSU further admits Dr. Tudor presented as a man when hired by SEOSU, but denies the remaining allegations.

13. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 13.

14. SEOSU admits the allegations in Paragraph 14.

15. SEOSU admits Cathy Conway, SEOSU's HR Director in 2007, communicated with Dr. Tudor to discuss transition as a female, but SEOSU denies all remaining allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. SEOSU admits Dr. Tudor began to go by the name “Rachel Tudor” and present as a woman at work during the 2007-2008 academic year, but is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 16.
17. SEOSU denies the allegations in Paragraph 17, and further states that Jane McMillan and Vice President McMillan specifically denied these allegations when interviewed by EEOC and/or the U.S. Department of Justice.
18. SEOSU admits, as alleged in Paragraph 18, the policy requires assistant professors to obtain tenure before the end of their seventh year as an assistant professor or their employment will be terminated. However, with permission from SEOSU President Minks to seek a one year extension from the RUSO Board, V.P. McMillian offered Dr. Tudor the ability to remain past the seven years so that she could have two years to fully address and supplement her portfolio for tenure. Dr. Tudor declined this offer, and was aware that as a result, her employment with SEOSU would end in May 2011.
19. SEOSU admits the allegations in Paragraph 19.
20. SEOSU denies the allegations in Paragraph 20. A notification letter is provided to each candidate regarding the decision at each level. At the end of the tenure process, the candidate is given a detailed letter documenting the reasons for denial or approval. Dr. Tudor received the notification letters and a detailed letter outlining the reasons for tenure denial.
21. SEOSU admits the allegations in Paragraph 21.
22. SEOSU admits the allegations in Paragraph 22.

23. SEOSU admits that Paragraph 23 contains statements included in SEOSU's Academic Policies and Procedures, but it presents a distortion of the process because it does not contain all of the applicable statements regarding the tenure process and the various levels of review. Specifically, Paragraph 23 omits the significant roles played by the Dean, Vice President of Academic Affairs, and the President, as well as the role played by the RUSO Board.
24. SEOSU is without sufficient knowledge or information to admit or deny whether preparations were taken by Dr. Tudor in the summer of 2009, as alleged in Paragraph 24. In addition, Dr. Tudor had applied for tenure and promotion to the position of Associate Professor the year before, in 2008, at which time the Department's Tenure and Promotion Committee for Dr. Tudor voted 5-0 against a recommendation for Tenure and Promotion. Upon the advice of a committee member, Tudor withdrew her application and portfolio.
25. SEOSU admits the allegations in Paragraph 25.
26. SEOSU admits it was at this meeting that Dean Scoufos learned Dr. Tudor was a transgender woman, but denies the remaining allegations in Paragraph 26.
27. As alleged in Paragraph 27, SEOSU admits Dr. Tudor told Dean Scoufos that she believed another faculty member in her Department had been discriminating against her since she had begun to present as a woman, and that she would prefer this member not serve on the Faculty Committee that would review her portfolio. When Dean Scoufos asked Dr. Tudor why she believed that faculty member was discriminating against her, Tudor stated that after her change, the faculty member did not ask Dr.

Tudor to accompany the honor students on field trips, such as cultural events to Dallas. Upon investigation, Dean Scoufos learned the honor trips had been stopped completely, and were wholly unrelated to Dr. Tudor. SEOSU denies the remaining allegations.

28. SEOSU admits the allegations in Paragraph 28.
29. SEOSU admits the allegations in Paragraph 29.
30. SEOSU admits the allegations in Paragraph 30.
31. SEOSU admits the allegations in Paragraph 31, but further states that notification letters do not contain explanations. Dr. Tudor received an explanation letter from Dr. McMillan after the process was complete, which was the standard procedure.
32. SEOSU admits the allegations in Paragraph 32.
33. SEOSU admits the allegations in Paragraph 33, but further states that notification letters do not contain explanations. Dr. Tudor later received an explanation letter. All candidates receive explanation letters once the process is complete.
34. SEOSU admits the allegations in Paragraph 34.
35. SEOSU admits that prior to Dr. Tudor receiving her explanation letter, she asked Vice President McMillan and Dean Scoufos for an explanation. Applicants are not permitted to have these types of discussions during the review process. SEOSU denies the remaining allegations in Paragraph 35, but further states that upon Dr. Tudor's request, she was allowed to place a document in her portfolio prior to the President's review.

36. SEOSU admits the allegations in Paragraph 36, because it was against SEOSU's policy to provide feedback to candidates during the tenure and promotion process, and thus, no candidates are given feedback until the end of the process. As previously stated, Dr. Tudor was provided an explanation at the end of the process.
37. SEOSU denies the allegations in Paragraph 37, and specifically states Dr. Tudor was treated no differently than other tenure applicants. After their portfolio submissions, applicants may be permitted to add publications to their portfolios. Dr. Tudor was given permission, and added a publication to her portfolio subsequent to its submission.
38. SEOSU admits that despite Dr. Tudor's knowledge of the tenure process, including the policy that explanations are not given until the tenure process is completed, she requested special treatment by filing a grievance, as alleged in Paragraph 38. Tudor was inappropriately attempting to obtain information that no candidate receives prior to completion of the tenure and promotion process.
39. SEOSU admits the allegations in Paragraph 39, and states that Tudor was provided an explanation at the end of the process.
40. SEOSU admits President Minks designated the Assistant Vice President to communicate to Dr. Tudor the FAC's recommendation and his decision regarding compliance with the recommendation. SEOSU denies the remaining allegations in Paragraph 40.

41. SEOSU admits the Assistant Vice President determined policy would be followed, and thus Dr. Tudor would not be given an explanation until the end of the process. SEOSU denies the remaining allegations in Paragraph 41.
42. Candidates are not allowed to supplement their portfolios during the review process, except to add publications that are received after the portfolio has been submitted and before the process is complete. Dr. Tudor was allowed to add a publication during the review process. SEOSU denies the remaining allegations in Paragraph 42.
43. SEOSU admits the allegations in Paragraph 43.
44. SEOSU denies the allegations in Paragraph 44 to the extent it omits that prior to denying tenure, candidates are frequently given the option to withdraw their applications for tenure and promotion. The option may be proposed by the P&T Review Committee, the Department Chair, the Dean, or the Academic Vice President. Dr. Tudor was given the option of withdrawing her application and was given an offer of additional time, i.e. two years, to resubmit her application, but Dr. Tudor declined this offer. Dr. Tudor's decision to decline this offer in light of the consequences of tenure denial was unprecedented.
45. SEOSU cannot admit or deny the date which Dr. Tudor received Vice President McMillan's explanation letter; SEOSU admits the remaining allegations in Paragraph 45.
46. SEOSU denies the allegations in Paragraph 46. The explanation letter received by Dr. Tudor sets forth clear and distinct bases for denial of promotion and tenure, giving specific examples of the inadequacies of her research/scholarship and her university

service. It was because of these significant inadequacies that prior to the completion process, Dr. Tudor was given the option of withdrawing her application and given two years to bolster her portfolio so that it would meet the policy requirements for tenure and promotion.

47. SEOSU denies the allegations in Paragraph 47. It is the candidate's responsibility to provide accurate and complete information in her portfolio to support all claims of publications, editorship, and responsibilities.

48. SEOSU denies the allegations in Paragraph 48. SEOSU has allowed re-application for promotion, but never for tenure.

49. SEOSU has no knowledge of the specific date Dr. Tudor informed her Department Chair of an intent to re-apply for promotion and/or tenure, but admits the remaining allegations in Paragraph 49.

50. SEOSU admits Dr. Tudor submitted a grievance to President Minks on August 30, 2010 regarding "Improprieties and Due Process Violations by Administrators in Tenure and Promotion Process." In September 2010, the FAC sent a letter with its finding to Dr. Tudor, which stated, in part, that the FAC "concluded that the information required by the Academic Policies and Procedures Manual (APPM,4.4.6,1b.) was not provided." The FAC letter also concluded that "it is not empowered to address the issue of due process related to promotions and tenure". Given these two findings, the FAC concluded that it was "unable to act on the grievance." SEOSU denies the remaining allegations in Paragraph 50.

51. SEOSU denies the allegations in Paragraph 51 in that they are incomplete and do not accurately reflect the contents and meaning of the October 2010 letter.
52. SEOSU denies the allegations in Paragraph 52 in that they are incomplete and do not accurately reflect the contents and meaning of the October 2010 letter.
53. SEOSU admits the allegations in Paragraph 53. No applicant for tenure is allowed to reapply after final review and denial, and Dr. Tudor was aware of the consequences of her refusal to withdraw her application for tenure the previous year.
54. SEOSU denies that the contents and meaning of the letter are accurately reflected, but SEOSU admits that, in response to Dr. Tudor's grievance, as alleged in Paragraph 54, Vice President McMillan sent a letter to the FAC setting forth the entire rationale for not allowing Dr. Tudor to re-apply for tenure and promotion.
55. SEOSU admits Dr. Tudor submitted four letters of recommendation from tenured SEOSU English professors, but denies the remaining allegations in Paragraph 55. As set forth in Vice President McMillan's letter to the FAC, "a review of the letters supplied by Dr. Tudor in support of her grievance do not suggest substantial improvements in her scholarly activity or service in the five months since she was notified by the President of his decision to deny her application for tenure and promotion. In fact, many of the activities cited in the letters were present in her 2009-2010 portfolio."
56. SEOSU is without sufficient knowledge or information to admit or deny the allegations in Paragraph 56, but denies that such claims were supported by the

contents of Dr. Tudor's portfolio, as detailed in Vice President McMillan's letters to Dr. Tudor and to the FAC.

57. SEOSU admits the FAC recommended SEOSU permit Dr. Tudor to reapply for tenure and promotion, as alleged in Paragraph 57, but Vice President McMillan appealed the FAC's decision to President Minks, and provided a detailed memorandum supporting the appeal.
58. SEOSU admits the general subject matter of the allegations, but denies that President Walkup's letter is accurately summarized in Paragraph 58. Vice President Walkup's letter was extremely detailed, setting forth the applicable policies and procedures pertaining to promotion and tenure, and explaining the "terminal year rule, including that withdrawal of the application is the only way to avoid the "terminal year rule". His letter further explained the policy prohibiting renewal of appointment for a seven-year faculty member that had not obtained tenure, and that renewal could occur only if the President made a specific recommendation for waiver of policy. SEOSU further states that it is not bound by FAC recommendations, but may consider them.
59. SEOSU admits the allegations in Paragraph 59, but denies SEOSU discriminated against Dr. Tudor when it denied her 2009-2010 application for tenure, or at any other time during Dr. Tudor's employment at SEOSU.
60. SEOSU admits the allegations in Paragraph 60, but denies SEOSU retaliated or discriminated against Dr. Tudor because of her discrimination complaint, or at any other time during Dr. Tudor's employment at SEOSU.

61. As alleged in Paragraph 61, SEOSU admits Dr. Stubblefield issued a report addressing Dr. Tudor's discrimination and retaliation complaints, and that Dr. Stubblefield, after a thorough investigation of all relevant facts and circumstances, found that Southeastern had not discriminated against or retaliated against Dr. Tudor.
62. SEOSU denies the allegations in Paragraph 62.
63. SEOSU denies the allegations in Paragraph 63. Dr. Tudor's contract was non-renewed due to her failure to attain tenure.
64. SEOSU admits that after Dr. Tudor's application for tenure was denied, (and thus her contract would not be renewed after the academic year 2010-2011), the Faculty Senate (of which Dr. Tudor was a member) gave this award to Dr. Tudor, as alleged in Paragraph 64. There are no specific requirements to receive this award.
- 65.– 69. Paragraphs 65-69 do not assert factual allegations against SEOSU, and therefore do not require a response.
70. In response to Paragraph 70, SEOSU adopts and realleges its responses to Paragraphs 1-69.
71. SEOSU denies the allegations contained in Paragraph 71.
72. SEOSU denies the allegations contained in Paragraph 72.
73. SEOSU denies the allegations contained in Paragraph 73.
74. SEOSU denies the allegations contained in Paragraph 74.
75. In response to Paragraph 75, SEOSU adopts and realleges its responses to Paragraphs 1-74.
76. SEOSU denies the allegations contained in Paragraph 76.

77. SEOSU denies the allegations contained in Paragraph 77.

78. SEOSU denies the allegations contained in Paragraph 78.

IN RESPONSE TO PLAINTIFF’S PRAYER FOR RELIEF, AND EACH OF ITS
SUBPARTS, SEOSU STATES THE FOLLOWING:

SEOSU did not engage in any discriminatory or retaliatory conduct, and therefore
Plaintiff is not entitled to any of its requested relief.

AFFIRMATIVE DEFENSES

1. Plaintiff and/or Dr. Tudor have failed to exhaust administrative remedies.
2. Plaintiff has failed to conciliate in good faith.
3. Plaintiff and/or Dr. Tudor failed to mitigate damages.
4. All actions by SEOSU regarding Dr. Tudor were non-discriminatory, done in good faith, and done for legitimate business reasons.
5. Plaintiff was denied tenure and promotion because her work and her service did not meet the necessary standards, and therefore her portfolio did not meet SEOSU’s policy requirements.
6. Plaintiff was given the opportunity to withdraw her portfolio due to the likelihood of tenure and promotion denial, but she refused.
7. Some or all of Plaintiff’s claims are barred by statutes of limitations and/or laches.
8. SEOSU and RUSO are not a “single employer” as alleged by Plaintiff.
9. Failure to state a claim upon which relief can be granted.
10. Transgender is not a protected class under Title VII.

11. To the extent that Plaintiff pursues unfounded claims and claims for which it relies upon facts known to be untrue, and intentionally presents facts in a misleading fashion to the Court that are frivolous at best, SEOSU will pursue costs and attorney's fees from Plaintiff.
12. After-acquired evidence.
13. Eleventh Amendment immunity.
14. Sovereign immunity pursuant to the Tenth Amendment to the U.S. Constitution.

/s/Dixie L. Coffey

DIXIE L. COFFEY, OBA#11876
JEB E. JOSEPH, OBA#19137
KINDANNE JONES, OBA# 11374
Assistant Attorney General
Oklahoma Attorney General's Office
Litigation Division
313 NE 21st Street
Oklahoma City, OK 73105
Telephone: 405.521.3921
Facsimile: 405.521.4518
Email: dixie.coffey@oag.ok.gov
Email: jeb.joseph@oag.ok.gov
Email: Kindanne.jones@oag.ok.gov
Attorney for Defendants

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) **Case No. CIV-15-324-C**
)
 1. SOUTHEASTERN OKLAHOMA)
 STATE UNIVERSITY, and)
)
 2. THE REGIONAL UNIVERSITY)
 SYSTEM OF OKLAHOMA)
)
 Defendant.)

**ANSWER OF DEFENDANT REGIONAL UNIVERSITY SYSTEM OF
OKLAHOMA TO PLAINTIFF’S COMPLAINT**

Defendant, Regional University System of Oklahoma, (“RUSO”), for its answer to Plaintiff’s Complaint, admits Plaintiff’s allegations contained in the Complaint only to the extent specifically set forth below. To the extent any matters are not explicitly admitted, they are denied. RUSO hereby provides its Answer as follows:

1. RUSO admits Plaintiff has brought this action to enforce Title VII, but denies Southeastern Oklahoma State University (“SEOSU”) or RUSO subjected Dr. Rachael Tudor to unlawful sex discrimination and retaliation or that either defendant violated Title VII. RUSO denies that it made any employment decision regarding Dr. Tudor based on gender or on her transgendered status.

2. RUSO admits Dr. Tudor worked for Southeastern as a tenure track assistant professor from 2004 to 2011, but is without sufficient knowledge to admit or deny the remaining allegations in Paragraph 2.
3. RUSO admits the allegations in Paragraph 3.
4. In response to Paragraph 4, RUSO denies that SEOSU and RUSO are a single employer for all relevant purposes. RUSO admits RUSO's Board of Regents is the governing board for SEOSU, and that RUSO's Policy Manual addresses the manner in which RUSO's and SEOSU's operations interrelate. RUSO admits RUSO has the power to fix compensation and personnel duties at SEOSU, but RUSO has the power to delegate that power to the respective presidents pursuant to 70 O.S. §3510(d), which it has done. RUSO denies SEOSU's President must report to RUSO on all matters related to employment, discipline, and termination of faculty.
5. RUSO admits the allegations in Paragraph 5.
6. RUSO admits the allegations in Paragraph 6.
7. RUSO admits the allegations in Paragraph 7.
8. In response to Paragraph 8, RUSO admits Dr. Tudor filed a charge of discrimination, but denies the allegations contained in such charge. RUSO was not named as the employer or a responsive party and was never notified by DOE or EEOC other than through SEOSU.
9. In response to Paragraph 9, RUSO admits Dr. Tudor supplemented her charge of discrimination, but denies the allegations contained in the supplemental charge.

RUSO was not named as the employer or a responsive party in Dr. Tudor's supplemental charge.

10. In response to Paragraph 10, RUSO denies the EEOC notified RUSO of the supplemental charge of discrimination, but admits that EEOC allegedly investigated these charges, and that EEOC contends the investigation revealed Dr. Tudor was subjected to sex discrimination and retaliation (as well as religious discrimination, which is not alleged in this lawsuit.) RUSO also admits that EEOC subsequently referred the case to the U.S. Department of Justice. RUSO denies that reasonable cause was found to believe SEOSU discriminated or retaliated against Dr. Tudor, and denies the EEOC notified RUSO of its reasonable cause or its findings. Upon information and belief, RUSO denies EEOC attempted to conciliate the charges in good faith, and further states that EEOC refused SEOSU's request for mediation, notifying SEOSU that this charge was not eligible for mediation.

11. RUSO denies the allegations in Paragraph 11.

FACTS

Unless otherwise noted, RUSO has no specific knowledge of the allegations and therefore adopts and incorporates by reference the Answer filed by SEOSU.

12. In response to the allegations in Paragraphs 12 through 64, RUSO adopts and incorporates by reference the Answers to these Paragraphs filed by SEOSU.

13. Paragraphs 65-69 do not assert factual allegations against RUSO, and therefore do not require a response.

14. In response to Paragraph 70, RUSO adopts and realleges its responses to Paragraphs 1-69.
15. RUSO denies the allegations contained in Paragraph 71, and further states RUSO never took any action relative to Dr. Tudor's application for promotion and tenure, and never discriminated against Dr. Tudor.
16. RUSO denies the allegations contained in Paragraph 72 and further states RUSO never took any action relative to Dr. Tudor's application for promotion and tenure, and never discriminated against Dr. Tudor.
17. RUSO denies the allegations contained in Paragraph 73, and denies it took any action relative to Dr. Tudor's application for promotion and tenure.
18. RUSO denies the allegations contained in Paragraph 74, and denies it discriminated against Dr. Tudor.
19. In response to Paragraph 75, RUSO adopts and realleges its responses to Paragraphs 1-74.
20. RUSO denies the allegations contained in Paragraph 76, denies it took any action relative to Dr. Tudor's application for promotion and tenure, and denies it retaliated against Dr. Tudor.
21. RUSO denies that the reasons given by SEOSU for not allowing Dr. Tudor to re-apply were a pretext for unlawful retaliation, and further denies it had any involvement with Dr. Tudor's reapplication process, as alleged in Paragraph 77.

22. RUSO denies that either Defendant engaged in retaliation against Dr. Tudor, unlawful or otherwise, and denies Dr. Tudor incurred damages as a result of unlawful conduct by Defendants, as alleged in Paragraph 78.

IN RESPONSE TO PLAINTIFF’S PRAYER FOR RELIEF, AND EACH OF ITS SUBPARTS, RUSO STATES THE FOLLOWING:

Defendants did not engage in any discriminatory or retaliatory conduct, and therefore Plaintiff is not entitled to any of its requested relief.

AFFIRMATIVE DEFENSES

1. Plaintiff and/or Dr. Tudor have failed to exhaust administrative remedies.
2. Plaintiff has failed to conciliate in good faith.
3. Plaintiff and/or Dr. Tudor failed to mitigate damages.
4. RUSO was not involved in Dr. Tudor’s tenure application process or denial, or her subsequent grievance. Any actions by RUSO affecting Dr. Tudor were non-discriminatory, done in good faith, and done for legitimate business reasons.
5. Plaintiff was denied tenure and promotion because her work and her service did not meet the necessary standards, and therefore her portfolio did not meet SEOSU’s policy requirements.
6. Plaintiff was given the opportunity to withdraw her portfolio due to the likelihood of tenure and promotion denial, but she refused.
7. RUSO and SEOSU are not a “single employer” as alleged by Plaintiff.

8. Some or all of Plaintiff's claims are barred by statutes of limitations and/or laches.
9. Failure to state a claim upon which relief can be granted.
10. Transgender is not a protected class under Title VII.
11. To the extent that Plaintiff pursues unfounded claims and claims for which it relies upon facts that known to be untrue, and intentionally presents facts in a misleading fashion to the Court that are frivolous at best, RUSO will pursue costs and attorney's fees from Plaintiff.
12. After-acquired evidence.
13. Eleventh Amendment immunity.
14. Sovereign immunity pursuant to the Tenth Amendment to the U.S. Constitution.

/s/Dixie L. Coffey

DIXIE L. COFFEY, OBA#11876

JEB E. JOSEPH, OBA#19137

KINDANNE JONES, OBA# 11374

Assistant Attorney General

Oklahoma Attorney General's Office

Litigation Division

313 NE 21st Street

Oklahoma City, OK 73105

Telephone: 405.521.3921

Facsimile: 405.521.4518

Email: dixie.coffey@oag.ok.gov

Email: jeb.joseph@oag.ok.gov

Email: Kindanne.jones@oag.ok.gov

Attorney for Defendants

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

UNITED STATES OF AMERICA,) CASE NO. 5:15-CV-00324-C
)
Plaintiff,)
)
v.)
)
1. SOUTHEASTERN OKLAHOMA)
STATE UNIVERSITY, and)
)
2. THE REGIONAL UNIVERSITY)
SYSTEM OF OKLAHOMA,)
)
)
Defendants.)

**COMPLAINT IN INTERVENTION OF
PLAINTIFF/INTERVENOR DR. RACHEL TUDOR**

This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”). Dr. Tudor intervenes in this action as an aggrieved person pursuant to 42 U.S.C. § 2000e-5(f). As set forth below, Plaintiff/Intervenor Dr. Rachel Tudor (“Plaintiff/Intervenor”) alleges that Defendants Southeastern Oklahoma State University (“Southeastern”) and the Regional University System of Oklahoma (“RUSO”) subjected Dr. Tudor to sex discrimination, including an unlawful hostile work environment based on sex, and retaliation in violation of Title VII.

PARTIES

1. Plaintiff/Intervenor Dr. Rachel Tudor is an English professor who worked

for Southeastern as a tenure track Assistant Professor from 2004 to 2011.

2. Defendant Southeastern is a member of the Oklahoma state system of higher education and is part of the Regional University System of Oklahoma (“RUSO”). Defendant RUSO’s Board of Regents is the governing board for several Oklahoma state universities, including Southeastern. RUSO’s Policy Manual explains how the operations of RUSO and Southeastern interrelate. RUSO has the power to fix compensation and duties of personnel at its regional universities, including Southeastern. RUSO has the power and duty to adopt rules and regulations to govern its regional universities, including Southeastern. Southeastern’s President must report to RUSO on all matters related to employment, discipline, and termination of faculty. For these reasons, Southeastern and RUSO are a single employer for all relevant purposes.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 42 U.S.C. §2000e-5(f) and 28 U.S.C. §1345.

4. Venue is proper in this judicial district under 42 U.S.C. §2000e-5(f)(3) and 28 U.S.C. § 1391(b). Both Southeastern and RUSO are agencies of the State of Oklahoma. At all relevant times, RUSO’s principal place of business has been in Oklahoma City, Oklahoma, and Southeastern’s principal place of business has been in Durant, Oklahoma.

5. Southeastern and RUSO are “persons” within the meaning of 42 U.S.C. §2000e(a) and “employers” within the meaning of 42 U.S.C. §2000e(b).

6. On or about September 9, 2010, Dr. Tudor filed a timely charge of

discrimination alleging, among other things, that Southeastern subjected her to sex discrimination when it denied her application for promotion and tenure during the 2009-10 academic year. Dr. Tudor filed this charge with the U.S. Department of Education, Office for Civil Rights (“DOE”). After notifying Southeastern of the charge, DOE referred the charge to the U.S. Equal Employment Opportunity Commission (“EEOC”) for investigation of Dr. Tudor’s Title VII claim.

7. On or about July 12, 2011, Dr. Tudor supplemented her charge of discrimination filed with the EEOC. She alleged, among other things, that Southeastern subjected her to sex discrimination and retaliated against her because she complained about Southeastern’s discrimination. Specifically, Dr. Tudor alleged that Southeastern unlawfully refused to permit her to re-apply for promotion and tenure during the 2010-11 academic year. Dr. Tudor’s supplemented charge was simultaneously filed with the EEOC and with the Oklahoma Human Rights Commission.

8. Pursuant to Section 706 of Title VII, the EEOC notified the Defendants of Dr. Tudor’s supplemented charge of discrimination. After conducting an investigation of Dr. Tudor’s charges, the EEOC found reasonable cause to believe that Southeastern discriminated against Dr. Tudor because of her sex and retaliated against her because she engaged in protected activity. The EEOC did not render a determination on the issue of hostile work environment based on sex raised by the facts alleged in Dr. Tudor’s original charge and supplemental charge. The EEOC notified the Defendants of its reasonable cause findings, unsuccessfully attempted to conciliate the charges, and subsequently referred the charges to the U.S. Department of Justice.

9. All conditions precedent to the filing of suit have been performed or have occurred.

FACTS

10. Dr. Tudor is a female citizen of the Chickasaw Nation.

11. Dr. Tudor is also a female citizen of the United States.

12. Dr. Tudor has a feminine gender expression.

13. Dr. Tudor has a female gender identity.

14. Dr. Tudor is a transgender woman.

Sex, Gender, Gender Expression and Gender Identity

15. *Sex* is an ambiguous term of art that includes gender, gender expression and gender identity within its meaning.

16. *Sex stereotyping* refers to the application by an employer of stereotypes related to sex assigned at birth to restrict or disparage an employee's gender expression or gender identity.

17. *Gender* refers to cultural or attitudinal characteristics (as opposed to physical characteristics) distinctive to the sexes.

18. *Gender expression* refers to a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. *Transgender expression* is a form of *gender expression*.

19. *Gender identity* refers to characteristics related to a person's internal sense of gender, being male, female, or other. *Transgender identity* is a form of gender

identity.

20. *Gender identity* is intractably rooted in the psyche by the age of two, and cannot be changed.

21. Discrimination against transgender persons for being transgender is based on their gender expression and gender identity, and the discrimination described herein against Dr. Tudor was based on her gender expression and gender identity.

22. Transgender individuals often seek out legal, social, and medical means of aligning external manifestations of their gender with their gender identity. This process is colloquially known as *gender transition* or *transition*.

23. A core component of gender transition entails publicly expressing one's gender as a member of the gender that comports with one's gender identity.

24. Transgender individuals are persons who have a gender expression or gender identity that does not match the sex they were assigned at birth.

25. Native Americans traditionally believe that transgender persons are blessed and have a spiritual responsibility to live their blessing.

26. Dr. Tudor subscribes to the traditional Native American belief that she, as a transgender woman, has a responsibility to discover the nature of her blessing and walk the sacred path set before her.

27. Scientific studies have shown that transgender persons have brain structures that are typical of nontransgender persons with the same gender identity. For example, women with transgender identity (i.e. those assigned male sex at birth but who have female gender identity) have brain structures that are similar to those of

nontransgender women. It is appropriate to refer to a transgender woman who has transitioned with female titles, honorifics (e.g., Miss, Ms. or Mrs.), and pronouns (e.g., her, hers, and she).

28. It is appropriate for a nontransgender woman to use a women's multi-stall restroom.

29. It is appropriate for a transgender woman who has transitioned to use a women's restroom.

30. It is appropriate for a nontransgender woman to wear traditionally female clothing, such as a skirt.

31. It is appropriate for a transgender woman who has transitioned to wear traditionally female clothing, such as a skirt.

32. Another core component of gender transition is utilizing medical therapies to align the patient's body with the patient's gender identity.

33. Myriad peer-review studies demonstrate that medical therapies, including hormone treatments, are one form of medically necessary care for transgender persons.

34. The American Medical Association, the American Psychological Association, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and the World Professional Association for Transgender Health ("WPATH") have all publicly endorsed the efficacy of medical therapies, including hormone treatments, for transgender persons.

35. The American Medical Association, the American Psychological Association, the American Academy of Family Physicians, the American College of

Obstetricians and Gynecologists, and WPATH all recognize that medical therapies, including hormone treatments, are a form of medically necessary care for transgender persons.

36. The American Medical Association, the American Psychological Association, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and WPATH have all publicly called for both private and public insurers to eliminate transgender-specific exclusions in health insurance plans.

Dr. Tudor's Employment at Southeastern and Transition to Female

37. In 2004, Dr. Tudor began working at Southeastern as a tenure-track Assistant Professor in the Department of English, Humanities, and Languages (the "English Department"). At that time, she presented as male and had a traditionally male name.

38. Dr. Tudor was the first transgender professor at Southeastern.

39. In the summer of 2007, Dr. Tudor notified Southeastern that she planned to transition from male to female and begin to present as female at work during the 2007-08 academic year.

40. After she informed Southeastern about her transition, Dr. Tudor received a phone call from an employee of Southeastern's human resources office to discuss various issues related to her gender transition. During that call, the human resources employee warned Dr. Tudor that Southeastern's Vice President for Academic Affairs, Dr. Douglas

McMillan, had inquired whether Dr. Tudor could be fired because her “transgender lifestyle” offended his religious beliefs. The human resources employee told Dr. Tudor that Vice President McMillan had been told that Southeastern could not fire her because she is transgender.

41. During the 2007-08 academic year, Dr. Tudor began to present as female at work by, among other things, wearing women’s clothing, styling her hair in a feminine manner, and going by the traditionally female name Rachel.

42. After Dr. Tudor began presenting as female, Jane McMillan, the director of Southeastern’s Counseling Center, told her that she should take safety precautions because some people were openly hostile towards transgender people. She also told Dr. Tudor that Vice President McMillan (who is her brother) considered such people to be a “grave offense to his [religious] sensibilities.”

43. After Dr. Tudor informed Southeastern about her gender identity and intent to transition, she was subjected to disadvantageous terms by unwarranted restrictions on her use of restrooms.

44. Use of male restrooms would subject Dr. Tudor to an unwarranted risk of harassment by males in those restrooms who would likely be severely surprised by her presence there, and who might thereby learn of her transgender identity. It would also subject her to humiliation as a visible woman who was forced to go into a male gender-segregated space.

45. She was instructed by an employee of Southeastern’s human resources office that, once she started presenting as female full-time at work, she should not use the

multi-stall women's restroom located on the same floor as her office or any other multi-stall women's restroom on campus.

46. The employee directed Dr. Tudor to only use a specific single-stall, all-genders restroom for persons with disabilities located on a different floor than Dr. Tudor's office. This restroom was the only single-stall, all-genders restroom for persons with disabilities located within a three-story building that served hundreds of people a day.

47. Dr. Tudor was told that she should use the only single-stall restroom for persons with disabilities in the building her office was located in because Southeastern was concerned that students or other faculty would complain if she used any of the multi-stall female-designated restrooms on campus.

48. Southeastern's human resources office has never counseled a nontransgender professor on which gender-segregated restroom they may use nor has the office ever directed a nontransgender professor to not use a gender-segregated multi-stall restroom that is immediately adjacent to the professor's office.

49. Southeastern's human resources office has never counseled a nontransgender professor to use a gender-segregated restroom that did not match the professor's gender identity.

50. Southeastern's human resources office counseled Dr. Tudor to use the single-stall restroom described above because the employee was uncomfortable with a transgender woman, based on her gender expression and gender identity, using a multi-stall women's restroom frequented by nontransgender women.

51. Southeastern's human resources office counseled Dr. Tudor to use the single-stall restroom described above because a Southeastern administrator told the human resources office that they were uncomfortable with a transgender woman using a multi-stall women's restroom frequented by nontransgender women.

52. Once Dr. Tudor transitioned to female, she followed the direction of Southeastern's human resource office and only used the single-stall, all genders restroom for persons with disabilities described above.

53. For nearly four years, whenever Dr. Tudor was on Southeastern's campus she was only permitted to use the single-stall, all genders restroom for persons with disabilities described above.

54. As a direct result of the restroom use restriction imposed by Southeastern's human resources office, Dr. Tudor was unable to use the restroom on a regular basis whenever she was on Southeastern's campus.

55. Dr. Tudor's busy class schedule made it nearly impossible for her to regularly utilize the only restroom she was permitted to use on campus. For example, Dr. Tudor's teaching schedule often left only ten to fifteen minutes between classes. On many occasions, Dr. Tudor found that she either did not have enough time to travel from the building where she was teaching classes back to the building where the single-stall restroom was located or that the only restroom she was permitted to use was in use for the duration of her break between classes.

56. On occasions where Dr. Tudor was unable to use the single-stall restroom described above, she felt great physical discomfort and humiliation.

57. On occasions where Dr. Tudor was able to use the single-stall restroom described above, she felt profound guilt and humiliation knowing that her use of the restroom for persons with disabilities often inconvenienced persons with physical disabilities including other faculty members and students.

58. On occasions where Dr. Tudor used the single-stall restroom described above and found a line outside the restroom she apologized to those waiting in line for the inconvenience. Having to routinely apologize to persons with physical disabilities whom were inconvenienced by Dr. Tudor's use of the restroom for persons with disabilities made her feel profound guilt and humiliation.

59. Starting in Summer 2007, Dr. Tudor used public women's restrooms whenever she was not on Southeastern's campus.

60. Dr. Tudor never had a negative response from women who used the women's restrooms she frequented off Southeastern's campus.

61. Transgender women routinely use multi-stall women's restrooms in the State of Oklahoma, including restrooms located in state and federal government facilities.

62. The presence of transgender women in gender-segregated multi-stall restrooms poses no threat to nontransgender women.

63. If a nontransgender woman is offended by the prospect of sharing gender-segregated facilities with transgender women, the nontransgender woman is free to seek out and use a single-stall restroom.

64. After Dr. Tudor informed Southeastern about her transition she was also

instructed by an employee of Southeastern's human resources office to not wear certain traditionally female articles of clothing going forward. Among other things, Dr. Tudor was counseled against wearing short skirts.

65. No nontransgender female professor was ever counseled by Southeastern's human resources office against wearing skirts of any length.

66. Both junior and senior female professors with traditional gender identity routinely wore traditionally female articles of clothing, including skirts of varying lengths, during the years Dr. Tudor was employed by Southeastern.

67. From the 2007-08 through the 2010-11 academic years the health insurance plan that Southeastern provided to professors, including Dr. Tudor, had an explicit exclusion that prohibited health care benefits to transgender persons.

68. As a result of the exclusion described above, Dr. Tudor was unable to get her insurance to cover various medically necessary treatments she needed as part of her medical transition to female. This included, but is not limited to, coverage for exogenous hormones and routine blood level tests needed to monitor her hormone levels.

69. Upon information and belief, the health insurance plan Southeastern provided to faculty members otherwise covered medically necessary exogenous hormone treatments and routine blood level tests needed to monitor blood levels as a result of such treatment.

70. As a result of the exclusion described above, Dr. Tudor was forced to pay for her hormone therapy and blood level tests out of pocket.

71. Upon information and belief, if Dr. Tudor were a nontransgender woman,

she could have received full coverage for her hormone treatment and blood level tests under Southeastern's health insurance plan.

Southeastern's Process for Promotion and Tenure

72. At Southeastern, Assistant Professors must obtain tenure before the end of their seventh year as an Assistant Professor or else their employment is terminated.

73. The process governing applications for promotion and tenure is set forth in Southeastern's "Procedure for Granting Promotion and Tenure." First, the applicant must submit a written application to her Department Chair, along with a portfolio that contains documentation pertinent to an assessment of her qualifications. Second, the applicant is reviewed by a Promotion and Tenure Review Committee ("P&T Review Committee") comprised of tenured faculty in the applicant's Department. Next, the application is reviewed sequentially by the Department Chair, the Dean of the applicant's school, and the Vice President for Academic Affairs, each of whom must consider whether to recommend the applicant to receive promotion and tenure and then forward his or her recommendation to the next reviewing official. Following the Vice President for Academic Affairs' review, the President of SOSU decides whether to approve or deny the application for promotion and tenure and, if the President approves the application, he submits his recommendation to the RUSO Board of Regents for their approval.

74. It is Southeastern's policy to notify applicants of the intermediate decisions in the process as they occur. On a candidate's request, administrators may provide

explanations of negative recommendations so that candidates for promotion and tenure can address deficiencies before the next level of review.

75. According to Southeastern's Academic Policies and Procedures, to attain a promotion to the position of Associate Professor an applicant must have: (1) an earned doctorate relevant to the teaching field awarded by a regionally accredited or internationally recognized institution of higher learning; (2) five years of successful higher education teaching experience in full-time appointments; (3) five years of experience at the Assistant Professor rank; (4) demonstrated effective classroom teaching, research/scholarship, contributions to the institution and profession (also referred to as "service"), and, in appropriate instances, successful performance of non-teaching or administrative duties; and (5) noteworthy achievement in classroom teaching, research/scholarship, and service, or, in appropriate instances, performance of non-teaching or administrative duties.

76. According to Southeastern's Academic Policies and Procedures, to attain tenure a professor must have: (1) five years of service at Southeastern in a tenure-track appointment as an Assistant Professor, Associate Professor, or Professor; (2) demonstrated effective classroom teaching, research/scholarship, service, and, in appropriate instances, successful performance of non-teaching or administrative duties; (3) demonstrated ability to work cooperatively to strengthen the academic quality of the institution; and (4) noteworthy achievement in classroom teaching and on at least one other criterion: research/scholarship, service, or, in appropriate instances, performance of non-teaching or administrative duties.

77. Southeastern’s Academic Policies and Procedures state that, “[f]aculty status and related matters are primarily faculty responsibility; this area includes . . . promotions [and] the granting of tenure.” The Academic Policies and Procedures further state that, in considering applications for promotion and tenure, the “governing board and president should . . . concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.”

Dr. Tudor Prepares to Apply for Promotion and Tenure

78. In the summer of 2009, as Dr. Tudor was about to enter her sixth year as an Assistant Professor, she made preparations to apply for tenure and promotion to the position of Associate Professor.

79. At the end of August 2009, Dr. Tudor met with the Dean of the School of Arts and Sciences, Dr. Lucretia Scoufos. It was Dean Scoufos’ customary practice to meet with professors applying for promotion and tenure to discuss the format and content of the portfolio that they had to prepare in support of their applications.

80. Dean Scoufos learned that Dr. Tudor was a transgender woman. Despite being informed of this fact, Dean Scoufos intentionally misgendered Dr. Tudor (i.e., used inappropriate male pronouns such as he and his) in subsequent meetings.

81. Misgendering is the practice of using incorrect gender referents (e.g., pronouns, titles, and name) in describing or conversing with a transgender person. When intentional, the purpose of misgendering is to communicate one’s belief that the subject is not truly a member of their post-transition gender and/or to express disregard for the

subject's gender identity.

82. During this meeting, Dr. Tudor told Dean Scoufos that she believed another faculty member in her Department had been discriminating against her since she had begun to present as female at work. Dr. Tudor said that she would prefer if this faculty member did not serve on the Faculty Committee that would review her portfolio. Dean Scoufos did not report Dr. Tudor's concern to Southeastern's Affirmative Action Officer—the person at Southeastern responsible for investigating discrimination complaints.

Dr. Tudor's Application for Promotion and Tenure

83. In October 2009, Dr. Tudor submitted her application for tenure and promotion to the position of Associate Professor to the Chair of the English Department, Dr. John Mischo.

84. Both the P&T Review Committee assigned to review Dr. Tudor's application and portfolio, as well as Dr. Mischo, recommended that she receive promotion and tenure.

85. On or about November 29, 2009, Dr. Mischo notified Dean Scoufos that he and the P&T Review Committee recommended that Dr. Tudor receive a promotion to the tenured position of Associate Professor.

86. In January 2010, Dean Scoufos sent Dr. Tudor a letter informing her that, despite the recommendations of Dr. Tudor's Department Chair and the P&T Review Committee, she had decided to oppose Dr. Tudor's application for promotion and tenure.

Dean Scoufos' letter contained no explanation for her decision.

87. Dean Scoufos passed her recommendation that tenure and promotion be denied and Dr. Tudor's portfolio along to Vice President McMillan.

88. In February 2010, Vice President McMillan sent Dr. Tudor a letter informing her that he also had decided to oppose her application for promotion and tenure. Like Dean Scoufos' letter, Vice President McMillan's letter contained no explanation for his decision.

89. Shortly afterwards, Vice President McMillan forwarded Dr. Tudor's portfolio to the President of Southeastern, Dr. Larry Minks. He also forwarded to President Minks his own negative recommendations for Dr. Tudor's promotion and tenure, as well as the recommendations of the P&T Review Committee, the Chair of the English Department, and Dean Scoufos.

90. Dr. Tudor asked Vice President McMillan and Dean Scoufos to explain why they had decided to oppose her application. That information would have enabled Dr. Tudor to supplement her portfolio before the President reviewed it.

91. Both Vice President McMillan and Dean Scoufos refused to explain to Dr. Tudor why they decided to oppose her application.

92. In refusing to discuss with Dr. Tudor why he opposed her application, Vice President McMillan treated Dr. Tudor differently than similarly-situated nontransgender professors. Indeed, in the previous academic term Vice President McMillan treated differently a similarly situated nontransgender male English professor, to wit: Vice President McMillan met with the other professor to discuss how that professor could

strengthen his portfolio. The other professor followed Vice President McMillan’s advice and supplemented his portfolio before it was submitted to the President of Southeastern for a final decision on his application. Based on his supplemented portfolio—and the guidance that he received from Vice President McMillan—the nontransgender professor.

93. In February 2010, Dr. Tudor filed a grievance with President Minks and requested a hearing before Southeastern’s Faculty Appellate Committee (“FAC”). In her grievance, she alleged that Dean Scoufos and Vice President McMillan had denied her the due process provided by Southeastern’s policies when they refused to explain why they had opposed her application for promotion and tenure.

94. The following month, the FAC ruled in Dr. Tudor’s favor and recommended to President Minks’ designee that Vice President McMillan and Dean Scoufos explain to Dr. Tudor why they had opposed her application.

95. Pursuant to Southeastern policy, President Minks designated the Assistant Vice President for Academic Affairs (“Assistant Vice President”) to communicate to Dr. Tudor both the FAC’s recommendation and his decision whether to comply with that recommendation. Southeastern policy also required that Dr. Tudor receive this information within ten workdays. Dr. Tudor would have the right to appeal the Assistant Vice President’s decision to President Minks.

96. The Assistant Vice President decided not to follow the FAC’s recommendation. Vice President McMillan directed the Assistant Vice President to wait until after President Minks made his decision on Dr. Tudor’s promotion and tenure application before informing her that he had decided not to follow the FAC’s

recommendation. Thus, Dr. Tudor received no notification within the ten workday deadline.

97. By violating Southeastern policy and withholding timely notification of the Assistant Vice President's decision, Southeastern denied Dr. Tudor the ability to appeal Vice President McMillan's and Dean Scoufos' refusals to provide explanation of their negative recommendations prior to President Minks' ultimate decision on her tenure and promotion application. Thus, she was deprived of the opportunity to supplement her portfolio to address their reasoning prior to President Minks' decision.

98. In April 2010, President Minks sent Dr. Tudor a letter informing her that he had decided to deny her application for promotion and tenure. In that letter, President Minks did not explain why Dr. Tudor's application was denied, but he did let her know that Vice President McMillan would inform her of the reasons for the denial in a separate communication.

99. President Minks' decision was the first time Southeastern had denied an English professor's application for tenure and promotion after he or she had obtained a favorable tenure recommendation from a P&T Review Committee and the Department Chair.

100. In June 2010, Dr. Tudor received a letter from Vice President McMillan. That letter—which purported to be dated over a month earlier, on April 30, 2010—stated that President Minks had denied Dr. Tudor's application because her record in the areas of “research/scholarship” and “university service” were deficient.

101. Dr. Tudor's qualifications for promotion and tenure were comparable, if

not superior to, the qualifications of at least three other similarly-situated nontransgender English professors who were considered for, and received, tenure during Dr. Tudor's time at Southeastern. For example, the number of publications Dr. Tudor had in her portfolio was greater than the number of publications that another successful applicant had in hers. One applicant received promotion and tenure even though she, unlike Dr. Tudor, had no peer-reviewed publications. Likewise, in the area of university service, Dr. Tudor's performance was also comparable to her nontransgender departmental peers who successfully applied for promotion and tenure.

102. Vice President McMillan's criticisms of Dr. Tudor's record in the area of scholarship also rested on his assertion that the Southeastern administration had been unable to verify that Dr. Tudor had served as an editor for two symposia listed in her portfolio. However, no one in the Southeastern administration ever requested that Dr. Tudor provide additional documentation to verify that she had served as an editor of the symposia. Moreover, copies of the published proceedings from the symposia were available in a reading room on Southeastern's campus and Dr. Tudor's role as editor was prominently displayed on the covers of both publications.

Dr. Tudor's Re-application and Grievances

103. Southeastern permits faculty members who have been denied promotion or tenure to reapply as long as they remain within their seven-year term of initial employment. In at least one other RUSO institution, professors have re-applied for promotion and tenure the year after the President denied their applications.

104. In August 2010, Dr. Tudor informed her Department Chair that she intended to re-apply for promotion and tenure during the 2010-11 academic year.

105. That same month, Dr. Tudor also filed a grievance in which she requested a hearing with the FAC so that she could dispute Southeastern's decision to deny her 2009-10 application for promotion and tenure. In September 2010, the FAC informed Dr. Tudor that it had no authority to overrule the President's decision to deny her promotion and tenure.

106. A few weeks later, in October 2010, Vice President McMillan sent Dr. Tudor a letter stating that Southeastern would not permit her to re-apply for promotion and tenure during the 2010-11 academic year. In the letter, which had been approved by President Minks, Vice President McMillan recognized that Southeastern policy did not prohibit Dr. Tudor from re-applying. But he nevertheless announced that he had decided that it was not in the "best interests of the university" to permit her to re-apply.

107. In his letter, Vice President McMillan offered several explanations for denying Dr. Tudor's request to re-apply for promotion and tenure. Among his reasons was his belief that deficiencies in Dr. Tudor's application from the prior academic year could not be corrected that quickly. Vice President McMillan also expressed concern that if the administration once again overruled positive recommendations from the P&T Review Committee and the Department Chair, its action would potentially "inflame the relationship between faculty and administration."

108. In October 2010, Dr. Tudor filed a grievance with the FAC and President Minks challenging Southeastern's decision not to let her re-apply for promotion and

tenure during the 2010-11 academic year.

109. In response to Dr. Tudor's grievance, Vice President McMillan sent a letter to the FAC stating that he had opposed Dr. Tudor's 2009-10 application for promotion and tenure because she had submitted "the poorest portfolio [he had] ever reviewed in the 20 years" he worked at Southeastern, and there was "very little chance" that Dr. Tudor could have corrected the deficiencies in the period since the initial decision.

110. In support of her grievance, Dr. Tudor submitted four letters of recommendation from tenured English professors at Southeastern detailing their positive assessments that Dr. Tudor was qualified for promotion and tenure.

111. Another tenured English professor submitted a letter to the FAC, in support of Dr. Tudor's grievance, which pointed out that "Dr. Tudor ha[d] published more research than any other member of the [English] department, tenured or untenured." The letter writer therefore maintained that Vice President McMillan was "clearly mistaken in his opinion that consideration of Dr. Tudor's tenure file would be a waste of time."

112. In December 2010, the FAC recommended that Southeastern permit Dr. Tudor to re-apply for promotion and tenure during the 2010-11 academic year.

113. President Minks designated Southeastern's Vice President for Business Affairs, Ross Walkup, to respond to the FAC's decision. In January 2011, Vice President Walkup sent a letter to the FAC stating that Southeastern would not comply with the FAC's recommendation because Southeastern policy prohibited professors from re-applying for promotion and tenure after the President denied their applications. In his letter, Vice President Walkup indicated that President Minks agreed with this

interpretation of Southeastern policy.

Dr. Tudor's Discrimination Complaint

114. In August 2010—at the same time she was seeking to re-apply for promotion and tenure—Dr. Tudor also filed a written discrimination complaint with Southeastern's Affirmative Action Officer, Dr. Claire Stubblefield. In that complaint, she alleged, among other things, that Southeastern had discriminated against her on the basis of her sex when it denied her 2009-10 application for promotion and tenure.

115. Dr. Tudor filed a similar discrimination complaint with DOE, and DOE informed Southeastern of the complaint in a letter dated September 15, 2010. This complaint specifically referenced “odious bullying” “hostile attitude arising from discrimination” and “adversarial and hostile demeanor toward a Native American woman.”

116. In October 2010, Dr. Tudor supplemented the discrimination complaint that she had filed with Dr. Stubblefield. She alleged that Southeastern had retaliated against her because of her discrimination complaints when it refused to permit her to re-apply for promotion and tenure during the 2010-11 academic year.

117. Dr. Stubblefield issued a report ostensibly addressing Dr. Tudor's discrimination and retaliation complaints in January 2011. Dr. Stubblefield found that Southeastern had not discriminated against or retaliated against Dr. Tudor.

118. Dr. Stubblefield's report did not address all of Dr. Tudor's allegations of discrimination and retaliation. For example, the report did not mention Southeastern's

decision not to permit Dr. Tudor to re-apply for promotion and tenure during the 2010-11 academic year, even though Dr. Tudor had expressly complained that this decision to not let her re-apply was retaliatory. Similarly, Dr. Stubblefield's report did not address Dr. Tudor's allegation that Vice President McMillan had treated her differently from one of her peers by meeting with a nontransgender English professor to discuss his portfolio before the President rendered a decision on his application for promotion and tenure, while denying Dr. Tudor the opportunity to have such a meeting.

Dr. Tudor's Employment with Southeastern is Terminated

119. Since Dr. Tudor failed to attain tenure before the end of her seventh year as an Assistant Professor, Southeastern terminated her employment on May 31, 2011.

120. Before Dr. Tudor's employment ended, Southeastern's Faculty Senate awarded her with the Faculty Senate Recognition Award for Excellence in Scholarship for the 2010-11 academic year.

121. Since her employment was terminated by Southeastern, Dr. Tudor has attempted to but been unable to secure a tenure-track professorship that is comparable to the one she held at Southeastern.

Dr. Tudor's Desire To Return to Southeastern

122. One of the remedies Dr. Tudor and the United States have requested is reinstatement as Assistant Professor, with tenure. This relief is particularly important given Dr. Tudor's connection to Oklahoma.

123. In the 1830s the Chickasaw were removed from their ancestral lands east of the Mississippi River and moved, at gunpoint, to lands in present-day Oklahoma.

124. Nearly three thousand Chickasaw traveled along the Trail of Tears; an estimated five hundred Chickasaw perished along the way.

125. Today, members of the Chickasaw Nation believe that the lands sold to the Chickasaw in Oklahoma by the federal government in the 1830s have been made sacred by the tears, sweat, blood, and bones of their ancestors.

126. Dr. Tudor believes that the land Southeastern lies upon has been made sacred by the tears, sweat, blood, and bones of her ancestors.

127. Southeastern's campus lies in the historic boundary of the lands sold to the Chickasaw and Choctaw Nations by the federal government in the 1830s. In 2004 Dr. Tudor was offered a lucrative tenure-track professorship at Northern Michigan University. Dr. Tudor was also offered a tenure-track professorship at Southeastern.

128. Dr. Tudor accepted the tenure-track professorship at Southeastern over the offer from Northern Michigan University because she wanted to spend the rest of her career teaching, working, and living on lands lying within the historic boundary of the relocated Chickasaw Nation.

129. Since her employment was terminated by Southeastern, Dr. Tudor has been unable to secure a tenure-track professorship at an institution that lies within the historic boundaries of the removed Chickasaw Nation.

COUNT ONE
Title VII, 42 U.S.C. § 2000e, et seq.
Hostile Work Environment Based on Sex
(Gender, Gender Expression, and Gender Identity)

130. Plaintiff/Intervenor re-alleges each and every allegation contained in paragraphs 1–129.

131. After Dr. Tudor disclosed her intent to transition to female during the 2007-08 school term, Southeastern’s administrators instituted a campaign of harassment and bullying on the basis of sex and sex stereotyping, including gender, gender expression, and gender identity, and adopted an attitude of adversarial and hostile demeanor. This harassment continued through Tudor’s termination from Southeastern in May 2011.

132. Dr. Tudor was targeted for harassment by administrators because of her sex, including gender, gender expression, and gender identity.

133. Dr. Tudor was nonetheless able to maintain cordial and productive relationships with the members of her department.

134. The discriminatory acts involved the same type of employment actions, occurred relatively frequently, were perpetuated and/or directed by the same core group of administrators, were egregious, numerous and concentrated, and formed part of the same hostile work environment, as detailed herein.

135. The work environment was permeated with discriminatory intimidation, ridicule, and insult, sufficiently severe or pervasive to alter the conditions of Dr. Tudor’s employment and to create an abusive working environment, as detailed herein.

136. Dr. McMillan made statements that were repeated to Dr. Tudor that her

gender expression and gender identity were offensive to him, as detailed above.

137. Southeastern administrators, including but not limited to Dr. McMillan, openly denied the legitimacy of Dr. Tudor's feminine gender expression and female gender identity and encouraged others under their direction to do the same. This conduct includes but is not limited to: administrators directing human resources to counsel Tudor against using the multi-stall women's restroom closest to her office and against wearing skirts and other traditionally female articles of clothing in Fall 2007; administrators, including Dean Scoufos, failing to notify the Affirmative Action Office of discrimination reported by Dr. Tudor in 2009; administrators, including Dean Scoufos and Vice President McMillan, publicly and privately misgendering or otherwise expressing their distaste for persons with nontraditional gender identity and expression generally and Dr. Tudor specifically.

138. Dean Scoufos had the power to impose or participate in discipline of Dr. Tudor and to interfere with or stop her tenure and promotion.

139. Vice President McMillan had the power to impose or participate in discipline of Dr. Tudor and to interfere with or stop her tenure and promotion.

140. Dean Scoufos was acting as the Defendants' agent in taking the actions regarding Dr. Tudor detailed herein.

141. Dean Scoufos was acting within the scope of his employment in taking the actions regarding Dr. Tudor detailed herein.

142. Vice President McMillan was acting as the Defendants' agent in taking the actions regarding Dr. Tudor detailed herein.

143. Vice President McMillan was acting within the scope of his employment in taking the actions regarding Dr. Tudor detailed herein.

144. Southeastern administrators, including upon information and belief Dr. McMillan, repeatedly attempted to craft formal and informal policies with the intended effect of forcing Dr. Tudor to suppress her feminine gender expression and female gender identity. This conduct includes but is not limited to: administrators directing Southeastern's human resources office to counsel Dr. Tudor to use a different restroom than that used by other female faculty, causing Dr. Tudor daily humiliation for four years; administrators directing Southeastern's human resources office to counsel Dr. Tudor to not wear traditionally female or feminine articles of clothing; and administrators repeatedly interfering with the tenure review process over the course of two years.

145. The requirement that Dr. Tudor not use female restrooms, and use only a specific single-stall restroom exposed her to disadvantageous terms as detailed herein.

146. The Defendants provided and maintained a health insurance plan for all faculty, including Dr. Tudor, that had an explicit exclusion for transgender health care, as detailed herein. The health insurance policy explicitly excluded all transition-related care for transgender persons. As a result of this exclusion, the plan denied care to transgender persons, solely on the basis of sex and regardless of medical necessity. As a result of this discriminatory exclusion, Dr. Tudor was unable to receive coverage for medically necessary care, she was forced to bear out-of-pocket costs, and was subjected to humiliation which contributed to the hostile work environment.

147. This hostile environment unreasonably interfered with Dr. Tudor's ability

to perform her job duties, by the disruption of her relationship to the University Administration and her Department colleagues, by the unreasonable public criticism and questioning of her abilities as a professor, by her inability to use restrooms appropriate to her gender, by the need to spend many hours on otherwise unnecessary grievance and review processes and other means of seeking relief, and by the necessity of having to create a new tenure application, a time-intensive task involving reviewing and assembling hundreds of pages and requesting and following up on recommendation letters, and other factors.

148. Many events contributing to this hostile work environment occurred within the 300 day period prior to Dr. Tudor's first charge dated September 9, 2010, including but not limited to the daily humiliations caused by the restroom restrictions and misgendering, the maintenance of the discriminatory insurance policy exclusion, dress restrictions, administrators repeatedly interfering with the tenure review process and the constant threat of termination.

149. Dr. Tudor perceived the working environment to be abusive or hostile.

150. A reasonable person in Dr. Tudor's circumstances would consider the working environment to be abusive or hostile.

151. The actions of Defendants' agents, including but not limited to Dean Scofous and Vice President McMillan, in creating the hostile work environment resulted in tangible job consequences to Dr. Tudor, including but not limited to her termination, her denial of promotion and tenure, her inability to reapply for promotion and tenure, her restriction in regard to using restrooms and her inability to obtain health care coverage

for medically necessary treatments.

152. The Defendants did not have any policy prohibiting discrimination based on gender expression or gender identity, and there were therefore no preventive and corrective opportunities available to Dr. Tudor for discrimination based on her gender expression or gender identity.

153. In fact, the Faculty Senate unanimously approved resolutions to prevent discrimination based on gender expression and gender identity on January 19, 2011, and they were sent to Vice President McMillian, who in turn presented the resolutions to Southeastern's President. Both resolutions were rejected.

154. Dr. Tudor took advantage of the preventive and corrective opportunities available to her to the extent they existed, by complaining to Defendants of discrimination based on her sex.

155. The Defendants were on notice of the hostile work environment, including actual notice by means of complaints made by Dr. Tudor to the University detailed herein, and vicariously and constructively by means of the acts perpetrated by her direct supervisors detailed herein.

156. The Defendants should have known of the hostile work environment because of Dr. Tudor's complaints and the acts perpetrated by the administrators, as detailed herein.

157. The Defendants made no efforts to stop the hostile environment detailed herein.

158. In the alternative, the Defendants did not undertake prompt and reasonable

efforts sufficient to stop the hostile environment detailed herein.

159. As a direct and proximate result of Defendants' unlawful discrimination, Dr. Tudor incurred damages including, but not limited to humiliation, loss of enjoyment of life, damage to her professional reputation, and other pecuniary and non-pecuniary losses.

COUNT TWO
Title VII, 42 U.S.C. § 2000e, *et seq.*
Unlawful Discrimination Based on Sex
(Gender, Gender Expression, and Gender Identity)

160. Plaintiff/Intervenor re-alleges each and every allegation contained in paragraphs 1–129.

161. Defendants engaged in adverse employment actions against Dr. Tudor because of her sex and sex stereotyping, including gender, gender expression, and gender identity, as defined and detailed below.

162. Defendants denied Dr. Tudor's application for promotion and tenure during the 2009-10 academic year.

163. Defendants refused to permit her to re-apply during the 2010-11 academic year because of Dr. Tudor's gender, gender expression and gender identity, which constitutes unlawful sex discrimination in violation of Title VII.

164. Had Dr. Tudor been permitted to re-apply during the 2010-11 academic year, she would have obtained tenure and promotion, absent further sex discrimination by Defendants.

165. Defendants created policies and practices that had a disparate impact on

persons based on gender expression and gender identity, and had a disparate impact on Dr. Tudor.

166. Defendants created a policy and practice that required certain female persons, based on their gender identity, including Dr. Tudor, not to use any women's restrooms on campus, but to use only all genders single-stall restrooms for persons with disabilities.

167. This policy and practice had a disparate impact on certain female persons based on their gender identity, including Dr. Tudor.

168. The creation and maintenance of this policy and practice was an adverse employment action.

169. These restroom restrictions also subjected Dr. Tudor to disparate treatment.

170. These restroom restrictions subjected certain persons, based on their gender identity, including Dr. Tudor, to disadvantageous terms based on sex, as detailed herein, and constituted unlawful sex discrimination in violation of Title VII.

171. Defendants terminated Dr. Tudor because of her gender, gender expression and gender identity, which constitutes unlawful sex discrimination in violation of Title VII.

172. Defendants' purported reasons for denying Dr. Tudor's application for promotion and tenure during the 2009-10 academic year and for refusing to allow her to re-apply in the 2010-11 academic year are a pretext for sex discrimination.

173. As a direct and proximate result of Defendants' unlawful sex discrimination, Dr. Tudor incurred damages including, but not limited to, lost income,

humiliation, loss of enjoyment of life, damage to her professional reputation and other pecuniary and non-pecuniary losses.

COUNT THREE
Title VII, 42 U.S.C. § 2000e, et seq.
Retaliation

174. Plaintiff/Intervenor re-alleges each and every allegation contained in paragraphs 1–129.

175. By refusing to permit Dr. Tudor to re-apply for promotion and tenure during the 2010-11 academic year, Defendants retaliated against Dr. Tudor in violation of Title VII because she (a) opposed their discrimination against her that she reasonably believed violated Title VII; and (b) participated in a Title VII proceeding by filing a complaint with DOE.

176. Defendants’ purported reasons for not allowing Dr. Tudor to re-apply for promotion and tenure in the 2010-11 academic year are a pretext for unlawful retaliation.

177. But for Defendants’ unlawful retaliation, Dr. Tudor would have obtained tenure and promotion, and thereby incurred damages including, but not limited to, lost income, loss of enjoyment of life, damage to her professional reputation, and other pecuniary and non-pecuniary losses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff/Intervenor requests that the court grant the following relief:

- a) Enjoin Defendants from subjecting employees to unlawful sex discrimination (including on the basis of gender, gender identity, gender

- expression, and sex stereotypes) and retaliation that violates Title VII;
- b) Order Defendants to institute and carry out new policies, practices, and programs to prevent unlawful sex discrimination (including on the basis of gender, gender identity, gender expression, and sex stereotypes) and retaliation that violates Title VII;
 - c) Order Defendants to institute and carry out policies, practices, and programs to report, investigate, and effectively address complaints about unlawful sex discrimination (including on the basis of gender, gender identity, gender expression, and sex stereotypes) and/or retaliation that violates Title VII;
 - d) Order Defendants to train their employees on Title VII's prohibitions against unlawful sex discrimination (including on the basis of gender, gender identity, gender expression, and sex stereotypes) and retaliation;
 - e) Order Defendants to train their employees who investigate complaints of Title VII violations on how to conduct effective investigations;
 - f) Order Defendants and their managers and supervisory employees to refrain from engaging in retaliation against any individual for giving testimony in this matter or participating in this matter in any way;
 - g) Order Defendants to compensate Dr. Tudor with monetary relief for the damages she suffered including, but not limited to, lost income, loss of fringe benefits, humiliation, loss of enjoyment of life, and damage to her professional reputation.
 - h) Order Defendants to award Dr. Tudor the position of Associate Professor

with tenure;

- i) Order any further relief necessary to make Dr. Tudor whole;
- j) Award such additional relief as justice may require, together with the Plaintiff/Intervenor's costs, disbursements, and attorneys' fees in this action.

Dated: May 5, 2015

Respectfully Submitted,

Brittany M. Novotny (Okla. Bar No. 20796)
National Litigation Law Group, PLLC
42 Shepherd Center
2401 NW 23rd St.
Oklahoma City, OK 73107
405-429-7626
Fax: 405-835-6244
bnovotny@nationlit.com

Jillian T. Weiss (NY Bar No. 2125011)
Admitted *Pro Hac Vice*
Law Office of Jillian T. Weiss, P.C.
P.O. Box 642
Tuxedo Park, NY 10987
845-709-3237
Fax: 845-915-3283
jweiss@jtweisslaw.com

Ezra Young (NY Bar No. 5283114)
Admitted *Pro Hac Vice*
Law Office of Jillian T. Weiss, P.C.
P.O. Box 642
Tuxedo Park, NY 10987
949-291-3185
Fax: 917-398-1849
eyoung@jtweisslaw.com

ATTORNEYS FOR PLAINTIFF/INTERVENOR

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) **Case No. CIV-15-324-C**
)
 1. SOUTHEASTERN OKLAHOMA)
 STATE UNIVERSITY, and)
)
 2. THE REGIONAL UNIVERSITY)
 SYSTEM OF OKLAHOMA)
)
 Defendants.)

**ANSWER OF DEFENDANT SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, TO PLAINTIFF/INTERVENOR’S COMPLAINT**

Defendant, Southeastern Oklahoma State University, (“SEOSU”), for its answer to Plaintiff/Intervenor’s Complaint in Intervention (“Complaint”), admits allegations of Plaintiff/Intervenor (“Plaintiff”) contained in the Complaint only to the extent specifically set forth below. To the extent any matters are not explicitly admitted, they are denied. SEOSU hereby provides its Answer as follows¹:

1. SEOSU admits the allegations in Paragraph 1 of the Complaint.
2. In response to Paragraph 2, SEOSU admits it is a member of the Oklahoma state system of higher education and is part of RUSO. SEOSU denies that SEOSU and RUSO are a single employer for all relevant purposes. SEOSU admits RUSO’s Board of Regents is the governing board for SEOSU, and that RUSO’s Policy Manual

¹ Paragraphs are numbered to correlate with the Complaint paragraphs to which they respond.

addresses the manner in which RUSO's and SEOSU's operations interrelate. SEOSU admits RUSO has the power to fix compensation and personnel duties at SEOSU, but RUSO has the power to delegate that power to the respective presidents pursuant to 70 O.S. §3510(d), which it has done. SEOSU denies its President must report to RUSO on all matters related to employment, discipline, and termination of faculty.

3. In response to Paragraph 3, SEOSU admits this Court has jurisdiction over Plaintiff's Counts II and III, but denies this Court has jurisdiction over Count I.
4. SEOSU admits the allegations in Paragraph 4.
5. SEOSU admits the allegations in Paragraph 5.
6. In response to Paragraph 6, SEOSU admits Dr. Tudor filed a charge of discrimination, but denies the allegations contained in such charge. SEOSU lacks sufficient knowledge or information to admit or deny the allegations regarding DOE's alleged referral to EEOC.
7. In response to Paragraph 7, SEOSU admits Dr. Tudor supplemented her charge of discrimination, but denies the allegations contained in the supplemental charge.
8. In response to Paragraph 8, SEOSU admits the EEOC notified Defendants of the supplemental charge of discrimination, that EEOC allegedly investigated these charges, and that EEOC contends the investigation revealed Dr. Tudor was subjected to sex discrimination and retaliation. SEOSU admits that EEOC subsequently referred the case to the U.S. Department of Justice. SEOSU denies that reasonable cause was found to believe SEOSU discriminated or retaliated against Dr. Tudor. SEOSU also denies the EEOC notified Defendants of its reasonable cause or its

findings. Specifically, EEOC continually refused to provide Defendants with any facts or evidence that allegedly supported EEOC's findings. SEOSU denies EEOC attempted to conciliate the charges in good faith, and further states that EEOC refused SEOSU's request for mediation, notifying SEOSU that this charge was not eligible for mediation. SEOSU admits the EEOC did not render a determination on the issue of hostile work environment, because that issue was not presented by Dr. Tudor to the EEOC, nor raised by the facts alleged in Dr. Tudor's charges.

9. SEOSU denies the allegations in Paragraph 9.
10. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 10.
11. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 11.
12. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 12.
13. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 13.
14. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 14.
- 15.-20. In response to Paragraphs 15-20, Defendant states these paragraphs do not assert specific or relevant facts or allegations against SEOSU, do not relate to the claims in this lawsuit, contain immaterial or impertinent matter, and therefore do not require a response.

21. SEOSU denies any discrimination occurred, as alleged in Paragraph 21.
- 22-36. In response to Paragraphs 22-36, Defendant states these paragraphs do not assert specific or relevant facts or allegations against SEOSU, do not relate to the claims in this lawsuit, contain immaterial or impertinent matter, and therefore do not require a response.
37. In response to the allegations in Paragraph 37, SEOSU admits Dr. Tudor began working at SEOSU in 2004 pursuant to a tenure track one year appointment, which had to be renewed on an annual basis for Dr. Tudor to continue employment at SEOSU. SEOSU further admits Dr. Tudor presented as a man when hired by SEOSU, but denies the remaining allegations.
38. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 38.
39. SEOSU admits the allegations in Paragraph 39.
40. SEOSU admits Cathy Conway, SEOSU's HR Director in 2007, contacted Dr. Tudor to discuss transition as a female, but SEOSU denies all remaining allegations contained in Paragraph 40.
41. SEOSU admits Dr. Tudor began to go by the name "Rachel Tudor" and present as a female at work during the 2007-2008 academic year, but is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 41.
42. SEOSU denies the allegations in Paragraph 42, and further states that Jane McMillan and Vice President McMillan specifically denied these allegations when interviewed by EEOC and/or the U.S. Department of Justice.

43. SEOSU denies the allegations in Paragraph 43.
44. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 44.
45. SEOSU denies the allegations in Paragraph 45.
46. SEOSU denies the allegations in Paragraph 46.
47. SEOSU denies the allegations in Paragraph 47.
48. SEOSU admits it has never counseled nor directed a transgender or a nontransgender professor, as alleged in Paragraph 48.
49. SEOSU admits it has never counseled a transgender nor nontransgender professor regarding the allegations in Paragraph 49.
50. SEOSU denies the allegations in Paragraph 50.
51. SEOSU denies the allegations in Paragraph 51.
52. SEOSU denies the allegations in Paragraph 52.
53. SEOSU denies the allegations in Paragraph 53, and further states Dr. Tudor never complained nor filed a grievance regarding bathroom accommodations, was never disciplined nor received any adverse employment action for not using a particular restroom, nor were any complaints received from handicapped persons regarding Dr. Tudor's use of the single stall restroom.
54. SEOSU denies the allegations in Paragraph 54.
55. SEOSU denies the allegations in Paragraph 55.
56. SEOSU denies the allegations in Paragraph 56.
57. SEOSU denies the allegations in Paragraph 57.

58. SEOSU denies the allegations in Paragraph 58.
- 59.-63. In response to Paragraphs 59-63, SEOSU states these paragraphs do not assert specific or relevant facts or allegations against SEOSU, or relate to the claims in this lawsuit, and therefore do not require a response.
64. SEOSU denies the allegations in Paragraph 64.
65. In response to the allegations in Paragraph 65, SEOSU admits it never counseled any transgender nor nontransgender professor against wearing skirts of any length.
66. SEOSU admits female professors wore female clothing, including skirts of varying length, during Dr. Tudor's employment with SEOSU. SEOSU lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 66.
67. SEOSU admits the health insurance plan offered to all of its employees contained numerous exclusions, including the following exclusion: "For transsexual Surgery or any treatment leading to or in connection with transsexual surgery.
68. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 68.
69. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 69.
70. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 70.

71. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 71.
72. SEOSU admits, as alleged in Paragraph 72, the policy requires assistant professors to obtain tenure before the end of their seventh year as an assistant professor or their employment contract will not be renewed. However, with permission from SEOSU President Minks to seek a one year extension from the RUSO Board, V.P. McMillian offered Dr. Tudor the ability to remain past the seven years so that she could have two years to fully address and supplement her portfolio for tenure. Dr. Tudor declined this offer, and was aware that as a result, her employment with SEOSU would end in May 2011.
73. SEOSU admits the allegations in Paragraph 73.
74. SEOSU denies the allegations in Paragraph 74. A notification letter is provided to each candidate regarding the decision at each level. At the end of the tenure process, the candidate is given a detailed letter documenting the reasons for denial or approval. Dr. Tudor received the notification letters and a detailed letter outlining the reasons for tenure denial.
75. SEOSU admits the allegations in Paragraph 75.
76. SEOSU admits the allegations in Paragraph 76.
77. SEOSU admits that Paragraph 77 contains statements included in SEOSU's Academic Policies and Procedures, but it presents a distortion of the process because it does not contain all of the applicable statements regarding the tenure process and

the various levels of review. Specifically, Paragraph 23 omits the significant roles played by the Dean, Vice President of Academic Affairs, and the President, as well as the role played by the RUSO Board.

78. SEOSU is without sufficient knowledge or information to admit or deny whether preparations were taken by Dr. Tudor in the summer of 2009, as alleged in Paragraph 78. In addition, Dr. Tudor had applied for tenure and promotion to the position of Associate Professor the year before, in 2008, at which time the Department's Tenure and Promotion Committee for Dr. Tudor voted 5-0 against a recommendation for Tenure and Promotion. Upon the advice of a committee member, Tudor withdrew her application and portfolio.
79. SEOSU admits the allegations in Paragraph 79.
80. SEOSU admits it was at this meeting that Dean Scoufos learned Dr. Tudor was a transgender woman, but denies the remaining allegations in Paragraph 80.
81. In response to paragraph 81, Defendant states this paragraph does not assert specific or relevant facts or allegations against SEOSU, does not relate to the claims in this lawsuit, and therefore does not require a response.
82. As alleged in Paragraph 82, SEOSU admits Dr. Tudor told Dean Scoufos that she believed another faculty member in her Department had been discriminating against her since she had begun to present as a woman, and that she would prefer this member not serve on the Faculty Committee that would review her portfolio. When Dean Scoufos asked Dr. Tudor why she believed that faculty member was discriminating against her, Tudor stated that after her change, the faculty member did

not ask Dr. Tudor to accompany the honor students on field trips, such as cultural events to Dallas. Upon investigation, Dean Scoufos learned the honor trips had been stopped completely, and were wholly unrelated to Dr. Tudor. SEOSU denies the remaining allegations.

83. SEOSU admits the allegations in Paragraph 83.

84. SEOSU admits the allegations in Paragraph 84.

85. SEOSU admits the allegations in Paragraph 85.

86. SEOSU admits the allegations in Paragraph 86, but further states that notification letters do not contain explanations. Dr. Tudor received an explanation letter from Dr. McMillan after the process was complete, which was the standard procedure.

87. SEOSU admits the allegations in Paragraph 87.

88. SEOSU admits the allegations in Paragraph 88, but further states that notification letters do not contain explanations. Dr. Tudor later received an explanation letter. All candidates receive explanation letters once the process is complete.

89. SEOSU admits the allegations in Paragraph 89.

90. SEOSU admits that prior to Dr. Tudor receiving her explanation letter; she asked Vice President McMillan and Dean Scoufos for an explanation. Applicants are not permitted to have these types of discussions during the review process. SEOSU denies the remaining allegations in Paragraph 90, but further states that upon Dr. Tudor's request, she was allowed to place a document in her portfolio prior to the President's review.

91. SEOSU admits the allegations in Paragraph 91, because it was against SEOSU's policy to provide feedback to candidates during the tenure and promotion process, and thus, no candidates are given feedback until the end of the process. As previously stated, Dr. Tudor was provided an explanation at the end of the process.
92. SEOSU denies the allegations in Paragraph 92, and specifically states Dr. Tudor was treated no differently than other tenure applicants. After their portfolio submissions, applicants may be permitted to add publications to their portfolios. Dr. Tudor was given permission, and added a publication to her portfolio subsequent to its submission.
93. SEOSU admits that despite Dr. Tudor's knowledge of the tenure process, including the policy that explanations are not given until the tenure process is completed, she requested special treatment by filing a grievance, as alleged in Paragraph 93. Tudor was inappropriately attempting to obtain information that no candidate receives prior to completion of the tenure and promotion process.
94. SEOSU admits the allegations in Paragraph 94, and states that Tudor was provided an explanation at the end of the process.
95. SEOSU admits President Minks designated the Assistant Vice President to communicate to Dr. Tudor the FAC's recommendation and his decision regarding compliance with the recommendation. SEOSU denies the remaining allegations in Paragraph 95.

96. SEOSU admits the Assistant Vice President determined policy would be followed, and Tudor would not be given an explanation until the end of the process. SEOSU denies the remaining allegations in Paragraph 96.
97. Candidates are not allowed to supplement their portfolios during the review process, except to add publications that are received after the portfolio has been submitted and before the process is complete. Dr. Tudor was allowed to add a publication during the review process. SEOSU denies the remaining allegations in Paragraph 97.
98. SEOSU admits the allegations in Paragraph 98.
99. SEOSU denies the allegations in Paragraph 99 to the extent it omits that prior to denying tenure, candidates are frequently given the option to withdraw their applications for tenure and promotion. The option may be proposed by the P&T Review Committee, the Department Chair, the Dean, or a higher administrative official. Dr. Tudor was given the option of withdrawing her application and was given an offer of additional time, i.e. two years, to resubmit her application, but Dr. Tudor declined this offer. Dr. Tudor's decision to decline this offer in light of the consequences of tenure denial was unprecedented.
100. SEOSU cannot admit or deny the date which Dr. Tudor received Vice President McMillan's explanation letter; SEOSU admits the remaining allegations in Paragraph 100.
101. SEOSU denies the allegations in Paragraph 101. The explanation letter received by Dr. Tudor sets forth clear and distinct bases for denial of promotion and tenure, giving specific examples of the inadequacies of her research/scholarship and her

university service. It was because of these significant inadequacies that prior to the completion process, Dr. Tudor was given the option of withdrawing her application and given two years to bolster her portfolio so that it would meet the policy requirements for tenure and promotion.

102. SEOSU denies the allegations in Paragraph 102. It is the candidate's responsibility to provide accurate and complete information in her portfolio to support all claims of publications, editorship, and responsibilities.
103. SEOSU denies the allegations in Paragraph 103. SEOSU has allowed re-application for promotion, but never for tenure.
104. SEOSU has no knowledge of the date Dr. Tudor informed her Department Chair of an intent to re-apply for promotion and/or tenure but admits the remaining allegations in Paragraph 104.
105. SEOSU admits Dr. Tudor submitted a grievance to President Minks on August 30, 2010 entitled "Improprieties and Due Process Violations by Administrators in Tenure and Promotion Process." In September 2010, the FAC sent a letter with its findings to Dr. Tudor, which stated, in part, that the FAC "concluded that the information required by the Academic Policies and Procedures Manual (APPM,4.4.6,1b.) was not provided." The FAC letter also concluded that "it is not empowered to address the issue of due process related to promotion and tenure". Given these two findings, the FAC concluded that it was "unable to act on the grievance." SEOSU denies the remaining allegations in Paragraph 105.

106. SEOSU denies the allegations in Paragraph 106 in that they are incomplete and do not accurately reflect the contents and meaning of the October 2010 letter.
107. SEOSU denies the allegations in Paragraph 107 in that they are incomplete and do not accurately reflect the contents and meaning of the October 2010 letter.
108. SEOSU admits the allegations in Paragraph 108. No candidate for tenure and promotion is allowed to reapply after final review and denial, and Dr. Tudor was aware of the consequences of her refusal to withdraw her application for tenure and promotion the previous year.
109. SEOSU denies that the contents and meaning of the letter are accurately reflected, but admits that, in response to Dr. Tudor's grievance, as alleged in Paragraph 109, Vice President McMillan sent a letter to the FAC setting forth the entire rationale for not allowing Dr. Tudor to re-apply for tenure and promotion.
110. SEOSU admits Dr. Tudor submitted four letters of recommendation from tenured SEOSU English professors, but denies the remaining allegations in Paragraph 110. As set forth in Vice President McMillan's letter to the FAC, "a review of the letters supplied by Dr. Tudor in support of her grievance do not suggest substantial improvements in her scholarly activity or service in the five months since she was notified by the President of his decision to deny her application for tenure and promotion. In fact, many of the activities cited in the letters were present in her 2009-2010 portfolio."
111. SEOSU is without sufficient knowledge or information to admit or deny the allegations in Paragraph 111, but denies that such claims were supported by the

contents of Dr. Tudor's portfolio, as detailed in Vice President McMillan's letters to Dr. Tudor and to the FAC.

112. SEOSU admits the FAC recommended SEOSU permit Dr. Tudor to reapply for tenure and promotion, as alleged in Paragraph 112, but Vice President McMillan appealed the FAC's decision to President Minks, and provided a detailed memorandum supporting the appeal.
113. SEOSU admits the general subject matter of the allegations in Paragraph 113, but denies that Vice President Walkup's letter is accurately summarized. Vice President Walkup's letter was extremely detailed, setting forth the applicable policies and procedures pertaining to promotion and tenure, and explaining the "terminal year rule", including that withdrawal of the application is the only way to avoid the "terminal year rule". His letter further explained the policy prohibiting renewal of appointment for a seven-year faculty member that had not obtained tenure, and that renewal could occur only if the President made a specific recommendation for waiver of policy. SEOSU further states that it is not bound by FAC recommendations, but may consider them.
114. SEOSU admits the allegations in Paragraph 114, but denies SEOSU discriminated against Dr. Tudor when it denied her 2009-2010 application for tenure, or at any other time during Dr. Tudor's employment at SEOSU.
115. SEOSU admits Dr. Tudor filed a discrimination complaint with DOE as alleged in Paragraph 115, but denies SEOSU discriminated against Dr. Tudor when it denied her 2009-2010 application for tenure, or at any other time during Dr. Tudor's

employment at SEOSU. SEOSU lacks sufficient knowledge to admit or deny the remaining allegations.

116. SEOSU admits the allegations in Paragraph 116, but denies SEOSU retaliated or discriminated against Dr. Tudor because of her discrimination complaint, or at any other time during Dr. Tudor's employment at SEOSU.
117. As alleged in Paragraph 117, SEOSU admits Dr. Stubblefield issued a report addressing Dr. Tudor's discrimination and retaliation complaints, and that Dr. Stubblefield, after a thorough investigation of all relevant facts and circumstances, found that Southeastern had not discriminated against or retaliated against Dr. Tudor.
118. SEOSU denies the allegations in Paragraph 118.
119. SEOSU denies the allegations in Paragraph 119. Dr. Tudor's contract was non-renewed due to her failure to attain tenure.
120. SEOSU admits that after Dr. Tudor's application for tenure was denied, (and thus her contract would not be renewed after the academic year 2010-2011), the Faculty Senate (of which Dr. Tudor was a member) gave this award to Dr. Tudor, as alleged in Paragraph 120. There are no specific requirements to receive this award.
121. SEOSU admits that Dr. Tudor's employment was not renewed after the 2010-2011 academic year, but lacks sufficient knowledge or information to admit or deny any other allegations in Paragraph 121.
122. In response to Paragraph 122, SEOSU admits Dr. Tudor is seeking this remedy, but denies the alleged importance.

123. In response to paragraph 123, Defendant states this paragraph does not assert specific or relevant facts or allegations against SEOSU, does not relate to the claims in this lawsuit, and therefore does not require a response.
124. In response to paragraph 124, Defendant states this paragraph does not assert specific or relevant facts or allegations against SEOSU, does not relate to the claims in this lawsuit, and therefore does not require a response.
125. In response to paragraph 125, Defendant states this paragraph does not assert specific or relevant facts or allegations against SEOSU, does not relate to the claims in this lawsuit, and therefore does not require a response.
126. In response to paragraph 126, Defendant states this paragraph does not assert specific or relevant facts or allegations against SEOSU, does not relate to the claims in this lawsuit, and therefore does not require a response.
127. SEOSU lacks sufficient knowledge or information to admit or deny the allegations regarding Northern Michigan University. SEOSU admits Dr. Tudor was offered a professorship at SEOSU, and that she failed to obtain tenure due to the inadequacies of her portfolio, but lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 127. . In further response to Paragraph 127, Defendant states that the allegations relating to SEOSU's geographic location and any historical boundary(ies) within which it might lie are not specific or relevant facts or allegations against SEOSU, do not relate to the claims in this lawsuit, and therefore do not require a response.

128. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 128.

129. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 129.

130-159. The allegations referenced in paragraph 130-159 of the Complaint relate to Count One, Hostile Work Environment Based on Sex. Defendants will be filing a Motion to Dismiss Count I, and therefore, no answer to these paragraphs is necessary at this time. SEOSU reserves the right to answer paragraphs 130-159, if necessary, after the Court's ruling on the Motion to Dismiss.

160. In response to Paragraph 160, SEOSU adopts and realleges its responses to Paragraphs 1-159.

161. SEOSU denies the allegations in Paragraph 161.

162. SEOSU denies the allegations in Paragraph 162 to the extent they omit that prior to being denied tenure, candidates are frequently given the option to withdraw their applications for tenure and promotion. The option may be proposed by the P&T Review Committee, the Department Chair, the Dean, or a higher administrative official. Dr. Tudor was given the option of withdrawing her application prior to denial and was given an offer of additional time, i.e. two years, to resubmit her application, but Dr. Tudor declined this offer. Dr. Tudor's decision to decline this offer in light of the consequences of tenure denial was unprecedented.

163. SEOSU denies the allegations in Paragraph 163.
164. SEOSU denies the allegations in Paragraph 164.
165. SEOSU denies the allegations in Paragraph 165.
166. SEOSU denies the allegations in Paragraph 166.
167. SEOSU denies the allegations in Paragraph 167.
168. SEOSU denies the allegations in Paragraph 168.
169. SEOSU denies the allegations in Paragraph 169.
170. SEOSU denies the allegations in Paragraph 170.
171. SEOSU denies the allegations in Paragraph 171.
172. SEOSU denies the allegations in Paragraph 172.
173. SEOSU denies the allegations in Paragraph 173.
174. In response to paragraphs 174, SEOSU adopts and realleges its responses to Paragraphs 1-173.
175. SEOSU denies the allegations in Paragraph 175.
176. SEOSU denies the allegations in Paragraph 176.
- 177.. SEOSU denies the allegations in Paragraph 177.

IN RESPONSE TO PLAINTIFF’S PRAYER FOR RELIEF, AND EACH OF ITS SUBPARTS, SEOSU STATES THE FOLLOWING:

SEOSU did not engage in any discriminatory or retaliatory conduct, and therefore Plaintiff is not entitled to any of its requested relief.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to exhaust administrative remedies.
2. Plaintiff has failed to conciliate in good faith.
3. Plaintiff has failed to mitigate damages.
4. All actions by SEOSU regarding Dr. Tudor were non-discriminatory, done in good faith, and done for legitimate business reasons.
5. Plaintiff was denied tenure and promotion because her work and her service did not meet the necessary standards, and therefore her portfolio did not meet SEOSU’s policy requirements.
8. Plaintiff was given the opportunity to withdraw her portfolio due to the likelihood of tenure and promotion denial, but she refused.
7. Some or all of Plaintiff’s claims are barred by statutes of limitations and/or laches.
8. SEOSU and RUSO are not a “single employer” as alleged by Plaintiff.
9. Failure to state a claim upon which relief can be granted.
10. Transgender is not a protected class under Title VII.
11. To the extent that Plaintiff pursues unfounded claims and claims for which it relies upon facts known to be untrue, and intentionally presents facts in a misleading

fashion to the Court that are frivolous at best, SEOSU will pursue costs and attorney's fees from Plaintiff.

12. After-acquired evidence.
13. Eleventh Amendment immunity.
14. Sovereign immunity pursuant to the Tenth Amendment to the U.S. Constitution.

/s/Dixie L. Coffey

DIXIE L. COFFEY, OBA#11876

Assistant Attorney General

Oklahoma Attorney General's Office

Litigation Division

313 NE 21st Street

Oklahoma City, OK 73105

Telephone: 405.521.3921

Facsimile: 405.521.4518

Email: dixie.coffey@oag.ok.gov

Attorney for Defendants

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) **Case No. CIV-15-324-C**
)
 1. SOUTHEASTERN OKLAHOMA)
 STATE UNIVERSITY, and)
)
 2. THE REGIONAL UNIVERSITY)
 SYSTEM OF OKLAHOMA)
)
 Defendants.)

**ANSWER OF DEFENDANT REGIONAL UNIVERSITY SYSTEM OF
OKLAHOMA TO PLAINTIFF/INTERVENOR’S COMPLAINT**

Defendant, Regional University of Oklahoma, (“RUSO”), for its answer to Plaintiff/Intervenor’s Complaint in Intervention (“Complaint”), admits allegations of Plaintiff/Intervenor (“Plaintiff”) contained in the Complaint only to the extent specifically set forth below. To the extent any matters are not explicitly admitted, they are denied. RUSO hereby provides its Answer as follows¹:

1. RUSO admits the allegations in Paragraph 1 of the Complaint.
2. In response to Paragraph 2, RUSO admits SEOSU is a member of the Oklahoma state system of higher education and is part of RUSO. RUSO denies that SEOSU and RUSO are a single employer for all relevant purposes. RUSO admits RUSO’s Board of Regents is the governing board for SEOSU, and that RUSO’s Policy Manual

¹ Paragraphs are numbered to correlate with the Complaint paragraphs to which they respond.

addresses the manner in which RUSO's and SEOSU's operations interrelate. RUSO admits RUSO has the power to fix compensation and personnel duties at SEOSU, but RUSO has the power to delegate that power to the respective presidents pursuant to 70 O.S. §3510(d), which it has done. RUSO denies SEOSU's President must report to RUSO on all matters related to employment, discipline, and termination of faculty.

3. In response to Paragraph 3, RUSO admits this Court has jurisdiction over Plaintiff's Counts II and III, but denies this Court has jurisdiction over Count I.
4. RUSO admits the allegations in Paragraph 4.
5. RUSO admits the allegations in Paragraph 5.
6. In response to Paragraph 6, RUSO admits Dr. Tudor filed a charge of discrimination, but denies the allegations contained in such charge. RUSO lacks sufficient knowledge or information to admit or deny the allegations regarding DOE's alleged referral to EEOC.
7. In response to Paragraph 7, RUSO admits Dr. Tudor supplemented her charge of discrimination, but denies the allegations contained in the supplemental charge.
8. In response to Paragraph 8, RUSO admits the EEOC notified Defendants of the supplemental charge of discrimination, that EEOC allegedly investigated these charges, and that EEOC contends the investigation revealed Dr. Tudor was subjected to sex discrimination and retaliation. SEOSU admits that EEOC subsequently referred the case to the U.S. Department of Justice. RUSO denies that reasonable cause was found to believe SEOSU discriminated or retaliated against Dr. Tudor. RUSO also denies the EEOC notified Defendants of its reasonable cause or its

findings. Specifically, EEOC continually refused to provide Defendants with any facts or evidence that allegedly supported EEOC's findings. RUSO denies EEOC attempted to conciliate the charges in good faith, and further states that EEOC refused SEOSU's request for mediation, notifying SEOSU that this charge was not eligible for mediation. RUSO admits the EEOC did not render a determination on the issue of hostile work environment, because that issue was not presented by Dr. Tudor to the EEOC, nor raised by the facts alleged in Dr. Tudor's charges.

9. RUSO denies the allegations in Paragraph 9.
10. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 10.
11. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 11.
12. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 12.
13. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 13.
14. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 14.
- 15.-20. In response to Paragraphs 15-20, Defendant states these paragraphs do not assert specific or relevant facts or allegations against RUSO, do not relate to the claims in this lawsuit, contain immaterial or impertinent matter, and therefore do not require a response.

21. RUSO denies any discrimination occurred, as alleged in Paragraph 21.
- 22-36. In response to Paragraphs 22-36, Defendant states these paragraphs do not assert specific or relevant facts or allegations against RUSO, do not relate to the claims in this lawsuit, contain immaterial or impertinent matter, and therefore do not require a response.
37. In response to the allegations in Paragraph 37, RUSO admits Dr. Tudor began working at SEOSU in 2004 pursuant to a tenure track one year appointment, which had to be renewed on an annual basis for Dr. Tudor to continue employment at SEOSU. RUSO further admits Dr. Tudor presented as a man when hired by SEOSU, but denies the remaining allegations.
38. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 38.
39. RUSO admits the allegations in Paragraph 39.
40. RUSO admits Cathy Conway, SEOSU's HR Director in 2007, contacted Dr. Tudor to discuss transition as a female, but RUSO denies all remaining allegations contained in Paragraph 40.
41. RUSO admits Dr. Tudor began to go by the name "Rachel Tudor" and present as a female at work during the 2007-2008 academic year, but is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 41.
42. RUSO denies the allegations in Paragraph 42, and further states that Jane McMillan and Vice President McMillan specifically denied these allegations when interviewed by EEOC and/or the U.S. Department of Justice.

43. RUSO denies the allegations in Paragraph 43.
44. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 44.
45. RUSO denies the allegations in Paragraph 45.
46. RUSO denies the allegations in Paragraph 46.
47. RUSO denies the allegations in Paragraph 47.
48. RUSO admits SEOSU has never counseled nor directed a transgender or a nontransgender professor, as alleged in Paragraph 48.
49. RUSO admits SEOSU has never counseled a transgender nor nontransgender professor regarding the allegations in Paragraph 49.
50. RUSO denies the allegations in Paragraph 50.
51. RUSO denies the allegations in Paragraph 51.
52. RUSO denies the allegations in Paragraph 52.
53. RUSO denies the allegations in Paragraph 53, and further states Dr. Tudor never complained nor filed a grievance regarding bathroom accommodations, was never disciplined nor received any adverse employment action for not using a particular restroom, nor were any complaints received from handicapped persons regarding Dr. Tudor's use of the single stall restroom.
54. RUSO denies the allegations in Paragraph 54.
55. RUSO denies the allegations in Paragraph 55.
56. RUSO denies the allegations in Paragraph 56.

57. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 57. RUSO further states Dr. Tudor never complained nor filed a grievance regarding bathroom accommodations, was never disciplined nor received any adverse employment action for not using a particular restroom, nor were any complaints received from handicapped persons regarding Dr. Tudor's use of the single stall restroom.
58. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 58. RUSO further states Dr. Tudor never complained nor filed a grievance regarding bathroom accommodations, was never disciplined nor received any adverse employment action for not using a particular restroom, nor were any complaints received from handicapped persons regarding Dr. Tudor's use of the single stall restroom.
- 59.-63. In response to Paragraphs 59-63, RUSO states these paragraphs do not assert specific or relevant facts or allegations against RUSO, or relate to the claims in this lawsuit, and therefore do not require a response.
64. RUSO denies the allegations in Paragraph 64.
65. In response to the allegations in Paragraph 65, RUSO lacks sufficient knowledge or information to admit or deny the allegations.
66. RUSO admits female professors wore female clothing, including skirts of varying length, during Dr. Tudor's employment with SEOSU. RUSO lacks sufficient

- knowledge or information to admit or deny the remaining allegations in Paragraph 66.
67. RUSO admits the health insurance plan offered to all of its employees contained numerous exclusions, including the following exclusion: “For transsexual Surgery or any treatment leading to or in connection with transsexual surgery. RUSO further states that Dr. Tudor never complained about this provision of the insurance policy, never requested that Southeastern or RUSO obtain a particular insurance policy or one that would cover particular treatments or medications, and to the best of RUSO’s knowledge never appealed the denial of any insurance claims for any exception.
68. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 68.
69. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 69.
70. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 70.
71. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 71.
72. RUSO admits, as alleged in Paragraph 72, the policy requires assistant professors to obtain tenure before the end of their seventh year as an assistant professor or their employment contract will not be renewed. However, with permission from SEOSU President Minks to seek a one year extension from the RUSO Board, V.P. McMillian

offered Dr. Tudor the ability to remain past the seven years so that she could have two years to fully address and supplement her portfolio for tenure. Dr. Tudor declined this offer, and was aware that as a result, her employment with SEOSU would end in May 2011.

73. RUSO admits that the process governing applications for promotion and tenure is set forth in SEOSU's "Procedure for Granting Promotion and Tenure." RUSO further states that only tenure is forwarded to the Board if the President recommends it. If the President agrees to a promotion, then that is a final decision.
74. RUSO denies the allegations in Paragraph 74. A notification letter is provided to each candidate regarding the decision at each level. At the end of the tenure process, the candidate is given a detailed letter documenting the reasons for denial or approval. Dr. Tudor received the notification letters and a detailed letter outlining the reasons for tenure denial.
75. RUSO admits the allegations in Paragraph 75.
76. RUSO admits the allegations in Paragraph 76.
77. RUSO admits that Paragraph 77 contains statements included in SEOSU's Academic Policies and Procedures, but it presents a distortion of the process because it does not contain all of the applicable statements regarding the tenure process and the various levels of review. Specifically, Paragraph 77 omits the significant roles played by the Dean, Vice President of Academic Affairs, and the President, as well as the role played by the RUSO Board.

78. RUSO is without sufficient knowledge or information to admit or deny whether preparations were taken by Dr. Tudor in the summer of 2009, as alleged in Paragraph 78. In addition, Dr. Tudor had applied for tenure and promotion to the position of Associate Professor the year before, in 2008, at which time the Department's Tenure and Promotion Committee for Dr. Tudor voted 5-0 against a recommendation for Tenure and Promotion. Upon the advice of a committee member, Tudor withdrew her application and portfolio.
79. RUSO admits the allegations in Paragraph 79.
80. RUSO admits it was at this meeting that Dean Scoufos learned Dr. Tudor was a transgender woman, but denies the remaining allegations in Paragraph 80.
81. In response to paragraph 81, Defendant states this paragraph does not assert specific or relevant facts or allegations against RUSO, does not relate to the claims in this lawsuit, and therefore does not require a response.
82. As alleged in Paragraph 82, RUSO admits Dr. Tudor told Dean Scoufos that she believed another faculty member in her Department had been discriminating against her since she had begun to present as a woman, and that she would prefer this member not serve on the Faculty Committee that would review her portfolio. When Dean Scoufos asked Dr. Tudor why she believed that faculty member was discriminating against her, Tudor stated that after her change, the faculty member did not ask Dr. Tudor to accompany the honor students on field trips, such as cultural events to Dallas. Upon investigation, Dean Scoufos learned the honor trips had been

stopped completely, and were wholly unrelated to Dr. Tudor. RUSO denies the remaining allegations.

83. RUSO admits the allegations in Paragraph 83.

84. RUSO admits the allegations in Paragraph 84.

85. RUSO admits the allegations in Paragraph 85.

86. RUSO admits the allegations in Paragraph 86, but further states that notification letters do not contain explanations. Dr. Tudor received an explanation letter from Dr. McMillan after the process was complete, which was the standard procedure.

87. RUSO admits the allegations in Paragraph 87.

88. RUSO admits the allegations in Paragraph 88, but further states that notification letters do not contain explanations. Dr. Tudor later received an explanation letter. All candidates receive explanation letters once the process is complete.

89. RUSO admits the allegations in Paragraph 89.

90. RUSO admits that prior to Dr. Tudor receiving her explanation letter; she asked Vice President McMillan and Dean Scoufos for an explanation. Applicants are not permitted to have these types of discussions during the review process. RUSO denies the remaining allegations in Paragraph 90, but further states that upon Dr. Tudor's request, she was allowed to place a document in her portfolio prior to the President's review.

91. RUSO admits the allegations in Paragraph 91, because it was against SEOSU's policy to provide feedback to candidates during the tenure and promotion process,

- and thus, no candidates are given feedback until the end of the process. As previously stated, Dr. Tudor was provided an explanation at the end of the process.
92. RUSO denies the allegations in Paragraph 92, and specifically states Dr. Tudor was treated no differently than other tenure applicants. After their portfolio submissions, applicants may be permitted to add publications to their portfolios. Dr. Tudor was given permission, and added a publication to her portfolio subsequent to its submission. RUSO further states that Dr. Tudor was afforded the same opportunity as all other tenure applicants in her position, when SEOSU gave her the option to withdraw her deficient application (pre-denial) so that she could improve the application packet and then resubmit it for consideration.
93. RUSO admits that despite Dr. Tudor's knowledge of the tenure process, including the policy that explanations are not given until the tenure process is completed, she requested special treatment by filing a grievance, as alleged in Paragraph 93. Tudor was inappropriately attempting to obtain information that no candidate receives prior to completion of the tenure and promotion process.
94. RUSO admits the allegations in Paragraph 94, and states that Tudor was provided an explanation at the end of the process.
95. RUSO admits President Minks designated the Assistant Vice President to communicate to Dr. Tudor the FAC's recommendation and his decision regarding compliance with the recommendation. RUSO denies the remaining allegations in Paragraph 95.

96. RUSO admits the Assistant Vice President determined policy would be followed, and Tudor would not be given an explanation until the end of the process. RUSO denies the remaining allegations in Paragraph 96.
97. Candidates are not allowed to supplement their portfolios during the review process, except to add publications that are received after the portfolio has been submitted and before the process is complete. Dr. Tudor was allowed to add a publication during the review process. RUSO denies the remaining allegations in Paragraph 97.
98. RUSO admits the allegations in Paragraph 98.
99. RUSO denies the allegations in Paragraph 99 to the extent it omits that prior to denying tenure, candidates are frequently given the option to withdraw their applications for tenure and promotion. The option may be proposed by the P&T Review Committee, the Department Chair, the Dean, or a higher administrative official. Dr. Tudor was given the option of withdrawing her application and was given an offer of additional time, i.e. two years, to resubmit her application, but Dr. Tudor declined this offer. Dr. Tudor's decision to decline this offer in light of the consequences of tenure denial was unprecedented.
100. RUSO cannot admit or deny the date which Dr. Tudor received Vice President McMillan's explanation letter; RUSO admits the remaining allegations in Paragraph 100.
101. RUSO denies the allegations in Paragraph 101. The explanation letter received by Dr. Tudor sets forth clear and distinct bases for denial of promotion and tenure, giving specific examples of the inadequacies of her research/scholarship and her

university service. It was because of these significant inadequacies that prior to the completion process, Dr. Tudor was given the option of withdrawing her application and given two years to bolster her portfolio so that it would meet the policy requirements for tenure and promotion.

102. RUSO denies the allegations in Paragraph 102. It is the candidate's responsibility to provide accurate and complete information in her portfolio to support all claims of publications, editorship, and responsibilities.
103. RUSO denies the allegations in Paragraph 103. SEOSU has allowed re-application for promotion, but never for tenure.
104. RUSO has no knowledge of the date Dr. Tudor informed her Department Chair of an intent to re-apply for promotion and/or tenure but admits the remaining allegations in Paragraph 104.
105. RUSO admits Dr. Tudor submitted a grievance to President Minks on August 30, 2010 entitled "Improprieties and Due Process Violations by Administrators in Tenure and Promotion Process." In September 2010, the FAC sent a letter with its findings to Dr. Tudor, which stated, in part, that the FAC "concluded that the information required by the Academic Policies and Procedures Manual (APPM,4.4.6,1b.) was not provided." The FAC letter also concluded that "it is not empowered to address the issue of due process related to promotion and tenure". Given these two findings, the FAC concluded that it was "unable to act on the grievance." RUSO denies the remaining allegations in Paragraph 105.

106. RUSO denies the allegations in Paragraph 106 in that they are incomplete and do not accurately reflect the contents and meaning of the October 2010 letter.
107. RUSO denies the allegations in Paragraph 107 in that they are incomplete and do not accurately reflect the contents and meaning of the October 2010 letter.
108. RUSO admits the allegations in Paragraph 108. No candidate for tenure is allowed to reapply after final review and denial, and Dr. Tudor was aware of the consequences of her refusal to withdraw her application for tenure the previous year.
109. RUSO denies that the contents and meaning of the letter are accurately reflected, but admits that, in response to Dr. Tudor's grievance, as alleged in Paragraph 109, Vice President McMillan sent a letter to the FAC setting forth the entire rationale for not allowing Dr. Tudor to re-apply for tenure and promotion.
110. RUSO admits Dr. Tudor submitted four letters of recommendation from tenured SEOSU English professors, but denies the remaining allegations in Paragraph 110. As set forth in Vice President McMillan's letter to the FAC, "a review of the letters supplied by Dr. Tudor in support of her grievance do not suggest substantial improvements in her scholarly activity or service in the five months since she was notified by the President of his decision to deny her application for tenure and promotion. In fact, many of the activities cited in the letters were present in her 2009-2010 portfolio."
111. RUSO is without sufficient knowledge or information to admit or deny the allegations in Paragraph 111, but denies that such claims were supported by the

contents of Dr. Tudor's portfolio, as detailed in Vice President McMillan's letters to Dr. Tudor and to the FAC.

112. RUSO admits the FAC recommended SEOSU permit Dr. Tudor to reapply for tenure and promotion, as alleged in Paragraph 112, but Vice President McMillan appealed the FAC's decision to President Minks, and provided a detailed memorandum supporting the appeal.
113. RUSO admits the general subject matter of the allegations in Paragraph 113, but denies that Vice President Walkup's letter is accurately summarized. Vice President Walkup's letter was extremely detailed, setting forth the applicable policies and procedures pertaining to promotion and tenure, and explaining the "terminal year rule", including that withdrawal of the application is the only way to avoid the "terminal year rule". His letter further explained the policy prohibiting renewal of appointment for a seven-year faculty member that had not obtained tenure, and that renewal could occur only if the President made a specific recommendation for waiver of policy. RUSO further states that SEOSU is not bound by FAC recommendations, but may consider them.
114. RUSO admits the allegations in Paragraph 114, but denies SEOSU discriminated against Dr. Tudor when it denied her 2009-2010 application for tenure, or at any other time during Dr. Tudor's employment at SEOSU.
115. RUSO admits Dr. Tudor filed a discrimination complaint with DOE as alleged in Paragraph 115, but denies SEOSU discriminated against Dr. Tudor when it denied her 2009-2010 application for tenure, or at any other time during Dr. Tudor's

employment at SEOSU. RUSO lacks sufficient knowledge to admit or deny the remaining allegations.

116. RUSO admits the allegations in Paragraph 116, but denies SEOSU retaliated or discriminated against Dr. Tudor because of her discrimination complaint, or at any other time during Dr. Tudor's employment at SEOSU.
117. As alleged in Paragraph 117, RUSO admits Dr. Stubblefield issued a report addressing Dr. Tudor's discrimination and retaliation complaints, and that Dr. Stubblefield, after a thorough investigation of all relevant facts and circumstances, found that Southeastern had not discriminated against or retaliated against Dr. Tudor.
118. RUSO denies the allegations in Paragraph 118.
119. RUSO denies the allegations in Paragraph 119. Dr. Tudor's contract was non-renewed due to her failure attain tenure.
120. RUSO admits that after Dr. Tudor's application for tenure was denied, (and thus her contract would not be renewed after the academic year 2010-2011), the Faculty Senate (of which Dr. Tudor was a member) gave this award to Dr. Tudor, as alleged in Paragraph 120. There are no specific requirements to receive this award.
121. RUSO admits that Dr. Tudor's employment was not renewed after the 2010-2011 academic year, but lacks sufficient knowledge or information to admit or deny any other allegations in Paragraph 121.
122. In response to Paragraph 122, RUSO admits Dr. Tudor is seeking this remedy, but denies the alleged importance.

123. In response to paragraph 123, Defendant states this paragraph does not assert specific or relevant facts or allegations against RUSO, does not relate to the claims in this lawsuit, and therefore does not require a response.
124. In response to paragraph 124, Defendant states this paragraph does not assert specific or relevant facts or allegations against RUSO, does not relate to the claims in this lawsuit, and therefore does not require a response.
125. In response to paragraph 125, Defendant states this paragraph does not assert specific or relevant facts or allegations against RUSO, does not relate to the claims in this lawsuit, and therefore does not require a response.
126. In response to paragraph 126, Defendant states this paragraph does not assert specific or relevant facts or allegations against RUSO, does not relate to the claims in this lawsuit, and therefore does not require a response.
127. RUSO lacks sufficient knowledge or information to admit or deny the allegations regarding Northern Michigan University. RUSO admits Dr. Tudor was offered a professorship at SEOSU, and that she failed to obtain tenure due to the inadequacies of her portfolio, but lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 127. In further response to Paragraph 127, Defendant states that the allegations relating to SEOSU's geographic location and any historical boundary(ies) within which it might lie are not specific or relevant facts or allegations against SEOSU, do not relate to the claims in this lawsuit, and therefore do not require a response.

128. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 128.

129. RUSO lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 129.

130-159. The allegations referenced in paragraph 130-159 of the Complaint relate to Count One, Hostile Work Environment Based on Sex. Defendants will be filing a Motion to Dismiss Count I, and therefore, no answer to these paragraphs is necessary at this time. RUSO reserves the right to answer paragraphs 130-159, if necessary, after the Court's ruling on the Motion to Dismiss.

160. In response to Paragraph 160, RUSO adopts and realleges its responses to Paragraphs 1-159.

161. RUSO denies the allegations in Paragraph 161.

162. RUSO denies the allegations in Paragraph 162. Further, this paragraph omits that prior to being denied tenure, candidates are frequently given the option to withdraw their applications for tenure and promotion. The option may be proposed by the P&T Review Committee, the Department Chair, the Dean, or a higher administrative official. Dr. Tudor was given the option of withdrawing her application prior to denial, and was given an offer of additional time, i.e. two years, to resubmit her application, but Dr. Tudor declined this offer. Dr. Tudor's decision

to decline this offer in light of the consequences of tenure denial was unprecedented.

163. RUSO denies the allegations in Paragraph 163.

164. RUSO denies the allegations in Paragraph 164.

165. RUSO denies the allegations in Paragraph 165.

166. RUSO denies the allegations in Paragraph 166.

167. RUSO denies the allegations in Paragraph 167.

168. RUSO denies the allegations in Paragraph 168.

169. RUSO denies the allegations in Paragraph 169.

170. RUSO denies the allegations in Paragraph 170.

171. RUSO denies the allegations in Paragraph 171.

172. RUSO denies the allegations in Paragraph 172.

173. RUSO denies the allegations in Paragraph 173.

174. In response to paragraphs 174, RUSO adopts and realleges its responses to Paragraphs 1-173.

175. RUSO denies the allegations in Paragraph 175.

176. RUSO denies the allegations in Paragraph 176.

177. RUSO denies the allegations in Paragraph 177.

IN RESPONSE TO PLAINTIFF’S PRAYER FOR RELIEF, AND EACH OF ITS
SUBPARTS, RUSO STATES THE FOLLOWING:

Defendants did not engage in any discriminatory or retaliatory conduct, and therefore
Plaintiff is not entitled to any of her requested relief.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to exhaust administrative remedies.
2. Plaintiff has failed to conciliate in good faith.
3. Plaintiff has failed to mitigate damages.
4. All actions by Defendants regarding Dr. Tudor were non-discriminatory, done in good faith, and done for legitimate business reasons.
5. Plaintiff was denied tenure and promotion because her work and her service did not meet the necessary standards, and therefore her portfolio did not meet SEOSU’s policy requirements.
8. Plaintiff was given the opportunity to withdraw her portfolio due to the likelihood of tenure and promotion denial, but she refused.
7. Some or all of Plaintiff’s claims are barred by statutes of limitations and/or laches.
8. SEOSU and RUSO are not a “single employer” as alleged by Plaintiff.
9. Failure to state a claim upon which relief can be granted.
10. Transgender is not a protected class under Title VII.

11. To the extent that Plaintiff pursues unfounded claims and claims for which it relies upon facts known to be untrue, and intentionally presents facts in a misleading fashion to the Court that are frivolous at best, SEOSU will pursue costs and attorney's fees from Plaintiff.
12. After-acquired evidence.
13. Eleventh Amendment immunity.
14. Sovereign immunity pursuant to the Tenth Amendment to the U.S. Constitution.

/s/Dixie L. Coffey

DIXIE L. COFFEY, OBA#11876

Assistant Attorney General

Oklahoma Attorney General's Office

Litigation Division

313 NE 21st Street

Oklahoma City, OK 73105

Telephone: 405.521.3921

Facsimile: 405.521.4518

Email: dixie.coffey@oag.ok.gov

Attorney for Defendants

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

UNITED STATES OF AMERICA and)
DR. RACHEL TUDOR,)
)
Plaintiffs,)
)
v.) **Case No. CIV-15-324-C**
)
SOUTHEASTERN OKLAHOMA)
STATE UNIVERSITY and)
THE REGIONAL UNIVERSITY)
SYSTEM OF OKLAHOMA,)
)
Defendants.)

MEMORANDUM OPINION AND ORDER

Plaintiff United States brought the present action to enforce Title VII claims against Defendants based on Defendants’ actions towards Plaintiff Dr. Tudor, alleging sex discrimination and retaliation in violation of Title VII. Dr. Tudor then filed a Complaint in Intervention adding a claim for hostile work environment. The premise for each Plaintiff’s claims are the alleged actions by Defendants directed at Dr. Tudor following her transition from male to female. Specific to the issues relevant to the present Motion, Dr. Tudor alleges that at the time she announced her intent to change gender Defendants began treating her differently, ultimately denying her tenure application. Dr. Tudor’s Complaint also offers details of a number of other actions taken by Defendants, all allegedly the result of her change in gender.

Defendants filed a Motion to Dismiss Dr. Tudor's Intervenor Complaint seeking dismissal of Dr. Tudor's hostile environment claim pursuant to either Fed. R. Civ. P. 12(b)(1) or 12(b)(6). Defendants' 12(b)(1) Motion argues the Court lacks subject-matter jurisdiction to hear Dr. Tudor's hostile work environment claim because she failed to exhaust her administrative remedies. The 12(b)(6) Motion argues that Dr. Tudor has failed to state a claim for relief, as the factual allegations in her Complaint are insufficient to state a claim for hostile work environment. Because the 12(b)(1) Motion attacks the Court's power to decide this case, it will be addressed first.

1. Exhaustion

Defendants do not deny that Dr. Tudor filed a charge with the EEOC, they simply argue that the statement provided by Dr. Tudor to the EEOC was insufficient to notify them that she was pursuing a hostile work environment claim. Initially the Court notes that the exhibits upon which Defendants rely to argue Dr. Tudor did not exhaust are not documents prepared by Dr. Tudor, but rather the documents were prepared by the U.S. Department of Education. Thus, they are not helpful in determining the nature of the claims that Dr. Tudor exhausted. Rather, the Court will consider the statements made by Dr. Tudor when filing her complaint with the EEOC.*

* As Defendants note, the Court may consider these documents in ruling on the exhaustion challenge without converting the present Motion to one seeking summary judgment. See Jenkins v. Educ. Credit Mgmt. Corp., 212 F. App'x 729, 732-33 (10th Cir. 2007).

The Supreme Court has held that Title VII does not specify the form or content of filings, providing only that charges shall be made in writing under oath or affirmation. See E.E.O.C. v. Shell Oil Co., 466 U.S. 54, 67 (1984). The EEOC is responsible for establishing the detailed requirements for inadequate filings. In that regard, the EEOC has established a regulation which provides “a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of.” 29 C.F.R. § 1601.12(b). The Tenth Circuit has held that “[w]e are required to construe appellants’ EEOC charges with utmost liberality since they are made by those unschooled in the technicalities of formal pleading.” Green v. Donahoe, 760 F.3d 1135, 1142 (10th Cir. 2014) (quoting Lyons v. England, 307 F.3d 1092, 1104 (9th Cir. 2002), cert. denied, ___ U.S. ___, 135 S. Ct. 1892 (2015)). Finally, “[a] plaintiff’s claim in federal court is generally limited by the scope of the administrative investigation that can reasonably be expected to follow the charge of discrimination submitted to the EEOC.” MacKenzie v. City and County of Denver, 414 F.3d 1266, 1274 (10th Cir. 2005) (citations omitted).

The Court finds that when measured by these standards, the complaint filed by Dr. Tudor with the EEOC was sufficient to exhaust a hostile environment claim. First, the letter Dr. Tudor sent to the EEOC provides adequate explanation that at least one of the issues on which her claims were based was her transition in gender and Defendants’ employees’ reaction to that change. The EEOC Charge of Discrimination signed by Dr. Tudor makes clear that employees of Defendants communicated her gender transition to members of the

administration who reacted negatively, and as a result she was subject to different terms and conditions of employment. These statements were sufficient to put Defendants on notice that Dr. Tudor was pursuing a hostile work environment claim, in addition to the other claims pursued in this case. Therefore, Defendants' Motion to Dismiss for failure to exhaust will be denied.

2. Hostile Environment Claim

Defendants challenge whether or not Dr. Tudor has pled facts to support a hostile work environment claim. "The elements of a hostile work environment claim are: (1) the plaintiff is a member of a protected group; (2) the plaintiff was subjected to unwelcome harassment; (3) the harassment was based on the protected characteristic . . . ; and (4) the harassment was sufficiently severe or pervasive to alter a term, condition, or privilege of the plaintiff's employment and created an abusive working environment." Asebedo v. Kan. State Univ., 559 F. App'x 668, 670 (10th Cir. 2014) (citing Dick v. Phone Directories Co., 397 F.3d 1256, 1262-63 (10th Cir. 2005)).

Defendants argue Dr. Tudor fails at the first step because she cannot establish she is a member of a protected class. According to Defendants, in Etsitty v. Utah Transit Auth., 502 F.3d 1215 (10th Cir. 2007), the Tenth Circuit held a transsexual individual is not within a protected class. However, the reasoning relied on by the Tenth Circuit in Etsitty is inapposite here. The Tenth Circuit's holding was that "transsexuals may not claim protection under Title VII from discrimination based solely on their status as a transsexual." Id. at 1222. The Circuit went on to clarify that "like all other employees, such protection extends

to transsexual employees only if they are discriminated against because they are male or because they are female.” Here, it is clear that Defendants’ actions as alleged by Dr. Tudor occurred because she was female, yet Defendants regarded her as male. Thus, the actions Dr. Tudor alleges Defendants took against her were based upon their dislike of her presented gender. The Tenth Circuit recognized this distinction in Etsitty at n.2, when it cited to the Sixth Circuit case of Smith v. City of Salem, 378 F.3d 566, 575 (6th Cir. 2004) (“Sex stereotyping based on a person’s gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior; a label, such as ‘transsexual,’ is not fatal to a sex discrimination claim where the victim has suffered discrimination because of his or her gender non-conformity.”). The factual allegations raised by Dr. Tudor bring her claims squarely within the Sixth Circuit’s reasoning as adopted by the Tenth Circuit in Etsitty. Consequently, the Court finds that the discrimination occurred because of Dr. Tudor’s gender, and she falls within a protected class. The first element is adequately pled.

The remainder of Defendants’ challenge to the hostile work environment claim argues that Dr. Tudor has failed to plead sufficient facts to raise her claim above the speculative level. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Defendants read Dr. Tudor’s Complaint too narrowly. When taken as a whole, it is clear that the factual allegations set forth by Dr. Tudor demonstrate that she was subjected to unwelcome harassment based on the protected characteristic and that the harassment by Defendants’ employees was sufficiently severe or pervasive to alter a term, condition, or privilege of her employment and thereby create an abusive work environment. Accordingly, the Court finds

that Defendants' Motion to Dismiss for failure to state claim on the hostile work environment claim will be denied.

3. Laches

Finally, Defendants argue that the Complaint should be dismissed based on the doctrine of laches. According to Defendants, much of the conduct of which Dr. Tudor complains occurred as much as four or five years prior to filing her Complaint. Defendants argue that the delay has prejudiced them because of the lapse of time. In order to establish laches, Defendants must demonstrate (a) inexcusable delay in instituting a suit and (b) prejudice or harm to Defendants flowing from that delay. Alexander v. Phillips Petroleum Co., 130 F.2d 593, 605 (10th Cir. 1942).

Defendants' argument fails on both elements. First, as Dr. Tudor establishes in her Response, she began the administrative process shortly after Defendants' allegedly discriminatory actions. That there was some delay in the lawsuit being filed was primarily as a result of the administrative process and the actions of the EEOC in determining whether or not to pursue the claim on behalf of the United States, rather than anything attributable to Dr. Tudor. Dr. Tudor has acted timely in pursuing her administrative remedy and acted timely in filing her Complaint in Intervention once this action was initiated by the United States. In short, Defendants have failed to meet their burden of establishing that the doctrine of laches should apply.

CONCLUSION

For the reasons set forth herein, Defendants Southeastern Oklahoma State University and The Regional University System of Oklahoma's Amended Motion to Dismiss Plaintiff/Intervenor's Complaint in Part (Dkt. No. 30) is DENIED. Defendants Southeastern Oklahoma State University and The Regional University System of Oklahoma's Motion to Dismiss Plaintiff/Intervenor's Complaint in Part (Dkt. No. 27) is STRICKEN as it was inadvertently filed.

IT IS SO ORDERED this 10th day of July, 2015.


ROBIN J. CAUTHRON
United States District Judge

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 RACHEL TUDOR,)
)
 Plaintiff-Intervenor)
)
 v.) **Case No. CIV-15-324-C**
)
 SOUTHEASTERN OKLAHOMA)
 STATE UNIVERSITY, and)
)
 THE REGIONAL UNIVERSITY)
 SYSTEM OF OKLAHOMA)
)
 Defendants.)

**ANSWER OF DEFENDANT REGIONAL UNIVERSITY SYSTEM
OF OKLAHOMA TO INTERVENOR PLAINTIFF’S COUNT ONE**

Defendant, Regional University System of Oklahoma, (“RUSO”), for its answer to Count I of Plaintiff/Intervenor’s Complaint in Intervention (“Complaint”), admits Plaintiff’s allegations contained in the Complaint only to the extent specifically set forth below. To the extent any matters are not explicitly admitted, they are denied. RUSO adopts and incorporates each and every allegation and affirmative defense contained in its Answer to Plaintiff/Intervenor’s Complaint [Doc. 29]. Defendant RUSO provides its Answer to Count I as follows¹:

¹ Paragraphs are numbered to correlate with the Intervenor Complaint paragraph to which it responds.

130. In response to Paragraph 130, RUSO adopts and realleges its responses to Paragraphs 1-129 of Plaintiff/Intervenor's Complaint.

131. RUSO denies the allegations in Paragraph 131, and further states that while employed at Southeastern Oklahoma State University ("SOSU"), Dr. Tudor did not submit any complaint or grievance of any type of harassment or bullying from SOSU or others.

132. RUSO denies the allegations in Paragraph 132.

133. RUSO is without sufficient knowledge or information to admit or deny the allegations in Paragraph 133.

134. RUSO denies the allegations in Paragraph 134.

135. RUSO denies the allegations in Paragraph 135.

136. RUSO denies the allegations in Paragraph 136.

137. RUSO denies the allegations in Paragraph 137.

138. RUSO denies the allegations in Paragraph 138.

139. RUSO admits the allegations in Paragraph 139.

140. Paragraph 140 states a legal conclusion, and therefore does not require a response from RUSO. Further, RUSO denies that Dean Scoufos took any unlawful actions regarding Dr. Tudor.

141. RUSO denies that Dean Scoufos took the alleged actions regarding Dr. Tudor. The remaining allegations in Paragraph 141 state a legal conclusion, and therefore do not require a response from RUSO.

142. The allegations in Paragraph 142 state a legal conclusion, and therefore do not require a response from RUSO. Further, RUSO denies that Vice President McMillan took any unlawful actions regarding Dr. Tudor.

143. The allegations in Paragraph 143 state a legal conclusion, and therefore do not require a response from RUSO. Further, RUSO denies that Vice President McMillan took any unlawful actions regarding Dr. Tudor.

144. RUSO denies the allegations in Paragraph 144.

145. RUSO denies the allegations in Paragraph 145.

146. Defendant admits all faculty and staff of Oklahoma regional universities, including SOSU, are provided a health insurance plan; Defendant admits the plan contained more than four pages of numerous exclusions, which included an exclusion for transsexual surgery or any treatment leading to or in connection with transsexual surgery; Dr. Tudor never submitted any type of complaint or request regarding her insurance coverage. Defendant denies the remaining allegations in Paragraph 146.

147. RUSO denies the allegations in Paragraph 147.

148. RUSO denies the allegations in Paragraph 148.

149. RUSO denies the allegations in Paragraph 149.
150. RUSO denies the allegations in Paragraph 150.
151. RUSO denies the allegations in Paragraph 151.
152. RUSO denies the allegations in Paragraph 152.
153. RUSO denies the allegations in Paragraph 153.
154. RUSO denies the allegations in Paragraph 154.
155. RUSO denies the allegations in Paragraph 155.
156. RUSO denies the allegations in Paragraph 156.
157. RUSO denies the allegations in Paragraph 157.
158. RUSO denies the allegations in Paragraph 158.
159. RUSO denies the allegations in Paragraph 159.

/s/ Dixie L. Coffey

DIXIE L. COFFEY, OBA#11876

Assistant Attorney General

Oklahoma Attorney General's Office

Litigation Division

313 NE 21st Street

Oklahoma City, OK 73105

Telephone: 405.521.3921

Facsimile: 405.521.4518

Email: dixie.coffey@oag.ok.gov

Attorney for Defendants

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
RACHEL TUDOR,)
)
Plaintiff-Intervenor)
)
v.) **Case No. CIV-15-324-C**
)
SOUTHEASTERN OKLAHOMA)
STATE UNIVERSITY, and)
)
THE REGIONAL UNIVERSITY)
SYSTEM OF OKLAHOMA)
)
Defendants.)

**ANSWER OF DEFENDANT SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY TO INTERVENOR PLAINTIFF’S COUNT ONE**

Defendant, Southeastern Oklahoma State University, (“SOSU”), for its answer to Count I of Plaintiff/Intervenor’s Complaint in Intervention (“Complaint”), admits Plaintiff’s allegations contained in the Complaint only to the extent specifically set forth below. To the extent any matters are not explicitly admitted, they are denied. SOSU adopts and incorporates each and every allegation and affirmative defense contained in its Answer to Plaintiff/Intervenor’s Complaint [Doc. 28]. Defendant SOSU provides its Answer to Count I as follows¹:

¹ Paragraphs are numbered to correlate with the Complaint paragraph to which it responds.

130. In response to Paragraph 130, SOSU adopts and realleges its responses to Paragraphs 1-129 of Plaintiff/Intervenor's Complaint.

131. SOSU denies the allegations in Paragraph 131, and further states that while employed at SOSU, Dr. Tudor did not submit any complaint or grievance of any type of harassment or bullying from SOSU or others.

132. SOSU denies the allegations in Paragraph 132.

133. SOSU is without sufficient knowledge or information to admit or deny the allegations in Paragraph 133, and therefore denies the same.

134. SOSU denies the allegations in Paragraph 134.

135. SOSU denies the allegations in Paragraph 135.

136. SOSU denies the allegations in Paragraph 136.

137. SOSU denies the allegations in Paragraph 137.

138. SOSU denies the allegations in Paragraph 138.

139. SOSU admits the allegations in Paragraph 139.

140. Paragraph 140 states a legal conclusion, and therefore does not require a response from SOSU. Further, SOSU denies that Dean Scoufos took any unlawful actions regarding Dr. Tudor.

141. SOSU denies that Dean Scoufos took the alleged actions regarding Dr. Tudor. The remaining allegations in Paragraph 141 state a legal conclusion, and therefore do not require a response from SOSU.

142. The allegations in Paragraph 142 state a legal conclusion, and therefore do not require a response from SOSU. Further, SOSU denies that Vice President McMillan took any unlawful actions regarding Dr. Tudor.

143. The allegations in Paragraph 143 state a legal conclusion, and therefore do not require a response from SOSU. Further, SOSU denies that Vice President McMillan took any unlawful actions regarding Dr. Tudor.

144. SOSU denies the allegations in Paragraph 144.

145. SOSU denies the allegations in Paragraph 145.

146. Defendant admits all faculty and staff of Oklahoma regional universities, including SOSU, are provided a health insurance plan; Defendant admits the plan contained more than four pages of numerous exclusions, which included an exclusion for transsexual surgery or any treatment leading to or in connection with transsexual surgery; Dr. Tudor never submitted any type of complaint or request regarding her insurance coverage. Defendant denies the remaining allegations in Paragraph 146.

147. SOSU denies the allegations in Paragraph 147.

148. SOSU denies the allegations in Paragraph 148.

149. SOSU denies the allegations in Paragraph 149.
150. SOSU denies the allegations in Paragraph 150.
151. SOSU denies the allegations in Paragraph 151.
152. SOSU denies the allegations in Paragraph 152.
153. SOSU denies the allegations in Paragraph 153.
154. SOSU denies the allegations in Paragraph 154.
155. SOSU denies the allegations in Paragraph 155.
156. SOSU denies the allegations in Paragraph 156.
157. SOSU denies the allegations in Paragraph 157.
158. SOSU denies the allegations in Paragraph 158.
159. SOSU denies the allegations in Paragraph 159.

/s/Dixie L. Coffey

DIXIE L. COFFEY, OBA#11876
KINDANNE JONES, OBA #11374
JEB E. JOSEPH, OBA #19137

Assistant Attorneys General
Oklahoma Attorney General's Office
Litigation Division
313 NE 21st Street
Oklahoma City, OK 73105
Telephone: 405.521.3921
Facsimile: 405.521.4518
Email: dixie.coffey@oag.ok.gov
Attorney for Defendants

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

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

Case No. 15-cv-324-C

SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, and

THE REGIONAL UNIVERSITY SYSTEM
OF OKLAHOMA,

Defendants.

DEFENDANTS' PROPOSED JURY INSTRUCTIONS

Defendants, Southeastern Oklahoma State University ("SEOSU") and The Regional University System of Oklahoma ("RUSO"), submit the attached Jury Instructions. Defendants reserve the right to amend or withdraw the proposed instructions or submit additional proposed instructions based upon further rulings of the Court and the evidence presented at trial.

Respectfully submitted,

/s/ Dixie L. Coffey

DIXIE L. COFFEY, OBA #11876

JEB E. JOSEPH, OBA #19137

KINDANNE JONES, OBA #11374

TIMOTHY M. BUNSON, OBA#31004

Assistant Attorneys General Oklahoma

Attorney General's Office

Litigation Division

313 NE 21st Street

Oklahoma City, OK 73105

Telephone: 405.521.3921

Facsimile: 405.521.4518

Email: dixie.coffey@oag.ok.gov

Email: jeb.joseph@oag.ok.gov

Email: kindanne.jones@oag.ok.gov

Email: tim.bunson@oag.ok.gov

Attorneys for Defendants Southeastern Oklahoma

State University and The Regional University

System of Oklahoma

DEFENDANTS' INSTRUCTION NO. 1

OPENING

In 2004 Dr. Robert Tudor was hired at SEOSU in the English, Humanities, and Languages Department (“EHL”) as a tenure-track professor. In 2007 Dr. Tudor began using the name “Rachel,” and transitioned from presenting himself as a man to presenting herself as a woman. In 2008 Dr. Tudor (“Intervenor” or “Tudor”) made an abortive attempt to apply for tenure. At a most preliminary level the EHL committee voted 0-5 against recommending her for tenure. Then after a conversation with her department chair, Intervenor withdrew her application before it could be sent to the Dean and higher administration for consideration. In 2009 Intervenor again submitted her application for tenure, this time receiving enough committee votes (4-1) for her application portfolio to be sent up for administrative consideration. Intervenor’s portfolio was then reviewed independently first by the Dean, and then by the Vice-President for Academic Affairs, both of whom had concerns about Intervenor’s application and recommended against the granting of tenure. In an attempt to assist Intervenor, the administration decided to offer her an opportunity to withdraw her portfolio prior to denial, and then to have an extra time period in which to improve her portfolio. At the time, she was warned that if the portfolio were allowed to continue being considered, tenure would be denied. Intervenor ignored the academic and professional advice she received from administrators (the decision makers) at SEOSU, and pushed forward with a deficient tenure application, with full knowledge she would not succeed. The result of Tudor’s selfish and cavalier approach to the tenure process was that Intervenor’s application for tenure was denied. Rather than accept personal responsibility for her own inadequacies in a very detail-oriented process, Tudor began first by submitting

internal procedure grievances at the university, and then by filing external charges of discrimination against the State with the United States of America’s (“Plaintiff” or “USA”) “Department of Education” (“DOE”), even claiming racial discrimination. After nearly five (5) years Plaintiff finally filed its lawsuit. Intervenor then joined the lawsuit..

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 2

UNLAWFUL DISCRIMINATION

It is unlawful for an employer to discriminate against an employee because of the employee's sex/gender¹. An employer may, however make promotion decisions for other reasons, good or bad, fair or unfair. Intervenor, Rachel Tudor, has brought a claim of employment discrimination against Defendants, Southeastern Oklahoma State University ("SEOSU") and The Regional University System of Oklahoma ("RUSO"). Intervenor claims that she was not granted tenure due to her transgender status and failing to conform to traditional gender types. SEOSU and RUSO deny that Intervenor's transgender status was a motivating factor for the decision to not grant tenure. SEOSU and RUSO also deny Intervenor's failure to conform to traditional sex stereotypes was a motivating factor in their decision to deny tenure. SEOSU and RUSO claim the decision was based on lawful reasons, i.e. Intervenor was not qualified for tenure.

Authority

9th Cir. Pattern Instruction 10.1A. (2016); 5th Cir. Pattern Instruction 11.1 (2014); *Green v. JP Morgan Chase Bank Nat. Ass'n*, 501 F.App'x 727, 733 (10th Cir. 2012)(choosing among relative parity is within the employer's discretion so long as the decision is not based on unlawful criteria); *Johnson v. Weld County, Colo.*, 594 F.3d 1202, 1211 (10th Cir. 2010)(employee must show more than the employer got it wrong).

GIVEN: _____
MODIFIED: _____
REJECTED: _____

¹ Title VII's prohibition on sex discrimination encompasses discrimination between men and women but does not encompass discrimination based on gender identity *per se*, including transgender status. *United States Attorney General Memorandum dated Oct. 4, 2017, Revised Treatment of Transgender Employment Discrimination Claim under Title VII of the Civil Rights Act of 1964.*

DEFENDANTS' INSTRUCTION NO. 3

TITLE VII

Intervenor's claim of discrimination based on sex is brought under a federal law known as Title VII of the Civil Rights Act of 1964, as amended, often called Title VII.

Title VII makes it an unlawful employment practice for an employer:

1. To discriminate against any individual with respect to the terms, conditions or privileges of employment because of such individual's sex, or
2. To limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect her status as an employee because of such individual's sex.
3. Title VII's prohibition on sex discrimination encompasses discrimination between men and women but does not encompass discrimination based on gender identity *per se*, including transgender status.

Authority

42 U.S.C. § 2000 e-2.

United States Attorney General Memorandum dated Oct. 4, 2017, Revised Treatment of Transgender Employment Discrimination Claim under Title VII of the Civil Rights Act of 1964.

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 4

ESSENTIAL ELEMENTS

Intervenor accuses SEOSU of gender discrimination in violation of federal law. To succeed on this claim, Intervenor must prove by a preponderance of the evidence that SEOSU took adverse employment action against her because of gender.

Intervenor need not show that gender discrimination was the only or predominant factor that motivated SEOSU. In fact, you may decide that other factors were involved as well in SEOSU's decision making process. In that event, in order for you to find for Intervenor, you must find that she has proven that, although there were other factors, she would have been granted tenure, but for the gender discrimination.

It is not your role to second guess SEOSU's business judgment. Standing alone, honest errors in business judgment do not establish discrimination. Even if you were to decide that the failure to grant tenure was neither fair, nor wise, nor professionally handled, that would not be enough. In order to succeed on the discrimination claim, Intervenor must persuade you by a preponderance of the evidence that were it not for gender discrimination, she would have been granted tenure.

Comments

Source of Instruction: *Proposed Civil Pattern Jury Instructions – Employment Discrimination (Pretext)*, Judge Hornby, United States District Court, District of Maine, §1.1 (2005).

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 5

GENDER

Intervenor has alleged that she has been discriminated against on the basis of her gender.
Gender refers to the quality of being male or female.

Authority:

42 U.S.C.A. § 2000e-2(a)

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 6

FAILURE TO CONFORM TO SEX STEREOTYPE

The ultimate question in this case is whether SEOSU denied tenure to Dr. Tudor or discriminated against Tudor because of her failure to conform to sex stereotypes. **It is not sufficient for a jury to merely disbelieve the reason offered by the Defendants.**

To find discrimination based upon failure to conform to sex stereotype, the jury must first find Dr. Tudor was a female at the time of the alleged non-conformity; second, that she did not conform to general notions of femininity, and third, that she was discriminated against based upon her nonconformity. The jury must believe that the Intervenor was the victim of intentional discrimination.

Authority

St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S.Ct. 2742 (1993).

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 7

STRAY REMARKS ARE NOT DIRECT EVIDENCE OF DISCRIMINATION

Stray remarks in the workplace based on sex stereotypes do not constitute direct evidence of discrimination. Dr. Tudor must show that the employer actually relied on gender in making its decision.

Authority

Ramsey v. City & Cnty. of Denver, 907 F.2d 1004, 1007–08 (10th Cir.1990); *Heim v. State of Utah*, 8 F.3d 1541 (10th Cir.1993)

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 8

DISPARATE TREATMENT

As to Intervenor's claim that her sex was a motivating factor in the denial of tenure, Intervenor has the burden of proving all of the following elements by a preponderance of the evidence:

1. *She was qualified for tenure;*
2. *She was overwhelmingly better qualified for tenure than others granted tenure;*
3. *She was denied tenure; and*
4. *Her gender was a motivating factor in the decision.*

Authority

9th Cir. Pattern Instructions 10.1C; 5th Cir. Pattern Instruction 11.1; *Ash v. Tyson Foods, Inc.*, 126 S.Ct. 1195, 1197-1198 (2006)(suggesting standards in which pretext may be inferred from disparity in qualifications); *Conroy v. Vilsack*, 707 F.3d 1163, 1172 (10th Cir. 2013) *post Ash*, (disparity in qualifications must be overwhelming).

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 9

QUALIFIED FOR POSITION

To be considered "qualified" for a position, Intervenor must show that her work was sufficient to meet her employer's legitimate expectations.

Comments

Source of Instruction: *Bramble v. American Postal Workers Union*, 135 F.3d 21, 25 (1st Cir. 1998) (citing *Mesnick v. General Elec. Co.*, 950 F.2d 816, 823 (1st Cir. 1991), *cert. denied*, 504 U.S. 985 (1992)) (applied to ADEA case).

Federal Circuits

Tenth: When two candidates are equally qualified in that they both possess the objective qualifications for a position and neither is clearly better qualified, it is within the employer's discretion under Title VII to choose among them so long as the decision is not based on unlawful criteria. An employee's own opinions about his or her qualifications do not give rise to a material factual dispute as to whether the employer's proffered reason for an adverse employment action is pretextual. Thus, in the instant case, although the Intervenor firefighter scored higher on the initial round of interviews and had more fire training than the successful candidate, the difference in scores was small and the firefighter had substantially less supervisory experience than the successful candidate; thus, no inference of discrimination was raised. *Simms v. Oklahoma*, 165 F.3d 1321, 1329-30 (10th Cir. 1999).

The Tenth Circuit found that a *prima facie* showing can be made through credible evidence that a Intervenor was qualified, even if that evidence was disputed by the employer, and that this burden may be met through the Intervenor's own testimony as well as that of coworkers who were in a position to know the Intervenor's qualifications. *Thomas v. Denny's, Inc.*, 111 F.3d 1506, 1510 (10th Cir.), *cert. denied*, 118 S. Ct. 626 (1997) (citing *Ellis v. United Airlines, Inc.*, 73 F.3d 999, 1005 (10th Cir.), *cert. denied*, 116 S. Ct. 2500 (1996)).

In addition, the Tenth Circuit concluded that the fact that a Intervenor has no college credit whatsoever will not disqualify him or her for a position if the requirement of college training was not a genuine prerequisite for the position; thus, evidence that the defendant employer retained others in the same position without college credit, or that the employer accepted other experience as a substitution for the college credit, raised a genuine issue of fact as to whether the employer's claim that the Intervenor was not qualified was pretextual. *Randle v. City of Aurora*, 69 F.3d 441, 453 (10th Cir. 1995).

References: Hiring—subsequent hiring of white applicant, testimony. 3 Am. Jur. 2d Proof of Facts 221 §32.

Hiring—admissibility of discriminatory reputation. 3 Am. Jur. 2d Proof of Facts 221 §26.

Hiring—the denial of employment, testimony. 3 Am. Jur. 2d Proof of Facts §25, 34, 36.

Hiring—supervisory position, *prima facie* case of race discrimination. 3 Am. Jur. 2d Proof of Facts 221 §21.

Hiring—adverse impact on minority employment. 3 Am. Jur. 2d Proof of Facts 221 §13, 21, 32, 33.

Hiring—testing, adverse impact on minority employment. 3 Am. Jur. 2d Proof of Facts 221 §8, 33.

Hiring—segregated work force. 3 Am. Jur. 2d Proof of Facts 221 §3.

Lack of duty to adopt procedure for maximization of minority hiring. 3 Am. Jur. 2d Proof of Facts 221 §2

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 10

EMPLOYER'S REASONS FOR ITS EMPLOYMENT DECISIONS

SEOSU and RUSO assert that they had a legitimate, non-discriminatory reason for not granting tenure to Intervenor. SEOSU asserts that the tenure process was handled according to SEOSU and RUSO's policies, and they determined that her portfolio did not demonstrate she was not qualified for tenure.

You are instructed that SEOSU and RUSO do not bear the burden of proof with respect to reasons for their actions. Thus, Intervenor can prevail on her claim of gender discrimination only if she proves, by the greater weight of the evidence, that her gender was a motivating factor in their decision not to grant tenure to Intervenor, in addition to, or instead of, any legitimate, non-discriminatory reason or reasons.

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 11

GENDER DISCRIMINATION: PRETEXT

Intervenor has introduced evidence that SEOSU and RUSO's articulated reason for their action is a pretext for discrimination. When you consider Intervenor's evidence of pretext, remember that **the relevant question is whether SEOSU and RUSO's reason that Intervenor was not qualified was not the real reason for their decision.**

You are not to consider whether SEOSU and RUSO's reason showed poor or erroneous judgment. You are not to consider SEOSU and RUSO's wisdom. However, you may consider whether their reason is merely a cover-up for discrimination.

You may consider whether SEOSU and RUSO's reasons are consistent with their own policies and rules and whether they have applied these policies and rules uniformly. You should also carefully evaluate any subjective reasons they have asserted for their actions.

Intervenor has the burden to persuade you by a preponderance of the evidence that SEOSU and RUSO took action against Intervenor because of her sex/gender. **If you do not believe Defendants' explanations, you may, but are not required to, infer that Intervenor has satisfied her burden of proof that Defendants intentionally discriminated against her because of her sex/gender.**

NOTES

In General

The **instruction** limiting the scope of inquiry into the defendant's articulated reason is adapted from *Clay v. Hyatt Regency Hotel*, 724 F.2d 721, 724 (8th Cir.1984).

When articulating a legitimate, nondiscriminatory reason for its action, the defendant is only required to introduce competent evidence that creates a question of fact as to whether the proffered reason was the motivating factor. *See St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 510, 113 S.Ct. 2742, 2748 (1993); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824 (1973).

If the defendant meets this burden, the plaintiff must persuade the trier of fact of the defendant's discriminatory intentions by showing that the defendant's proffered reason was merely a **pretext** for **discrimination** or by proving it more likely true than not true that sex motivated the defendant. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253, 101 S.Ct. 1089 (1981).

The plaintiff retains the final burden of persuading the **jury** of intentional discrimination. *Patterson v. McLean Credit Union*, 491 U.S. 164, 187, 109 S.Ct. 2363, 2378 (1989). *See Cabrera v. Jakobovitz*, 24 F.3d 372, 381-82 (2d Cir.), cert. denied, 513 U.S. 876, 115 S.Ct. 205 (1994) (if facts of prima facie care are disputed and

defendant has produced no rebuttal evidence, **jury** needs to be told that if it finds the following facts, plaintiffs are entitled to prevail; there is no need to label such facts for **jury** as constituting “prima facie case”).

In *Dybczak v. Tuskegee Institute*, 737 F.2d 1524 (11th Cir.1984), the Eleventh Circuit stated:

Elsewhere in its charge to the jury, the district court, referring to the pretext analysis, stated, “If you find from a preponderance of the evidence that the defendant would have retained or would have reappointed the plaintiff in the absence of [discrimination], then you may return a verdict in favor of the plaintiff and against the defendant.” To the extent that it focuses on the question whether the defendant's motive was actually discriminatory, not the hypothetical question whether the defendant would have taken the same action even if there had been no discriminatory purpose, we think that formulation of the burden in terms of the pretextual nature of the articulated reason is preferable. Given the portion of the charge quoted in the text, however, the district court's use of the other formulation, in itself, scarcely amounts to reversible error.

737 F.2d at 1530 n.5.

In *Hargett v. National Westminster Bank, USA*, 78 F.3d 836 (2d Cir.), cert. denied, 519 U.S. 824, 117 S.Ct. 84 (1996), the court upheld the following **pretext** charge:

It is for you to decide if the other individuals were similarly situated to the plaintiff. You may consider the positions held and the conduct in question in determining if the individuals were similarly situated. If you believe by a preponderance of the evidence that plaintiff has proven that other similarly situated employees did commit similar acts and were not terminated, then you may find defendants' reason pretextual.

78 F.3d at 838. Because evidence was lacking that the employment determination was the product of a mixture of legitimate and illegitimate motives, the trial court did not abuse its discretion in declining to give a mixed motives charge. 78 F.3d at 840–41.

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 12

GOOD FAITH BUSINESS JUDGMENT

Federal law only requires that an employer reach an employment decision without regard to any employee's gender. The law does not require that an employer reach a decision which the Intervenor or anyone else would necessarily agree was reasonable and correct. As jurors, you are not permitted to second-guess an employer's good faith business decision. The question is not whether the employer made a wise or prudent business decision, but whether the Intervenor has proven by the greater weight of the evidence that SEOSU and/or RUSO intentionally discriminated against Intervenor because of her gender status and failing to conform to traditional gender types.

You may not infer or find that Intervenor was intentionally discriminated against on the basis of her gender simply because you may happen to disagree with SEOSU and/or RUSO's business decision. You are not permitted to base your decision on a view, if any, that you would have granted Intervenor tenure or that SEOSU and/or RUSO's business judgment does not appeal to your sensibilities.

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 13

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence – such as the testimony of an eye witness. The other is indirect or circumstantial evidence – the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule the law makes no distinction between direct and circumstantial evidence but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 14

INDIRECT EVIDENCE – DEFENDANTS ARTICULATE A NON-DISCRIMINATORY REASON

SEOSU and RUSO have stated legitimate, non-discriminatory reasons for not granting Intervenor tenure. By doing so, SEOSU and RUSO have met their burden of producing some explanation of their actions other than gender discrimination. It is not necessary that the reason be a good one, or one that you agree with **or believe it to be true.** All SEOSU and RUSO need do is state a reason other than gender discrimination for their actions. It is then Intervenor's burden to prove that it was not the reason for the SEOSU and RUSO's actions; SEOSU and RUSO do not have the burden of convincing you.

By meeting this intermediary burden, SEOSU and RUSO have shifted the burden of proof back to Intervenor

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 15

INFERENCE OF DISCRIMINATION — SIMILARLY SITUATED

To be deemed similarly situated, individuals with whom Plaintiff seeks to compare her treatment must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it.

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 16

INTERVENOR'S TITLE VII RETALIATION CLAIM – ESSENTIAL ELEMENTS

In this case, Intervenor claims that SEOSU retaliated against her. SEOSU and RUSO deny all liability. SEOSU and RUSO specifically deny all allegations of retaliation in violation of Title VII.

For Intervenor to prevail on her Title VII Retaliation claim, she must first establish a *prima facie* case of retaliation by showing:

1. She engaged in a protected opposition to Title VII discrimination;
2. She suffered an adverse employment action; and
3. There is a causal connection between the protected activity and the adverse employment action.

Authority

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); *Fye v. Oklahoma Corp. Comm'n*, 516 F.3d 1217, 1227 (10th Cir. 2008); *Meiners v. Univ. of Kan.*, 359 F.3d 1222, 1229 (10th Cir. 2004)

GIVEN: _____

MODIFIED: _____

REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 17

HOSTILE OR ABUSIVE WORK ENVIRONMENT

To establish a hostile or abuse work environment, Intervenor must prove by a preponderance of the evidence that the workplace was permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of Intervenor's employment and create an abusive work environment. In determining whether a work environment is "hostile" or "abusive," you must look at all the circumstances including:

1. The total physical environment of Intervenor's work place;
2. The degree and type of obscenity that filled the environment before and after Intervenor arrived;
3. The reasonable expectations of Intervenor upon entering the environment;
4. The frequency of the offensive conduct;
5. The nature of unwelcome sexual acts or words;
6. The severity of the conduct;
7. Whether the conduct was physically threatening or humiliating;
8. Whether it was merely an offensive utterance; and
9. Whether it unreasonably interfered with Intervenor's work performance.

In determining whether conduct was hostile, you should consider the following:

1. Whether the conduct was verbal, physical, or both;
2. Whether the conduct occurred one time or repeatedly,
3. Whether the conduct was plainly offensive;
4. Whether the alleged harasser was a co-worker or supervisor;
5. Whether others joined in the harassment;
6. Whether the harassment was directed at one more person; and

7. Whether Intervenor voiced any complaints about the hostile conduct.

Authority

29 C.F.R. §1604.11; *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 81 (1998); *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 68 (1986); *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998); *Harrison v. Eddy Potash, Inc.*, 248 F.3d 1014, 1022 (10th Cir. 2001).

Comments

See Faragher v. City of Boca Raton, 524 U.S. 775, 786–87, 118 S.Ct. 2275, 2282–83 (1998), *citing Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21–23, 114 S.Ct. 367, 370–71 (1993)

Test for hostile work environment under Title VII has objective and subjective elements: the misconduct shown must be severe or pervasive enough to create an objectively hostile or abusive work environment, and the victim must also subjectively perceive that environment to be abusive. *Alfano v. Costello*, 294 F.3d 365, 374 (2d Cir. 2002). Isolated acts, unless very serious, do not meet threshold of severity or pervasiveness required to establish hostile work environment under Title VII. *Alfano v. Costello*, 294 F.3d 365, 374 (2d Cir. 2002).

A Title VII hostile work environment claim requires a showing that the harassment was sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. *Fairbrother v. Morrison*, 412 F.3d 39, 48 (2d Cir. 2005).

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 18

HOSTILE WORK ENVIRONMENT STANDARD

The prohibition on harassment based on sex forbids only behavior so objectively offensive as to alter the conditions of the victim's employment.

Authority

Oncale v. Sundowner Offshore Servs., Inc., 118 S. Ct. 998 (1998).

DEFENDANTS' INSTRUCTION NO. 19

EMPLOYERS ENTITLED TO AFFIRMATIVE DEFENSE

Employers are entitled to an affirmative defense to a hostile work environment claim where no tangible employment action has occurred and:

1. the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and
2. the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Authority

Faragher v. City of Boca Raton, 524 U.S. 775, 786–87, 118 S.Ct. 2275, 2282–83 (1998), at 2293; *see also Phillips v. Taco Bell Corp.*, 156 F.3d 884, 888 (8th Cir. 1998); *Duran v. Flagstar Corp.*, 17 F.Supp.2d 1195, 1203 (D. Colo. 1998)

DEFENDANTS' INSTRUCTION NO. 20

INTERVENOR'S SUBJECTIVE BELIEF OF DISCRIMINATION OR RETALIATION

You are instructed that Intervenor's subjective belief, however genuine, that she has been discriminated or retaliated against is not sufficient to establish her claims. In fact, mere speculation can never serve as a basis for discrimination or retaliation claims. Just as Intervenor's own opinion is not sufficient to support her claims, neither is the opinion of Intervenor's co-workers. You cannot base a finding of discrimination or retaliation solely on a co-worker's opinion that Intervenor should have been granted tenure.

Authority

Carter v. City of Miami, 870 F.2d 578, 585 (11th Cir. 1989)(plaintiff's subjective opinion that defendant's action was discriminatory, without support of evidence, is not sufficient to establish pretext); *Young v. Gen Foods*, 840 F.2d 825, 830 (11th Cir. 1988); *Fusaro v. Hialeah Housing Authority*, 33 F.Supp.2d 1354, 1360 (S.D. Fla. 1999)("Conclusory allegations of discrimination are not sufficient to raise an inference of pretext of intentional discrimination where a defendant has offered extensive evidence of legitimate nondiscriminatory reasons for its actions."); *Woodbury v. Sears, Roebuck & Co.*, 901 F.Supp. 1560, 1565 (M.D. Fla. 1995)(citing *Carter v. City of Miami*, 870 F.2d 578, 585 (11th Cir. 1985)("a plaintiff's subjective opinion that the defendant's action was discriminatory, without supportive evidence, is not sufficient to establish pretext...")); *Hamalanian v. Mister Grocer Corp.*, 735 F.Supp. 1025, 1029 (S.D. Fla. 1990).

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 21

DETERMINING CREDIBILITY [BELIEVABILITY] OF WITNESS

You are the sole judges of the believability of each witness and the value to be given the testimony of each. You should take into consideration the witness's means of knowledge, strength of memory and opportunities for observation. Also consider the reasonableness and consistency or inconsistency of the testimony.

You should also consider the bias, prejudice, or interest, if any, the witness may have in the outcome of the trial, the conduct of the witness upon the witness stand, and all other facts and circumstances that affect the believability of the witness.

Authority

See Frierson v. Hines, 426 P.2d 362, 365 (Okla. 1967); *In re Brown*, 412 F. Supp. 1066, 1070 (W.D. Okla. 1975); *Lincoln v. Wells*, 350 P.2d 589 (Okla. 1960) (Syllabus 1); *Borden v. Day*, 197 Okla. 110, 113, 168 P.2d 646, 649 (1946).

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 22

IMPEACHMENT

You are instructed that a witness may be discredited or impeached by contradictory evidence or by evidence that at other times the witness has made statements that are inconsistent with the witness' present testimony.

If you believe that any witness has been impeached and thus discredited, it is your exclusive providence to give the testimony of that witness only such credibility, if any, as you may think it deserves.

If any witness is shown to have knowingly testified falsely concerning any material matter, you have the right to distrust such witness' testimony in other particulars, and you may reject all of the testimony of that witness, or give it only such credibility as you may think it deserves.

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 23

NO SPECULATION

Although you are allowed to draw inference based on circumstantial evidence, an inference is not a suspicion or a guess. An inference is a reasoned, logical conclusion that a disputed fact exists on the basis of another fact that has been shown to exist. While you may draw such inferences, your decision must be based upon probabilities, not possibilities. It may not be based upon pure speculation or guesswork.

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 24

DAMAGES

If you find that Intervenor has not proven her discrimination claims by a preponderance of the evidence, your verdict should be for the Defendants.

If, however, you find that Intervenor has proven her claims by a preponderance of the evidence that the Defendant purposefully or intentionally discriminated against her, you must then consider the issue of damages.

You may award compensatory damages only for injuries that Intervenor has proven to you were directly caused by wrongful conduct by the Defendant. To obtain compensatory damages, Intervenor must prove she suffered actual injury at the hands of the Defendant. You may award Intervenor a sum of money you believe will justly and fairly compensate her for any injury you believe she suffered as a direct result of Defendant's conduct. The abstract value of a civil suit is not part of the damages awarded in this action.

Each element of damages must be proven by Intervenor; damages are not presumed.

Damages must be reasonable. If you should find that the Intervenor is entitled to a verdict, you may award her only such damages as will reasonably and fairly compensate her for such injury and damages as you find from a preponderance of the evidence. Intervenor may not recover damages for any of her losses which could have been avoided through the exercise of reasonable care and prudence.

You may award compensatory damages, based on the evidence introduced at trial, for emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

The fact that I instruct you on damages should not be taken by you as indicating one way or another whether the claimant is entitled to recover anything. This is entirely for you to decide.

You may award compensatory damages only for damages that Intervenor proves were proximately caused by the alleged wrongful conduct. Proximate cause means a cause that, in a natural and continuous sequence, produces injury or damage without which the injury or damages would not have happened. The damages that you award must be fair compensation for all damages, no more and no less. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize.

GIVEN: _____

MODIFIED: _____

REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 25

INTERVENOR'S DUTY TO MITIGATE DAMAGES

You are instructed that any person who claims damages as a result of an alleged wrongful act on the party of another has a duty under the law to mitigate those damages – that is, to take advantage of any reasonable opportunity that may have existed under the circumstances to reduce or minimize her damages.

So if you find by a preponderance of the evidence that Intervenor failed to seek out or take advantage of a business or employment opportunity that was reasonably available under all the circumstances shown by the evidence, then you must take that into consideration in determining what damages, if any, Intervenor is entitled to recover.

Authority

Federal Claims Instruction 1.2.1 and Supplemental Damages Instruction. 1.1

GIVEN: _____
MODIFIED: _____
REJECTED: _____

DEFENDANTS' INSTRUCTION NO. 26

SPECIAL INTERROGATORY

Question No. 1:

Has Intervenor proved by a preponderance of the evidence that her gender was a motivating factor for SEOSU's decision to not grant her tenure?

Yes_____ No_____

If the answer to Question 1 is "no" do not answer any further questions. If the answer to Question 1 is "yes" proceed to Question No. 2.

Question No. 2:

Has SEOSU proven by a preponderance of the evidence that it's reason for not granting tenure to Intervenor was motivated by a lawful reason?

Yes_____ No_____

If your answer to Question 2 is "yes" do not answer any further questions. If your answer to Question No. 2 is "no" proceed to Question No. 3.

Question No. 3:

Has SEOSU proven, by a preponderance of the evidence, that it would have made the same decision to deny tenure even if the Intervenor's gender had played no role in its decision?

Yes_____ No_____

DEFENDANTS' INSTRUCTION NO. 27

VERDICT FORM

We, the Jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find the issues in favor of Defendants, SEOSU and RUSO.

Foreperson

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Exhibit 1

Expert Report of George R. Brown, MD, DFAPA

U.S. et al. v. Southeastern Okla. St. Univ. et al., 5:15-cv-00324-C (W.D. Okla.)

I. Qualifications and Experience

I am a Professor of Psychiatry and Associate Chairman of the Department of Psychiatry at East Tennessee State University in Johnson City, Tennessee. I am board-certified in adult psychiatry. I was named a Fellow of the American Psychiatric Association in 1998 and a Distinguished Fellow in 2003.

I have specialized training and expertise in the diagnosis and treatment of Gender Identity Disorder and Gender Dysphoria (“GID/GD”). I have authored or coauthored 38 papers in peer-reviewed journals and 19 book chapters on topics related to GID/GD, including the chapter on GID/GD in *Treatments of Psychiatric Disorders*, (3rd Ed. 2001), the definitive text on the diagnosis and treatment of psychiatric disorders published by the American Psychiatric Association. I have been a practicing psychiatrist since 1987. Over the last 33 years, I have evaluated, treated, and/or conducted research with between 600 and 1000 individuals with gender disorders in person, and over 5100 patients with gender dysphoria during the course of research-related chart reviews.

Since 1987, I have been extensively involved with the World Professional Association of Transgender Health (“WPATH”), the only international association of medical, surgical, and mental health professionals specializing in the evaluation and treatment of, transsexual, transgender, and gender non-conforming people (WPATH is the same organization which was previously known as the Harry Benjamin International Gender Dysphoria Association until 2006). I served on the Board of Directors of WPATH from 1993-1997 and from 2001 – 2007 and from 2010-2014. I also served on the Executive Committee of this organization as Secretary-Treasurer from 2007-2009. In addition, I was a coauthor in the development and publication of the World Professional Association of Transgender Health Care’s Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7 (published in 2011 and currently in use), and in the previous 2 versions (versions 5 and 6). I served as a member of WPATH’s Standards of Care Revision Committee from 1990-1998 and have been Co-Chairman or a member of that Committee from 2001 to present. These standards for the medical treatment of GID/GD represent the consensus of specialists in the field, and have been recognized as the definitive standards by a number of jurisdictions in the USA and Canada. My current responsibilities involve conducting the largest studies ever developed concerning the health of, and health disparities in, transgender/gender dysphoric people, as well as providing national training programs on transgender health care on a national basis in the Veterans Health Administration

and for the Department of Defense. More detailed information about my background and experience can be found in my curriculum vitae, which is attached as Exhibit 1.¹

II. Opinions

I have been asked to render expert opinions in the following areas:

- (1) The factors that medical professionals consider when determining a person's sex.
- (2) The traits of "gender" and "gender identity," how they relate to a person's sex, and how they relate to "sexual identity."
- (3) The traits of being "transgender" and "transsexual" and how they relate to a person's sex.
- (4) The condition of "gender dysphoria" (previously called gender identity disorder).
- (5) Treatment of gender dysphoria and gender identity disorder.

In forming my opinions, I have relied on my scientific education and training, my research experience, my knowledge of the scientific literature in the pertinent fields (a nonexhaustive list of those references are included at the end of this document), and my 33 years of clinical experience in evaluating, treating, and conducting research with patients with sexual and gender identity issues and gender identity/gender dysphoria disorders. My opinions are set forth below. I may wish to supplement these opinions or the bases for them as a result of new scientific research or publications or in response to statements and issues that may arise in my area of expertise.

A. Summary of Opinions/Conclusions

"Sex" is complex and requires more than a cursory glance at a newborn's genitalia. Sex involves biological constructs that may or may not be readily observed, and includes the important component of gender. "Gender" involves both gender identity and gender role/expression. Gender identity is an internal, subjective sense of oneself as masculine, feminine, or occasionally some other sense of gender that does not fit readily into the "binary" construct of male/masculine and female/feminine that predominates in our Western culture. Gender role, or expression, is the objective presentation that each of us has as we dress, behave, and interact in society in ways that are understood by others as masculine, feminine, or occasionally some other gender role/expression that does not seem to fit into the binary construct of male/masculine or female/feminine. Everyone has a gender identity and role, and in the vast majority of people, there is consonance between the sex of assignment at birth

¹ Please see Exhibit 2 for information about my compensation for preparing reports and testifying in this case.

(“birth sex”) and both gender identity and role. Rarely, there is significant incongruity between “birth sex” and one’s gender identity, which can result in a set of clinically significant symptoms described in psychiatric manuals as “gender dysphoria” (GD).

Treatment of GD is guided by the WPATH standards of care, and many individuals with this diagnosis can be fully cured of all symptoms with appropriate treatment. Treatment typically consists of psychological evaluation and therapy, hormonal therapy, living in the felt gender role, and, for some, irreversible surgeries to bring the body into alignment with the subjective experience of gender identity. Part of this transition necessitates the legal assumption of an identity that is consistent with gender identity, e.g. driver’s license, amended/changed birth certificate, passport.

B. Determining a person’s sex

A person’s “sex” is not exclusively or solely defined by one’s anatomy or ability to procreate as was often believed in the past (Ovesey and Person, 1973). “Biological sex” is a broad and complex concept that consists of a number of variables, including gender and gender identity, genital anatomy (internal and externally visible), secondary sexual characteristics, brain anatomy, sexual orientation, hormonal levels in the brain and body, and chromosomal complement. Most commonly, the factors that constitute biological sex align and there is little variation. For example, for the vast majority of men, there is a total matching of chromosomes (XY), sexual organ appearance as male (penis and testicles), male hormone levels (predominantly testosterone), and the overall psychological sense of being a man. The American Psychological Association defines “[s]ex as a person’s biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female).” “Birth sex” is another term frequently used in medical professionals’ discussions of sex, and refers to the sex of assignment at birth as recorded on a birth certificate. “Birth sex” (the sex of assignment at, or near, the time of birth) can be recorded as only “male” or “female” and as such, is an administrative binary terminology that does not take into account the complexity of human experience.

The variables identified above and their role in determining a person’s sex are discussed in more detail below.

1. Gender and gender identity

Gender is a component of sex, and like sex, has both a subjective and an objective component. The subjective sense of oneself as masculine, feminine, both, neither or some other gender is commonly referred to as gender identity, is a critical component in determining a person’s sex, and is inextricably linked, although partially distinct, from sexual orientation. Gender role is the objective, social expression of gender identity and is usually aligned with gender identity. Most people give no thought to their gender

identity and whether or not it matches their physical anatomy because no conflict exists. For example, most men get up in the morning, put on clothes that identify them as men in our society, and experience no conflicts or incongruity between their sense of being a man and how they look anatomically and how they present themselves in society as men. However, in rare individuals (recent estimates are 4.6/100,000 births; Arcelus, 2015), gender identity and gender role may not align, and gender identity may not align with the other components of sex. For example, transsexual persons generally experience a lack of alignment between their subjective sense of themselves (gender) and their genital/physical anatomy. Note that “sex” is an integral part of the term “transsexual” (discussed below) which indicates the linkage between gender and sex.

A person’s “gender identity” is a component of one’s biological sex and refers to “one’s sense of oneself as male, female, or transgender” (American Psychological Association, 2006). The American Psychiatric Association defines gender identity as a “category of social identity and refers to an individual’s identification as male, female, or occasionally, some category other than male or female.” (APA, DSM-5, 2013, pg 451). When one’s gender identity and other biological characteristics are not congruent, the individual may experience gender dysphoria (defined below). While “birth sex” (sex of assignment at birth) is usually congruent with a child’s gender identity (as experienced and expressed later in childhood), children are sometimes born with anatomical, hormonal, and/or chromosomal variations that do not align with the “birth sex” (genital anatomy) that was recorded by a physician at or near the time of birth. Such children may then develop gender identities and roles that do not align with their “birth sex.”

All individuals, not just transgender individuals (who are discussed in section II.C below), have a gender identity. Studies have shown that gender role, as an expression of gender identity, is usually established early in life, by the age of 2-3 years old, and that gender role (behaving as a typical boy or girl in our culture) usually displays very little malleability over time for the vast majority of people (Stoller, 1968), especially after the onset of puberty. Children as young as one year old may display gender-specific behaviors readily recognizable as associated with the “other” sex (Zucker and Bradley, 1995, Chapter 1, page 11).

Gender identity is distinguishable from and exists separately from sexual orientation, which refers to whom a person is sexually attracted. Just as with other individuals, transgender people can have sexual identities/orientations as heterosexual, homosexual, bisexual or asexual.

2. Genital anatomy (internal and externally visible)

A critical component in determining a person’s sex is the genital anatomy, which includes both internal (not observable) and external (observable) components. It is the

appearance of the observable external genitalia that determines the classification of “birth sex,” the sex of assignment at birth, and whether “Male” or “Female” is registered on a birth certificate.

3. Primary and Secondary sexual characteristics

Primary sexual characteristics are those features that are not subject to the hormonal changes associated with puberty. These typically include: testes, prostate, seminal vesicles, penis, in “birth sex” males, and ovaries, vagina, uterus, fallopian tubes, clitoris, labia in “birth sex” females. Secondary sexual characteristics are those physical features that develop under the influence of rising levels of sex steroid hormones beginning at puberty. Examples include breasts in women, “Adam’s Apple” (enlargement of the front part of the laryngeal cartilage) in men, facial hair in men, widening of the pelvis in women, deepening of the voice in men, and hip-to-waist measurement ratios that are lower in adult females, on average, compared to adult males. These physical changes are dependent on production of adequate amounts of estrogens in females and testosterone in males.

4. Brain anatomy

Brain anatomy is another determinant of a person’s sex. Many areas of the brain are different between males and females (“sexually dimorphic” areas of the brain), due to genetics and the amounts of sex steroid hormones present in the developing fetal brain (from any source, including from the woman carrying the fetus).

It is well known that the brains of “birth sex” men and women differ in size in many regions of the brain. These include specific parts of the brain that are visible on MRI studies, including the hippocampus, caudate nucleus, and anterior cingulate gyrus, to name a few, that are larger in “birth sex” women and the amygdala and gray matter volumes that are larger in “birth sex” men. Most studies of gender-typical male and female brains also indicate that the right hemisphere is larger in men than in women.

5. Sexual orientation

“Sexual orientation” refers to the sex of those to whom one is sexually and/or romantically attracted. The term “sexual identity” is often used interchangeably with sexual orientation. Categories of sexual orientation typically have included attraction to members of one’s own “birth sex” (gay men or lesbians), attraction to members of the other “birth sex” (heterosexuals), and attraction to members of both sexes (bisexuals). Rarely, some individuals report that they have no attraction to either sex (“asexual”). While these categories continue to be widely used, research has suggested that sexual orientation does not always appear in such definable categories and instead occurs on a continuum. In addition, some research indicates that sexual orientation is fluid for

some people; this may be especially true for women (Nichols, 2004; Peplau and Garnets, 2000).

Although usually aligned, sexual expression/role may or may not be consistent with the subjective sexual identity. For example, a person who has male genitals, a male-differentiated brain, male secondary sexual characteristics (e.g. facial hair, Adam's apple, strong upper body strength), XY chromosomal complement, male levels of brain and body testosterone, and sexual attraction to women (i.e., a heterosexual sexual orientation) as well as a subjective sexual identity as a heterosexual male may nonetheless engage in occasional same-sex sexual behaviors, indicating that sexual identity/orientation and sexual role/behavior may not always align.

6. Hormonal levels in the brain and body

The relative levels of estrogen and testosterone (and their metabolites, or what is left after they are processed by the body) present in the brain and body are also factors that determine a person's sex. Estrogen and testosterone are referred to as "sex steroid hormones" and testosterone and its byproducts are referred to as "androgens." Both the brain and the body have receptors for estrogen and testosterone, which means that the brain and various organs in the body are changed by the presence, or absence, of these two major hormone classes. For example, it is known that both testosterone and estrogen are present in all people, but the relative amount of estrogen compared to testosterone is typically far, far higher in female bodies than in male bodies, whereas the amount of testosterone is typically far greater in male bodies than in female bodies. Variabilities in the amount of these sex hormones, both before and after birth, can have major consequences on the primary and secondary sexual characteristics, the likelihood of homosexual or heterosexual orientation, and the gender role behavior of people with these variances. For example, defects in prenatal sex hormone production can result in ambiguously appearing genitalia at birth, or misclassification of "birth sex" as female when the baby meets the criteria for male sex otherwise (MacGillivray and Mazur 2005). "Birth sex" females with much higher levels of androgens early in life (e.g., congenital adrenal hyperplasia, a genetic absence of an important sex steroid enzyme) may appear to have male genitalia at birth even though they have typically female chromosomes (46XX; see below). Gender identity in these girls is typically female, while gender role behavior may be masculine ("tomboys") and the likelihood of homosexual identity and orientation is much higher (Zurenda and Sandberg, 2003). There are many such conditions, present in both "birth sex" males and females, and collectively these conditions are known as "intersex," disorders of sex development, or "atypical sexual development." (Mazur, et al, 2007).

7. Chromosomal complement

Chromosomes are an important determinant of sex. Typically, most people have 46 total chromosomes, two of which are “sex chromosomes” known as X and Y. The usual situation is for “birth sex” females to have a 46XX pattern, and for “birth sex” males to have a 46XY pattern. If the genes associated with the chromosomes are also typical, there is production of sex steroid hormones in various amounts and at various times during typical physical development such that 46XX is associated with female sex, female genitals, female gender identity and role (see below), and in a similar way, 46XY is associated with male sex, male genitals, male gender identity and role. A single gene on the Y chromosome is responsible for the differentiation of a human embryo into a “birth sex” male fetus with testicular development at approximately 6 to 7 weeks into a pregnancy (Mazur, et al, 2007).

In a fetus with 46XX chromosomes, no testosterone/androgens are secreted, and therefore female genitalia develop.

Uncommonly (but not rarely), there are genetic abnormalities in the fertilized egg that lead to chromosome patterns that are different from either 46XX or 46XY. Examples are numerous and can be found in Mazur, et al, 2007. Classic examples include Turner's Syndrome, estimated at 1:2500 live “birth sex” females (46XO, where one sex chromosome is missing), Klinefelter's Syndrome, where an extra X chromosome is present (for example, 47XXY, 48XXYY). This nonheritable genetic abnormality is present in 1:600 live “birth sex” males (Nielsen and Wohler, 1991).

Some, but not all, disorders of the sex chromosomes are associated with atypical sexual organ appearance, higher rates of homosexuality, bisexuality, or asexuality (that is, little to no sexual attraction to anyone or interest in having sexual relations). Some, but not all, may have atypical gender identity and/or gender role development as well. The key point is that the presence of a typical 46XX or 46XY chromosome pattern is relevant for determining a person's sex but not sufficient, in and of itself, to determine a person's sex.

C. What it means to be transgender or transsexual

The term “transgender” is a relatively recent term used as an umbrella concept for anyone who experiences any significant degree of “mismatch” between subjective gender identity and objective physical/anatomic sex. The term “transgender” is also used to describe people who have transitioned to living as a gender different from what they were assigned at birth. Many people who self-identify as transgender may have only transient problems which may or may not reach a threshold for a psychiatric diagnosis as defined below. “Transsexual” is frequently used to describe people whose gender identity is substantially inconsistent with the sex they were assigned at birth and

such individuals usually seek social transition and some type of medical, psychological, and/or surgical intervention(s) to align their physical anatomy with their subjective gender identity. Therefore, many researchers in this field of study consider the smaller group of transsexual people to be a subset of the much larger group of transgender persons. In any event, the population of transgender people is not known, as there are no large population-based studies. Since many people who self-identify as transgender do not come to clinical attention and gender identity questions are generally not asked on census forms or medical documents, it is not currently possible to know the size of this population. Estimates for transsexual people, who are more likely to come to clinical attention, vary widely, but are listed as from 0.005% to 0.014% for “birth sex” males and from 0.002% to 0.003% of “birth sex” females (APA, DSM-5, 2013, pg 454).

Although the precise etiology of transsexualism is unknown (Ettner, 2007; Lev, 2004), most experts in the study of transgender phenomena agree that there is likely a biological basis for transsexualism and perhaps other transgender phenomena. Even those who espouse the idea that postnatal factors, such as familial interactions, play an important role in gender identity development suspect that biological factors play a role in “inducing a vulnerability that then allows the psychosocial factors within the family to exert their effect” (Bradley, 1985, p. 175).

Much of the evidence in support of a biological basis for gender identity (typical or atypical) is based on comparison studies of the brains of transsexual persons using imaging techniques with live subjects or measurements taken post-mortem (after death). Such techniques were not possible a short time ago, but nonetheless, the concept of a “critical period effect” during fetal brain development was espoused decades ago as an explanation for why some (few) individuals experience gender nonconformity (Kimura 1992). Although it is not possible to directly study the developing human brain before birth, it was proposed that the hormones present in the bloodstream surrounding the developing brain at certain, undetermined critical periods in brain sexual differentiation was altered to the extent that the “brain sex” did not match the otherwise “normal” anatomic/genital sex at birth. This theory more recently received support in a study of fetal testosterone exposure, which showed that amniotic fluid levels of testosterone for “birth sex” male and female fetuses correlated positively with male-typical play patterns in both “birth sex” male and female children (Auyeung, et al, 2009).

Zhou and others reported in 1995 that areas of the brain known to differ in size between men and women generally could be studied in transsexual persons. At least one of these sexually dimorphic brain regions in male-to-female transsexual subjects was consistent with the size seen in “birth sex” females, and not males.

Additional support for a biological basis for transsexualism was reported by Luders and colleagues, who analyzed MRI data of 24 male-to-female (MtF) transsexuals not yet treated with cross-sex hormones in order to determine whether gray matter volumes in the brains of MtF transsexuals more closely resemble people who share their “birth sex” (30 control men), or people who share their gender identity (30 control women). Results revealed that MtF transsexuals showed a significantly larger volume of regional gray matter in the right putamen compared to the control group of non-transsexual, “birth sex” men. These researchers concluded that their findings provided new evidence that transsexualism is associated with a distinct cerebral pattern, which supports the assumption that brain anatomy plays a role in gender identity.

Savic and Stefan (2011) studied the brains of male-to-female transsexuals compared to “birth sex” controls of the same sexual orientation. The brains of the MtF subjects differed from controls in several regions (e.g., smaller volumes in the putamen and thalamus in MtF). They concluded: “Gender dysphoria is suggested to be a consequence of sex atypical cerebral differentiation.”

Additional studies in support of the hypothesis that gender dysphoria (defined below) is caused by sex atypical differentiation of parts of the brain before birth due to genetic and/or an early organizational effect of testosterone levels during fetal brain development include: Giedd J, Castellanos F, et al, 1997; Green R and Keverne E, 2000; van Goozen S, Slabbekoorn D, et al, 2002; and Swaab D, 2007.

Finally, several other studies have also found distinctive brain patterns in transsexual subjects that differ from what would be expected to be seen in non-transsexual subjects of the same “birth sex” in post-mortem studies: Kruijver F, Zhou J, et al, 2000; Berglund H, Lindstrom P, et al, 2008.

There is a spectrum of severity in the disconnect between subjective gender identity and “birth sex”, with gender dysphoric transsexualism (see D. below) being on the far end of this spectrum. The evidence for transsexualism arising from strictly, or mostly, postnatal influences (such as family interactions, social factors, maternal/paternal rearing styles) is not compelling; nor is the theory that transsexualism is “a lifestyle choice.” Importantly, “birth sex” males who consider themselves to be females (“transwomen” or “male-to-female transsexuals”) and have a female gender identity and female gender role are considered to be women, and not men, whether or not they have had any surgery to alter the appearance or function of their genitalia. Likewise, “birth sex” females who self-identify as male (“transmen”, “female-to-male transsexuals”) and have a male gender identity and gender role are considered to be men and not women irrespective of whether they have had any surgical interventions to change their bodies.

D. The condition of gender dysphoria

Gender dysphoria (GD) is both a symptom complex and a psychiatric diagnosis. As a set of symptoms, gender dysphoria is a mixture of mood symptoms (irritability, depression, anxiety) and mental distress or discomfort based on the experience of a mismatch between the sex of the body (“birth sex”) and the inner, subjective sense of gender. There are degrees of severity of gender dysphoria symptoms, ranging from mild to severe, and such symptoms may be episodic. It is well known that gender dysphoric persons may live in denial of those symptoms and sometimes make life choices that they feel are likely to “purge” cross-gender feelings, e.g. joining the military or pursuing other hypermasculine pursuits in the case of gender dysphoric “birth sex” males (Brown, 1988; 2015; Brown and McDuffie, 2010). It is therefore not uncommon for adults later in life to first “come out” or acknowledge to others their transgender feelings (Lev, 2004).

The Diagnostic and Statistical Manual of Mental Disorders (DSM 5; APA, 2013) is the current, generally recognized authoritative handbook on the diagnosis of mental disorders relied upon by mental health professionals in the United States, Canada, and other countries. Its content reflects a non-ideological, science-based, and peer-reviewed process by experts in the field who have varying perspectives. Prior to the current iteration of the DSM, persons with clinically significant levels of GD symptoms were diagnosed with Gender Identity Disorder (GID).

That diagnosis has since been replaced by the diagnosis of GD in recognition that the essence of the diagnosis is the treatable symptom complex of gender dysphoria, and not a disorder of identity, which remains fixed irrespective of treatment. Most adult patients who would meet the criteria for the past diagnosis of GID would meet the criteria for the current diagnosis of GD. Both GD and GID are diagnostically coded the same (302.85).

Individuals with GID/GD, experience a persistent and recurrent discordance between their anatomical “birth sex” and psychological gender. “Birth sex” males with GID/GD, for example, feel female in their mind and emotions. Individuals with GD are, in essence, psychologically in the “wrong body” and experience significant emotional distress as a result.

The diagnosis of GD in the DSM-5 (pgs 451-459) involves two major diagnostic criteria for adolescents and adults, synopsized below:

A. A marked incongruence between one’s experienced/expressed gender and assigned gender, of at least 6 months’ duration, as manifested by at least two of the following:

1. A marked incongruence between one's experience/expressed gender and primary and/or secondary sex characteristics
 2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experience/expressed gender.
 3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
 4. A strong desire to be of the other gender
 5. A strong desire to be treated as the other gender
 6. A strong conviction that one has the typical feelings and reactions of the other gender
- B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas as of functioning.

Diagnoses of gender dysphoria may also be designated by one, or both, of two “specifiers:” gender dysphoria with a disorder of sex development; post-transition gender dysphoria (e.g., an individual who has transitioned, or is in the process of transitioning to the desired /felt gender—with or without legalization of gender change) and has undergone, or is preparing to have, at least one cross-sex medical procedure or treatment regimen (for example, regular cross-sex hormonal treatment or gender reassignment surgeries). Like all psychiatric diagnoses, symptoms must be of significant severity to cause notable distress and/or dysfunction in a person's life. The presence of gender nonconformity alone is insufficient to warrant a psychiatric diagnosis.

There is a general agreement in mainstream psychiatry that GID/GD is a legitimate mental disorder and it is recognized as such in standard medical texts (Saddock and Saddock, 2007; Gabbard, 2007). For example, GD, as defined in various iterations of DSM since 1980, is defined and explained in numerous psychiatric textbooks and resources. The term “transsexualism” is no longer a diagnostic term, having been replaced by GID and GD, but the term is still used in professional circles, scholarly works, and treatment guidelines to refer to persons on the extreme end of a continuum of gender dysphoric symptoms (Coleman, et al, 2012).

The World Health Organization also recognizes the discordance between anatomical sex and gender as a disorder in its publication, The International Classification of Diseases (known as ICD 10). The ICD and DSM codes are generally now compatible with each other. The code for transsexualism in ICD-10 corresponds with the DSM-5

diagnosis of GD. While DSM-5 is the primary diagnostic tool used by mental health professionals in the United States, the ICD is also used in this country, predominantly for research, billing and coding purposes.

In spite of research evidence in support of a biological basis for GID/GD, there are no commercially available or reliable biological or laboratory tests that are used in clinical practice to diagnose GID/GD. This is true for virtually all of the mental disorders in the DSM-5 and its predecessors. In fact, Strategic Objective #1 of the National Institute of Mental Health (NIMH) is to “define the mechanisms of complex behaviors,” including molecules and genomic factors (NIMH, 2015). This statement is in recognition that even in 2016, we don’t know the definitive root cause for mental disorders listed in DSM-5, and we do not have objective tests of body, brain, or fluids that definitively diagnose any mental disorders.

A diagnosis of GID/GD is made by a mental health professional who has training and experience with this disorder and who conducts an in-depth evaluation of the patient, preferably with access to past medical records and collateral history from others who know the individual. The American Psychiatric Association and WPATH (Coleman, et al, Standards of Care, Version 7, 2012) recognize that such diagnoses can be made by a range of trained and experienced mental health professionals.

E. Treatment of Gender Dysphoria (previously Gender Identity Disorder)

Many people initially do not understand their cross-gender feelings and do not have a language for such feelings until well into adulthood. Many “birth sex” males report an extensive history of cross-gender feelings and cross-dressing followed by a variety of attempts to eradicate such feelings, including by marrying and having children or by excessive involvement in stereotypical male behavior (for example joining the military), a phenomenon known as “flight into masculinity” for transgender women (people who transition from male-to-female; Brown, 1988; McDuffie and Brown, 2010; Brown and Jones, 2015). Attempts to repress and suppress gender identity are ultimately unsuccessful and the cross-gender feelings return, often stronger. It may not be until later in life that a person learns that there is a name for their cross-gender feelings. Individuals with severe and prolonged gender conflict frequently have a frantic preoccupation with trying to change their anatomic sex to match their psychological gender. The severe end of the spectrum of GID/GD (which is often referred to as transsexualism) is characterized by significant symptoms of gender dysphoria, whereas many transgender individuals may not experience the symptoms of gender dysphoria, or only to a mild extent or only transiently.

Early attempts at treatment to change transsexuals’ gender identity to that congruent with “birth sex” were demonstrated to be ineffective in most cases, prompting the

American Medical Association as early as 1972 to support medical and surgical interventions as the treatment of choice for transsexualism (AMA, 1972). Others noted that psychotherapy, often with associated cross-sex hormonal treatment, was of benefit for some transsexual people with respect to life adjustment, but not for changing one's gender identity (Lothstein and Levine, 1981; Seikowski, 2007). In fact it has been stated that there are no demonstrable, successful "conversions" of transsexual persons' gender identities through the use of psychotherapy (Monstrey, et al, 2007, pg 89), a form of psychotherapy known today as "reparative therapy" or "conversion therapy." These types of therapy are widely considered to be unethical by professional organizations based on the premise that gender identity and sexual identity/orientation are not "changed" by conversion psychotherapies and that emotional harm has been demonstrated in many who have received such therapies in the past (Daniel, et al, 2015). The federal Substance Abuse and Mental Health Services Administration recently issued a report showing that conversion therapy is not an appropriate therapeutic approach based on the evidence. The report also included similar consensus statements developed by an expert panel held by the American Psychological Association in July 2015. The professional organization that was arguably the most involved with attempting to convert both homosexual and transgender persons' identities decades ago has also strongly come out against the use of psychotherapy to attempt to change either sexual or gender identity:

"Psychoanalytic technique does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an individual's sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes." (American Psychoanalytic Association, 2012).

WPATH has developed Standards of Care ("SOC") for the evaluation and medical treatment of persons with GID/GD. WPATH has over 1000 members worldwide, approximately 70% of whom are in the United States. These members are physicians, psychiatrists, psychologists, social workers, surgeons, and other health professionals who specialize in the diagnosis and treatment of GID/GD. The "SOC" were first developed in 1979. Currently in the seventh version, the SOC are considered to be authoritative for the evaluation and treatment of gender dysphoria (Coleman, et al, 2012). There are no other comprehensive, widely accepted, medical standards of care for the treatment of GID/GD. As with all medical standards, the SOC are guidelines that can be modified based on the individualized patient circumstances and the health care professional's clinical judgment.

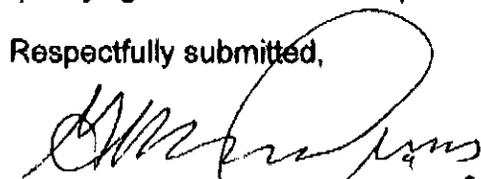
The medical treatment of a person diagnosed with GID/GD is based upon an individualized plan involving one or more of three major components: (1) hormonal

reassignment to the felt/experienced gender identity; (2) 12 continuous months of living in a gender role that is congruent with the patient's identity (previously known as the "real-life experience") and (3) surgery to change the genitalia and, in some cases, secondary sexual characteristics. These elements have been referred to as triadic therapy. Other treatments may also be sought, including electrolysis, voice therapy, breast augmentation, facial reconstruction, etc. (Coleman, et al, 2012). Although it is not an explicit requirement for surgical treatment, it is recommended that patients who seek such procedures have regular contact with a mental health or other medical professional.

Under the SOC, hormone therapy and surgery have established eligibility and readiness criteria that should be met prior to approval for these somatic treatments. Eligibility criteria generally involve timelines of successful experience with one mode of therapy before the next step should be undertaken. Readiness criteria involve the clinician's assessment of whether the client has demonstrated sufficient consolidation of an evolving gender identity to move on to the next step of transition.

The minimum criteria for genital surgery includes the requirement that one have a persistent, well-documented history of gender dysphoria, the capacity to consent to treatment, be of the age of majority and have any significant medical or health care conditions well-controlled. Lastly, a person seeking genital surgery must generally undergo 12 continuous months of living in a gender role that is congruent with the patient's identity, and obtain two letters of referral from experienced clinicians in a qualifying mental health discipline.

Respectfully submitted,



George R. Brown, MD, DFAPA
Professor of Psychiatry
East Tennessee State University

Date: 5/27/16

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Exhibit 17

DECLARATION OF DANIEL ALTHOFF

1. I am A Full Professor with tenure at Southeastern Oklahoma State University (“Southeastern”).
2. I started working at Southeastern in Fall 1998. Since that time, I have been in Southeastern’s English, Humanities, and Languages Department (“English Department”).
3. To my knowledge, Dr. Tudor is the first transgender professor at Southeastern.
4. To my knowledge, when Tudor transitioned from male to female, she was the only transgender person at Southeastern. Meaning, at the time, there were no other openly transgender faculty, staff, or students at Southeastern.
5. **Dr. Tudor’s gender transition.**
 - a. I recall that just before the start of the Fall 2007 term, Dr. Tudor hand delivered letters to me and other members of the English Department. A true copy of the letter I received is attached hereto as **Exhibit A** (bates marked PI002042 to PI002043) on the lower right hand corner).
 - b. When I was done reading the letter, I told Tudor that she was brave to transition to female while at Southeastern.

- c. After Tudor gave me her letter, I consistently used feminine pronouns to refer to Tudor and used only her female first name, Rachel, thereafter. I recall that all of my colleagues in the English Department did the same.
- d. To my knowledge, Tudor's gender transition was a non-issue with our English Department colleagues. I think some of my colleagues were surprised by Tudor's transition initially, but none of them ever said anything negative about Tudor's gender transition or her gender in my presence. Given the size of the Department, if there had been concerns raised I likely would have learned of them at some point.
- e. To my knowledge, Tudor's gender transition was a non-issue with students taking classes in the English Department. Southeastern has a relatively small student body. I do not recall ever hearing a student complain or say anything negative about Tudor's gender transition or her gender. Given the small size of Southeastern's student body, if there had been concerns raised by students I likely would have learned of them at some point.
- f. I do not have any knowledge of how Southeastern's administration immediately reacted to Tudor's gender transition or her gender. Between the time Tudor gave me her letter and her separation

from Southeastern at the end Spring 2011, the faculty and administration had very little direct interaction.

6. Southeastern's promotion and tenure process during Tudor's employ.

This is what I recall about the tenure and promotion processes in place while Dr. Tudor worked at Southeastern:

- a. Tenure track faculty could apply for promotion and tenure at any time, but applications were typically made sometime during their fifth, sixth, or seventh year at Southeastern.
- b. The common understanding was that if someone's application for tenure and/or promotion failed, they could reapply. I found this surprising.
- c. I recall that professors other than Tudor were permitted to withdraw their applications at any point during the tenure and promotion process without being penalized. Once withdrawn, these professors were permitted to reapply during the next application cycle.
- d. I recall that professors other than Tudor were permitted to reapply for tenure and/or promotion after their applications were rejected.

7. Tudor's attempt to reapply in the 2010-11 cycle.

- a. I recall that Tudor attempted to reapply for tenure and promotion in the 2010-11 cycle.

- b. Sometime in the middle of the 2010-11 term, I learned that Dr. Douglas McMillan refused to allow Tudor the opportunity to reapply in the 2010-11 cycle.
- c. Sometime thereafter, I learned that the Faculty Senate, which is the representative voice of the Southeastern faculty, voted to demand that the Southeastern administration let Tudor reapply in the 2010-11 cycle.
- d. Sometime thereafter, I learned more about the circumstances surrounding the Southeastern administration's refusal to allow Tudor to reapply for promotion and tenure in the 2010-11 cycle. I believed there to be many suspicious procedures cited in the administration's refusal memorandum and that it was otherwise totally unfair to deprive Tudor of the opportunity to reapply in the 2010-11 cycle. I had not at the time (and to this day have not) seen anything like the Southeastern administration's refusal to allow Tudor to reapply for promotion and tenure in the 2010-11 cycle.
- e. During the 2010-11 term, I believed that Tudor should be allowed to reapply for promotion and tenure and that, if her application merited promotion and tenure, she should be granted promotion and tenure.

- f. To my knowledge, the Southeastern faculty was unified in its desire that Dr. Tudor be allowed to reapply for promotion and tenure in the 2010-11 cycle.
- g. To my knowledge, the Southeastern campus was not in any way torn apart by Tudor's grievances against the Southeastern administrators or her appeals related to the tenure and promotion process in 2009-10 and 2010-11. To my recollection, the faculty was united behind Dr. Tudor.
- h. To my knowledge, if the Southeastern administration had allowed Tudor to reapply in the 2010-11 cycle, Southeastern's faculty, including myself, would have supported Tudor being allowed the opportunity to reapply for promotion and tenure. However, grant of reapplication itself would not have guaranteed Tudor would have been awarded promotion and tenure—it only would have given Tudor the opportunity to reapply.

8. Southeastern's nondiscrimination and harassment policies during Tudor's employ at Southeastern.

- a. Southeastern had nondiscrimination and harassment policies during this period, but I do not recall receiving training on these at any time and did not have a deep understanding of how these policies even worked. I generally knew that one could complain

about racial discrimination during this period. I do not recall specifically that one could complain about gender discrimination of any kind during this period.

b. I recall that during this period, Southeastern's nondiscrimination and harassment policies were memorialized in writing. I recall that though some types of discrimination and harassment were expressly listed—such as race discrimination—other types were not listed. Specifically, I recall that during this period neither sexual orientation nor gender identity (or any other phrase that might capture transgender persons specifically or LGBT persons more broadly) were listed as protected categories in Southeastern's policies.

c. I recall that during this period, I thought that the absence of specific language pointing to sexual orientation and/or gender identity (or any other phrase that might capture transgender persons specifically or LGBT persons more broadly) in Southeastern's policies meant that discrimination or harassment faced by gay or transgender persons was not redressable under Southeastern's policies and, more broadly, under Oklahoma state law.

- d. I recall that close in time to Tudor's termination from Southeastern, the Faculty Senate passed a resolution requesting that the administration revise Southeastern's policies to expressly protect gay and transgender persons from discrimination and harassment.
 - e. During this period, Southeastern essentially operated on a "don't ask, don't tell" basis with regards to sexual orientation and/or transgender status. It was my understanding that because Southeastern did not have any codified protections for gay and/or transgender persons, faculty members were at risk of being fired if they made their gay and/or transgender status public.
 - f. I personally found the absence of gay and/or transgender status protections during this period to have a chilling effect on faculty at Southeastern.
 - g. During this period, given the lack of express protections for gay and/or transgender persons on campus, it is not surprising that a gay and/or transgender faculty member who faced discrimination or harassment would not make complaints about it.
9. Southeastern's nondiscrimination and harassment policies since Tudor left Southeastern. This is what I know about Southeastern's current nondiscrimination and harassment policies:

- a. Shortly after President Burrage came to Southeastern, Southeastern changed its nondiscrimination and harassment policies.
 - b. Southeastern's policies now expressly protect gay and/or transgender persons from discrimination and harassment.
 - c. To my knowledge, it is now commonly understood by the faculty that Southeastern's policies protect gay and/or transgender persons from discrimination and harassment.
10. **Tudor's return to Southeastern.** To my knowledge, if Tudor were to return to Southeastern this would be a non-issue for the faculty. There is no bad blood between Tudor and the Southeastern faculty.

I state under penalty of perjury that the foregoing is true and correct.

Executed on (date) October 10, 2017 in (location) Durant, Oklahoma.



Dr. Daniel Althoff

Exhibit A

Dear Colleague.

I hope you will pardon this intrusion, but I am obliged to share some personal information with you. Please allow me to premise my disclosure with an acknowledgement of how much I value being a member of this community of educators and learners. I have labored my entire life to be a contributing member of such a community, and I feel privileged to be here. I want to be clear about this, because my retiring personality may have been misinterpreted by some as unfriendliness. The reason for this letter is that after a lifetime of searching, and with the assistance of professional guidance, I have come to the conclusion that I am also a member of another community—the transgender. Unfortunately, this community is frequently misunderstood, often ridiculed, widely discriminated against, and sometimes subject to violence. Hence, the necessity for this letter. I do not want being a member of the transgender community to cause discomfort or anxiety to members of my academic community. Please allow me to share a few basic facts about transgenderism. It is a part of one's core identity and is present from birth. Some say that it is not a choice, but I believe everything one does is an act of will with purpose. For me, the choice is either to be reclusive and unhappy, or to strive to find a place in life where I may be true to my core identity and create personal and professional relationships based on openness free from fear. Next, it is important to know that a transgender person is not a transvestite or crossdresser—it is not sartorial, it is physiological. I, for instance, have been following a physician prescribed regimen of hormone adjustment therapy for months. Finally, transgenderism has nothing to do with sex or sexual orientation. Perhaps the confusion comes from the unfortunate fact that our language uses “sex” and “gender” as synonyms. In actuality, transgenderism is a human and civil rights issue, and it should not be taboo to discuss it.

I assure you that I will continue to comport myself in a professional manner with attention to my responsibilities. I hope you will look on this occasion, as I do, as an opportunity for education and personal growth.

You probably have questions that I have not addressed. You are welcome to discuss them with me. My most pressing question is how you will respond to my revelation. I will listen to your opinion and value your advice.

Presently, I am planning on transitioning at the beginning of the Fall semester. I have legally changed my name to Rachel. After I transition, please address me by my new name with corresponding pronouns. I am keenly aware the period of transition will be confusing and awkward for everyone. Please let me know if there is anything I can do to put you at ease.

Very best regards,

R. Tudor

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, I electronically transmitted a copy of the foregoing Appendix to the Clerk of the Court by using the ECF System for filing and automatic service of Appendix to all counsel of record herein.

/s/ Marie Eisela Galindo
MARIE E. GALINDO
TX BAR NO. 00796592

Marie Eisela Galindo
Law Office of Marie E. Galindo
Wells Fargo Building
1500 Broadway, Suite 1120
Lubbock, Texas 79401
(806) 549-4507
megalindo@thegalindolawfirm.com

Attorney for Dr. Rachel Tudor,
Plaintiff-Appellant/Cross-Appellee