

Nos. 18-6102 / 18-6165

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

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RACHEL TUDOR,

*Plaintiff-Appellant/ Cross-Appellee,*

v.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
*and the* REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA,

*Defendants-Appellees/ Cross-Appellants.*

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On appeal from the United States District Court  
for the Western District of Oklahoma  
The Hon. Robin J. Cauthron  
No. 5:15-CV-00324-C

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**APPENDIX *for* DEFENDANTS–APPELLEES/CROSS-APPELLANTS**

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**VOLUME 2**

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
DR. RACHEL TUDOR,	)	
	)	
Plaintiff/Intervenor,	)	
	)	
v.	)	Case No. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA	)	
STATE UNIVERSITY,	)	
	)	
and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
Defendants.	)	

**DR. RACHEL TUDOR’S RESPONSE AND OPPOSITION TO  
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

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## I. Introduction

Ten years ago, Dr. Rachel Tudor bravely announced to her colleagues at Southeastern Oklahoma State University (“Southeastern”) that she would be transitioning from male to female. Neither Southeastern nor its governing board, the Regional University System of Oklahoma (“RUSO”), had express protections in place. Though Tudor received tremendous support from her colleagues and students, a small but powerful cadre of administrators placed Tudor in their crosshairs.

Tudor endured years of hostilities. She was threatened with termination if she used women’s restrooms on campus. She endured a health plan that specially excluded care she needed which was otherwise available to her nontransgender female peers. She also endured sporadic slights and ridicule. For fear of losing her job, Tudor suffered much of this in silence and set her eyes on tenure and promotion—a means to stay at a school she to this day still loves, alongside her colleagues who still miss her.

Of course, no federal lawsuit results where things end well. Over a two-year period, Southeastern’s top administrators deprived Tudor of a fair and impartial evaluation of her tenure and promotion portfolio. In the 2009-10 cycle, they denied her application and refused to even proffer explanations for their denials. Those same administrators later manufactured rationales that cannot stand up to scrutiny. Close in time to Tudor stepping up her

complaints, the administration barred her from attempting a reapplication in the 2010-11 cycle on the incredible pretense that her reapplication would tear apart the university (it would not) and reapplication violated policy (it did not). Despite the Southeastern faculty standing behind Tudor and support pouring in from within and outside of Oklahoma, the administration nonrenewed Tudor, kicking her to the curb at a time when she should have been celebrating a major and hard-earned career milestone.

Over the last ten years, Southeastern and the rest of our nation have made great strides towards welcoming women, like Tudor, whose path in life is a bit different but nonetheless deserving of both basic decency and the full protection of Title VII. For all the reasons set forth below, Dr. Tudor respectfully requests that that the Court deny Defendants' Motion for Summary Judgment and allow Tudor to bring the facts to a jury of her peers.

## **II. Response to Defendants' Statement of Undisputed Facts**

1. The deposition excerpt Defendants cite establishes Tudor's year of and name at birth, both of which she admits. *See* ECF No. 177-1 at 188:4–8. If Defendants intended to argue Tudor “was born male” and/or her “biological sex” is male because she is a transgender woman, this is disputed. *See Exhibit 1* at 2 (providing medical definition of “sex”); *id.* at 3 (providing medical definition of “biological sex” and distinguishing “birth sex” from “biological sex”).



2. Admitted.

3. Tudor presented herself as male at Southeastern from Fall 2004 until just prior to Fall 2007; Tudor has presented herself as female from Fall 2007 through present.

4. Partially denied. Tudor complained orally and in writing and otherwise opposed hostilities and discrimination prior to and during the 2009-10 application process. *See, e.g., Exhibit 3* at 3–12 (collecting complaints between 2007 and end 2009-10 cycle).

5. Admitted that Southeastern had multiple stages of tenure and promotion review. However, tenure and promotion decisions were ultimately the providence of the faculty. In rare situations where there was disagreement between the faculty and administration, policy required that the administration provide rationales justifying a departure from the faculty's decision. *See, e.g., Exhibit 18* ¶ 6(b)(ii); *id.* ¶ 6(b)(iii); *id.* ¶ 6(d); *id.* ¶ 6(e).

6–8. Tudor denies that paragraphs 6 to 8 are material to the resolution of this Motion because her 2008-09 application does not speak to the discrimination, retaliation, and hostilities she faced in connection with the 2009-10 and 2010-11 cycles.

9. Admitted.

10. The English Department committee voted as a unit to approve

Tudor's 2009-10 application. **Exhibit 4** at 155: 6–12 (committee had “one vote”); **Exhibit 5** at 141:6–15 (similar). Moreover, Defendants misrepresent the role of administration in tenure and promotion decisions. *See, e.g.*, evidence cited *supra* Resp. 5.

11. Tudor admits that her 2009-10 portfolio was reviewed by Dean Scoufos. However, Scoufos' original denial letter did not provide a rationale for denial beyond curiously suggesting (but not specifying) her decision turned on a supposed lack of documentation rather than merit (**Exhibit 65**). After the 2009-10 cycle, Tudor got back her portfolio and discovered Scoufos placed (see, e.g., **Exhibit 66**; **Exhibit 68**) a backdated letter (**Exhibit 27**) in the portfolio. Scoufos' rationale in the backdated letter is mere pretext for discrimination (see, e.g., **Exhibit 68**). *See infra* Part III ¶¶ 10–11.

12. Admitted.

13. Tudor admits that McMillan did not recommend her for promotion and tenure in the 2009-10 cycle. But McMillan's denial letter did not articulate any rationale (**Exhibit 67**). McMillan never provided his rationale to Tudor (see, e.g., **Exhibit 8** at EEOC183). Curiously, McMillan did write a letter to Tudor dated in April 2010 but dispatched to Tudor in June 2010, wherein he claims to tell Tudor Minks' rationale for denial but not his own (**Exhibit 9** at PI1200–01 [letter]; *id.* at PI1202 [envelope postmarked June 9, 2010]). Minks/McMillan's articulated rationale is mere

pretext for discrimination. *See infra* Part III ¶¶ 10–11.

14. Admitted.

15. Denied. *See Exhibit 3* at 65–66.

16. Denied. Dean Scoufos’ and McMillan’s characterizations of the “offer” does not speak to whether the discrimination or retaliation occurred and thus are immaterial. Moreover, Mischo did not characterize the “offer” as a “generous.” *See, e.g., Exhibit 5* at 199:9–15 (characterizing the “offer” as an “ultimatum”); *id.* at 197–200 (agreeing with the overall veracity of **Exhibit 3** at 65–66).

17. Denied. Tudor declined to withdraw her 2009-10 application on April 6, 2010 (see evidence cited *supra* Resp. 15 and 16), but her decision did not necessitate that her application be rejected by Minks. Indeed, Tudor tried to speak with Minks to answer any questions he might have (see, e.g., **Exhibit 41**), but he refused Tudor and denied her application (**Exhibit 40**). Similarly, Tudor’s refusal to withdraw her application did necessitate that the administration prohibit her reapplication—policy at the time allowed reapplication (see, e.g., **Exhibit 10** [April 1, 2010 email between administrators and counsel discussing fact that Tudor could reapply next cycle]; **Exhibit 43** at 55:5–25, 56:4–16, 57:2–5, 57:24–25 [reapplication permitted even if president previously denied application]).

18. Tudor received a perfunctory denial letter from Minks in late

April 2010 (**Exhibit 40**), but received McMillan's letter which contained Mink's purported rationales for denial in June 2010 (**Exhibit 9** at PI1202 [postmarked June 9, 2010]).

19. Denied. During this period, neither Southeastern nor RUSO policy prohibited reapplication.<sup>1</sup>

20. Tudor admits that she sent a letter to the U.S. Department of Education on or about August 31, 2010 wherein she alleged gender discrimination and hostilities.

21. Tudor denies that paragraph 21 is material. The fact that males and/or females were granted promotion and/or tenure in the 2009-10 and 2010-11 cycles is immaterial as to whether Tudor faced discrimination because of her gender.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

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<sup>1</sup> See, e.g., **Exhibit 10** (policy would "let [Tudor] reapply" in the 2010-11 cycle); **Exhibit 11** at 243:12-21 (agreeing with "options" in **Exhibit 10**); **Exhibit 12** ("The policy states that an application for tenure may occur in the fifth, sixth or seventh year. I recognize that the policy does not proscribe a subsequent application . . . ."); **Exhibit 43** at 55:5-25, 56:4-16, 57:2-5, 57:24-25 (reapplication permitted even if president previously denied application); **Exhibit 17** ¶ 6(b) (reapplication permitted); *id.* ¶ 6(d) (others reapplied after denial). See also **Exhibit 14** at 23:23-25 and 24:1-2 (Southeastern's policies subject to RUSO's); **Exhibit 15** (RUSO professors allowed to reapply); **Exhibit 39** (Oct. 1, 2010 email from Prus to Scoufos notifying of formation of Tudor's 2010-11 tenure and promotion committee).

26–31. Tudor denies that paragraphs 26–31 are material to resolution of this Motion. Tudor’s claims deal exclusively with the work environment at Southeastern and the circumstances surrounding her 2009-10 and attempted 2010-11 tenure and promotion applications. Moreover, Defendants’ Exhibit 11 (ECF No. 177-11) is inadmissible for use at summary judgment for the reasons set forth in Tudor’s motion *in limine* (ECF No. 189).

32. Admitted.

33. Tudor denies that paragraph 33 is material to resolution of this motion. See substantive response and evidence cited *supra* Resp. 26–31.

34. Admitted that Southeastern had a harassment policy, but it did not reach the kind of hostilities Tudor endured.<sup>2</sup>

35. Admitted that Southeastern had a discrimination policy, but it did not reach the kinds of discrimination Tudor endured. See evidence cited *supra* Resp. 34.

36. Denied. Tudor complained about hostilities, including some objectionable utterances. See, e.g., **Exhibit 3** at 3–20 (gathering dozens of complaints); **Exhibit 2** ¶ 10(a)–(c); **Exhibit 61** at 221:2–4; *id.* 221:22–25

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<sup>2</sup> See, e.g., **Exhibit 17** ¶ 8(a)–(d); *id.* ¶8(5) (“faculty members were are risk of being fired if they made their gay and/or transgender status public”); *id.* ¶ 8(f) (absence of express protections had a “chilling effect on faculty”); *id.* ¶ 8(g); **Exhibit 18** ¶ 10(a)–(h); **Exhibit 2** ¶ 2(b)–(d); **Exhibit 19** at EEOC66 (“being transgender is not a protected status”); **Exhibit 20** (March 2, 2011 emails discussing the need to revise policies so that they protect the “LGBTs”); **Exhibit 31** at 190:2–8; **Exhibit 13** at 157:7–17.

(confirming Tudor made complaints about Scoufos' pronoun use).

37. Denied. The restroom restriction was imposed on Tudor as a condition of her employment.<sup>3</sup>

38. Tudor admits she thanked Conway for not summarily firing her in 2007 (**Exhibit 2** ¶ 2(a)).

### III. FACTS PRECLUDING JUDGMENT AS MATTER OF LAW

1. Some Southeastern staff and administrators did not consider Tudor to be female because she is a transgender woman.<sup>4</sup>

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<sup>3</sup> See, e.g., **Exhibit 3** at 22–23 (describing June 1, 2007 call with Conway); **Exhibit 2** ¶ 2(b). See also **Exhibit 5** at 39–42 (Mischo was told Tudor would not use the women's restrooms); *id.* at 41 (“someone other than Dr. Tudor had decided Dr. Tudor would use the unisex restroom”); **Exhibit 14** at 67:3–13 (Southeastern “made arrangements for a gender-neutral bathroom” for Tudor); *id.* at 68:12–18 (gender-neutral restroom in Morrison was Southeastern's “solution” for Tudor); **Exhibit 43** at 39–43 (Weiner directed Conway to place restroom restriction on Tudor); *id.* at 45–46 (Weiner thought women in Tudor's department objected to her using women's restrooms and thus imposed restroom restriction). *But see* **Exhibit 18** ¶ 5(c) (women in Tudor's department accepted her as female); *id.* ¶ 5(e) (no problems with Tudor's gender within the department); **Exhibit 17** ¶ 5(d) (similar).

<sup>4</sup> **Conway** had obvious discomfort with transgender people, restroom access, and Tudor's gender in particular. See, e.g., **Exhibit 31** at 40:13–23 (might not be legal in Tenth Circuit to allow transgender woman to use restroom matching her gender); *id.* at 127 (“law” might require genital reconstruction surgery in order for a transgender person to use restroom); *id.* at 61–63 (call with Babb about Tudor's restroom use [referencing notes taken during call, **Exhibit 32** at DOJ12] and law concerning restroom access); *id.* at 70:13–23 (did not know if Tudor was female thus used male pronouns to refer Tudor); *id.* at 91–94 (uncomfortable with Tudor's gender transition; feared others at Southeastern would object due to Tudor's presumed genital configuration); *id.* at 209 (uncertain if Tudor is female given “[a]ll this documentation is about her being transgender”); **Exhibit 30** (using male pronouns to refer to Tudor in 2010; Stubblefield making light of the pronoun misuse in response).

Because **Minks** knew Tudor is transgender (**Exhibit 33** at 31: 8–16), he attests he did not know if she was female (*id.* at 32:8–11) or male (*id.* at 31:13–16). Minks'

2. Since Tudor's separation, Southeastern revised its harassment and discrimination policies so that they expressly protect transgender persons who face gender discrimination and hostilities.<sup>5</sup>

3. During Tudor's employ, Defendants' fringe benefit health plans categorically excluded coverage of treatments sought for gender dysphoria by transgender persons despite otherwise covering the same treatments for nontransgender persons seeking care for other conditions.<sup>6</sup> In Fall 2016,

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discomfort identifying Tudor's gender (and refusal to identify the gender of anyone else at his deposition other than Attorney Coffey) suggests Minks has a bias against transgender persons and tried to hide it by disclaiming the ability to discern the gender of others. *Compare Exhibit 33 id.* at 32–34 (Minks claiming inability to identify genders of persons attending deposition) *with Exhibit 34* (memorialization of gender presentations of persons whom Minks was asked to identify).

**McMillan** testified under oath to struggling with Tudor's gender and transgender people more generally. *See, e.g., Exhibit 35* at 221–22 (describing religious beliefs about gender and change of gender); *id.* at 223 (similar discussion with regards to Tudor); *id.* at 239–40 (unsure if transgender people should use restroom matching their presented gender); *id.* at 240 (uncertain whether possible to change gender); *id.* at 241–42 (contrasting transgender restroom restrictions with race based restroom restrictions, concluding it is wrong to exclude based on race but uncertain whether exclusion based on being transgender is okay).

<sup>5</sup> *See, e.g., Exhibit 21* (May 2015 email publicizing change); **Exhibit 22** at PI002073 (May 2017 policy—identifying old policies amended by new policy); *id.* at PI002113 (“freedom from discrimination and harassment based on gender identity or transgender status”); *id.* (treat employees in accordance with gender identity); *id.* at 2114 (mandating that restroom be accessible “consistent with an individual's gender identity”); **Exhibit 17** ¶ 9(a)–(c); **Exhibit 18** ¶ 14(a)–(b).

<sup>6</sup> *See* ECF No. 28 ¶ 67 (admitting exclusion); ECF No. 29 ¶ (67) (admitting exclusion). Defendants' plans covered breast reconstruction (**Exhibit 23** at 125) and hormones such as estrogen (*id.* at 111) for conditions other than gender dysphoria, but their plan excluded reconstructive surgery (*id.* at 107–09) and hormones (*id.* at 108–09) sought by transgender persons to treat gender dysphoria. During this period, Defendants were empowered to seek out plans without the exclusion (*id.* at 114).

Defendants removed the exclusion, showing it was feasible to have a plan without the exclusion. *See Exhibit 24* at PI002065 (partially removing exclusion); *id.* at PI002121 (removing surgical component of exclusion).

4. During Tudor's employ, Defendants did not evaluate whether their health plans complied with federal laws. *See, e.g., Exhibit 23* at 93–94; *id.* at 128–29; **Exhibit 31** at 179:11–16. Defendants had no policies to redress employee complaints about the health plan (**Exhibit 23** at 73). None of Defendants' employees grieved their health plan or otherwise challenged an exclusion (*id.* at 82), showing there was no avenue to grieve exclusions.

5. During Tudor's employ, there were virtually no safeguards against bias during the tenure and promotion process. The only check on bias from the Dean was the VPAA or President (**Exhibit 14** at 185:14–25 and 186: 2); the only check on the VPAA's decision was the President (*id.* at 188:3–5.). There was no written policy or established process allowing a faculty member to grieve the President's tenure and promotion decision, even if the President was accused of bias (*id.* at 188:6–16; **Exhibit 64** at 108:22–25 and 109:1–10; 165:13–21 and 166:1; 169:14–18; 172:8–15). Defendants' policies now allow redress of all decisions, including those made by the President (*see, e.g., Exhibit 28* ¶ 22(b); **Exhibit 14** at 188:10–16; **Exhibit 64** at 166–69).

6. During Tudor's employ at Southeastern: Tenure was granted



where the candidate qualified in the combined areas of teaching, scholarship, and service. *See, e.g., Exhibit 16* at 3. “Excellence” only had to be shown in two of three criteria. *See Exhibit 18* ¶ 6(a). Southeastern weighed teaching more heavily than other criteria. *See, e.g., Exhibit 16* at 3–4 (interpreting Southeastern’s policies). Aside from Tudor, administrators provided their rationales for voting for or against promotion/tenure directly to the candidate before the process was over.<sup>7</sup>

7. “Peer review” of a tenure and promotion application can reveal whether university decision-makers inappropriately took into account factors other than merit in making a decision on an application. *See, e.g., Exhibit 14* at 183:15–25; *id.* at 184:14–23.

8. Dr. Parker, an expert on tenure and promotion, attests that Tudor’s 2009-10 and 2010-11 portfolios were on par with if not better than portfolios of successful English Department comparators. *See generally Exhibit 16*.

9. As to Tudor’s 2009-10 application: She was qualified as to

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<sup>7</sup> *See, e.g., Exhibit 25* ¶¶ 9–11 (Mark Spencer’s experience); *Exhibit 14* at 201:17–25 and 202:2–6 (typical practice to provide decision and rationale directly to candidate during process; agreeing it was “inappropriate” for Scoufos and McMillan to withhold rationales until “the process was over”); *Exhibit 43* at 62:8–15 (similar); *id.* at 63:5–23 (Tudor is the only person not given rationales for denial mid-process). Administrators also allowed professors other than Tudor to get feedback on their application while it was still pending and improve it prior to the president’s final decision. *See, e.g., Exhibit 25* ¶¶ 12–17 (Mark Spencer’s experience).

teaching,<sup>8</sup> scholarship<sup>9</sup>, *and* service<sup>10</sup>.

10. Scoufos (**Exhibit 27**) and McMillan/Minks (**Exhibit 9**) did not actually believe the rationales they cited for rejecting Tudor's 2009-10 application.<sup>11</sup>

11. Scoufos' (**Exhibit 27**) and McMillan/Minks' (**Exhibit 9**)

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<sup>8</sup> See, e.g., **Exhibit 27** ("there is evidence that Tudor is a generally effective classroom teacher"); **Exhibit 16** at 6 ("ample evidence that Tudor is an excellent teacher").

<sup>9</sup> See, e.g., **Exhibit 16** at 17–18 (evaluating Tudor's scholarship at time of 2009-10 portfolio and concluding it is stronger than comparators in English Department).

<sup>10</sup> See, e.g., **Exhibit 16** at 25–26 (describing Tudor's service as on par with comparators).

<sup>11</sup> **Scoufos's** original denial letter (**Exhibit 65**) claimed Tudor lacked documentation to support her application but did not claim Tudor lacked merit. When Scoufos replaced the original denial letter with a backdated letter (**Exhibit 27** [backdated letter]; see also **Exhibit 68** and **Exhibit 66**) she set forth rationales that she did not believe to be true in January 2010. For example, Scoufos claimed Tudor had only one peer review publication and this was insufficient (but see **Exhibit 36**, where Scoufos inquires months after January 2010 whether open mic publication should be counted as scholarship). For example, Scoufos claimed there was no recommendation from the Department Chair (**Exhibit 27**) but in January 2011, Scoufos told Walkup that the Department Chair's evaluation form (which she had) was the equivalent to a letter of recommendation (**Exhibit 42**).

**McMillan** never provided his rationales to Tudor, but he did write a letter on Minks' behalf articulating rationales that neither actually believed (**Exhibit 9**). Compare **Exhibit 9** at PI1200 (claiming deficiency in number scholarship activities, and that three activities meet tenure standard but five do not) *with* 83:9–17 (must be "ongoing, continuous element" of scholarship to warrant tenure) and **Exhibit 35** at 99:5–10 (McMillan claiming he asked Scoufos what an open mic chapbook was when he evaluated Tudor's portfolio in February 2010) and **Exhibit 26** (Scoufos inquiring as to what an open mic chapbook is in April 2010). Compare **Exhibit 9** at PI1200 (construing Southeastern's Native American Symposium as local and thus not scholarship) *with* **Exhibit 50** at DOJ456 (Southeastern self-study report authored in part by Minks, McMillan, and Scoufos; identifying the Symposium as a "regional conference that brings in international participants to Southeastern's campus"). Compare **Exhibit 9** at PI1201 (service was deficient because it was heavily stacked with departmental committees) *with* **Exhibit 35** at 88:14–18 (identifying "continuousness" as "most critical piece" of service demonstration).

rationales for denying Tudor's 2009-10 application are not worthy of credence.<sup>12</sup>

12. As to Tudor's 2010-11 application: She was qualified as to teaching<sup>13</sup>, scholarship (even stronger than in the 2009-10 cycle)<sup>14</sup>, and service<sup>15</sup>.

13. McMillan did not actually believe the rationales he cited in the October 2010 memorandum (**Exhibit 12**) wherein he barred Tudor's reapplication in the 2010-11 cycle.<sup>16</sup>

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<sup>12</sup> **Tudor's scholarship: Exhibit 16** at 17–18 (Tudor's 2009-10 portfolio demonstrated she had more peer review articles than comparators who got tenure and promotion); *id.* at 18 (Scoufos' and McMillan's low ratings of Tudor's scholarship were "puzzling"); *id.* (Scoufos and McMillan both undercounted Tudor's peer review publications); *id.* (Scoufos and McMillan counted as scholarship accepted but not yet published peer review articles for comparators but not Tudor); **Exhibit 16** at 17 ("[b]ecause Parrish's record shows no scholarship produced during her time at Southeastern, I see no reasonable cause for rating her record of scholarship above the record of scholarship for Professor Tudor"). **Tudor's service: Exhibit 16** at 25 ("Given the difficulty of making meaningful distinctions among the service records of various candidates, it seems perplexing that all candidates except Tudor were considered by the administrators beyond their department to have served the University with distinction.")

<sup>13</sup> See evidence cited *supra* note 8. See also **Exhibit 29** at PI1299 ("Tudor's teaching is exemplary").

<sup>14</sup> See, e.g., **Exhibit 16** at 19 (evaluating eight peer review articles which should count towards scholarship in Tudor's 2010-11 portfolio and concluding on balance portfolio "shows an even much stronger scholarly profile, stronger than Cotter-Lynch's in terms of actual accomplished publication, and far stronger than Parrish's and Spencer's portfolios"); **Exhibit 29** at PI1300 ("Tudor has far exceeded any stated or unstated standard for scholarly production at this university").

<sup>15</sup> **Exhibit 16** at 25; **Exhibit 29** at PI1299–300 ("Tudor not only amply fulfills service expectations for faculty members, but is exemplary in the range, depth, and dedication she has shown in service to our university").

<sup>16</sup> Among other things, McMillan knew that university policy allowed Tudor to reapply in the 2010-11 term—as evidenced by an email chain months prior where

14. There is also evidence that the rationales McMillan listed in the October 2010 memorandum (**Exhibit 12**) are not worthy of credence.<sup>17</sup>

15. Southeastern administrators and RUSO general counsel Charles Babb repeatedly interfered with, sabotaged, and otherwise undermined Tudor's efforts to grieve mistreatment at Southeastern.

- a. "**FAC1**" appeal. Tudor filed an appeal with the Faculty Appellate Committee in February 2010 (**Exhibit 45**) demanding that Scoufos and McMillan provide her with rationales for their decisions to deny her 2009-10 application. The FAC1 found a violation of policy and ordered Scoufos and McMillan to provide their rationales to Tudor (**Exhibit 46**). McMillan interfered with the FAC1 process by advising Weiner to not timely notify Tudor of FAC1's decision and to later send Tudor a letter

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Tudor's entitlement to reapply was settled (**Exhibit 10** at EEOC919). *See also Exhibit 37* (former Regent Ogden expressing concern the bar on application and denial of 2009-10 application rationales were pretextual).

<sup>17</sup> For example, though McMillan claimed it would be "impossible" for Tudor to fix deficiencies he identified in 2009-10 cycle in a single year (**Exhibit 12**), others disagree. *See, e.g., Exhibit 4* at 149–50. There was also no evidence Tudor's reapplication would sow discord at Southeastern. *Compare Exhibit 12* (claiming not in "best interests of the university" and would be "disruptive to School of Arts and Sciences" and "will potentially inflame the relationship between faculty and administration") *with Exhibit 17* ¶ 7(e)–(h); **Exhibit 18** ¶ 8 ("administration's refusal to allow Tudor's reapplication made things exponentially more tense between the faculty and administration"). *See also Exhibit 18* ¶ 13(b)–(c) (McMillan claimed Southeastern's faculty did not support her and did not want her to return in 2014; Cotter-Lynch attests faculty did not feel this way and endeavored to disprove McMillan's false claims to President Burrage).

(**Exhibit 8**) wherein the administration refused to provide McMillan's and Scoufos' rationales to Tudor. *See also Exhibit 43* at 64–71 (Weiner describing McMillan's rationale for delaying delivery of **Exhibit 8** to Tudor).

- b. "**FAC 2**" appeal. Tudor filed another appeal with the Faculty Appellate Committee in August 2010 (**Exhibit 48**) regarding the administration's improprieties during her 2009-10 cycle. Defendants interfered with this process. Babb, Stubblefield, and Bryon Clark attended a FAC2 meeting (**Exhibit 6**). Babb advised FAC2 that Tudor's appeal could not be heard by FAC2 because he deemed it to not be a due process complaint. Babb also directed that, to the extent Tudor's appeal pointed to discrimination, FAC2 also could not hear it (setting up Tudor's discrimination issues to only be assessed by Stubblefield). The FAC2 ultimately dismissed Tudor's appeal on the grounds articulated by Babb (see, e.g, **Exhibit 60**).
- c. Stubblefield "investigation." Tudor filed an internal discrimination and environment complaint in August 2010 (**Exhibit 47**), grieving mostly issues in the 2009-10 cycle. In October 2010, Tudor advised Stubblefield of McMillan's bar on her application (see, e.g., **Exhibit 52**) and formally amended

her complaint to add a retaliation claim (**Exhibit 53**). Despite Stubblefield being close friends with McMillan and deeming him incapable of discrimination (*see, e.g., Exhibit 61* at 24:14–25 and 25:1–3; *id.* at 129:22–25 and 130:1–16; *id.* at 132:23–25 and 133:1–3), she was assigned to investigate. Stubblefield conducted a sham investigation. She did not ask McMillan whether he was biased against Tudor because of her presented gender (*see, e.g., Exhibit 61* at 129:11–15; *id.* 138:5–11 and 138:17–21). She sought out legal opinions stating that transgender people were not protected by law or policy (*see, e.g., Exhibit 19*). She did only perfunctory interviews (*see, e.g., Exhibit 18* ¶ 9; **Exhibit 2** ¶ 10(f)). She took no steps to investigate Tudor’s retaliation claim (*see, e.g., Exhibit 61* at 163:2–15; **Exhibit 54** at [investigatory notes ending in mid-Sept. 2010—weeks before Tudor even filed retaliation claim]). She fed sensitive information about her investigation to the respondents (*see, e.g., Exhibit 58*) and did not share similar information with Tudor (**Exhibit 2** ¶ 10(h)). Stubblefield also shared working drafts of her investigatory report with McMillan and gave him the opportunity to edit and make corrections as he saw fit (*see, e.g.,*

**Exhibit 59**).<sup>18</sup> Stubblefield’s final report found that Tudor did not face discrimination, but failed to address Tudor’s hostile work environment (**Exhibit 61** at 218:13–25 and 219:1–7 [claiming Tudor’s “hostile attitude” complaint was construed as a direction to investigate whether Tudor got “what she wanted”]), and retaliation claims. Tudor appealed Stubblefield’s report (**Exhibit 56**), which was heard by Minks—despite the fact that his own actions were the subject of her discrimination and retaliation complaints. Minks summarily sided with Stubblefield (**Exhibit 57**).

- d. **“FAC3” appeal.** Tudor filed another appeal with the Faculty Appellate Committee in late October 2010 (**Exhibit 44**) after she was barred from reapplication. McMillan conspired with Clark for the latter to serve as the liaison, which would be “cleaner,” contemplating court action (**Exhibit 7**). Clark was tasked with keeping deadlines, sharing information, and making up new rules for the process. The FAC3 ordered the administration (**Exhibit 55**) to let Tudor reapply. The administration refused to comply with the FAC3 order, and

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<sup>18</sup> Stubblefield admits that asking someone being investigated what she should or should not do is inappropriate. See **Exhibit 61** at 173:21–25 and 174:1–9.

Clark created new rules mid-process (**Exhibit 49**) that allowed the President to sit over the FAC3 as final appellate reviewer despite the fact that his own actions were the subject of the appeal. The new rules were never approved by the Faculty Senate (as was required at the time) and they have never been used in any other appeal (before or since). Tudor grieved the new rules (**Exhibit 62**) but her grievance was summarily denied (**Exhibit 63**). Minks overruled the FAC3 order (**Exhibit 51**).

16. During the 2010-11 cycle, English Department instructor Wilma Shires was promoted to a tenure-track assistant professor position. Ever since, Shires has taught the same classes Tudor taught. In the 2017-18 cycle, Dr. Shires is applying for promotion from assistant to associate professor with tenure. If Shires succeeds, she will have the same physical office, hold the same job, and teach the same classes Tudor would have if she had been given promotion and tenure in the 2009-10 or 2010-11 cycles. *See Exhibit 18 ¶ 15(a)–(j)*.

17. Defendants learned of many of the issues Tudor grieves in this lawsuit from third parties prior to Tudor's separation at the end of May 2011. *See, e.g., Exhibit 38* (sampling of complaints); **Exhibit 18 ¶ 12(a)–(d)** (describing complaints and authenticating supporting exhibits of complaints).



#### IV. STANDARD OF REVIEW

In addition to the standard articulated by Defendants (SJ Mot. at 177 at 9–10), Dr. Tudor points out that employers must do more at summary judgment than proffer a bald, self-serving defense. “An articulation not admitted into evidence will not suffice. Thus, the [employer] cannot meet its burden merely through an answer to the complaint or by argument of counsel.” *Texas Dep’t of Community Affairs v. Burdine*, 450 U.S. 248, 255 n.9 (1981).

#### V. ANALYSIS & AUTHORITIES

##### A. Tudor is protected by Title VII.

Defendants argue Tudor cannot make out a *prima facie* case on her discrimination (SJ Mot. at 19–20) and retaliation (*id.* at 28) claims because she is a transgender woman. Defendants’ rehash the argument they posed in their motion to dismiss (see, e.g., ECF No. 30 at 3 n.1). But this Court has already decided that Tudor is a member of a protected class,<sup>19</sup> which is law of the case.<sup>20</sup>

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<sup>19</sup> In denying Defendants’ motion to dismiss, this Court held that Tudor is protected under Title VII insofar as she is female but Defendants regarded her as male and further held that insofar as the discrimination Tudor alleges occurred “because of Dr. Tudor’s gender [...] she falls within a protected class.” ECF No. 34 at 5.

<sup>20</sup> “The law of the case doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *United States v. Monsivais*, 946 F.2d 114 (10th Cir. 1991) (*citing Arizona v. California*, 460 U.S. 605, 618 (1982) (cleaned up)). *See also United States*

Moreover, Defendants fail to convincingly explain why *Etsitty v. Utah Transit. Auth.*, 502 F.3d 1215, 1220 (10th Cir. 2007)<sup>21</sup> deprives Tudor of any protection from gender discrimination. Defendants' reliance on the United States Attorney General's recent pontifications on the nature of sex are neither sacrosanct nor evidence of scientific fact. *Contra* SJ Mot. at 19–20. Moreover the United States recognizes Tudor as female (**Exhibit 26**) and its former expert in this case (now assumed by Tudor), has provided the Court with an report opining on this issue which is supported by fact, rather than Defendants' wishful thinking on the eve of trial. *See generally* **Exhibit 1**.

## B. Hostile Work Environment Claim

### 1. Tudor has established a *prima facie* case.

For Tudor to survive summary judgment on her hostile work environment claim, she must show that a rational jury could find the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment and that she was targeted because of her gender. *Morris v. City of Colo. Springs*, 666 F.3d 654, 663–64 (10th Cir. 2012). Tudor must also show that she was offended by the

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*v. Webb*, 98 F.3d 585, 587 (10th Cir. 1996) (“Under law of the case doctrine, findings made at one point during the litigation become law of the case for subsequent stages of the same litigation.”).

<sup>21</sup> Though not dispositive, perhaps of interest to the Court: **Exhibit 13** at 147–53.

work environment and a reasonable person would likewise be offended. *Id.* at 664.

*Evidence supports Tudor’s environmental claim.* Tudor experienced more than a handful of sporadic insults, incidents, or comments.<sup>22</sup> Every single day over the course of a four-year period, Tudor endured restrictions on her restroom access (Part II ¶ 37), restrictions on her dress and make-up (**Exhibit 2** ¶ 2(b), and her fringe benefit health plan subjected her to unequal coverage of treatment (Part III ¶ 3). Tudor was targeted by these policies because she presented herself as female but Defendants treated her as if she were male.<sup>23</sup> *See* ECF No. 34 at 5. Peppered throughout this same period, Tudor was also subjected to discrete hostilities

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<sup>22</sup> Defendants argue Tudor’s environmental claim cannot be predicated on hostilities she did not immediately grieve at Southeastern or individually list in her EEOC filings (SJ Mot. at 12–13). But with an environmental claim, an employee need only file a charge within the statutory time period to redress like constituent hostilities. “It does not matter . . . that some of the component acts of the hostile work environment fall outside of the statutory time period.” *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002). So long as “an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court.” *Id.* Where there is a relationship between the acts alleged after and before the filing period, all acts shall be considered part of the same environmental claim. *Duncan v. Manager, Dep’t of Safety, City and Cnty. of Denver*, 397 F.3d 1300, 1308–09 (10th Cir. 2005). Here, Tudor grieves policies, practices, and discrete hostilities which targeted her because of her presented gender and/or retaliatory hostilities related to the former. The hostilities are linked in time—clustered in unbroken four year period—making them part of the same hostile environment.

<sup>23</sup> Part III ¶ 1 (evidence of individual actors failure to regard Tudor as female); Part III ¶ 3 (evidence that Tudor’s health plan exclusion operated by regarding her as other than female because she is transgender thereby depriving her of coverage of care accessible to other females).

from administrators targeting her gender (see, e.g., Part II ¶ 36 [complaints about pronoun misuse by Scoufos]), as well as gender neutral hostilities<sup>24</sup> (see, e.g., **Exhibit 3** at 65–66 [Scoufos’ ultimatum in April 2010]), and the Kafkaesque appeals and grievance proceedings she desperately pursued in hopes of securing the job she earned (Part III ¶ 15(a); Part III ¶ 15(b); Part III ¶ 15(c)).

Looking at the totality of the circumstances, the environment was subjectively hostile as evidenced by Tudor’s many complaints and the environment’s impact on her (**Exhibit 2** ¶ 5; *id.* ¶ 8(a)–(d); *id.* ¶ 9(a)–(c)). The environment is also objectively hostile—as a reasonable person in Tudor’s shoes would deem it objectionable. Indeed, Tudor’s as well would be deemed colleague Cotter-Lynch attests to as much (see, e.g., **Exhibit 18** ¶ 11(a)–(d)).

**2. Defendants cannot invoke *Faragher/ Ellerth* defense.**

Under *Faragher/ Ellerth*, an employer may avoid liability for hostilities it failed to redress where it establishes two elements: (1) the employer exercised reasonable care to prevent and promptly correct any statutorily prohibited harassment, and (2) the employee unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer.

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<sup>24</sup> “Facially neutral abusive conduct [Tudor grieves] can support a finding of [gender] animus sufficient to sustain a hostile work environment claim when that conduct is viewed in the context of overly [gender]discriminatory conduct.” *O’Shea v. Yellow Tech. Servs., Inc.*, 185 F.3d 1093, 1098 (10th Cir. 1999).

*Stapp v. Curry Cty. Bd. Comm'rs*, 672 Fed.Appx. 841 (10th Cir. 2016).

***Defendants fail at the first step.*** The bare fact that Defendants had policies in place during Tudor's employ is insufficient to warrant summary judgment in their favor. Defendants must demonstrate (and Tudor must fail to counter) that the policies could redress the hostilities alleged. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 72–73 (1986) (general nondiscrimination policy or one that fails to expressly identify the kind of discrimination complained of does not alert employees to the employer's interest in correcting that form of discrimination); *Debord v. Mercy Health Sys. of Kan., Inc.*, 737 F.3d 642, 653 (10th Cir. 2013) (employee whom points to deficiencies in policies rebuts employer's showing that policies satisfy the first element of *Faragher/Ellerth*). Defendants cannot meet this bar.

At the time of Tudor's employ, Defendants' policies did not expressly reach the kinds of discrimination and hostilities Tudor endured (see, e.g., Part II ¶¶ 34–35; Part III ¶¶3–4; Part III ¶ 5). Moreover, since Tudor's departure, Defendants have changed their policies so that they now expressly protect transgender persons from gender hostilities (Part III ¶ 2) and the health plan no longer contains the illicit exclusion (Part III ¶ 3). These changes are evidence that Defendants' policies were deficient during Tudor's employ. *See Debord*, 737 F.3d at 653.

***Defendants also fail at step two.*** Despite believing her complaints

to be futile (**Exhibit 2** ¶¶ 6, 7(a)–(e)), Tudor pursued remedial measures available to her at Southeastern (see, e.g., **Exhibit 61** at 218–19 [admitting Tudor grieved hostile environment at Southeastern]) as well as many discrete hostilities that are constituent parts of her environmental claim (see, e.g., Part III ¶ 15(a); *id.* ¶ 15(b); *id.* ¶ 15(c)). *Contra* SJ Mot. at 15 (“Defendants were deprived of any opportunity to conduct an investigation of the alleged harassment.”)

Second, the evidence makes clear that Defendants had actual knowledge of a critical mass of constituent hostilities. For instance, because Defendants themselves imposed and controlled hostile policies, like the health plan exclusion and about the restroom restrictions—no grievance notifying them of these repugnant policies was necessary. Additionally, Tudor grieved the environment generally, citing specific incidents through internal grievances and appeals *in writing* through her many grievances and appeals. As to other constituent hostilities, Tudor complained repeatedly to coworkers, mid-level administrators, and high-level administrators dozens of times both orally and in writing (**Exhibit 3** at 3–20). Tudor and third parties also complained publicly and directly to RUDO about many of the hostilities; Defendants still did nothing (see, e.g., Part III ¶ 17; **Exhibit 13** at 60–61 [RUSO detailing timing of response and steps to investigate]).

In response to all of these complaints—Defendants did nothing. This

deafening response defeats a *Faragher/Ellerth* defense. *See Fuller v. City of Oakland*, 47 F.3d 1522, 1529 (9th Cir. 1995) (“An employer whose sole action is to conclude that no harassment has occurred cannot in any meaningful sense be said to have ‘remedied’ what happened. Denial does not constitute a remedy.”).

### C. Sex Discrimination (Failure to Promote Claim<sup>25</sup>)

*Tudor has shown a prima facie case.* In order to establish her *prima facie* case, Tudor needs to show that she is a (1) member of a protected class; (2) she applied for and was qualified for a position; (3) despite being qualified, she was rejected; and (4) after her rejection, the position was filled. *Jones v. Barnhart*, 349 F.3d 1260, 1266 (10th Cir. 2003).

Tudor can show a *prima facie* case. She is a member of a protected class (ECF No. 34 at 5–6). It is undisputed that Tudor applied for promotion and tenure in the 2009-10 cycle. There is also evidence that Tudor was qualified for the position (see, e.g., Part III ¶ 9), which is sufficient to survive summary judgment.<sup>26</sup> As to the fourth factor, Tudor need not necessarily show another

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<sup>25</sup> In her Complaint, Tudor alleges that Defendants discriminated against because of her sex when they (a) denied her tenure and promotion application in the 2009-10 cycle (“failure to promote claim”) (see ECF No. 24 ¶¶ 162, 172) and (b) denied her the opportunity to reapply for tenure and promotion in the 2010-11 cycle, resulting in her termination (“termination claim”) (see ECF No. 24 ¶¶ 163, 164, 171, 172). But, Defendants move for summary judgment only on Tudor’s failure to promote claim. *See* SJ Mot. at 17–27.

<sup>26</sup> *Edwards v. Okla.*, 2017 WL 401259, at \*2 (W.D.Okla. 2017) (Cauthron, J.) (quoting *EEOC v. Horizon/CMS Healthcare Corp.*, 220 F.3d 1184, 1193 (10th Cir.

person was promoted at the exact time she was not. *Cf. Weinberger v. Okla.*, 2007 WL 593572 at \*6 (W.D.Okla. 2007) (Cauthron, J.) (evidence of disfavorable treatment sufficient in university setting). Tudor points to evidence that similarly situated colleagues received promotions around the same time with substantially similar credentials (see generally **Exhibit 16**). *See also Exhibit 18* ¶ 15(a)–(j) ( providing background on Wilma Shires, whom has ostensibly taken Tudor’s spot at Southeastern, evidence “same job” still exists). Defendants contention that Tudor cannot show discrimination because male and female comparators were treated better is without merit. Tudor need only show she was unfavorably treated; she need not show persons of her same gender were uniformly mistreated. *See Perry v. Woodward*, 199 F.3d 1126, 1137 (10th Cir. 1999).

*Nondiscriminatory rationale is pretextual.* Defendants argue that they denied Tudor’s 2009-10 application because it was “deficient” (SJ Mot. at 26). To survive summary judgment, Tudor need only show that there is a genuine dispute of material fact as to whether Defendants’ articulated reason is pretextual. *Perry*, 199 F.3d at 1135. She can establish pretext by pointing to “such weaknesses, implausibilities, inconsistencies, incoherencies,

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2000) (“relevant inquiry at the prima facie stage is not whether an employee is able to meet all the objective criteria adopted by the employer, but whether the employee has introduced some evidence that she possesses the objective qualifications necessary to perform the job sought”).



or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence." *Jones v. Barnhart*, 349 F.3d 1260, 1266 (10th Cir. 2003). Examples of pretext include, "prior treatment of plaintiff," "disturbing procedural irregularities (e.g., falsifying or manipulating . . . criteria); and the use of subjective criteria." *Garrett v. Hewlett-Packard Co.*, 305 F.3d 1210, 1217 (10th Cir. 2002) (cleaned up).

Tudor points to disturbing procedural irregularities in the 2009-10 cycle. For example, Scoufos refused to give her rationales to Tudor and later planted a backdated letter in Tudor's portfolio spelling out rationales after the fact (Part II ¶ 11). McMillan refused to provide *his* rationales for denial to Tudor, which he held to even after FAC1 ordered him to disclose them (Part III ¶¶ 15(a)). After Minks denied Tudor's application, he directed McMillan to write to Tudor purportedly memorializing Minks' (but not McMillan's) rationales. Making this odder still, McMillan's letter, dated in April 2010, was not dispatched to Tudor until June 2010 (Part II ¶ 13). Other oddities include that mid-process, the administration pressured Tudor to withdraw her application and threatened her with retaliation if she failed to comply (Part II ¶¶ 16–17).

Even if we treat the rationales in Scoufos' backdated letter and the Minks/McMillan letter as Defendants' nondiscriminatory rationales—these

evidence subjectivity giving rise to pretext. As Dr. Parker's report explains in excruciating detail, Scofos' and McMillan/Minks' evaluations of Tudor's scholarship (**Exhibit 16** at 17–18) and service (*id.* at 24–25) are puzzling—they do not map onto Southeastern's articulated criteria for tenure and promotion evaluation and they are totally irreconcilable with decisions made with regards to comparators whom qualified for tenure and promotion. On balance, construed in Tudor's favor, Scofos and McMillan/Minks' undervaluing of Tudor's qualifications, taking into account their prior acts and biases (see, e.g., Part III ¶ 1) can be construed as evidencing sex-based bias against Tudor. *Cf. Weinberger*, at \*6.

Taken together, the foregoing facts are more than enough to give rise to pretext. *See Edwards*, at \*4 (*quoting Johnson v. Weld Cnty., Colo.*, 594 F.3d 1202, 1211 (10th Cir. 2010)) (summary judgment improper where employee combats employers' reasons with “evidence that the employer didn't really believe its proffered reasons for action and thus may have been pursuing a hidden discriminatory agenda”).

#### **D. Retaliation Claim**

***Tudor has made a prima facie case.*** In order to establish her *prima facie* case, Tudor must show that she (1) engaged in protected activity; (2) she suffered an adverse employment action; and (3) there was a causal connection between the protected activity and the adverse action.

*Timmerman v. U.S. Bank, N.A.*, 483 F.3d 1106, 1123–24 (10th Cir. 2007).

Tudor meets this bar. First, it is beyond dispute that Tudor engaged in protected activities (both participatory and oppositional). For example, on August 30, 2010, Tudor filed internal grievances at Southeastern (see, e.g., Part III ¶ 15(b); *id.* ¶ 15(c)) and sent a letter to the U.S. Department of Education (“DOE”) complaining of discrimination and hostilities (Part II ¶ 20) in connection with the 2009-10 cycle. Tudor also informally complained to her colleagues (see, e.g., **Exhibit 3** at 13–15; **Exhibit 66**). Second, Tudor also suffered an adverse action. Being denied the opportunity to apply for tenure and promotion both deprived Tudor of an opportunity to seek promotion and tenure at Southeastern (a promotion) *and*, because 2010-11 was her “terminal year,” had the effect of triggering a nonrenewal, which resulted in her termination at the end of Spring 2010. Both the denial of an opportunity to apply and a decision triggering termination are adverse actions. Third, there was a causal connection between Tudor’s opposition to the administration’s treatment of her in the 2009-10 cycle. Within 36 days of Tudor filing the FAC2 appeal, the grievance initiating the Stubblefield “investigation,” and sending a letter to the DOE, McMillan issued his memorandum barring her reapplication in the 2010-11 cycle (**Exhibit 12**). *See Ramirez v. Okla. Dep’t of Mental Health*, 41 F.3d 584, 596 (10th Cir. 1994) (one and one-half month period between protected activity and adverse

action may, by itself, establish causation).

*Nonretaliatory rationale is pretextual.* To avoid summary judgment Tudor need only point to a dispute of material fact undergirding Defendants' proffered nonretaliatory rationale. She can do so. Defendants argue that Tudor's reapplication in the 2010-11 cycle was barred because reapplication was "extraordinary [] and contrary to administrative practice" where a professor's application had been denied by the President in a prior cycle (SJ Mot. at 28–29). Yet, evidence shows that there was no automatic bar on reapplication and others were treated more favorably (see Part II ¶ 19). Moreover, to the extent that McMillan now claims policy prohibited reapplication after denial by the president, this is a shift from McMillan's rationale memorialized in the very memorandum he wrote to bar Tudor's reapplication and is thus unworthy of credence. **Exhibit 12** ("I recognize that the policy does not proscribe a subsequent application").

## VI. Conclusion

For the reasons set forth herein, Dr. Tudor respectfully requests the Court deny Defendants' Motion for Summary Judgment.

Dated: October 13, 2017

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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 began this Title VII action in March of 2015. Ten days later, Plaintiff Tudor filed a Complaint in Intervention and was permitted to intervene in the action. The Complaint raised claims of sex discrimination and retaliation arising under Title VII. Plaintiff Tudor's Complaint in Intervention added a hostile work environment claim. Plaintiffs entered a common interest agreement and have worked closely in preparing this claim for trial. In August of 2017, Plaintiff United States settled its claims with Defendants. Plaintiff United States now seeks dismissal from this action. Defendants agree to Plaintiff United States' request for dismissal; however, Plaintiff Tudor objects.

Plaintiff Tudor raises four concerns which drive her objection to the request for dismissal. First, she is concerned that if Plaintiff United States' claims are dismissed with prejudice, that dismissal could be construed as a judgment or ruling which precludes the continued litigation of her mirror claims. In response, both Defendants and Plaintiff United

States acknowledge that their settlement agreement would not have any impact on the merits of Plaintiff Tudor's claims. Thus, this argument does not provide a basis to deny the request for dismissal.

Next Plaintiff Tudor argues that the dismissal of United States may trigger an election of remedies as to Tudor and her claims. Once again, the Court finds no support for Plaintiff's concerns. In the event that Plaintiff prevails at trial in this matter and is awarded damages, any concern about double recovery or the effect of the settlement can be addressed at that stage. To the extent Plaintiff seeks prospective relief, any issues related to such an award may be addressed at the time the issue arises. Delaying dismissal of Plaintiff United States from this action is not necessary to preserve the appropriate chance to address those matters.

Next Plaintiff Tudor argues that she should be permitted to continue to use experts originally retained and designated by Plaintiff United States – Drs. Parker and Brown. Defendants object, arguing that avoiding the cost of the depositions of those experts was one of the reason it settled the case with Plaintiff United States. The Court is not persuaded by Defendants' arguments. In her witness list, Plaintiff Tudor designated the witnesses listed by Plaintiff United States which included these expert witnesses. Further, Defendants did not object to Plaintiff Tudor's adoption of Plaintiff United States' expert witnesses. Additionally, it is apparent from the parties' briefs that Plaintiff Tudor advised Defendants of her intent to use these experts and that she was willing to carry forward with their previously set depositions. It was Defendants who declined this opportunity. Accordingly, the Court finds that Plaintiff Tudor will be permitted to offer into evidence

the expert testimony of Drs. Parker and Brown without regard to the dismissal of Plaintiff United States.

Finally, Plaintiff wishes to have the Court impose certain conditions on Plaintiff United States, preventing it from making filings or public statements regarding the settlement. As Plaintiff United States notes, Plaintiff Tudor has failed to offer any legal authority supporting her request for such a restriction and for this reason that request will be denied.

Defendants have also filed a Motion for Protective Order seeking an order from the Court prohibiting Plaintiff United States and/or Plaintiff Tudor from making any statement to members of the media regarding the settlement and/or its terms. As the basis for its request, Defendants argue that absent the requested protective order it is likely the jury pool will be irrevocably tainted by media coverage of the Plaintiff United States' resolution of the case.

Defendants' request will be denied. First, Defendants have failed to overcome the presumption attached to the openness of court filings. While in certain instances, parties may agree to a confidential settlement agreement, that is typically a matter of contract between the parties. As the parties here could not reach agreement on those terms, the general right of publicity attaching to court proceedings governs. Further, the Court finds that appropriate voir dire and instruction from the Court will eliminate any issues of bias or prejudice arising from pretrial coverage. Accordingly, Defendants' request for a protective order will be denied.



For the reasons set forth herein, the Stipulation and Joint Motion for Dismissal of Plaintiff United States' Complaint with Prejudice (Dkt. No. 164) is GRANTED IN PART. All claims brought by Plaintiff United States against Defendants are dismissed with prejudice. However, Plaintiff Tudor may offer as evidence in this case the expert opinions and reports of Drs. Parker and Brown. Defendants Southeastern Oklahoma State University and the Regional University System of Oklahoma's Motion for Entry of Protective Order (Dkt. No. 156) is DENIED. United States' Motion to Compel Production of ESI Withheld on the Basis of Privilege (Dkt. No. 146) and 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) (Dkt. No. 149) are STRICKEN AS MOOT.

IT IS SO ORDERED this 17th day of October, 2017.



ROBIN J. CAUTHRON  
United States District Judge

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

UNITED STATES OF AMERICA, )

Plaintiff, )

and )

DR. RACHEL TUDOR, )

Plaintiff/Intervenor, )

v. )

Case No. 5:15-CV-00324-C

SOUTHEASTERN OKLAHOMA )  
STATE UNIVERSITY, )

and )

THE REGIONAL UNIVERSITY )  
SYSTEM OF OKLAHOMA, )

November 8, 2017 **Trial Docket**

Defendants. )

**JOINT PRETRIAL REPORT**

TO THE HONORABLE JUDGE ROBIN CAUTHRON:

Pursuant to this Court’s Order (ECF No. 142 as modified by ECF No. 175), Plaintiff/Intervenor Dr. Rachel Tudor and Defendants Southeastern Oklahoma State University (“Southeastern”) and the Regional University System of Oklahoma (“RUSO”), jointly submit this Pretrial Report through their undersigned counsel.

**COUNSEL APPEARING AT TRIAL**

**Appearing for Plaintiff/ Intervenor:**

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### **Jury Trial Demanded**

**1. BRIEF PRELIMINARY STATEMENT.** Plaintiff/Intervenor Dr. Rachel Tudor, an individual, sues her former employers Southeastern Oklahoma State University (“Southeastern”) and the Regional University System of Oklahoma (“RUSO”), alleging she was: (a) subjected to a hostile work environment; (b) discriminated against based on her sex when she was denied tenure and promotion during the 2009-10 application cycle; (c) discriminated against on the based on her sex when she was denied the opportunity to reapply for tenure and promotion in the 2010-11 application cycle; (d) retaliated against when she was denied the opportunity to reapply for tenure and promotion in the 2010-11 application cycle. Dr. Tudor sues for violation of her civil rights under Title VII of the Civil Rights Act of 1964, as amended.

Defendants contend Plaintiff/Intervenor was never discriminated against nor retaliated against, and was never subjected to a hostile work environment. In 2008, Dr.

Tudor's first application for tenure resulted in the EHL committee voting 0-5 against recommending her for tenure. Tudor withdrew her application before it could be sent to the Dean and higher administration for further consideration. In 2009 Tudor 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. Tudor's portfolio was then reviewed independently first by the Dean of the College of Arts and Sciences, and then by the University Vice-President for Academic Affairs, both of whom had concerns about Tudor's application and recommended against the granting of tenure. In an attempt to assist Tudor, 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. She was advised that if the portfolio were allowed to continue being considered during the 2009-2010 academic year, tenure would be denied due to the portfolio's deficiencies. Tudor surprised the University administration by refusing to accept the offer, and refused to withdraw the portfolio. Thus, ultimately her application for tenure was denied. She was subsequently barred from further reapplication due to her tenure denial.

**2. JURISDICTION.** This Court has jurisdiction over this Title VII sex discrimination (Plaintiff/Intervenor's Count II) and retaliation (Plaintiff/Intervenor's Count III) lawsuit under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345. Defendants contend that the Court lacks jurisdiction over Intervenor's hostile work environment claim (Plaintiff/Intervenor's Count I),

contending that Plaintiff/Intervenor failed to exhaust administrative remedies. Plaintiff/Intervenor contends that she exhausted administrative remedies over Count I. Tudor also contends that the Court already decided the exhaustion issue. *See* ECF No. 34 at 2–4 (holding Tudor exhausted her environmental claim).

**3. STIPULATED FACTS.**

- a. Dr. Rachel Tudor began employment at Southeastern on August 1, 2004 as an Assistant Professor, which is a tenure-track position.
- b. Based on the number of Defendants' total employees, the \$300,000 damage cap at 42 U.S.C. § 1981a(b)(3)(D) applies to this case.
- c. On or about August 30, 2010, Dr. Tudor filed a discrimination complaint with Southeastern's Affirmative Action Officer, Dr. Claire Stubblefield.
- d. In February 2011, Dr. Tudor was non-renewed by Southeastern, resulting in her termination in late May 2011.
- e. For the purposes of this lawsuit only, Defendants acted as a single employer for the purposes of Title VII.

**4. LEGAL ISSUES**

**A. Plaintiff/Intervenor:**

- 1) Whether Tudor is a member of a protected class for Title VII purposes (Plaintiff-Intervenor contends this was already decided in the affirmative in ECF No. 34);

- 2) Whether Tudor faced unwelcome harassment based on her sex between announcing her gender transition in mid-2007 and her separation in late May 2011;
- 3) Whether the harassment Tudor faced was sufficiently severe or pervasive as to alter a term, condition, or privilege of employment and thereby created an abusive working environment;
- 4) Whether Tudor's 2009-10 application for tenure and promotion to Associate Professor was denied because of her sex;
- 5) Whether Tudor's sex was a motivating factor in Defendants' decision to deny Tudor's 2009-10 application for tenure and promotion to Associate Professor;
- 6) Whether Defendants barred Tudor from reapplying for tenure and promotion during the 2010-11 cycle because of her sex;
- 7) Whether Tudor's sex was a motivating factor in Defendants' decision to bar Tudor from reapplying for tenure and promotion during the 2010-11 cycle;
- 8) Whether Defendants barred Tudor from reapplying for tenure and promotion during the 2010-11 cycle in retaliation for her protected activities;
- 9) The extent of Tudor's damages for the hostile work environment;
- 10)The extent of Tudor's damages for sex discrimination;
- 11)The extent of Tudor's damages for retaliation;
- 12)Whether Tudor is entitled to reinstatement with promotion and tenure to

Associate Professor at Southeastern; and

13) Whether Tudor is entitled to her attorneys' fees and costs.

**B. Defendants:**

1) TITLE VII - HOSTILE WORK ENVIRONMENT

a. Plaintiff/Intervenor has failed to state a Title VII claim of hostile work environment.

b. Statute of limitations/failure to exhaust/jurisdiction. Plaintiff/Intervenor failed to properly exhaust this claim by timely filing an EEOC charge. Factual claims not contained in EEOC Charge are not properly exhausted.

c. Failure to exhaust discreet claims – no grievance filed with Defendants re: alleged hostile work environment.

d. Any bathroom usage/restriction during the period of 2004 – 2011 was not an adverse employment action.

e. Failure to mitigate damages.

f. Title VII damages are capped at \$300,000 pursuant to 42 U.S.C. §1981a(b)(3)(D).

2) TITLE VII – DISCRIMINATION

a. Defendants allege Plaintiff/Intervenor was denied tenure, and subsequently non-renewed, for legitimate, nondiscriminatory reasons.



- b. Transgender is neither a “sex” onto itself nor a protected class under Title VII.
- c. Plaintiff/Intervenor cannot show she was treated less favorably than similarly situated employees outside of a protected class to which she actually belongs.
- d. Failure to mitigate damages.
- e. Title VII damages are capped at \$300,000 pursuant to 42 U.S.C. §1981a(b)(3)(D).

3) TITLE VII – RETALIATION

- a. Defendants allege Plaintiff/Intervenor was denied tenure, and subsequently non-renewed, for legitimate, nondiscriminatory and non-retaliatory reasons.
- b. Transgender is neither a “sex” unto itself nor a protected class under Title VII.
- c. Plaintiff/Intervenor did not engage in protected activity.
- d. Plaintiff/Intervenor did not suffer an adverse employment action resulting from alleged protected activity.
- e. Failure to mitigate damages.
- f. Title VII damages are capped at \$300,000 pursuant to 42 U.S.C. §1981a(b)(3)(D).

g. Decisions regarding equitable/prospective relief (available only if Plaintiff/Intervenor prevails on discrimination claim) are for the court to decide, not a jury.

**5. CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.**

**A. Plaintiff/ Intervenor:<sup>1</sup>**

- 1) Dr. Tudor contends that Defendants, acting as a single employer for the purposes of Title VII, discriminated against Dr. Tudor because of her sex, subjected her to a hostile work environment, and retaliated against her because she engaged in activity protected by Title VII.
- 2) Dr. Tudor contends that she was subjected to a hostile work environment between her announcing her gender transition from male to female in Summer 2007 until her separation from Defendants in late May 2011. At trial, Tudor will point to evidence showing that Defendants placed conditions on her employment such that (a) Tudor was not permitted to use the women's restroom on campus; (b) Tudor was not permitted to wear short skirts; and (c) Tudor was not allowed to wear make-up that would be deemed harassing to her male colleagues. Tudor endured these conditions of her employment until her separation from Defendants in late May 2011. The conditions that Southeastern placed on Tudor's employment were

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<sup>1</sup> Defendants object to Plaintiff/Intervenors's unnecessary recitation of disputed facts in this section, as these

hostile to Tudor and contributed to her hostile work environment.

- 3) Between 2007 and 2011, Defendants provided health plans as a fringe benefit to employees, including professors at Southeastern. During this period, Defendants' health plans all contained a categorical exclusion on all care sought by transgender persons to treat gender dysphoria. As a result of this exclusion, Tudor was barred from seeking coverage of counseling, pharmaceutical (including hormone therapy and related blood tests), and surgical (including genital and breast reconstruction surgeries) because the exclusion treated Tudor differently than nontransgender women under the same plan. Under the terms of the plans between 2007 and 2011, the plans covered the same treatments Tudor needed to treat her gender dysphoria so long as the treatments were sought by nontransgender persons for conditions other than gender dysphoria. The health plan exclusion was hostile to Tudor and contributed to her hostile work environment.
- 4) From 2007 through Tudor's separation in late May 2001, Tudor also endured discrete instances of discriminatory and retaliatory hostilities which contributed to her hostile work environment.
- 5) Dr. Tudor contends that Defendants discriminated against her on the basis of sex when they (a) denied the application for tenure and promotion that she submitted during the 2009-10 cycle and (b) refused to let her apply for

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disputed facts are not representative of Plaintiff-Intervenor's Contentions and Claims, nor appropriately included in

tenure and promotion during the 2010-11 cycle.

- 6) Dr. Tudor also contends that the Defendants retaliated against her in violation of Title VII when they refused to permit her to apply for tenure and promotion during the 2010-11 academic year.
- 7) Defendants claim that they denied Dr. Tudor's application for tenure and promotion because she was not qualified. This reason is pretext for sex discrimination. Among other things, Tudor will prove at trial that: (a) Defendants treated Tudor differently than similarly situated non-transgender professors whom conformed to traditional gender stereotypes during the Defendants' review of her tenure and promotion application; (b) the Defendants deviated from their own established policies and procedures in ways that adversely affected Dr. Tudor's ability to obtain tenure and promotion; (c) the Defendants' decision-makers in this case made statements and took actions which indicated that they did not want Dr. Tudor to obtain tenure or promotion because of her gender identity, gender transition, and non-conformance with gender stereotypes.
- 8) Shortly after Tudor made Title VII-protected complaints about Defendants' discrimination, the Defendants decided not to permit her to apply for tenure and promotion during the 2010-11 cycle. At first, the Defendants conceded that no policy prohibited Tudor from reapplying during the 2010-11 cycle

but they still decided not to let her apply. After Tudor grieved that decision the Defendants changed their position and falsely claimed that their policies prohibited professors from applying for tenure more than once. Tudor will present this and other evidence at trial to prove Defendants' reasons for refusing to permit Tudor to apply for tenure and promotion during the 2010-11 cycle were pretext for discrimination and retaliation.

- 9) Dr. Tudor seeks monetary relief in the form of backpay; compensation for lost employee benefits; and compensation for Dr. Tudor's loss of enjoyment of life, damage to her professional reputation, and other non-economic damages.
- 10) Dr. Tudor also seeks injunctive relief, as described in her Complaint-in-Intervention (ECF No. 24 at 33–34), which would include, among other things, an order that the Defendants revise their policies, provide training to their employees, and award Dr. Tudor the position of Associate Professor with tenure.
- 11) Should Tudor prevail on her hostile work environment claim, the Court may award attorneys' fees and costs.
- 12) Should Tudor prevail on her sex discrimination claim, the Court may award attorneys' fees and costs.
- 13) Should Tudor prevail on her retaliation claim, the Court may award attorneys' fees and costs.

**B. Defendants:**

1) TITLE VII - HOSTILE WORK ENVIRONMENT

- a. No hostile work environment existed.
- b. Plaintiff/Intervenor failed to exhaust administrative remedies.
- c. Defendants had preventive and remedial measures of which Plaintiff/Intervenor failed to avail herself.
- d. Title VII damages are capped at \$300,000 pursuant to 42 U.S.C. §1981a(b)(3)(D).

2) TITLE VII – DISCRIMINATION

- a. Defendants allege Plaintiff/Intervenor was denied tenure, and subsequently non-renewed, for legitimate, nondiscriminatory reasons.
- b. Defendants had preventive and remedial measures of which Plaintiff/Intervenor failed to avail herself.
- c. Defendants had policies and procedures in place to report, investigate and address discrimination complaints.
- d. Defendants followed proper policies and procedures in addressing Plaintiff/Intervenor's discrimination complaints/grievances.
- e. Defendants' employees were properly trained to conduct investigations re: alleged discrimination.

3) TITLE VII – RETALIATION

- a. Defendants allege Plaintiff/Intervenor was denied tenure, and subsequently non-renewed, for legitimate, nondiscriminatory and non-retaliatory reasons.
- b. Defendants had preventive and remedial measures of which Plaintiff/Intervenor failed to avail herself.
- c. Defendants had policies and procedures in place to report, investigate and address discrimination complaints.
- d. Defendants followed proper policies and procedures in addressing Plaintiff/Intervenor's discrimination complaints/grievances.
- e. Defendants' employees were properly trained to conduct investigations re: alleged discrimination.

4) MONETARY DAMAGES AND PROSPECTIVE INJUNCTIVE RELIEF

- a. Plaintiff/Intervenor is not entitled to recovery of any type of damages or injunctive relief.
- b. In the event of a finding of discrimination by Defendants, Plaintiff/Intervenor's damages, if any, should be limited to back pay.
- c. No reinstatement, tenure nor front pay should be awarded to Plaintiff/Intervenor.
- d. In the event Plaintiff/Intervenor is awarded any award of pay, Plaintiff/Intervenor should be limited to not more than one (1) year's salary.

**6. EXHIBITS.**

Unlisted exhibits will not be admitted unless, by order of the court, the final pretrial order is amended to include them.

**A. Plaintiff/Intervenor:**

<b>No.</b>	<b>Title/Description</b>	<b>Objection</b>	<b>FRE Relied Upon</b>
1.	Portions of Tudor 2009-10 promotion and tenure portfolio (PI001309 – 1335)		901
2.	English, Humanities, & Languages Tenure/Promotion Guidelines (PI001177 – 1180)		901
3.	Policy 3.7.4 Role of the Faculty (EEOC000300-01)		
4.	Policy 4.0 Faculty Personnel Policies (EEOC000303 – 349)		
5.	Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet for Tudor (DEF001133 – 34)		
6.	11/14/2005 letter from Mangrum to Spencer (EEOC003570)		401, 402, 403, 801, 802
7.	Emails dated 8/26/2010 (DEF001144)	Vague, improperly identified	
8.	10/11/2010 Tudor grievance (DEF005644 – 5659)		
9.	1/28/2011 Tudor email to Prus (PI000743)		401, 402, 403, 801, 802, 901
10.	1/19/2011 Findings and Conclusions on Gender Discrimination Complaint (DEF001796 – 1801)		
11.	Memorandum to Regent Connie Reilly (DEF001765 – 68)		
12.	Document Retention Notice Pursuant to Charge of Discrimination (DEF001106 – 07)		401, 402, 403
13.	Southeastern Oklahoma State University Administrative Organization Chart (DEF001314)		
14.	4/4/2007 letter from F. Porter		401, 402,



	(EEOC000592)		403, 801, 802, 901
15.	Conway notes and emails re Tudor gender transition (DOJ000009 – 14)	Overly broad; Defendants’ reserve the right to supplement these objections.	901
16.	Diagram of Morrison Hall with Conway’s handwritten markings from her deposition (Plaintiff’s deposition Exhibit 27)		401, 402, 403
17.	9/3/2010 emails between Conway and Stubblefield (DEF004701)		401, 402, 403, 801, 802
18.	9/15/2010 letter from U.S. Department of Education to Minks (DOE000004)		401, 402, 403, 801, 802
19.	Defendants’ submission to EEOC (DEF005279 – 86)	Not a complete copy of what Defendants submitted to EEOC.	106, 901
20.	Nondiscrimination, Equal Opportunity and Affirmative Action Policy (EEOC000265)		
21.	Nondiscrimination, Equal Opportunity and Affirmative Action Policy (DEF005879)		407, 901
22.	Sexual Harassment Policy (DEF006929 – 31)		401, 402, 403
23.	Sexual Harassment Policy (DEF006955 – 56)		401, 402, 403
24.	Faculty Senate Minutes 1/19/2011 (PI000400 – 07)		401, 402, 403, 901
25.	Online petition to reinstate Tudor and selected signatures (PI000815 and PI000995)		401, 402, 403, 801, 802, 901
26.	4/1/2011 letter to Tudor (EEOC000593)		
27.	Orientation for New Faculty (DEF001311 – 12)		
28.	Legal Briefing on Sexual Harassment and attendance sheets (DEF008898 – 8910)		401, 402, 403, 801, 802
29.	Training materials “Sexual Harassment: What Is and Isn’t Acceptable” (DEF008915 – 8946)		401, 402, 403, 801, 802
30.	4/29/2010 letter from Weiner to Tudor (EEOC000183 – 84 and EEOC000908)		801, 802
31.	2/26/2010 Tudor grievance (EEOC000927 – 29)		
32.	3/25/2010 Faculty Appellate Committee		

	determination on Tudor's 2/26/2010 grievance (DEF005125)		
33.	3/4/2010 Tudor email to Weiner with email chain (EEOC000174)		401, 402, 403, 801, 802
34.	3/21/2010 and 3/22/2010 emails between Weiner and Tudor RE: Tudor Appeal (EEOC001481 – 82)	Not properly identified; Defendants reserve the right to supplement objections as document is more clearly identified.	
35.	4/1/2010 email from Weiner (EEOC000919 – 20)		
36.	Policy 3.7.3 Role of the President (EEOC000299 – 300)		
37.	4/6/2010 Tudor email to Weiner (EEOC000177)		401, 402, 403, 801, 802
38.	4/20/2010 Weiner email to Tudor (EEOC000180)		401, 402, 403, 801, 802
39.	5/7/2010 Tudor appeal to Minks (EEOC000185)		901
40.	8/30/2010 Tudor discrimination complaint filed with Stubblefield (DEF001279 – 84; DEF005176 – 5187; and EEOC000895)	Defendants do not object to one complete copy of Tudor's grievance (DEF5171-5187)	
41.	8/30/2010 Tudor grievance filed with Minks (DEF001158 – 1175)		
42.	9/16/2010 Weiner email to Stubblefield with email chain (EEOC000031 – 33)		401, 402, 403, 801, 802
43.	2/2/2005 memorandum from Snowden to Johnson re Fridley promotion and tenure application (EEOC002961)		401, 402, 403
44.	Spencer Tenure Application Vita (EEOC003523 – 3534)		401, 402, 403
45.	12/1/2006 Mischo letter to Mangrum re Spencer promotion and tenure application (DEF007506 – 07)		401, 402, 403, 801, 802
46.	1/11/2007 Mangrum letter to Spencer re Spencer promotion and tenure application (DEF007505)		401, 402, 403, 801, 802
47.	2/12/2007 D. McMillan memo to Snowden re Spencer promotion and tenure		401, 402, 403, 801, 802

	application (DEF007504)		
48.	4/18/2007 Snowden letter to Spencer re promotion and tenure application (DEF007503)		401, 402, 403, 801, 802
49.	9/8/2010 Snowden letter re Spencer promotion and tenure application process (EEOC000896)		401, 402, 403, 801, 802
50.	2/12/2007 D. McMillan memo to Snowden re Spencer promotion and tenure application (DEF012992)		401, 402, 403, 801, 802
51.	Spencer curriculum vita (DEF007311 – 19)		401, 402, 403
52.	9/21/2010 Clark email to Scoufos re Tudor grievance (DEF001155 – 56)		
53.	Minutes of Faculty Appellate Committee 9/22/2010 meeting and 9/30/2010 decision on Tudor grievance (DEF000144 and DEF001152)		
54.	1/31/2011 Clark email re Tudor grievance (DEF005672)		
55.	Procedure attached to Clark 1/31/2011 email (DEF005673)		
56.	1/3/2011 Walkup memo re Tudor grievance (PI001244 – 47)		801, 802
57.	2/22/2011 D. McMillan memo to Clark re Tudor grievance (DEF001331)		
58.	3/4/2011 Tudor email to Clark re Tudor grievance (DEF001332 – 37)		
59.	3/25/2011 Minks letter re Tudor grievance (DEF005687)		
60.	A Self-Study Report for Continued Accreditation (DOJ000331 – 548)		401, 402, 403, 801, 802, 901
61.	Mischo curriculum vita (DEF007284-86)		401, 402, 403, 901
62.	2/23/2010 D. McMillan memo to Minks re 1/25/2010 letter from Faculty Senate (PI001187 – 88)		
63.	Faculty Development Agreement and Follow-Up for Tudor 2005 – 2006 (EEOC000801 – 04)		
64.	Follow Up Faculty Development Agreement for Tudor 2006 – 2007 (EEOC00791 – 793)		

65.	Faculty Development and Evaluation Summary for Tudor 2007-08 evaluation period (EEOC000781 – 82)		
66.	Follow Up Report Faculty Development Agreement for Tudor 2007-08 (EEOC000778 – 80)		
67.	Faculty Development and Evaluation Summary for Tudor 2008-09 evaluation period (DEF007392 – 93)		
68.	Faculty Promotion and Tenure Evaluation Summary for Parrish by Mischo (DEF007389 – 90)		401, 402, 403
69.	11/9/2009 email from Tudor to Mischo with email chain re meeting with Coleman (PI000588)		801, 802
70.	12/1/2009 email from Mischo to Tudor re promotion and tenure recommendation (PI000592)		801, 802
71.	Faculty Development Agreement for Tudor 2009-10 (EEOC000915 – 16)		
72.	1/12/2010 memo from Scoufos to Tudor re promotion and tenure application recommendation (DOJ000151)		
73.	2/19/2010 Tudor email to Scoufos requesting reasons for promotion and tenure recommendation (EEOC000162 – 64)		
74.	2/19/2010 Tudor email to McMillan requesting reasons for promotion and tenure recommendation (EEOC000166 – 68)		
75.	Tudor response to Defendants' Request for Admission No. 8		801, 802
76.	9/15/2010 Mischo email to Tudor with email chain re Scoufos' recommendation on Tudor's promotion and tenure application (PI000662)		801, 802
77.	1/12/2010 Scoufos memo to D. McMillan re recommendation on Tudor promotion and tenure application (DOJ000150)		
78.	11/30/2010 Scoufos email re Tudor article accepted for publication (EEOC000063 – 64)		401, 402, 403
79.	4/30/2010 D. McMillan memo to Tudor re Denial of Application for Tenure and		

	Promotion (DEF001186 – 87)		
80.	Audio recording of EEOC interviews of Stubblefield, Mischo, and Weiner (EEOC004567)		801, 802, 901
81.	9/17/2010 D. McMillan email chain to Scoufos forwarding Stubblefield email Subject “Discrimination Cases-Litmus Test” (EEOC000877)		401, 402, 403, 801, 802
82.	10/7/2010 Tudor email to Stubblefield subject “retaliation” (EEOC000036)		
83.	10/7/2010 Tudor email to Stubblefield subject “letter” (EEOC000040)		502, 801, 802
84.	10/5/2010 D. McMillan memo to Tudor re Application for Tenure and Promotion during the 2010 – 2011 Academic Year (DEF005188)		
85.	10/13/2010 Tudor memo to Stubblefield (EEOC000037-39)		801, 802
86.	10/14/2010 email chain between D. McMillan and Stubblefield (EEOC000044)		401, 402, 403, 801, 802
87.	10/28/2010 Tudor amended discrimination complaint to Stubblefield (DEF001290 – 96)		
88.	1/19/2011 email chain between Legako and Stubblefield (EEOC000066-67)		502
89.	Stubblefield’s timeline from investigation of Tudor’s discrimination complaint (EEOC001183 – 86)		401, 402, 403, 502
90.	8/3/2011 Stubblefield memo to Scoufos enclosing EEOC’s document retention notice (EEOC000825 – 29)		401, 402, 403, 502
91.	8/17/2011 Scoufos memo to Stubblefield transmitting copy of Tudor file from School of Arts & Sciences (EEOC000824)		401, 402, 403, 502
92.	11/20/2009 Faculty Development and Evaluation Summary for Tudor (EEOC000972 – 73)		
93.	3/21/2012 letter from EEOC to Stubblefield (EEOC000002 – 03)		401, 402, 403, 801, 802
94.	Southeastern’s response to requests for information from EEOC (EEOC000239)	Incomplete as identified; objections reserved	
95.	5/8/2015 email from Scoufos to		

	Southeastern faculty regarding change to discrimination policy (Plaintiff's deposition Exhibit 118)		
96.	4/21/2010 memo from Babb to D. McMillan regarding Southeastern's Promotion and Tenure Policy (PI001195 – 97)		502
97.	12/3/2010 Faculty Appellate Committee decision on Tudor's 10/11/2010 grievance (PI000411)		
98.	1/24/2011 emails between Babb and Clark re "Addition to Grievance Policy" (DEF005674)		502
99.	Audio recording of EEOC's interview of Minks (EEOC004564-65)		613, 801, 802
100.	Parrish curriculum vita (EEOC001681 – 87)		401, 402, 403, 901
101.	Defendants' Response to United States' First Set of Interrogatories Propounded Upon Defendants	Not best evidence.	401, 402, 403, 613
102.	Barker curriculum vita (DOJ000173 – 76)		401, 402, 403, 901
103.	Faculty Promotion and Tenure Evaluation Summary for Tudor by Scoufos (EEOC000857 – 58 or DEF001137-38)		
104.	Faculty Promotion and Tenure Evaluation Summary for Tudor by D. McMillan (EEOC007703 – 04)		
105.	4/6/2010 memo from Tudor to Scoufos regarding offer made to Tudor relating to her application for promotion and tenure (EEOC001483)		801, 802
106.	10/19/2010 D. McMillan memo to Hall and Clark regarding Tudor grievance (DEF001323 – 24)		
107.	1/9/2011 Tudor memo to Hall regarding Tudor's grievance (PI001248 – 50)		801, 802
108.	1/28/2011 Tudor appeal of Stubblefield's findings on Tudor's discrimination complaint (DEF001297 – 99)		
109.	2/21/2011 Minks letter to Tudor regarding Tudor's discrimination complaint (DEF001300)		
110.	5/6/2011 letter from AAUP to Minks (EEOC000213 – 16)		401, 402, 403, 801, 802

111.	10/26/2010 Dear Colleague letter from DOE (PI000558 – 67)		401, 402, 403, 801, 802
112.	1/3/2011 Scoufos email to Walkup (DEF001131)		401, 402, 403
113.	1/3/2011 Scoufos email to Walkup forwarding email from Coleman (DEF001139)		401, 402, 801, 802
114.	1/3/2011 Scoufos email to Walkup with (1) Faculty Promotion and Tenure Evaluation Summary for Tudor by Mischo and (2) Scoufos memo to D. McMillan re Tudor promotion and tenure application attached (DEF001132 – 35)		
115.	9/30/2010 emails between Hall and Clark regarding Tudor grievance (Plaintiff's deposition Exhibit 141)SEOSU84		
116.	Handwritten notes of 10/15/2010 Faculty Appellate Committee meeting regarding Tudor grievance (DEF000143)		401, 402, 613, 801, 802
117.	10/15/2010 email from Clark to Hall, Prather, and Knapp regarding Tudor grievance (Plaintiffs' deposition Exhibit 143)SEOSU17		
118.	3/7/2011 email from Hall to Clark regarding Tudor grievance (DEF005667)		
119.	Audio recording of EEOC's interview of Scoufos (EEOC004556)		613, 801, 802, 901
120.	Audio recording of DOJ's interview of Scoufos (DOJ000003)		613, 801, 802, 901
121.	8/25/2009 email from Scoufos to Tudor (with email chain below) with Scoufos' handwritten notes re 8/31/2009 meeting with Tudor (EEOC000734 – 35)		801, 802
122.	10/28/2009 email from Mischo to Scoufos with Scoufos' handwritten notes (EEOC000976)		801, 802
123.	10/29/2009 email from Scoufos to House with Scoufos' handwritten notes (EEOC000974)		801, 802
124.	Scoufos' handwritten notes of 4/6/2010 meeting with Tudor and Mischo (EEOC000913)		801, 802
125.	4/6/2010 memo from Tudor to Scoufos regarding offer made to Tudor relating to		801, 802

	her application for promotion and tenure with Scoufos' handwritten notes (EEOC000914)		
126.	6/15/2010 memo from Minks to Scoufos notifying Scoufos of Tudor's tenure and promotion denial (EEOC000902)		
127.	4/30/2010 Scoufos emails, with email chain below, asking about "open mic chapbook" (EEOC000904)		401, 402, 403, 801, 802
128.	10/1/2010 Prus email to Scoufos re Tenure & Promotion Committees for Drs. Barker and Tudor (EEOC000867)		401, 402, 403, 801, 802
129.	Audio recording of EEOC's interview of D. McMillan (EEOC004566)		613, 801, 802, 901
130.	Audio recording of DOJ's interview of D. McMillan (DOJ000002)		613, 801, 802, 901
131.	Southeastern Policy for Granting Promotion and Tenure (Rev. 7/13) (DEF005950 – 53)		401, 402
132.	Excerpts from Plaintiff/Intervenor's Notice of Rule 30(b)(6) Deposition of Defendant Southeastern Oklahoma State University and the Regional University System of Oklahoma	Not best evidence	401, 402, 403
133.	Excerpts from Complaint in Intervention of Plaintiff/Intervenor Dr. Rachel Tudor (ECF No. 24) pages 1, 12, and 13.	Not best evidence	401, 402, 403
134.	Excerpts from Answer of Defendant Regional University System of Oklahoma to Plaintiff/Intervenor's Complaint (ECF No. 29) pages 1 and 7	Not best evidence Statement of lawyer's legal theories not evidence	401, 402, 403
135.	Excerpts from Answer of Defendant Southeastern Oklahoma State University, To Plaintiff/Intervenor's Complaint pages (ECF No. 28) 1, 6, and 7	Not best evidence Statement of lawyer's legal theories not evidence	401, 402, 403
136.	Blue Choice PPO High Option Certificate of Benefits (DEF006716 – 19 and DEF006768)	Improper Exhibit Plaintiff and Plaintiff/Intervenor do not have a health benefits claim in	401, 402, 403



		the instant action	
137.	6/14/2016 email from Coffey to Young and Weiss regarding Plaintiff/Intervenor's 30(b)(6) notice		401, 402, 403, 502
138.	6/24/2016 letter from Young to Coffey regarding Plaintiff/Intervenor's 30(b)(6) notice		401, 402, 403, 502
139.	3/31/2010 Babb email to Weiner with email chain (RUSO001272) (native file)		401, 402, 403, 801, 802, 803
140.	4/5/2010 Babb email to Weiner replying to Weiner (RUSO001279) (native file)		401, 402, 403, 801, 802, 803
141.	3/31/2010 Babb email to Weiner with email chain (RUSO001272) (native file)	Duplicate of #139	401, 402, 403, 801, 802, 803
142.	4/21/2010 Babb email to Weiner replying to Weiner (RUSO001474) (native file)		401, 402, 403, 801, 802, 803
143.	4/21/2010 Babb email to Weiner with email chain and attachments (RUSO001465) (native file)		401, 402, 403, 801, 802, 803
144.	1/24/2011 Clark email to Babb with attachments (SEOSUmail00880) (native file)		401, 402, 403, 801, 802, 803
145.	4/28/2011 letter from Andrew Rice (PI001273)		401, 402, 403, 801, 802, 803
146.	1/2/2016 Knight letter to Stubblefield re House (RUSO000502.001) (native file)		401, 402, 403
147.	3/1/2016 House letter to Stubblefield (RUSO002027.0001) (native file)		401, 402, 403
148.	4/1/2010 Weiner email to Minks, D. McMillan, Scoufos, and Babb with email chain (RUSO000447) (native file)		401, 402, 403, 801, 802, 803
149.	4/1/2010 Weiner email to Minks, D. McMillan, Scoufos, and Babb with email chain (SEOSUmail05927) (native file)		401, 402, 403, 801, 802, 803
150.	4/1/2010 Weiner email to Minks, D. McMillan, Scoufos, and Babb with email chain (SEOSUmail06865) (native file)	Cumulative as to Exhibit 149	
151.	4/1/2010 Weiner email to Minks, D.	Cumulative as to	

	McMillan, Scoufos, and Babb with email chain (SEOSUmail06958) (native file)	Exhibit 149 and 150	
152.	4/1/2010 Weiner email to Minks, D. McMillan, Scoufos, and Babb with email chain (SEOSUmail07217) (native file)	Cumulative as to Exhibit 149, 150, and 151	
153.	Plaintiff United States' Amended Notice of Oral Deposition Under Fed. R. Civ. P. 30(b)(6)		401, 402, 403
154.	Academic Policies and Procedures Manual submitted to EEOC (EEOC000252 – 428)		
155.	9/5/2012 EEOC's Letter of Determination (EEOC004576-77)		401, 402, 403
156.	7/6/2011 Tudor supplemental charge of discrimination filed with EEOC (EEOC004592-93)		
157.	7/21/2011 EEOC notice of charge of discrimination (EEOC004602)		
158.	10/12/2010 DOE letter to Minks regarding Tudor complaint (EEOC004906-07)		
159.	Expert Report of Dr. George R. Brown		401, 402, 403
160.	Expert Report of Dr. Robert Dale Parker		401, 402, 403
161.	Southeastern's "Faculty Senate Awards Policy" (DOJ000587-88)		401, 402, 403
162.	Promotion and Tenure Portfolio of Parrish (EEOC001676-2238 or DEF003674 - 4236)		401, 402, 403
163.	Promotion and Tenure Portfolio of Cotter-Lynch (EEOC002239-2474 or DEF001955 – 2190)		401, 402, 403
164.	2010-11 Promotion and Tenure Portfolio of Tudor (EEOC003086-3271)		401, 402, 901, 902
165.	Promotion and Tenure Portfolio of Spencer (EEOC003521-3576 or DEF004830 - 4885)		401, 402, 403
166.	Promotion and Tenure Portfolio of Barker (DOJ000158-330)		401, 402, 403
167.	2/15/2010 memo from McMillan to Tudor re notification of promotion status (EEOC001619)		401, 402, 403
168.	4/21/2010 Minks memo to Tudor re Application for Tenure and Promotion to Associate Professor (DEF001319)		
169.	2/16/2011 Faculty Senate meeting minutes (DEF004720 – 23)		901, 902

170.	11/17/2010 Cotter-Lynch letter to FAC (PI000377-78)		901, 902
171.	Defendants' Response to United States' Second Set of Interrogatories		401, 402, 801, 802
172.	Defendants' Response to United States' First Requests for Admissions		401, 402, 801, 802
173.	Tudor 2015 contract with Collin College (PI002044 – 45)		801, 802
174.	5/9/2011 Scoufos email to D. McMillan with email chain (EEOC000839)		401, 402, 801, 802
175.	2/22/2010 Scoufos email to Mischo replying to his email with handwritten notes (EEOC000933)		
176.	2/11/2010 Williamson email to Scoufos replying to Scoufos' email with email chain and handwritten notes (EEOC000945)		
177.	30(b)(6) deposition transcript of Defendants taken by United States		401, 402, 801, 802
178.	30(b)(6) deposition transcript of Defendants taken by Plaintiff/Intervenor		401, 402, 801, 802, 803
179.	Babb deposition transcripts		401, 402, 801, 802, 803
180.	Clark deposition transcript		401, 402, 801, 802
181.	Conway deposition transcript		401, 402, 801, 802, 803
182.	Habas deposition transcript		401, 402, 801, 802, 803
183.	Hall deposition transcript		401, 402, 801, 802, 803
184.	Knapp deposition transcript		401, 402, 801, 802, 803
185.	D. McMillan deposition transcript		401, 402, 801, 802, 803
186.	Minks deposition transcript		401, 402, 801, 802, 803
187.	Mischo deposition transcript		401, 402, 801, 802, 803
188.	Nusz deposition transcript		401, 402, 801, 802, 803
189.	Ogden deposition transcript		401, 402, 801, 802, 803

190.	Prus deposition transcript		401, 402, 801, 802, 803
191.	Robinson deposition transcript		401, 402, 801, 802, 803
192.	Scoufos deposition transcript		401, 402, 801, 802, 803
193.	Snowden deposition transcript		401, 402, 801, 802, 803
194.	Stubblefield deposition transcript		401, 402, 801, 802, 803
195.	Tudor deposition transcripts		401, 402, 801, 802, 803
196.	Walkup deposition transcript		401, 402, 801, 802, 803
197.	Weiner deposition transcript		401, 402, 801, 802, 803
198.	Porter declaration (PI002046 - 49)		401, 402, 403, 801, 802, 901
199.	Tudor handwritten list of colleges where she applied for jobs (PI002050 - 54)		801, 802, 901
200.	RUSO Policy Manual (DOJ000016-133)		
201.	Letter from Tudor to co-workers re gender transition (PI002042-43)	Not listed on Tudor's or USA's exhibit lists	401, 402, 801, 802, 901
202.	Plaintiff/Intervenor's Responses to Defendants' First Set of Interrogatories Propounded Upon Plaintiff/Intervenor	USA nor Tudor have listed this exhibit before and therefore we have not objected to it previously	801, 802, 803
203.	8/10/2016 Emails between Whitney Popchoke and Marvin Bontrager "Re: Gender Reassignment Exclusion" (DEF013822-23)	Tudor has no claim concerning health coverage; USA nor Tudor have listed this exhibit	401, 402, 403
204.	Health plan documents produced by Defendants at 30(b)(6) deposition of Defendants (designee Whitney Popchoke) (DEF013824-014634)	Tudor has no claim concerning health coverage; USA nor Tudor have listed this exhibit	401, 402, 403
205.	1/13/2004 Appointment Letter; College of the Mainland for 2003-2004 (PI00447)		901
206.	5/18/2004 Appointment Letter: Southeastern Oklahoma State University for 2004-2005 (PI00448)		901

207.	Tudor's Southeastern Oklahoma State University Payroll Advice for 01/01/2011–01/31/2011 (PI00448)		901
208.	Southeastern Oklahoma State University: Salary Calculation Form 2011-12, Full-Time Faculty and Guide (PI000450 to PI000451)		901
209.	8/30/2013 Salary Letter: Collin College for 2013-2014 (PI0000453)		901
210.	9/3/2014 Salary Letter: Collin College for 2014–2015 (PI000454)		901
211.	Collin College Full-Time Faculty Contract for 2015-2016 (PI000455 to PI000456)		901
212.	Collin College Electronic Pay Stub for pay period 1/1/2013 to 1/31/2013 (PI000022)		901
213.	Collin College Full-Time Faculty Contract for 2015-2016 (PI002044 to PI002045)		901
214.	Tudor Federal Income Tax Returns 2011 (PI000434 to PI000436)		
215.	Tudor Federal Income Tax Returns 2012 (PI000437 to PI000449)		
216.	Tudor Federal Income Tax Returns 2013 (PI000441 to PI000443)		
217.	Tudor Federal Income Tax Returns 2014 (PI000444 to PI000445)		
218.	Humana Dental Claim Receipts (PI000457 to PI000460)	Improper Exhibit, Tudor has no health benefits claim	401, 402, 403, 801, 802, 901
219.	Tudor Chickasaw Nation Tribal Citizenship Identification Cards (PI002035 and PI002124)		401, 402, 403
220.	9/5/2011 Blog Entry: “Open Letter to Petition Signers” (PI00110 to PI00111)		401, 402, 403, 801, 802, 901
221.	5/30/2011 Blog Entry: “Scholarship Record” (PI001126 to PI001131)		401, 402, 403, 801, 802, 901
222.	5/29/2011 Blog Entry: “Reason is the Surest Safeguard Against Tyranny” (PI001132 to PI001138)		401, 402, 403, 801, 802, 901
223.	4/26/2011 Blog Entry: “Award for Excellence in Scholarship” (PI001141 to PI001142)		401, 402, 403, 801, 802, 901

224.	4/24/2011 Blog Entry: "Petition" (PI001143 to PI001144)		401, 402, 403, 801, 802, 901
225.	4/20/2011 Blog Entry: "Why This Blog?" (PI001145 to PI001146)		401, 402, 403, 801, 802, 901
226.	4/18/2011 Blog Entry: "Southeastern Oklahoma State University" (PI001147 to PI001150)		401, 402, 403, 801, 802, 901
227.	2/15/2012 Blog Entry: "LinkedIn" (PI001169)		401, 402, 403, 801, 802, 901
228.	10/12/2017 Tudor Declaration (filed on the docket as ECF No. 205-2)	Not listed before Tudor's Rsp to MSJ	401, 402, 801, 802, 803
229.	10/10/2017 Althoff Declaration (filed on the docket as ECF No. 205-17)	Not listed before Tudor's Rsp to MSJ	401, 402, 801, 802, 803
230.	10/12/2017 Cotter-Lynch Declaration (filed on the docket as ECF No. 205-18)	Not listed before Tudor's Rsp to MSJ	401, 402, 801, 802, 803
231.	5/2/2016 Spencer Declaration (filed on the docket as ECF No. 205-25)	Not listed before Tudor's Rsp to MSJ	401, 402, 801, 802, 803
232.	3/2/2011 email between Stubblefield and Conway, "Re: Interesting Article" (SEOSU1659) (native file)	Not listed prior to PTO	401, 402, 403
233.	Southeastern "Civil Rights & Title IX Policy for Faculty, Students, and Staff" (PI002070 to PI002118)	Not listed prior to PTO	401, 402, 403
234.	10/6/2016 OKHEEI Group Minutes of Regular Meeting (PI002055 to PI002068)	Not listed prior to PTO	401, 402, 403
235.	11/10/2016 OKHEEI Group Minutes of Regular Meeting (PI002119 to PI002123)	Not listed prior to PTO	401, 402, 403
236.	Settlement Agreement Between the United States of America and Southeastern Oklahoma State University and the Regional University System of Oklahoma (22 pages) (last signature 8/30/2017)	Not listed prior to PTO	408
237.	11/18/2010 emails between Conway and Stubblefield, "Re: Tudor/Conclusion Letter" (SEOSU3295) (native file)	Not listed prior to PTO	401, 402, 403,
238.	5/24/2016 Email from Rachel Tudor to Ezra Young (filed on the docket as ECF No. 205-34)	Not listed prior to PTO	401, 402, 403,
239.	4/27/2011 Emails between Richard Ogden and Sheridan McCaffree (RUSO2566) (native file)	Not listed prior to PTO	401, 402, 403,

240.	4/27/2011 Email complaint from Frank Akehurst (RUSO465) (native file)	Not listed prior to PTO	401, 402, 403,
241.	4/28/2017 Email complaint from Carolyn Eichner (RUSO494) (native file)	Not listed prior to PTO	401, 402, 403,
242.	5/1/2011 Email complaint from Jeremy Shipley (RUSO933 and RUSO353) (native files)	Not listed prior to PTO	401, 402, 403,
243.	5/3/2011 Email complaint from Clayton Alsup (RUSO354) (native file)	Not listed prior to PTO	401, 402, 403
244.	5/6/2011 Email complaint from Therese Quinn (RUSO452) (native file)	Not listed prior to PTO	401, 402, 403
245.	10/14/2010 Email from Stubblefield to Babb and Minks, "Re: Info" (SEOSU2297) (native file)	Not listed prior to PTO	401, 402, 403
246.	11/18/2010 Email from Stubblefield to McMillan, "Re: TUDOR" (SEOSU3553) (native file)	Not listed prior to PTO	401, 402, 403
247.	9/30/2010 emails between Charla Hall and Bryon Clark (Plaintiff's Exhibit 141)SEOSU84	Not listed prior to PTO	401, 402, 403
248.	9/14/2010 email between Tudor and Stubblefield (DEF5467)	Not listed prior to PTO	401, 402, 403
249.	10/14/2010 email between McMillan and Stubblefield (SEOSU3284) (native file)	Not listed prior to PTO	401, 402, 403
250.	All exhibits listed by Defendants not objected to by Plaintiff/Intervenor.		
251.	All documents needed for rebuttal purposes.		

**B. Defendants:**

#	Title/Description	Objection	FRE Relied Upon
1.	Memorandum from Doug McMillan to Rachel Tudor dated 10/5/2012 RE: Application for Tenure (DEF27)	The header on this document is a hearsay statement from the EEOC. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted.	1003

2.	Memorandum from Doug McMillan to Charla Hall and Bryon Clark dated 10/19/2010 RE: Tudor Grievance (DEF28-31)(Plaintiff's Depo Exhibit #129)	The Bates numbers do not match the document described. Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 129 but the documents Bates numbered DEF28-31 are not the same as Plaintiff's Deposition Exhibit 129.	
3.	Notice of Appeal to Lawrence Minks dated 2/26/2010 (DEF1754-1456)(Plaintiff's Depo Exhibit #46)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 46 but the Bates numbers identified do not correspond with Plaintiff's Deposition Exhibit 46. Plaintiff's Deposition Exhibit 46 is Bates numbered EEOC927-929.	
4.	Administration's Response to Notice of Appeal dated 4/29/2010 (DEF35-36)	The header on this document is a hearsay statement from the EEOC. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted.	1003
5.	Doug McMillan letter to Rachel Tudor dated 4/30/2010 RE: Denial of Application for Tenure and Promotion (DEF37-38)(Plaintiff's Depo Exhibit #102)	The header on this document is a hearsay statement from the EEOC. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted.	1003
6.	Memorandum from Charla Hall, James Knapp, Larry Prather to Rachel Tudor dated 9/30/2010; Copied to: Larry Minks, Doug McMillan, Charles Weiner; Bryon Clark and Randy Prus RE: Grievance (DEF5192)		



7.	Grievance dated 10/11/2010 (DEF49-64)(Plaintiff's Depo Exhibit #15)	The Bates numbers do not match the document described. Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 15 but the documents Bates numbered DEF49-64 are not the same as Plaintiff's Deposition Exhibit 129.	
8.	Memorandum from Ross Walkup to Rachel Tudor, Doug McMillan and Charla Hall dated 1/3/2011 RE: Grievance filed 10/11/2011(DEF65-68)(Attachment to Memo is Plaintiff's Depo Exhibit #74)	The Bates numbers do not match the document described. Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 74 but the documents Bates numbered DEF65-68 are not the same as Plaintiff's Deposition Exhibit 129.  Additionally, the header on DEF65-68 (which does not appear in Plaintiff's Deposition Exhibit 74) is a hearsay statement from the EEOC. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted.	1003
9.	Non-Renewal Letter dated 2/22/2011 (DEF1464)	The Bates number does not correspond to the exhibit described here. Tudor needs to know which document Defendants intend to use as an exhibit.	
10.	Letter from Bryon Clark to Rachel Tudor dated 3/4/2011 RE: Appeal (DEF76-80)	The header on this document is a hearsay statement from the EEOC. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted.	1003
11.	Document prepared by James L. Knapp dated 9/23/2010 RE: Grievance (DEF144)(Plaintiff's Depo Exhibit #71)		
12.	DOE letters to Barbara Seely, Larry Minks and Rachel Tudor dated 10/12/2010 RE: OCR Docket #07102099 (DEF170-175)	The handwriting at the top of the document Bates numbered DEF221 is a hearsay statement from an unknown source. Also, because the handwriting is not an original part of the document, the version of this document with the handwriting does not satisfy FRE	1003

		1003 since it is not a duplicate. Tudor would not object to this exhibit if the handwriting were redacted.	
13.	Memorandum from Doug McMillan to Rachel Tudor dated 10/5/2010 RE: Application for Tenure and Promotion during the 2010-2011 Academic Year (DEF221)(Plaintiff's Depo Exhibit #107)	The Bates numbers do not match the document described. Plaintiff's Exhibit 107 bears Bates mark DEF5188.  Additionally, the header on the document Bates numbered DEF221 is a hearsay statement from the EEOC. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted or, alternatively, if Plaintiff's Deposition Exhibit 107 (DEF5188) were used instead.	1003
14.	RUSO Policy Manual (DEF254-366)	The header on this document is a hearsay statement from the EEOC. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted.	1003
15.	SEOSU Academic Policies and Procedures (DEF367-516)	The header on this document is a hearsay statement from the EEOC. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted.	1003
16.	SEOSU Sexual Harassment Policy (DEF524-526)	This Bates range contains more than just the Sexual Harassment Policy. Tudor does not, however, object to the admissibility of any documents within the Bates range DEF525-526.	
17.	SEOSU Nondiscrimination Equal Opportunity Affirmative Action Policy (DEF528)		
18.	SEOSU Retaliation Policy (DEF529-530)	This Bates range contains more than just the Retaliation Policy. Tudor does not, however, object to the admissibility of the document within the Bates marked DEF526.	
19.	SEOSU Tenure and Promotion Policy	This Bates range contains more	

	(DEF606-708)	than just the SEOSU Tenure and Promotion Policy.  Tudor would not object if Plaintiff's Deposition Exhibit 7 (EEOC303-349) were used instead.	
20.	SEOSU Religion and EHL Faculty Policy (DEF709-710)	This document is not a policy. Defendants prepared it and submitted to the EEOC in response to a request from the EEOC in connection with its investigation of Dr. Tudor's charge of discrimination. The document is hearsay.	
21.	Rachel Tudor File from Human Resources (including I-9, Garnishment and Unemployment documents as produced to EEOC (DEF712-1012)	Unemployment insurance docs (DEF773-820) are irrelevant, prejudicial, and some are hearsay; garnishment docs (DEF929-1012) are irrelevant, prejudicial, and hearsay.	
22.	Lucretia Scoufos email to Rachel Tudor dated 8/25/2009 RE: Tenure – with Dr. Scoufos' handwritten notes (DEF1014-1015)		
23.	Documents sent to SEOSU by DOE (DEF1301-1309)	The header on this document (upper left hand corner, reading "Attachment 1") is a hearsay statement from an unknown source. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted.	
24.	SEOSU Orientation of New Faculty, Agenda and Sample Handouts (DEF1311-1460) (Contains Plaintiff's Depo Exhibits #s 21, 40)	This Bates range contains more than just orientation materials. Tudor does not, however, object to the admissibility of any documents within the Bates range DEF1311-1460.	
25.	Timeline of Affirmative Action Officer at SEOSU (DEF1463-1466)(Plaintiff's Depo Exhibit #112)		
26.	Memorandum from Cathy Conway to Claire Stubblefield dated 8/15/2011 RE: EEOC Request for Information on Dr. Rachel Tudor Discrimination Charges (DEF1468)	Defendants created this document in response to a request from the EEOC. The document describes complaints of other employees, who are not witnesses in this case, that are irrelevant and potentially confusing to the jury. Tudor objects under FRE 402 and 403. Plaintiff also objects to this	402, 403

		exhibit because it is hearsay.	
27.	Memorandum from Doug McMillan to William Fridley dated 4/30/2010 RE: Denial of Application for Tenure and Promotion (DEF1727-1728)	This exhibit is irrelevant and potentially confusing to the jury and should be excluded under FRE 402 and/or FRE 403.	402, 403
28.	Memorandum from Doug McMillan to Rachel Tudor dated 2/15/2010 RE: Notification of Promotion Status (DEF1753)	This version of the document (DEF1753) has a cryptic handwritten notation at the top that could be potentially confusing to the jury. Tudor, thus, objects under FRE 403 but would not object to a different version of this exhibit, without this notation, such as the version of this document that the Defendants have identified as Exhibit 130.	403
29.	Memorandum to Dr. Weiner from James Knapp, Larry Prather and Jon Reid dated 3/25/2010 RE: Appeal of Dr. Rachel Tudor (DEF1757)(Plaintiff's Depo Exhibit #47)	The Bates numbers do not match the document described. Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 47 (DEF5125).	
30.	Memorandum from Larry Minks to Rachel Tudor dated 4/21/2010 RE: Application for Tenure and Promotion to Associate Professor (DEF1462)	This Bates number does not match the description of the document. If the Defendants intended to identify the document Bates numbered DEF4771, Tudor has no objection to the admissibility of that document.	
31.	Letter from Larry Minks to Rachel Tudor dated 3/25/2011 RE: Appeal Review regarding the rejection of Dr. Tudor's Tenure and Promotion Application (DEF1463).	This Bates number does not match the description of the document. If the Defendants intended to identify Plaintiff's Deposition Exhibit 77 (DEF5687), Tudor has no objection to the admissibility of that document.	
32.	SEOSU Position Statement (DEF1779-1785)(Plaintiff's Depo Exhibit #30)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 30 (DEF5279-5286), but requests that the Defendants correct the bates range cited in their exhibit list to avoid confusion.	
33.	Schematic of Morrison Building (DEF1787-1789)(Plaintiff's Depo Exhibit #27)		
34.	Findings and Conclusions on Gender Discrimination Complaint from Claire Stubblefield to Rachel Tudor dated 1/19/2011 (DEF1795-1801) (Plaintiff's Depo Exhibit #19)	The document described is Plaintiff's Deposition Exhibit 17, not 19. Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 17 or 19 but requests that the Defendants correct this error in their exhibit	

		list to avoid confusion.	
35.	Memorandum from Ross Walkup to Rachel Tudor, Doug McMillan, Charla Hall dated 1/3/2011 RE: Grievance filed 10/11/2010 (DEF5668-5671)		
36.	SEOSU Faculty Promotion and Tenure Evaluation Summary – Confidential Analysis Worksheet for Rachel Tudor signed by Lucretia Scoufos dated 1/14/2010) (DEF5075-5076)(Plaintiff's Depo Exhibit #126)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 126 (EEOC857-858), but requests that the Defendants correct the bates range cited in their exhibit list to avoid confusion.	
37.	Paula Smith Allen email to John Mischo dated 11/3/2008 RE: Tenure and Promotion of Dr. Tudor (DEF5077)	This document is irrelevant, unfairly prejudicial, and potentially confusing and should be excluded under FRE 402 and/or 403.	402, 403
38.	Lucretia Scoufos email to Ross Walkup dated 1/3/2011 RE: FW: Tenure and Promotion Report (DEF5078)(Plaintiff's Depo Exhibit #148)	The document described is not Plaintiff's Deposition Exhibit 148. Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 148 or to the document described here (which is Bates numbered DEF5078) but Tudor requests that the Defendants amend this entry on their exhibit list to avoid confusion.	
39.	Acknowledgement of Receipt dated 10/7/2010 of Memorandum from Doug McMillan dated 10/5/2010 with Handwritten note of Lucretia Scoufos that Rachel Tudor refused to sign in the presence of Randy Prus (DEF5079)		
40.	Portfolio Transmittal Form for Rachel Tudor dated 10/15/2009 and signed as reviewed by Lisa Coleman on 11/18/09; John Mischo on 11/29/09; Lucretia Scoufos on 1/14/2010; and Doug McMillan on 2/10/2010 (DEF5080)		
41.	Rachel Tudor email to Doug McMillan and copy to John Mischo dated 2/19/2010 RE: Tenure; ATTACHMENT: Letter to Doug McMillan from Rachel Tudor (DEF5095-5097)		

42.	Email string between Doug McMillan to Rachel Tudor and Lucretia Scoufos dated 2/19/2010 RE: Tenure (DEF5098-5107)	The document description does not match the Bates range. There is an email string dated 2/19/2010 at DEF5098-5100 but the other documents in the identified Bates range are not part of that email string.	
43.	Rachel Tudor email to Lucretia Scoufos and copy to John Mischo dated 2/19/2010 RE: Tenure; ATTACHMENT: Scoufos.docx (DEF5108-5110)(Plaintiff's Depo Exhibits #96 and #97)	The document described is Plaintiff's Deposition Exhibit 96, not 97. Tudor does not object to the admissibility of Plaintiff's Deposition Exhibits 96 and 97 but requests that Defendants clarify which document they intend to mark as Defendants' Exhibit 43.	
44.	Acknowledgment of Receipt of 4/29/2010 letter from Charles Weiner dated 4/29/2010 RE: Decision Rendered by Faculty Appellate Committee (DEF5122)		
45.	Charles Weiner letter to Rachel Tudor dated 4/29/2010 RE: Decision Rendered by Faculty Appellate Committee (DEF5123-5124)(Plaintiff's Depo Exhibit #45)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 45 (EEOC183-908), but requests that the Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
46.	Bryon Clark email to Rachel Tudor; Copied to: Doug McMillan; Ross Walkup; Charla Hall; James Knapp; Larry Prather dated 2/11/2011 RE: Response to 7 Feb. 2011 e-mail ATTACH: Addition to Grievance Policy 24 Jan 2011; Grievance Policy Section 4.4.6 APPM; Tudor Grievance dated 11 October 2010; Response to Policy Change (DEF5156-5127)	The Bates range does not match the document description. If the Defendants intended to identify documents Bates numbered DEF5156-5157, Tudor would have no objection.	
47.	Memorandum from Bryon Clark to Doug McMillan dated 2/22/2011 RE: Appeal of Faculty Appellate Committee's Recommendation in the Rachel Tudor Grievance Concerning the 2010-2011 Decision not to Allow her Application for Tenure and Promotion (DEF5158)(Plaintiff's Depo Exhibit #75)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 75 (DEF1331), but requests that the Defendants correct the bates range cited in their exhibit list to avoid confusion.	
48.	Rachel Tudor email to Bryon Clark dated 3/4/2011 attaching 3/4/2011	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 76	

	Appeal RE: Appeal (DEF5159-5164)(Plaintiff's Depo Exhibit #76)	(DEF1332-1337), but requests that the Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
49.	Rachel Tudor letter to Larry Minks; Copied to: Randy Prus dated 8/30/2010 RE: Improprieties and Due Process Policy Violations by Administrators in Tenure and Promotion Process (DEF5617-5634)(Plaintiff's Depo Exhibit #56)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 56 (DEF1158-1175), but requests that the Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
50.	Lucretia Scoufos email to Doug McMillan dated 10/7/2010 RE: Rachel Tudor (DEF5189)(Plaintiff's Depo Exhibit #14)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 14 (DEF1148-1150), but requests that the Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
51.	Complaint from Rachel Tudor to Claire Stubblefield; Copied to: Randy Prus; dated 8/30/2010 (DEF8213-5218)	There appears to be a typo in the Bates range. If the Defendants intended to identify the documents Bates numbered DEF5213-5218, Tudor has no objection.	
52.	Rachel Tudor email to Bryon Clark dated 2/7/2011 RE: Response to Policy Change ATTACH: Amended Faculty Grievance Policy (DEF5256-5258)		
53.	Lucretia Scoufos email to Ross Walkup dated 1/3/2011 RE: Rachel Tudor's AY 2009-10 Departmental File (DEF5266)		
54.	Lucretia Scoufos email to Lisa Coleman dated 5/9/2011 RE: FW: Tenure and Promotion Report (DEF5287)		
55.	William Fridley email string with Kenneth Chinn dated 5/9/2011 RE: Rachel Tudor (DEF5288-5293)	The description of the 5/9/2011 email's subject line is inaccurate. Additionally, the Bates range cited contains documents other than the email chain described. Tudor has no objection to the admissibility of DEF5288-5293, but requests that the Defendants correct the description cited in their exhibit list to avoid confusion.	
56.	William Fridley letter to Kathy Nusz dated 4/8/2012 RE: EEOC Request for Faculty Senate Documentation Pertaining to		

	Dr. Tudor (DEF5317)		
57.	Charles Weiner, Rachel Tudor email string dated 3/4/2010 RE: Faculty Appeal (DEF5320)		
58.	Larry Minks letter to Rachel Tudor dated 3/25/2011 RE: Appeal Review regarding the rejection of Dr. Tudor's Tenure and Promotion Application (DEF5321)(Plaintiff's Depo Exhibit #77)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 77 (DEF5687), but requests that the Defendants correct the bates range cited in their exhibit list to avoid confusion.	
59.	Rachel Tudor letter to Lucretia Scoufos dated 4/6/2010 RE: Offer with handwritten notes by Lucretia Scoufos dated 4/7/2010 (EEOC914)(Plaintiff's Depo Exhibit #151)		
60.	Larry Minks Memorandum to Rachel Tudor dated 4/21/2010 RE: Application for Tenure and Promotion to Associate Professor (DEF5327)	This appears to be duplicative to Exhibit 30 (which Tudor suggests, above, that Defendants correct to the document Bates numbered DEF4771). Tudor has no objection to the admissibility of DEF4771.	
61.	Rachel Tudor letter titled "In re: Dr. Weiner's letter" (DEF5328)		
62.	Charles Weiner letter to Rachel Tudor dated 4/29/2010 (DEF5329-5330)	This is duplicative of Exhibit 45.	
63.	Rachel Tudor letter to Larry Minks dated 5/7/2010 RE: Appeal (DEF5331)(Plaintiff's Depo Exhibit #54)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 54 (EEOC185), but requests that the Defendants correct the bates range cited in their exhibit list to avoid confusion.	
64.	Rachel Tudor email to William Fridley; Christopher Moretti; Dennis Brewster; George Jacox; Halet Poovey dated 11/9/2010 (DEF5332)		
65.	DOE letter to Larry Minks dated 10/12/2010 RE: OCR Docket #07102099 (DEF5333-5342)	The Bates range does not match the document described. If the Defendants intend to offer the document Bates numbered DEF5335-5342, Tudor does not object.	
66.	EEOC letter to Charles Babb dated 3/14/2013 RE: Rachel Tudor v. SEOSU – EEOC Charge Number: 564-2011-00849 (DEF5345-5346)	This document was written in the context of settlement negotiations during the EEOC's conciliation process. It is also irrelevant and potentially confusing. Thus, it is inadmissible under FRE 402, 403, and/or 408. This version of	402, 403, 408



		the document also has unidentified highlighting and handwriting that is hearsay.	
67.	Claire Stubblefield memo to Lucretia Scoufos dated 8/3/2011 RE: Important Information Regarding EEOC Charge attaching Document Retention Notice Pursuant to Charge of Discrimination (DEF5348-5351)(Attachment is Plaintiff's Depo Exhibits #20; #35; #113)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 20 (DEF1106-1107) and Plaintiff's Deposition Exhibit 35 (DEF1106-1107), which are the same document. Similarly, Tudor does not object to the admissibility of Plaintiff's Deposition Exhibit 113 (EEOC825-829). However, Tudor requests that the Defendants correct the bates range cited in their exhibit list to avoid confusion.	
68.	Bryon Clark email to Rachel Tudor; Doug McMillan dated 1/31/2011 RE: Tudor Grievance dated 10/11/2010 (DEF5361)(Plaintiff's Depo Exhibit #72)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 72 (DEF5672), but requests that the Defendants correct the bates range cited in their exhibit list to avoid confusion.	
69.	Bryan Clark – Rachel Tudor email string dated 2/14/2011 RE: Response to 2/7/2011 email with attachments (DEF5365-5373)	There is a typo in the description of this exhibit; Tudor requests that Defendants correct the description with the proper spelling of Bryon Clark's name to avoid confusion.	
70.	Larry Minks letter to Rachel Tudor dated 2/21/2011 RE: Appeal of the Findings and Conclusions on Gender Discrimination Complaint (DEF5386)(Plaintiff's Depo Exhibit #132)	Tudor has no objection to the admissibility of Plaintiff's Deposition Exhibit 132 (DEF1300), but requests that the Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
71.	Complaint by Rachel Tudor dated 8/30/2010 (DEF5388-5394)(First 6 pages of Plaintiff's Depo Exhibit #55)	Tudor has no objection to the admissibility of the first six pages of Plaintiff's Exhibit 55 (DEF1279-1284), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
72.	Claire Stubblefield letter to Rachel Tudor RE: Receipt of Complaint (DEF5396)	The document description does not match the Bates range.	
73.	Rachel Tudor letter to Claire Stubblefield dated 10/13/2010 RE: Additional Information (DEF5397-5399)(Plaintiff's Depo Exhibit #108)	Tudor has no objection to the admissibility of Plaintiff's Exhibit 108 (EEOC37-39), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
74.	Amended Complaint by Rachel Tudor dated 10/28/2010 (DEF5400-	Tudor has no objection to the admissibility of Plaintiff's	

	5406)(Plaintiff's Depo Exhibit 110)	Exhibit 110 (DEF1290-1296), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
75.	Rachel Tudor letter to Larry Minks dated 1/28/2011 RE: Appeal of Dr. Stubblefield's Findings and Conclusions on Gender Discrimination Complaint (DEF5407-5409)(Plaintiff's Depo Exhibit #131)	Tudor has no objection to the admissibility of Plaintiff's Exhibit 131 (DEF1297-1299), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
76.	Charles Weiner-Rachel Tudor email string dated 9/16/2010 FW: Faculty Appeal (DEF5420-5423)(Plaintiff's Depo Exhibit #57)	Tudor has no objection to the admissibility of Plaintiff's Exhibit 57 (EEOC31-33), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
77.	Lurcretia Scoufos letter to Doug McMillan dated 1/12/2010 RE: Recommendation to deny tenure and to give Rachel Tudor, a one-year termination appointment at the rank of Assistant Professor in the Department of English, Humanities and Languages for the 2010-2011 Academic Year (DEF5424)(Plaintiff's Depo Exhibit #100)	There are typos in the description of this exhibit. Tudor requests that Defendants correct the description with the proper spelling of Lucretia Scoufos's name to avoid confusion. Tudor also requests that the title of the email be corrected to read: "RE: Recommendation to deny tenure and to give Rachel J. Tudor, Ph.D., a one-year terminal appointment at the rank of Assistant Professor in the Department of English, Humanities and Languages for the 2010-2011 Academic Year."  Additionally, Tudor has no objection to the admissibility of Plaintiff's Exhibit 100 (DOJ150), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
78.	Rachel Tudor email to Claire Stubblefield dated 10/7/2010 RE: Retaliation (DEF5426)(Plaintiff's Depo Exhibit #105)	Tudor has no objection to the admissibility of Plaintiff's Exhibit 105 (EEOC36), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
79.	Virginia Parrish email to Claire Stubblefield dated 11/16/2010 RE: Tenure and Promotion Portfolio (DEF5451-5152)	This Bates range appears to have a typographical error. If Defendants intended the Bates range to be DEF5451-5452, Tudor has no objection to this exhibit.	
80.	Lucretia Scoufos email to Doug McMillan dated 11/30/2010	Tudor has no objection to the admissibility of Plaintiff's Exhibit 101 (EEOC63-64), but	

	FW: Article with attachment (DEF5453-5464)(Portion of Plaintiff's Depo Exhibit #101)	requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
81.	Rachel Tudor email to Claire Stubblefield dated 9/14/2010 RE: Scoufos Letter (DEF5467)		
82.	Sample Application Portfolio for Promotion to Associate Professor Rank with Tenure Status (DEF5835-5846)		
83.		This entry is left blank on Defendants' Final Exhibit List. See ECF Doc. 114 at 8. Tudor's counsel asked for clarification from Defendants as to whether they wished to change their list for inclusion in this Report and they indicated via email on Oct. 17, 2017 that they did not desire to make any changes.	
84.	Academic Policies and Procedures 2014-2015 (DEF5863-6029) Example to be used in the event injunctive relief is order.		
85.	Academic Policies and Procedures (DEF6030-6180)		
86.	Temporary and Supplemental Salary Schedules 2011-2012 (DEF6183)		
87.	Sexual Harassment Policy – Appendix C Source: Policy Manual of Board of RUSO, Sec. 4.6)(DEF6184-6185)(Plaintiff's Depo Exhibit #34)	Tudor has no objection to the admissibility of Plaintiff's Exhibit 34 (DEF6955-6956), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
88.	Faculty Development and Evaluation Criteria – Appendix D (DEF6186)		
89.	Catalog of Faculty Development and Evaluation Criteria – Appendix B (DEF6187-6193)	There is a typo in the description of this exhibit; Tudor requests that Defendants correct the description to read "Catalog of Faculty Development and Evaluation Criteria – Appendix E" to avoid confusion.	
90.	Faculty Development Agreement – Appendix F (DEF6194)		
91.	SEOSU Faculty Development and		

	Evaluation Summary – Appendix G (DEF6195-6197)		
92.	Portfolio Transmittal Form (DEF6203)		
93.	Cathy Conway memo to Claire Stubblefield dated 8/16/2011 RE: EEOC Information Required – Dr. Rachel Tudor Transmittal of Copies of all documents in Charging Party’s Personnel File (6204)	There is a typo in Defendants’ Bates range for this exhibit; Tudor requests that Defendants correct it to DEF6204 to avoid confusion.	
94.	Benefit Programs for Employees of SEOSU (DEF6591-6623)	This Bates range contains more than just the Benefit Programs for Employees of SEOSU documents. Tudor does not, however, object to the admissibility of any documents within the Bates range DEF6591-6623.	
95.	Follow-Up Faculty Development Agreement 2005-2006 – School of Arts and Letters dated 9/8/2006 (DEF7183-7184)		
96.	Follow-Up Faculty Development Agreement 2005-2006 – School of Arts and Letters dated 11/4/2005 (DEF7185-7186)(Plaintiff’s Depo Exhibit #81)	The description of this document is inaccurate. This is not a “Follow-Up” agreement. Other than this error in the description, Tudor does not object to this exhibit.	
97.	Faculty Development Follow-Up dated 9/15/2005 (DEF7187-7188)(Plaintiff’s Depo Exhibit #81)	This description is inaccurate. Additionally, Tudor has no objection to the admissibility of Plaintiff’s Exhibit 81 (EEOC801-804), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
98.	Follow-Up Faculty Development Agreement 2006-2007 – School of Arts and Letters dated 9/28/2007 (DEF7189-7191)(Plaintiff’s Depo Exhibit #82)	This description is inaccurate. Additionally, Tudor has no objection to the admissibility of Plaintiff’s Exhibit 82 (EEOC791-793), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
99.	Follow-Up Faculty Development Agreement 2006-2007 – School of Arts and Letters dated 9/8/2006 (DEF7192-7193)	This description is inaccurate.	
100.	Follow-Up Faculty Development Agreement 2007-2008 – School of Arts and Letters signed but not dated (DEF7197-7199)	This description is inaccurate.	

101.	SEOSU Faculty Development and Evaluation Summary for Rachel Tudor dated 10/30/2008 – Evaluation Period 2007-2008 (DEF7200-7201)(Plaintiff’s Depo Exhibit #83)	Tudor has no objection to the admissibility of Plaintiff’s Exhibit 83 (EEOC781-782), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
102.	Follow-Up Faculty Development Agreement 2007-2008 – School of Arts and Letters dated 9/28/2007 (DEF7202-7203)	This description is inaccurate.	
103.	Follow-Up Faculty Development Agreement 2008-2009 – School of Arts and Letters dated 10/7/2008 (DEF7204-7205)	The description of this document is inaccurate because it is not a “Follow-Up” Faculty Development Agreement.	
104.	Faculty Promotion and Tenure Evaluation of Rachel Tudor (DEF7703-7704)(Plaintiff’s Depo Exhibit #127)	Tudor has no objection to the admissibility of Plaintiff’s Exhibit 127 (DEF7703-7704), but requests that Defendants correct the Bates range cited in their exhibit list to avoid confusion.	
105.	Screening Committee Packet for Faculty Positions at SEOSU (DEF7705-7730)	This packet is irrelevant and potentially confusing to the jury. The packet appears to have been created after the conclusion of Dr. Tudor’s employment at Southeastern based on the dates on some of the pages. Furthermore, the packet concerns the hiring process at Southeastern which is not at issue in this case. This packet should be excluded under FRE 402 and/or 403.	402, 403
106.	SEOSU Policy Presentation on Sexual Harassment (DEF7731-DEF7772)		
107.	Sexual Harassment and Anti-Discrimination presentation (DEF7773-7809)	According to the first page of these presentation materials, they were prepared in 2015, long after Dr. Tudor stopped working at Southeastern. Thus, it should be excluded as irrelevant and potentially misleading under FRE 402 and/or 403.	402, 403
108.	Sexual Harassment Training for Greek Organizations (DEF7810-7830)	These training materials were prepared for Greek organizations and Greek organizations are not at issue in this case. Thus, these materials are irrelevant, could confuse the jury, and should be excluded under FRE 402 and/or 403.	402, 403
109.	Athletic Department Training Modules (DEF7831-7848)	This training module relates to Title IX and Southeastern’s athletic department. There is no	402, 403

		Title IX claim in this case and nothing that occurred in the case relates to the athletic department. Thus, this training module is irrelevant, could confuse the jury, and should be excluded under FRE 402 and/or 403.	
110.	Title IX Overview for Mandatory Training (DEF7849-DEF7866)	Based on the content of these training materials, they were prepared in or after 2012 and Dr. Tudor separated from Southeastern in 2011. Furthermore, these materials relate to Title IX and there is no Title IX claim in this case. Thus, these materials are irrelevant, could confuse the jury, and should be excluded under FRE 402 and/or 403.	402, 403
111.	Title IX Primer for SE Campus Police (DEF7867-DEF7888)	These training materials cover Title IX and were designed for campus police. There is no Title IX claim in this case and the campus police were not involved in this case in any way. Thus, these training materials are irrelevant, could confuse the jury, and should be excluded under FRE 402 and/or 403.	402, 403
112.	ATIXA Campus Title IX Coordinator and Admin. Train. & Cert. Course (DEF7889-DEF8180)		
113.	Title IX: A New ERA of Responsibility (DEF8181-DEF8204)		
114.	Appreciating, Accepting, and Celebrating Differences Through Tolerance... DEF8205-DEF8229)		
115.	HR Trainings Attended by Cathy Conway (DEF8830-DEF8833)(Plaintiff's Depo Exhibit #24)		
116.	February 27, 2006 email from Cathy Conway re: test group Sexual Harassment Training (DEF8896-8897)		
117.	April 5, 2006 email from Cathy Conway to group re: training (DEF8899-8901)(Plaintiff's Depo Exhibit #41)		
118.	List of SE Sexual Harassment Training Presentation attendees		

	(DEF8904-8910)(Plaintiff's Depo Exhibit #41)		
119.	BLR's Human Resources Training Presentations on Sexual Harassment (DEF8915-8946)(Plaintiff's Depo Exhibit #42)		
120.	Academic Policies Final as of 11-11-04 (DEF10627-10796)		
121.	Academic Policies Final as of 1/7/2005 (DEF9256-9426)		
122.	Academic Policies Final as of 1/10/2005 (DEF9427-9597)		
123.	Academic Policies Final as of 1/17/2005 (DEF9598-DEF9768)		
124.	Academic Policies Final as of 8/23/2005 (DEF9941-10113)		
125.	Academic Policies Final as of 10/18/2005 (DEF10114-10287)		
126.	Academic Policies and Procedures manual 10/31/2007 (DEF8954-9106)		
127.	Academic Policies and Procedures manual 8/5/2008 (DEF9107-9225)		
128.	Academic Policies and Procedures manual 2009-2010 (DEF10947-11094)		
129.	Academic Policies and Procedures manual 2014-2015 (DEF11576-11742)		
130.	Memorandum to Rachel Tudor from Doug McMillan dated 2/15/2010 RE: Notification of Promotion Status (DEF13001-13002)	This description is inaccurate. There is a document in this Bates range that is not the Memorandum.	
131.	Email from The Chronicle (DEF13016-13018)	This email is a newsletter that has no relation to this case. It also contains unfairly prejudicial content. It should be excluded under FRE 802 because it is hearsay; under FRE 402 because it is irrelevant; and FRE 403 because it is unfairly prejudicial, could confuse the jury, and has no probative value.	402, 403
132.	Candidate's Letter in Support... with comments by Dr. Randy Prus (DEF13019-13023)(Plaintiff's Depo Exhibit #10)		
133.	Documents received from schools	Tudor objects to documents Bates numbered DEF13359-	402, 403

	cited by Intervenor as places to which post-SEOSU applications were made for employment (DEF13024-13449)	<p>13409. These are documents related to Tudor's employment at Oklahoma University that pre-dates her employment at Southeastern. The documents should be excluded under FRE 402 and/or 403 because they are irrelevant, potentially confusing to the jury, and contain potentially prejudicial information. (Defendants produced two different sets of documents both Bates numbered DEF13024-13032. Tudor understands which set the Defendants intend to use as an exhibit based on the description they have provided but wants to note this Bates numbering error to avoid any confusion.)</p> <p>Tudor also objects to documents in the range DEF13024-13449 that are clearly unrelated to this case because they pertain to persons with a similar name to Tudor (and/or her previous names) but they clearly are not records pertinent to Tudor. For example: Ohio Christian University Documents (DEF13318-13329) and Moraine Valley Community College (DEF13353-13358) are both records of undergraduate students with similar names to Tudor but clearly not Tudor given their dates of attendance at these institutions.</p>	
134.	OU Additional Response to Subpoena Duces Tecum (DEF13629)	Tudor objects to documents Bates numbered DEF13629. These are documents related to Tudor's employment at Oklahoma University that pre-dates her employment at Southeastern. The documents should be excluded under FRE 402 and/or 403 because they are irrelevant, potentially confusing to the jury, and contain potentially prejudicial information.	402, 403
135.	CV – Rachel Tudor (DEF13630-13638)		
136.	Handwritten note of Claire Stubblefield dated 10/26 (DEF13643)		
137.	Legal Briefing: Respectful Workplace dated 3/6/2012 by	These training materials relate to a training given after Dr. Tudor separated from Southeastern.	402, 403



	Charlie Babb (DEF13647-13667)	Thus, they are irrelevant and potentially misleading. They should be excluded under FRE 402 and/or 403.	
138.	Legal Briefing: Helping Create a Respectful Workplace dated 4/19-20/2006 by Charlie Babb (DEF13668-13671)		
139.	DOE letter to Larry Minks dated 9/15/2010 RE: OCR Docket #07102099 (DOE000003)		
140.	Note regarding 6/1/2007 call with Dr. Tudor about policies (DOJ000009)		
141.	Corie Delashaw letter to Tenure Review Committee RE: Dr. Rachel Tudor/Application for Tenure (DOJ000015)		
142.	Louis Lopez email to Rachel Tudor dated 7/24/2013 copied to Allan Townsend RE: EEOC Charge at DOJ (DOJ000134)	This document is irrelevant and should be excluded under FRE 402.	402
143.	Allan Townsend email to Rachel Tudor dated 8/13/2013 RE: EEOC Charge at DOJ (DOJ000135-136)	This document is irrelevant and should be excluded under FRE 402.	402
144.	Rachel Tudor email to Allan Townsend dated 8/13/2013 RE: EEOC Charge at DOJ (DOJ000137-139)	This document is irrelevant and should be excluded under FRE 402.	402
145.	Allan Townsend email to Rachel Tudor dated 8/13/2015 RE: EEOC Charge at DOJ (DOJ000140-142)	This document is irrelevant and should be excluded under FRE 402.	402
146.	Rachel Tudor email to Allan Townsend dated 8/13/2013 RE: EEOC Charge at DOJ (DOJ000143-146)	This document is irrelevant and should be excluded under FRE 402.	402
147.	Rachel Tudor email to Allan Townsend dated 8/15/2013 RE: September 26, 2010 email (DOJ000147)		
148.	Rachel Tudor email to Allan Townsend dated 8/16/2013 RE: Scoufos letters (DOJ000149)		
149.	Rachel Tudor email to Allan Townsend dated 11/25/2013 RE: Decision? (DOJ000152)	This document is irrelevant and should be excluded under FRE 402.	402

150.	Allan Townsend email to Rachel Tudor dated 11/27/2013 copied to Louis Lopez RE: Decision? (DOJ000153-154)	This document is irrelevant and should be excluded under FRE 402.	402
151.	EEOC Request for Information regarding Charge #564-2011-00849 outlining issues (DOJ01663-1674)	No party produced documents Bates numbered DOJ01663-1674. Tudor is unable to determine what these documents are and, thus, objects to preserve her rights.	
152.	Notice of Right to Sue within 90 Days dated 4/2/2015 (DOJ004574)	No party produced a document Bates numbered DOJ004574. Tudor is unable to determine what this document is and, thus, objects to preserve her rights. If Defendants intended to identify the document Bates numbered EEOC004574, Tudor would not object to that document.	
153.	Academic Policies Final as of 1/19/2005 (DEF9769-9940)		
154.	EEOC Charge of Discrimination signed by Rachel Tudor(DOJ4592-4593)	No party produced documents Bates numbered DOJ4592-93. Tudor is unable to determine what these documents are and, thus, objects to preserve her rights. If Defendants intended to identify the documents Bates numbered EEOC004592-4593, Tudor would have no objection.	
155.	EEOC Charge of Discrimination dated 7/6/211 (DOJ004595-4596)	No party produced documents Bates numbered DOJ004595-96. Tudor is unable to determine what these documents are and, thus, objects to preserve her rights. If Defendants intended to identify the documents Bates numbered EEOC004595-4596, Tudor objects on the basis of hearsay. The draft charge Bates numbered EEOC004595-96 is unsigned and, thus, is not a statement of Tudor.	
156.	Rachel Tudor email to Kathy Nusz dated 2/6/2012 RE: Thursday, February 9, 2012 (DOJ004612-4613)	No party produced documents Bates numbered DOJ004612-13. Tudor is unable to determine what these documents are and, thus, objects to preserve her rights. If Defendants intended to identify the documents Bates numbered EEOC004612-13, Tudor objects. The emails Bates numbered EEOC004612-13 are irrelevant and potentially misleading. They should be excluded under FRE 402 and/or 403.	402, 403
157.	Medical records produced by Rachel		

	Tudor in Discovery (PI000428-432)		
158.	SEOSU Payroll Advice for 1/1/2011 – 1/31/2011 for Rachel Tudor (PI000449)		
159.	SEOSU Payroll Advise for 1/1/2011 – 1/31/2011 for Rachel Tudor (PI000452)		
160.	Cary Isreal with Collin College Memorandum to Rachel Tudor dated 8/30/2013 RE: Compensation 2013-2014 (PI000453)		
161.	Cary Isreal with Collin College Memorandum to Rachel Tudor dated 9/3/2014 RE: Compensation 2014-2015 (PI000454)		
162.	Collin County Community College District Full-Time Faculty Contract beginning 8/12/2014 and ending May 2016 signed by Rachel Tudor on 4/22/2015 (PI000455-456)		
163.	Kathy Nusz's handwritten notes of EEOC interview of James Knapp (EEOC4798-4799)		
164.	Kathy Nusz's handwritten notes of EEOC interview of Doug McMillan (EEOC4821-4829)	The EEOC investigator's handwritten notes taken during the questioning of Doug McMillan are irrelevant and potentially confusing to the jury. The investigator recorded the interview and, thus, the actual content of the interview may be confused with these notes. Thus, these notes should be excluded under FRE 402 and/or 403.	402, 403
165.	EEOC Typed Questions for Doug McMillan Interview (EEOC4815-4817)	The EEOC investigator's notes of questions she planned to ask Dr. McMillan are irrelevant and potentially confusing to the jury. The investigator recorded the interview and, thus, the actual content of the interview may be confused with these notes. Thus, these notes should be excluded under FRE 402 and/or 403.	402, 403
166.	Kathy Nusz's handwritten notes of EEOC interview of Larry Minks on 2/8/2012 (EEOC4811-4814)	The EEOC investigator's handwritten notes taken during the questioning of Larry Minks are irrelevant and potentially confusing to the jury. The investigator recorded the interview and, thus, the actual content of the interview may be confused with these notes. Thus,	402, 403

		these notes should be excluded under FRE 402 and/or 403.	
167.	Kathy Nusz's handwritten notes of EEOC interview of John Mischo on 2/8/2012 (EEOC4835-4838)	The EEOC investigator's handwritten notes taken during the questioning of John Mischo are irrelevant and potentially confusing to the jury. The investigator recorded the interview and, thus, the actual content of the interview may be confused with these notes. Thus, these notes should be excluded under FRE 402 and/or 403.	402, 403
168.	Kathy Nusz's handwritten notes of EEOC interview of Virginia Parrish (EEOC4777-4780)		
169.	Kathy Nusz's handwritten notes of EEOC interview of Larry Prather (EEOC4791-4793)		
170.	Kathy Nusz's handwritten notes of EEOC interview of Randy Prus (EEOC4769-4771)		
171.	Kathy Nusz's handwritten notes of EEOC interview of Lucretia Scoufos (EEOC4843-4858)	The EEOC investigator's handwritten notes taken during the questioning of Lucretia Scoufos are irrelevant and potentially confusing to the jury. The investigator recorded the interview and, thus, the actual content of the interview may be confused with these notes. Thus, these notes should be excluded under FRE 402 and/or 403.	402, 403
172.	Kathy Nusz's handwritten notes of EEOC interview of Wilma Shires (EEOC4776)	The EEOC investigator's handwritten notes taken during the questioning of Wilma Shires are irrelevant and potentially confusing to the jury. The investigator recorded the interview and, thus, the actual content of the interview may be confused with these notes. Thus, these notes should be excluded under FRE 402 and/or 403.	402, 403
173.	Kathy Nusz's handwritten notes of EEOC interview of Mark Spencer (EEOC4785-4790)		
174.	Kathy Nusz's handwritten notes of EEOC interview of Claire Stubblefield on 2/8/2012 (EEOC4830-4834)	The EEOC investigator's handwritten notes taken during the questioning of Claire Stubblefield are irrelevant and potentially confusing to the jury. The investigator recorded the interview and, thus, the actual content of the interview may be confused with these notes. Thus,	402, 403

		these notes should be excluded under FRE 402 and/or 403.	
175.	Kathy Nusz's handwritten notes of EEOC interview of Ross Walkup (EEOC4807-4820)	Tudor objects because the Bates range for these notes is incorrect. The notes for the Walkup interview are Bates numbered EEOC4807-08.  Tudor also objects because the EEOC investigator's handwritten notes taken during the questioning of Ross Walkup are irrelevant and potentially confusing to the jury. The investigator recorded the interview and, thus, the actual content of the interview may be confused with these notes. Thus, these notes should be excluded under FRE 402 and/or 403.	402, 403
176.	Kathy Nusz's handwritten notes of EEOC interview of Charles Weiner on 2/8/2012 (EEOC4839-4842)	The EEOC investigator's handwritten notes taken during the questioning of Charles Weiner are irrelevant and potentially confusing to the jury. The investigator recorded the interview and, thus, the actual content of the interview may be confused with these notes. Thus, these notes should be excluded under FRE 402 and/or 403.	402, 403
177.	Kathy Nusz's handwritten notes of EEOC interview of Caryn Witten (EEOC4767-4768)		
178.	Kathy Nusz's handwritten notes of EEOC interview of Jane McMillan (EEOC4794-4797)	The EEOC investigator's handwritten notes taken during the questioning of Jane McMillan are irrelevant and potentially confusing to the jury. The investigator recorded the interview and, thus, the actual content of the interview may be confused with these notes. Thus, these notes should be excluded under FRE 402 and/or 403.	402, 403
179.	Kathy Nusz's handwritten notes of EEOC interview of William Fridley (EEOC4802-4806)		
180.	Kathy Nusz's handwritten notes of EEOC interview of Margaret Cotter-Lynch (EEOC4867-4872)		
181.	Kathy Nusz's handwritten notes of EEOC interview of Cathy Conway on 2/8/2012 (EEOC4809-4810)	The EEOC investigator's handwritten notes taken during the questioning of Cathy Conway are irrelevant and potentially confusing to the jury. The investigator recorded the	402, 403

		interview and, thus, the actual content of the interview may be confused with these notes. Thus, these notes should be excluded under FRE 402 and/or 403.	
182.	Kathy Nusz's handwritten notes of EEOC interview of Lisa Coleman (EEOC4762-4764)	The Bates number range the Defendants have identified is incomplete. Ms. Nusz's notes of her interview of Dr. Coleman are at EEOC4762-4766. All pages should be included for sake of completeness.	
183.	Kathy Nusz's handwritten notes of EEOC interview of Bryon Clark (EEOC4818)	As a threshold matter, Ms. Nusz's notes of Dr. Clark's interview contain more pages than the Bates number range that the Defendants have identified. The notes are at EEO4818-4820. All pages should be included for sake of completeness.  However, the EEOC investigator's handwritten notes taken during the questioning of Bryon Clark are irrelevant and potentially confusing to the jury. The investigator recorded the interview and, thus, the actual content of the interview may be confused with these notes. Thus, these notes should be excluded under FRE 402 and/or 403.	402, 403
184.	Kathy Nusz's handwritten notes of EEOC interview of Janet Barker (EEOC4783-4784)		
185.	Kathy Nusz's handwritten notes of EEOC interview of Teresa Anderson (EEOC4781-4782)		
186.	Kathy Nusz's handwritten notes of EEOC interview of Daniel Althoff (EEOC4772-4773)		
187.	Kathy Nusz's handwritten notes of EEOC interview of Paula Allen (EEOC4774-4775)		
188.	Transcript and Audio of EEOC Interview of Ross Walkup	Tudor does not know what transcript the Defendants are referring to here. Transcripts of interviews were not produced in discovery.	
189.	Transcript and Audio of EEOC Interview John Mischo	Tudor does not know what transcript the Defendants are referring to here. Transcripts of interviews were not produced in discovery.	
190.	Transcript and Audio of EEOC	Tudor does not know what	

	Interview of Bryon Clark	transcript the Defendants are referring to here. Transcripts of interviews were not produced in discovery.	
191.	Transcript and Audio of EEOC Interview of Claire Stubblefield	Tudor does not know what transcript the Defendants are referring to here. Transcripts of interviews were not produced in discovery.	
192.	Transcript and Audio of 2/9/2012 DOJ Interview of Jane McMillan	Tudor does not know what transcript the Defendants are referring to here. Transcripts of interviews were not produced in discovery. Furthermore, this description is inaccurate because the EEOC conducted this interview, not DOJ.	
193.	Transcript and Audio of 2/8/2012 DOJ Interview of Larry Minks	Tudor does not know what transcript the Defendants are referring to here. Transcripts of interviews were not produced in discovery. Furthermore, this description is inaccurate because the EEOC conducted this interview, not DOJ.	
194.	Transcript and Audio of 2/8/2012 DOJ Interview of Doug McMillan	Tudor does not know what transcript the Defendants are referring to here. Transcripts of interviews were not produced in discovery. Furthermore, this description is inaccurate because the EEOC conducted this interview, not DOJ.	
195.	Transcript and Audio of 2/8/2012 DOJ Interview of Charles Weiner	Tudor does not know what transcript the Defendants are referring to here. Transcripts of interviews were not produced in discovery. Furthermore, this description is inaccurate because the EEOC conducted this interview, not DOJ.	
196.	Transcript and Audio of 2/8/2012 DOJ Interview of Cathy Conway	Tudor does not know what transcript the Defendants are referring to here. Transcripts of interviews were not produced in discovery. Furthermore, this description is inaccurate because the EEOC conducted this interview, not DOJ.	
197.	Kathy Nusz letter to Claire Stubblefield dated 1/5/2012 RE: Additional Information Needed and Request to Interview Personnel (EEOC4743-4744)(Plaintiff's Depo Exhibit #43)		
198.	Claire Stubblefield email to Kathy Nusz dated 1/11/2012	This description of the document is inaccurate in that it erroneously indicates that the	

	RE: February 7th date (EEOC4741-4742)(Plaintiff's Depo Exhibit #43)	document is Plaintiff's Deposition Exhibit 43.	
199.	Rachel Tudor email to John Mischo dated 10/27/2009 RE: Tenure Promotion Committee (PI000583)(Plaintiff's Depo Exhibit #87)		
200.	Lucretia Scoufos email to Ross Walkup dated 1/3/2011 RE: Scoufos.pdf (DEF1132-1135)(Plaintiff's Depo Exhibit #139)		
201.	Memorandum from Larry Minks to Lucretia Scoufos dated 6/15/2010 RE: Notification of Tenure and/or Promotion Decision (EEOC902)(Plaintiff's Depo Exhibit #152)		
202.	Randy Prus email to Lucretia Scoufos dated 4/30/2010 RE: "Open Mic" publisher (EEOC904)(Plaintiff's Depo Exhibit #154)		
203.	Rachel Tudor's Personnel File from Collin College (CC1-CC1083)	No documents matching this description and/or bearing Bates mark CC1-CC1083 have been produced in this litigation.  Additionally, it is unclear what documents the Defendants are referring to and the Defendants should clarify. Tudor reserves the right to object after she receives further clarification from the Defendants.  Additionally, Tudor objects to admissions of these documents for the reasons she sets forth in her motion <i>in limine</i> (ECF No. 189).	
204.	Plaintiff/Intervenor's Response to RUSO's Interrogatory No. 2 [Doc. 177-2]		
205.	4/30/2010 D. McMillan memo to Tudor re Denial of Application for Tenure and Promotion (DEF001186 - 87) [Doc. 177-7]		
206.	Plaintiff/Intervenor's DOE Charge dated August 31, 2010 (DOE00013-16) [Doc. 177-8]		



207.	Excerpts from SEOSU response to EEOC Request for Information (DEF459; 1949-50)[Doc.177-9]	The header on the document Bates numbered DEF459 is a hearsay statement from the EEOC. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted.	1003
208.	Plaintiff/Intervenor's Responses to RUSO's Interrogatory No. 11 [Doc. 177-10].		
209.	SEOSU Anti-Sexual Harassment Policy with Grievance Procedure (DEF348-50; 495-96) [Doc. 177-12]	The headers on the documents Bates numbered DEF348-50, and DEF495-96 are hearsay statements from the EEOC. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted.	1003
210.	SEOSU Equal Opportunity and Anti-Discrimination Policy (DEF344)[Doc. 177-13]	The header on the document Bates numbered DEF344 is a hearsay statement from the EEOC. Also, because the header is not an original part of the document, the version of this document with the header does not satisfy FRE 1003 since it is not a duplicate. Tudor would not object to this exhibit if the header were redacted.	1003
211.	All exhibits listed by Plaintiff/Intervenor not objected to by Defendants.		
212.	All documents needed for rebuttal purposes.		

## 7. WITNESSES:

Unlisted witnesses in chief will not be permitted to testify unless, by order of the court, the final pretrial order is amended to include them.

### A. Plaintiff/Intervenor:

Plaintiff/Intervenor will call the following witnesses:

<b>No.</b>	<b>Name and Address</b>	<b>Proposed Testimony</b>
1	Dr. Rachel Tudor  Witness may be contacted through her counsel.	Witness will testify about the discrimination, retaliation, and hostile work environment she experienced at Southeastern and the damages she suffered as a result.
2	Dr. Margaret Cotter-Lynch  c/o Joan and Barry Cotter 2920 Coventry Lane McKinney, TX 75069	Witness's testimony is expected to include, but not be limited to, Dr. Tudor's qualifications for promotion and tenure; Southeastern's process for evaluating applications for promotion and tenure; and the effects that Defendants discrimination had on Dr. Tudor.
3	Dr. Robert Dale Parker  Department of English University of Illinois 608 S. Wright Street Urbana, IL 61801	Expert witness who is expected to testify on the matters addressed in his report.
4	Dr. George R. Brown  549 Miller Hollow Road Bluff City, TN 37618-4108	Expert witness who is expected to testify on the matters addressed in his report.
5	Ms. Melinda "Mindy" House  3105 Butlan Circle Durant, OK 74701	Witness's testimony would be expected to include, but not limited to, information related to Southeastern administrators' treatment of and interactions with Dr. Tudor.
6	Dr. Mark Spencer  Witness is a current faculty member at Southeastern and can be contacted at her work address.	Witness's testimony is expected to include, but not be limited to, Dr. Tudor's qualifications for promotion and tenure; Southeastern's process for evaluating applications for promotion and tenure; how Defendants treated him when he applied for promotion and tenure; and Southeastern's process for considering Dr. Tudor's application for tenure and promotion to Associate Professor.
7	Whitney Popchoke  Witness is currently employed by RUSO and can be contacted at her work address.	Witness's testimony would be expected to include, but not be limited to, information about Defendants' health benefits plans trans exclusion from 2007 through 2016 as well as circumstances surrounding the removal of the exclusion for plans in effect from 2017 going forward.

8	<p>Mr. Charles Babb</p> <p>Witness is former General Counsel to RUSO and can be contacted through his former employer.</p>	<p>Witness's testimony is expected to include, but not be limited to, information regarding Southeastern's and RUSO's policies as applied to Dr. Tudor, discussions he had with various other RUSO and Southeastern personnel, and the new policy developed during Dr. Tudor's grievance process during the 2010-11 school year.</p>
9	<p>Dr. Bryon Clark</p> <p>736 Webb Smith Rd. Sherman, TX 75090</p>	<p>Witness's testimony is expected to include, but not be limited to, information regarding Dr. Tudor's grievance of the decision not to let her apply for promotion and tenure during the 2010-11 academic year and information regarding Southeastern's process for evaluating applications for promotion and tenure.</p>
10	<p>Dr. Lisa Coleman</p> <p>Witness is a current faculty member at Southeastern and can be contacted at her work address.</p>	<p>Witness's testimony is expected to include, but not be limited to, Dr. Tudor's qualifications for promotion and tenure, Southeastern's process for evaluating applications for promotion and tenure, and Southeastern's process for considering Dr. Tudor's application for tenure and promotion to Associate Professor.</p>
11	<p>Ms. Cathy Conway</p> <p>3043 Quail Ridge Cir. Durant, Oklahoma</p>	<p>Witness's testimony is expected to include, but not be limited to, conversations that Ms. Conway had with Dr. Tudor and other employees of Southeastern regarding Dr. Tudor's gender transition.</p>
12	<p>Dr. William Fridley</p> <p>Witness is a current faculty member at Southeastern and can be contacted at his work address.</p>	<p>Witness's testimony is expected to include, but not be limited to: activities and records of the Faculty Senate; activities and records of the Faculty Senate's Personnel Policies Committee; and application and interpretation of Southeastern and RUSO policies.</p>
13	<p>Dr. Charla Hall</p> <p>Witness is a current faculty member at Southeastern and can be contacted at her work address.</p>	<p>Witness's testimony is expected to include, but not be limited to, information related to grievances that Dr. Tudor filed in connection with her efforts to obtain tenure and promotion to Associate Professor and information regarding Southeastern's process for evaluating applications for promotion and tenure.</p>
14	<p>Dr. James Knapp</p>	<p>Witness's testimony is expected to include, but</p>

	Witness is a current faculty member at Southeastern and can be contacted at his work address.	not be limited to, information related to grievances that Dr. Tudor filed in connection with her efforts to obtain tenure and promotion to Associate Professor and information regarding Southeastern's process for evaluating applications for promotion and tenure.
15	Dr. Douglas McMillan  4047 Woodlawn Road Denison, TX 75021	Witness's testimony is expected to include, but not be limited to, the reasons for decisions that Southeastern made in connection with Dr. Tudor's application for tenure and promotion to Associate Professor during the 2009-10 cycle; her attempted application for tenure and promotion to Associate Professor during the 2010-11 cycle; actions Southeastern took regarding Dr. Tudor when she went through her gender transition; and Southeastern's process for evaluating applications for promotion and tenure.
16	Dr. Larry Minks  3450 N. Commerce Street, No. 707 Ardmore, OK 73401	Witness's testimony is expected to include, but not be limited to, information about Dr. Tudor's application for tenure and promotion to Associate Professor during the 2009-10 cycle; her attempted application for tenure and promotion to Associate Professor during the 2010-11 cycle; and Southeastern's process for evaluating applications for promotion and tenure.
17	Dr. John Mischo  Witness is a current faculty member at Southeastern and can be contacted at his work address.	Witness's testimony is expected to include, but not be limited to, Dr. Tudor's qualifications for promotion and tenure; Southeastern's process for evaluating applications for promotion and tenure; and Southeastern's process for considering Dr. Tudor's application for tenure and promotion to Associate Professor.
18	The Honorable Judge Richard Ogden  Oklahoma County Courthouse 321 Park Ave., Rm. 115 Oklahoma City, OK 73102	Witness's testimony would be expected to include, but not be limited to, information about Defendants' internal investigations of Dr. Tudor's discrimination complaints and grievances.
19	Dr. Virginia Parrish	Witness's testimony is expected to include, but not be limited to, Dr. Tudor's qualifications for

	P.O. Box 577 Durant, OK 74702-0577	promotion and tenure, Southeastern's process for evaluating applications for promotion and tenure, and Southeastern's process for considering Dr. Tudor's application for tenure and promotion to Associate Professor.
20	Dr. Randy Prus  Witness is a current faculty member at Southeastern and can be contacted at his work address.	Witness's testimony is expected to include, but not be limited to, Dr. Tudor's qualifications for promotion and tenure; Southeastern's process for evaluating applications for promotion and tenure; Southeastern's process for considering Dr. Tudor's application for tenure and promotion to Associate Professor; and facts related to Southeastern's decision not to let Dr. Tudor apply for promotion and tenure during the 2010-11 cycle.
21	Dr. Lucretia Scoufos  1200 W. Morton Street Denison, TX	Witness's testimony is expected to include, but not be limited to, the reasons for decisions that Southeastern made in connection with Dr. Tudor's application for tenure and promotion to Associate Professor during the 2009-10 cycle and Tudor's attempted application for tenure and promotion to Associate Professor during the 2010-11 cycle and information regarding Southeastern's process for evaluating applications for promotion and tenure.
22	Dr. Jesse Snowden  1200 W. Morton Street Denison, TX	Witness's testimony would be expected to include, but not be limited to, Defendants' treatment of other professors during their promotion and tenure application processes.
23	Dr. Claire (Gilmore) Stubblefield  830 Franklin Drive Ardmore, OK 73401	Witness's testimony is expected to include, but not be limited to, how the Defendants' responded to Tudor's discrimination (including hostile work environment) and retaliation complaints.
24	Mr. Ross Walkup  2001 Live Oak Durant, OK 74701	Witness's testimony is expected to include, but not be limited to, why Defendants refused to accept Dr. Tudor's application for tenure and promotion to Associate Professor during the 2010-11 cycle, and information regarding Southeastern's process for evaluating applications for promotion and tenure.
25	Dr. Charles Weiner	Witness's testimony is expected to include, but

	1517 W. Elm Durant, Oklahoma	not be limited to, a restroom restriction Defendants placed on Dr. Tudor as a condition of her employment upon her gender transition from male to female in 2007; the Defendants' tenure and promotion policies; Defendants' response to a grievance that Dr. Tudor filed; Defendants' decision not to accept Dr. Tudor's application for tenure and promotion during the 2010-11 cycle; and information regarding Southeastern's process for evaluating applications for promotion and tenure.
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**B. Defendants:**

Defendants will call the following witnesses:

<b>No.</b>	<b>Name and Address</b>	<b>Proposed Testimony</b>
1	Charlie Babb  c/o Defendants' Attorneys Assistant Attorneys General 313 NE 21 <sup>st</sup> Street Oklahoma City, OK 73105	Will testify about Intervenor's employment, tenure process and grievance process, SEOSU tenure process, RUSO policies and procedures, and allegations in this lawsuit
2	Bryon Clark  736 Webb Smith Rd. Sherman, TX 75090	Will testify about Intervenor's grievance process, SEOSU policies and procedures
3	Lisa Coleman  Address Unknown	Will testify about Intervenor's employment, Intervenor's allegations against her, Intervenor's tenure process and SEOSU tenure process
4	Cathy Conway  3043 Quail Ridge Circle Durant, OK	Will testify about Intervenor's employment, Intervenor's transition, SEOSU policies and procedures, role as HR Director and Affirmative Action Officer, and allegations in this lawsuit.
5	Meg Cotter-Lynch  c/o Joan and Barry Cotter 2920 Coventry Lane	Will testify about Intervenor's employment and tenure process, SEOSU policies and procedures, and Plaintiff's allegations in this lawsuit.

	McKinney, TX 75069	
6	<p>Mike Davis SEOSU EEO and Director of Safety and Compliance</p> <p>c/o Defendants' attorneys, Assistant Attorneys General, 313 NE 21<sup>st</sup> Street Oklahoma City, OK 73105</p>	Will testify about his job duties, SEOSU policies and procedures related to his job duties, and Plaintiff's allegations in this lawsuit.
7	<p>Sheridan McCaffree RUSO Executive Director</p> <p>c/o Defendants' Attorneys Assistant Attorneys General 313 NE 21<sup>st</sup> Street Oklahoma City, OK 73105</p>	RUSO's involvement in tenure process of regional universities; RUSO's evaluation process; RUSO Policies and Procedures; role of RUSO Board
8	<p>Doug McMillan</p> <p>4047 Woodlawn Road Denison, TX 75021</p>	Will testify about Intervenor's employment, tenure process, SEOSU policies and procedures, and allegations in this lawsuit.
9	<p>Jane McMillan</p> <p>3450 N. Commerce Street, No. 707 Ardmore, OK 73401</p>	Will testify about the facts and circumstances re: Intervenor's employment and allegations in this lawsuit.
10	<p>Lawrence Minks</p> <p>3450 N. Commerce Street, No. 707 Ardmore, OK 73401</p>	Will testify about the facts and circumstances re: Intervenor's employment and allegations in this lawsuit.
11	<p>John Mischo</p> <p>155 Mills Drive Durant, OK</p>	Will testify about Intervenor's employment, Intervenor's tenure process and SEOSU tenure process.
12	<p>Virginia Parrish</p> <p>P.O. Box 577 Durant, OK 74702</p>	Will testify about Intervenor's employment, Intervenor's tenure process and SEOSU tenure process.
13	<p>Randy Prus</p> <p>720 North 8t Avenue</p>	Will testify about Intervenor's employment and tenure process and SEOSU tenure process.

	Durant, OK	
14	Sharon Robinson 1516 North 12 <sup>th</sup> Avenue Durant, OK 74701	Her involvement with Title IX issues, discussions with federal officers/agencies, SEOSU practices, policies and procedures.
15	Lucretia Scoufos 1200 W. Morton Street Denison, TX	Will testify about Intervenor's employment and tenure process and SEOSU tenure process.
16	Jesse Snowden 1200 W. Morton Street Denison, TX	Will testify about SEOSU tenure process.
17	Mark Spencer 1405 N. 4 <sup>th</sup> Ave. Durant, OK 74701	Will testify about Intervenor's employment and tenure process and SEOSU tenure process.
18	Claire Stubblefield 830 Franklin Drive Ardmore, OK 73401	Will testify about duties performed as affirmative action officer, Intervenor's employment, tenure process, Intervenor's complaints and grievances and investigation of same.
19	Rachel Tudor c/o Ezra Young 30 Devoe, 1a Brooklyn, NY 1121	Will testify about the facts and circumstances re: Intervenor's employment and allegations in this lawsuit.
20	Ross Walkup 2001 Live Oak Durant, OK	Will testify about Intervenor's grievance process re: tenure and reapplication.
21	Dr. Don Weasenforth Collin College 2800 E. Spring Creek Parkway Plano, TX 75074	Will testify about Intervenor's employment at Collins College, including, but not limited to Intervenor's job performance and nonrenewal.
22	Holly Newell c/o Matthew Stangl Assistant Attorney General 313 NE 21 <sup>st</sup> Street Oklahoma City, OK 73105	Intervenor's application and interview process at Seminole State College.



Defendants may call the following witnesses:

No.	Name and Address	Proposed Testimony
1	Charla Hall  159 Eagle Lake Drive Durant, OK 74701	Will testify about tenure process, SEOSU policies and procedures, Intervenor's grievance process, and Plaintiff's allegations in this lawsuit.
2	James Knapp  509 Belmont Lane Van Alstyne, TX 75495	Will testify about the facts and circumstances re: Intervenor's employment and allegations in this lawsuit.
3	Kathy Nusz  OKC EEOC Office	Expected to testify about Intervenor's charges made to the EEOC, the EEOC's investigation of Intervenor's complaints, and documents produced by the EEOC; lack of guidelines, rules or policies applicable to Dr. Tudor's claims.
4	Larry Prather 1405 N. 4 <sup>th</sup> Ave. Durant, OK 74701	Will testify about Intervenor's employment, Intervenor's tenure and grievance process and SEOSU tenure process.
5	Charles Weiner  1517 West Elm Durant, OK	Will testify about SEOSU tenure process, SEOSU grievance process, and Intervenor's grievance process re: tenure.
6	Witness(es) to testify regarding subpoenas responded to by various educational institutions identified by Intervenor in her efforts to demonstrate mitigation of damages and acquire gainful employment.	
7	All witnesses on Plaintiff's and/or Plaintiff/Intervenor's witness lists to which Defendants do not object.	

8. **ESTIMATED TRIAL TIME:** 7 days

A. Plaintiff's Case: 3.5 days

B. Defendant's Case: 3.5 days

9. **BIFURCATION REQUESTED:** Yes \_\_\_\_\_ No X

**10. POSSIBILITY OF SETTLEMENT:**

Good \_\_\_\_\_ Fair \_\_\_\_\_ Poor   X  

**11. OTHER**

Plaintiff/Intervenor Dr. Tudor and Defendants approve this report and understand and agree that this report supersedes all pleadings, shall govern the conduct of the trial, and shall not be amended except by order of the Court.

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CASE NO. 15-cv-324-C

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

---

RACHEL TUDOR

Plaintiff,

v.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY and THE REGIONAL  
UNIVERSITY SYSTEM OF OKLAHOMA,

Defendants.

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DEFENDANTS SOUTHEASTERN OKLAHOMA STATE UNIVERSITY AND  
THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA'S RESPONSE IN  
OPPOSITION TO PLAINTIFF'S MOTION FOR REINSTATEMENT

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December 20, 2017

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

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

SOUTHEASTERN OKLAHOMA STATE  
UNIVERSITY, and

THE REGIONAL UNIVERSITY SYSTEM  
OF OKLAHOMA,

Defendants.

**Case No. 15-cv-324-C**

**DEFENDANTS SOUTHEASTERN  
OKLAHOMA STATE UNIVERSITY AND THE REGIONAL  
UNIVERSITY SYSTEM OF OKLAHOMA'S RESPONSE  
IN OPPOSITION TO PLAINTIFF'S MOTION FOR REINSTATEMENT**

Defendants, Southeastern Oklahoma State University, ("SEOSU"), and The Regional University System of Oklahoma ("RUSO"), (collectively "University Defendants" or "the State"), and pursuant to the Court's Minute Entry of November 20, 2017, [Doc. 256], submit the following Response Brief in Opposition to Dr. Tudor's Motion for Reinstatement [Doc. 268] asking this Court for an order reinstating Plaintiff and awarding her tenure.

**INTRODUCTION**

A working relationship is a lot like a marriage, and if both parties are not enthusiastic about it and eager for it to succeed, then it will not. A forced marriage is no marriage at all; it is a condition of servitude. Dr. Tudor asks this Court to force the State of Oklahoma into a condition of servitude to a dysfunctional and fundamentally broken

relationship. There is a reason that our nation's justice system has evolved to reduce disputes and their solutions to monetary payments.

The Court is now the finder of fact with respect to equitable relief. In determining whether reinstatement and/or tenure is an appropriate remedy, the Court conducts a fact-specific inquiry taking into account not only the jury verdict, but also the jury instructions and the evidence presented by the parties. If the Court finds any evidence that the termination was motivated by something other than discrimination, reinstatement is not an appropriate remedy. 42 U.S.C.A. §2000e-5(g)(2)(A). This inquiry should be conducted with deference given to academic or business decisions of the institution. Traditionally, federal courts have been wary of interfering with academic tenure decisions. Courts do not sit as super-tenure committees and may not readily substitute their judgment for that of a university.

Defendants ask this Court to deny Dr. Tudor's requests for (a) reinstatement and (b) tenure. Reinstatement is neither reasonably feasible, nor is it desired.

### **ARGUMENT AND AUTHORITY**

#### **PROPOSITION I: OPINIONS OF TUDOR'S QUALITY AS A PROFESSOR**

As the Court is already well aware, the jury in this case awarded damages well in excess of the statutory cap and reasonableness. This is not evidence warranting reinstatement. Nor is the self-serving testimony of Tudor or the impassioned pleas of her "close friend," Dr. Cotter-Lynch. While Tudor and her counsel put on a case of transgender discrimination, the jury was hoodwinked into disregarding the settled law that while Title VII may protect against instances of gender stereotyping and conformity (or non-



conformity) with gender stereotypes, Title VII does not protect against discrimination based *per se* on someone's status as transgender. Dr. Tudor mistakenly or intentionally disregards the evidence presented against her proposed return to campus. Dr. Tudor also asked this Court and jury to wholly disregard (or remain wholly ignorant of) her poor work performance after leaving Southeastern. Whether or not Dr. Cotter-Lynch, Dr. Tudor, or even Dr. Tudor's expert believe Dr. Tudor was a good teacher or scholar nearly a decade ago, in 2009-2010, is not the issue now. The issue today is whether or not Dr. Tudor would be good for the students, the department, and the university presently, and in years to come. The evidence shows that she would not.

**A. Dr. Randy Prus: Tenure Committee Member, Department Chair**

The Court heard Dr. Prus' testimony for itself. Dr. Randy Prus is currently the Chair of Southeastern Oklahoma State University's department of English, Humanities, and Languages, ("EHL"), the department to which Dr. Tudor wishes reinstatement and tenure. Dr. Prus testified in open court that in 2009-10 he voted against granting Dr. Tudor tenure, and was the lone dissenter on that committee. (*Trial Transcript Vol. 3*, p. 465, ln. 13-18, attached as Exhibit 1). Dr. Prus testified that Dr. Tudor's portfolio in 2009-10 demonstrated a failure to properly address her audience in writing, something at which one would expect an English professor to do better. As Dr. Prus put it, Dr. Tudor's cover letter "lacked professional competence," missed its intended audience, and simply "didn't make sense." (*Id.* at p. 465, ln. 21 – p. 466, ln. 3). Dr. Prus criticized Dr. Tudor's lack of engagement and energy as a teacher. (*Id.* at p. 466, ln. 2-4). Dr. Prus testified that Dr. Tudor's inclusion of a personal journal as a form of publication was not an appropriate publication for a tenure

portfolio to include. (*Id.* at pp. 472, ln. 24 - p. 473, ln. 4). Dr. Prus testified that Dr. Tudor's portfolio references to non-tenured faculty and staff was not appropriate in seeking tenure for herself. (*Id.* at p. 473, ln. 13-16).

As the current Chair of the department, Dr. Prus testified about the logistics and benefits of Dr. Tudor's departure from (or possible return to) the EHL department. For example, Dr. Prus testified in court that no one in particular took over duties that would have been filled by Dr. Tudor had she received tenure and promotion. (*Id.* at p. 480, ln. 3-6). Regarding possible reinstatement of Dr. Tudor, Dr. Prus testified as follows:

Q.: As the current chair of the English, Humanities, and Languages department at Southeastern, do you think it would be a good thing for that department if Dr. Tudor came back to work there now?

Prus: No.

Q.: Do you think it would be a good thing for those students if Dr. Tudor came back to work now?

Prus: No.

Q.: Do you think it would be a good thing for the university if Dr. Tudor came back to work there now.

Prus: No.

Dr. Tudor argues in her brief on reinstatement and tenure [Doc. 268] that there would be no opposition to her return to work at Southeastern's EHL department, relying primarily on the endorsement of her "close friend," Dr. Cotter-Lynch, for this proposition. "To [Cotter-Lynch's] knowledge, no one in the English Department opposed Tudor's return to Southeastern." [Doc. 268, p. 3]. However, as noted above, Department Chair Dr. Prus, specifically objects to Dr. Tudor's return as it would not be good for the department, the students, or the university. Further, when questioned by Dr. Tudor's counsel, Dr. Prus

testified on the issue of whether anyone in the Department opposes Tudor's return, as follows:

Q.: Do you think other faculty in the English department would welcome Dr. Tudor back at Southeastern?

Prus: I – we didn't discuss it formally as a department, but informally, I spoke with my colleagues, and it might be split at best, you know. There are a few – there are those who would object to it for a variety of reasons.

(Ex. 1 at p. 483, ln. 11-20).

Perhaps most tellingly, and most germane to the question of tenure, was Dr. Prus' testimony about the promise of what future work Dr. Tudor demonstrated (or failed to demonstrate). Dr. Prus testified as follows:

Prus: As I think I might have mentioned . . . tenure for me is not just a reward but a promise of what further work one is going to do in a field, and I didn't see that promise.

Q.: And by that you mean a promise from the candidate demonstrating potential?

Prus: Yeah.

(*Id.* at p. 474, ln. 8-14).

Dr. Tudor simply did not demonstrate potential for future contributions and success in a way that merited tenure.

Finally, Dr. Prus seems to be, perhaps, the one professional academic involved in this litigation whom everyone regards highly. For example, Dr. Tudor herself testified under oath and in open court that she trusts Randy Prus' judgment and that he is a truthful person. (*Trial Transcript, Vol. 1*, p. 90, ln. 2-5, attached as Exhibit 2). Dr. Tudor's most ardent advocate and close personal friend, Dr. Meg Cotter-Lynch, testified before the Court that she respects Dr. Randy Prus, and that she trusts him. (*Trial Transcript, Vol. 2*, p. 361,

ln. 7-10, attached as Exhibit 3). Former-Dean, Dr. Lucretia Scoufus, testified in open court that Dr. Prus is “an outstanding department chair.” (*Trial Transcript, Vol. 4*, p. 631, ln. 18-20, attached as Exhibit 4). Finally, Dr. Tudor’s lead counsel, himself, Mr. Ezra Young, represented in his closing remarks to that jury that, “Dr. Randy Prus [] is a bit of a curmudgeon, but he’s an honest curmudgeon.” (*Trial Transcript Vol. 5*, p. 835, ln. 12-13, attached as Exhibit 5). Keep in mind that Dr. Prus’ honest and sworn testimony as a professional academic, as someone who reviewed Dr. Tudor’s actual 2009-10 portfolio and found it lacking, and as the current Chair of the EHL department, is that Dr. Tudor should not come back to work at Southeastern; that it would not be good for the students, the EHL department, or the university. No one else in this litigation has the benefit of the insights held by Dr. Prus. Trust Dr. Randy Prus’ professional judgment.

#### **B. Dr. Tudor’s Work Subsequent to Leaving Southeastern**

Throughout this litigation, Dr. Tudor and counsel on her behalf have treated the concept of tenure as an entitlement, something which Dr. Tudor was owed by virtue of the fact that she worked at Southeastern for seven years, regardless of the merit and promise she failed to demonstrate. However, Dr. Tudor’s work performance and professional productivity show that Dr. Prus was right about Dr. Tudor in his 2009-10 evaluation of her. To be blunt, Dr. Tudor’s work performance since leaving Southeastern’s employ has been demonstrably poor in the areas that matter for a professional educator and someone who claims an entitlement to tenure in the higher education setting.

### ***1. Collin College***

The jury did not get to hear about Collin College. But Dr. Tudor's performance at Collin College is directly relevant to whether or not she deserves reinstatement or tenure at Southeastern today. At the end of the spring semester of academic year 2010-11, Dr. Tudor separated from Southeastern Oklahoma State University due to her inability to merit tenure there. In the summer of 2012, Dr. Tudor signed a contract to begin teaching at Collin County Community College in the State of Texas. (*See Excerpts from Tudor's Personnel File from Collin College* at CC 5, attached as Exhibit 6). Dr. Tudor was paid a salary of \$51,184 that year. (*Id.* at CC 13). Dr. Tudor then benefitted from general raises to \$52,720 (2012-13) (*id.* at CC 16); then to \$54,829 (2013-2014) (*Id.* at CC 19); and then to \$58,022 (2014-2015) (*Id.* at CC 25).

However, despite benefitting from the general raises in her salary, Dr. Tudor ultimately demonstrated that she was not meeting the needs of the students and the College, and her contract there was not renewed. For example, during her "Faculty Performance Appraisal 2014-2015" at Collin College, dated 1/11/16, Dr. Tudor's then-dean, Dr. Donald Weasenforth, wrote the following:

In the Fall 2014 and Spring 2015 student evaluations, a notable number of students in Professor Tudor's dual credit classes and in one College campus-based class report that Professor **Tudor's instruction is not as clear as it should be** and that **her classroom management is lacking**.

(*See Collin College Faculty Performance Appraisal 2014-2015*, CC 299 – 307 at 301, attached as Exhibit 7). (Emphasis added)

In the same annual review, Dean Weasenforth described Dr. Tudor's service to Collin College as, "adequate, albeit not outstanding." *Id.* at 303. Dean Weassenforth went on to

give Dr. Tudor an “Overall Evaluation” score of “Improvement Needed.” (*Id.* at CC 307). Finally, Dean Weasenforth’s “Recommendation to the Council on Excellence” was as follows:

I     do   X  do not recommend this faculty member for a multi-year contract.

JUSTIFICATION/COMMENTS: Professor Tudor’s professional development meets standards of excellence. However, her service is adequate, and student evaluations from Fall 2014 and Spring 2015 indicate a need for improvement in instruction and classroom management.

Ex. 7.

In short, Dean Weasenforth and Collin College judged Dr. Tudor’s work performance as a mixed bag – some good, some bad – but ultimately not good enough to continue teaching there.

Unable or unwilling to accept responsibility for her own deficiencies, Dr. Tudor cried discrimination, (as she did at Southeastern), and filed a grievance with Collin College accusing Dean Weasenforth of “biased performance evaluation . . . based on sex,” the “deliberate distortion of information,” a “factual misrepresentation of the data,” and failures to respond to Tudor’s inquiries. (*See Tudor’s Employee Complaint* at CC 1045 – 1047, attached as Exhibit 8). Dr. Tudor accused the Dean of mishandling an incident involving “transphobic remarks” allegedly made by another professor. (*See Collin College Hearing Officer Findings*, CC 1049-1052 at 1050, attached as Exhibit 9). Dr. Tudor also argued in the internal Collin College hearing that negative remarks in certain student evaluations purportedly reflect bias against her because of her transgender status, and that some of her students allegedly called her “sir.” *Id.* Dr. Tudor demanded negative

remarks be removed from her written evaluation, and that new policies or procedures be established at Collin College. Apparently, maligning people in her profession is something to which Dr. Tudor readily resorts, whether it be at Southeastern, Collin College, or who knows where else. However, the Collin College Hearing Officer found Tudor's claims "not substantiated." (See Ex. 9 at CC 1049-1052). Needless to say, Dr. Tudor appealed that decision, pressing her accusations of discrimination against Dr. Weasenforth. (See *Tudor Appeal*, "CC 1054-1057," attached as Exhibit 10). The Collin College lower panel's finding against Dr. Tudor was affirmed. (See *Collin College Review Panel Decision*, "CC 1058," attached as Exhibit 11).

Despite Dr. Tudor's accusations of administrative or institutional transphobia and sex discrimination, the student evaluations spoke volumes. As a sample set, the student evaluations about Dr. Tudor's performance at Collin College included the following statements directly from her students in 2014:

"[We] are having a problem with [our] composition two professor Rachel Tudor. She is very vague on instructions and does not explain what she wants in our essays. The whole class is lost . . . I tried to get help and even went to the writing center but they could not help me because the instruction [sic] were so vague and they didn't know what I had to write about. . . . Her teaching is very unprofessional and the whole class is having problems with her. . . .

On Thursday, March 20<sup>th</sup> she puts my email up for the whole class to see and she starts correcting my grammar and says that there are clear instruction [sic] for the essay. . . . I did not give her consent for her to show my email to the whole class. . . .

(See *Collin College Student Evaluations*, "CC 1067," attached as Exhibit 12).

Another student wrote:

“The major concern I have with this professor was in class, she informed the class that a complaint had been made about her. She put the complaint up on the overhead projector for the class to read, asking us if we agreed or disagreed with the student’s complaint. I feel rather uncomfortable with this I also feel this is highly unethical. She asked the students to go to the dean saying that the statement the student made was not true.

*(Id. at CC 1069).*

Then, in one representative instance in October of 2015, Dr. Tudor held up a student’s paper for ridicule in front of other students, and the authoring student’s name was visible to the student’s classmates. In pertinent part, that student’s complaint says:

On 10/26/15 the professor exposed my paper in front to my classmate, without my permission. She used my paper as a bad example. I felt so embarrassed because my name was on it and everybody knew it was my paper.

*(Id. at CC 1073).*

Public humiliation of her students in front of the whole class seems to be a recurring theme in Dr. Tudor’s method of instruction. One can only imagine the cries of discrimination Dr. Tudor would have wailed had something like this happened to her. Another student’s evaluation echoed some of these same concerns, writing, “Professor [Tudor] does not give specific instructions to students and makes fun of students’ work,” and “assigns papers to students in a confusing way.” *(Id. at CC 1074).* Still another student evaluation in late 2015 described Dr. Tudor as a “bully.” *(Id. at CC 1076).* In more banal complaints, students cited concerns such as, “I don’t feel like I have learned anything this year.” *(Id. at CC 1078).* More recently, in early 2016, one of Dr. Tudor’s students wrote:

I have been flagged on Blackboard [a digital classroom management tool] for the use of the word ‘illegal.’ She [Tudor] has made a rule that ‘illegal’ will result



in expulsion from the class. I can't turn in my required blog posts due to her removing me from Blackboard discussion boards. I fear my grade will suffer because I don't align with her politically.

(*Id.* at CC 1082).

But according to Dr. Tudor, this is no doubt all part of a transphobic conspiracy to ruin her career, perpetrated at no less than two institutions of higher education, in two states, by everyone from the RUSO board, the SEOSU administration, the Collin College Administration, and the Collin College students. It is also noteworthy that in the one hundred and twenty (120) pages' worth of exhibits attached to Dr. Tudor's Motion for Reinstatement and Tenure, there is not a single reference, recommendation, or endorsement from any of Dr. Tudor's former students, either at Southeastern, Collin College, or elsewhere.

Although Dr. Randy Prus, and the administration at Southeastern Oklahoma State University may not have known how poorly Dr. Tudor would do as a professor at Collin College, the evidence shows that Dr. Prus' professional judgment was right in the first place. Dr. Tudor showed neither the potential (nor the actuality) of a successful professor in the university setting. Administrators, evaluators, and students all agree: Dr. Tudor's professional performance is lacking. She should be neither reinstated, nor granted tenure.

## ***2. Seminole State College***

In the summer of 2017, Dr. Tudor applied for work with an Oklahoma entity outside of SEOSU and the RUSO system: Seminole State College ("SSC"). (*See Declaration of Holly Newell*, attached as Exhibit 13). According to employees at SSC, Dr. Tudor declined to appear in person or to participate in a Skype/live-video interview remotely, instead

requesting only an interview by telephone. *Id.* at p. 3. She was applying for a job as an Instructor of English Composition, and was informed that part of the interview process was a sample teaching presentation which might not be effective over the telephone, and Dr. Tudor still declined to appear in person or via video conferences. *Id.* at p. 4. Dr. Tudor refused multiple attempts from Holly Newell at SCC to aid in setting up video conferencing. *Id.* According to the documentation obtained in this litigation by subpoena from SSC, Dr. Tudor seemed good on paper to SSC reviewers, getting the highest pre-interview score of the twenty applicants, but then had the poorest interview score of the six applicants who actually spoke with the reviewers. (*See SSC Documents*, attached as Exhibit 14). The SCC Interview Committee offered terms like “not engaging,” “monotone,” “disappointing,” and “lacked energy” to describe Dr. Tudor’s presentation. (Ex. 13 at p. 5).

Just as Dr. Parker (Tudor’s trial expert on tenure) was impressed with Dr. Tudor on paper, (though never having observed her in a teaching or interview setting), the SSC reviewers thought her written application submissions were strong. But, Dr. Tudor then failed to inspire confidence as a potential classroom teacher in a live setting, interacting with human beings. Dr. Tudor ended up ranked sixth among the six applicants who were actually interviewed, and SSC did not hire her, meaning that at least five (5) other applicants in 2017 were better qualified over all to teach at SSC (in that institution’s opinion). Dr. Tudor asks this Court to award her something that she has repeatedly demonstrated she cannot, and will not, ever merit on her own. As evidenced at trial, Dr. Tudor was given the opportunity to withdraw her tenure application so she could strengthen her publication and service, but she refused. Her refusal is very telling of her

lacking abilities, and her lack of commitment to excelling in higher education. She knew she was unable to strengthen these areas in which she was deficient, regardless of how much time she was given. She knew she would not be able to accomplish what was being asked of her, as she repeatedly demonstrated at Southeastern, at Collin College, and in the minimal efforts she put forth to obtain future employment upon her non-renewal at Collin College. Dr. Tudor is asking this Court of one person to sit as a super-tenure committee, something courts in the past have been loath to do, as set forth more fully, below.

**PROPOSITION II: REINSTATEMENT IS NOT FEASIBLE; TENURE IS UNWARRANTED.**

While the Court may not ignore a factual issue explicitly or implicitly resolved by the jury, the Court must construe the verdict in conjunction with the instructions the jury received and the evidence that the parties presented to the jury. *LG Electronics USA, Inc. v. Whirlpool Corp.*, 790 F.Supp.2d 708 (N.D. Ill. 2011) (citing *Bartee v. Michelin N. Am., Inc.*, 374 F.3d 906, 912-13 (10th Cir. 2004)). In this case, the jury made no finding as to whether Defendant University would have retained Plaintiff in the absence of discrimination, much less granted her tenure, nor did Plaintiff present any evidence to support such a finding.

According to Dr. Tudor, reinstatement is a preferred remedy. However, reinstatement is not an absolute right. *E.E.O.C. v. Prudential Federal Savings and Loan Ass'n*, 763 F.2d 1166 (10th Cir. 1985) cert. denied 474 U.S. 946, 106 S.Ct. 312 (1985). “Reinstatement . . . may not always be possible.” *Whittlesey v. Union Carbide Corp.*, 742 F.2d 724, 728 (2d Cir. 1984). To determine if reinstatement is appropriate, courts conduct a fact-based assessment of feasibility. See *Greenbaum v. Svenska Handelsbanken*, 979

F.Supp. 973, 986 (S.D.N.Y. 1997). (Reinstatement “is an equitable remedy whose appropriateness depends upon the discretion of the court in the light of the facts of each individual case.”) (quoting *EEOC v. Kallir, Philips, Ross, Inc.*, 420 F.Supp. 919, 926–27 (S.D.N.Y. 1976)); see also *Zakre v. Norddeutsche Landesbank Girozentrale*, 541 F.Supp.2d 555, 570 (S.D.N.Y. 2008) (“[R]einstatement may be denied where the plaintiff’s employment term would have already ended by the time of judgment, where reinstatement would displace an innocent third party, or where the[ ] employer-employee relationship may have been irreparably damaged.” (internal quotation marks and citations omitted)). Dr. Tudor acknowledges in her brief that infeasibility is a proper ground for denying a plaintiff’s request for reinstatement. While reinstatement might be a preferred remedy, “where it is not feasible, a plaintiff will be entitled to front pay.” *Thornton v. Kaplan*, 961 F. Supp. 1433, 1437 (D. Colo. 1996) (citations omitted). “An order of reinstatement and an award of front pay are mutually exclusive remedies in this circuit.” *Thornton, citing Anderson v. Phillips Petroleum Co.*, 861 F.2d 631, 637 (10th Cir.1989). “Reinstatement may not be an appropriate remedy where hostility or animosity between the parties, as a practical matter, makes a productive and amicable working situation possible.” *Id.* at 1437.

In the present case, the hostility between the parties is significant. What hostility may have existed in the first place has certainly been exacerbated by the protracted litigation. The discovery and motion practice engaged in by the former-Plaintiff, United States of America, in conjunction with Dr. Tudor’s personal counsel, bordered on abusive, and only deepened pre-existing feelings of hostility and distrust. The relationships on campus suffered as a result of the side-choosing engaged in by university employees even

before Dr. Tudor's separation. The current Chair of the department, Dr. Prus, testified that Dr. Tudor's return to campus would not be beneficial to the students, the department, or the university. Further, there is not an available slot or budget line into which Dr. Tudor could be reinstated. There is no gap of classes not being offered, or a similar situation in need of an additional professor (tenured or otherwise). (*See Declaration of Dr. Randy Prus*, attached as Exhibit 15).

Dr. Tudor's demonstrated inability to address work conflicts without resorting to crying discrimination, (as evidenced by her accusations and filings both at Southeastern and at Collin College), mean that Dr. Tudor would bring to campus the kind of professional radioactivity that will make each situation involving her a powder keg on the edge of explosion. As a brief reminder, Dr. Tudor has accused the following colleagues of discrimination: Dr. Lisa Coleman, Dr. Lucretia Scoufus, Dr. Doug McMillan, Dr. Claire Stubblefield, Dr. Larry Minks, the entire RUSO board, former RUSO general counsel Charles Babb, Dr. Donald Weasenforth, not to mention the Collin College students whom Dr. Tudor accused of discrimination, after providing them with poor class management, confusing instruction, and public humiliation before their peers. Dr. Tudor should not be reinstated.

Of course, what Dr. Tudor really wants is reinstatement *with tenure*. As the *Thorton* court aptly noted, "the actual remedy sought by plaintiff, reinstatement with tenure, would entangle this Court excessively in matters that are left best to academic professionals." *Id.* at professionals. 1439-40 *citing Gutzwiller v. Fenik*, 860 F.2d 1317, 1333 (6th Cir.1988). As the Sixth Circuit recently said about *Gutzwiller*, "a court must not sit as a 'super tenure

committee.” *Seoane-Vazquez v. Ohio State Univ.*, 577 F.App'x 418, 432 (6th Cir. 2014). Moreover, “federal courts have traditionally been wary of interfering with academic tenure decisions.” *Ford v. Nicks*, 866 F.2d 865, 875 (6th Cir.1989). This sentiment has been echoed in other circuits. For example, “we do not sit as a super tenure review board,” *Roebuck v. Drexel Univ.*, 852 F.2d 715, 731 (3d Cir. 1988). In fact, a significant body of case law emphasizes that courts do not sit as “super-tenure committees” and may not readily substitute their judgment for that of a university. *Villanueva v. Wellesley Coll.*, 930 F.2d 124, 129 (1st Cir.1991); *Jiminez v. Mary Washington \*31 Coll.*, 57 F.3d 369, 376-77 (4th Cir. 1995); and *Gutzwiller*.

In *Thonton v. Kaplan*, the District Court of Colorado noted that awarding tenure in a Title VII case “is a ‘significantly more intrusive remedy than remedies ordinarily awarded in Title VII cases, such as reinstatement or seniority, because a judicial tenure award mandates a lifetime relationship between the University and the professor.” 937 F. Supp. 1441, 1449 (D. Colo. 1996) (*citing Brown v. Trustees of Boston University*, 891 F.2d 337 at 359 (1989)). That type of intrusion is not warranted here because the would-be tenured professor, Dr. Tudor, has demonstrated over the last six (6) years the same lack of promise noted by Dr. Randy Prus during the 2009-10 tenure and promotion process. Dr. Tudor’s miserable work history, service, and scholarly production since separating from Southeastern warrant against any impulse to intrude in such a significant way as to award tenure. Dr. Tudor invited a jury to ignore these things (or remain wholly ignorant of them), and focus on her personal struggle as a transgender person. But one’s transgender status

does not, *per se*, merit protection under Title VII, nor does it mean entitlement to a tenured job, despite performance problems. Reinstatement and tenure should be denied.

**PROPOSITION III: DR. TUDOR'S ONGOING, AND DEMONSTRATED, LACK OF SCHOLARSHIP AND SERVICE CAUTION AGAINST EITHER REINSTATEMENT OR TENURE.**

Dr. Tudor claims to be an excellent scholar in her field, but has apparently published nothing in the last six (6) years. On March 25, 2016, Dr. Tudor submitted an application for an Assistant Professor of Humanities position at Rogers State University ("RSU"), in Claremore, Oklahoma. Her application materials were submitted via electronic mail to Mrs. Kristi Mallet at RSU. (*See Email of Friday, March 25, 2016 and eight (8) attachments, from Dr. Tudor to Mrs. Mallett*, attached as Exhibit 16). Included amongst the materials in her application, Dr. Tudor included zero (0) documents attached showing any of her work at Collin College. Bizarrely, Dr. Tudor's application letter was dated "24 February 2012," despite being submitted in March of 2016. *Id.* at p. 2. Dr. Tudor's CV submitted with her application to RSU in 2016 showed no work experience past 2011, despite the fact that Dr. Tudor had been working at Collin College since 2012. Both her CV and her application letter reveal what is, at best, Dr. Tudor's sloppiness and lack of attention to detail, and at worst, her deliberate deceptiveness and lack of honesty. With regard to scholarship specifically, Dr. Tudor's CV submitted to RSU in 2016 showed zero (0) publications since 2012, a year in which she apparently had a single article accepted for publication that was "pending." Based on a search performed by the undersigned, Tudor's 2012 article was a six-page article published in the January 2012 edition of the "ASEBL Journal." Thus, the article necessarily must have been written in 2011 or some time prior to 2011, and

according to Dr. Tudor's application submissions in March 2016, that was the last thing of any kind she published.

Dr. Tudor's scholarship, unlike perhaps teaching or even service, does not require her to have a full-time position anywhere, at any college, university, or high school. She could perform research and then write articles from any place on Earth that has an internet connection. And yet, over the past six (6) or so years, Dr. Tudor has published nothing. This is telling not only of Dr. Tudor's current qualifications to be a full-time university professor, but also of her promise and potential as a future employee and professor. If she has published anything, there can be no good reason for not telling a prospective employer about it 2016. This is exactly one of the considerations Dr. Randy Prus mentioned during his testimony in open court. In 2009-10, Dr. Tudor simply did not show the promise for future success that Dr. Prus wanted to see, and that Southeastern deserved. The years since Dr. Tudor's denial of tenure have only confirmed Dr. Prus' professional, academic evaluation.

As to service, Dr. Tudor's job application submissions demonstrate the same lack of service to the community and to her field. Dr. Tudor's CV submitted in March 2016 shows no service with committees, journals, think tanks, scholarly organizations, or even work with service-based organizations like community groups, tribal organizations, churches, youth groups, or civic entities. In short, Dr. Tudor has continued to demonstrate the lack of promise presaged by her poor work performance at Southeastern, and as aptly observed by Dr. Prus during the 2009-10 tenure and promotion process. Whether or not Dr. Tudor was ready and qualified for tenure in 2009-10 is debatable by the parties. However, not a



single witness that reviewed Dr. Tudor's application at the time it was submitted testified she was qualified. Every witness (Dr. Scoufos, Dr. Prus, Dr. McMillan and Dr. Spencer) all testified she did not meet the service and publication requirements, or that her portfolio of work was weak. While Dr. Cotter-Lynch (who testified that she never actually saw Tudor's tenure portfolio) thinks Tudor was ready, Dr. Prus and others testified Tudor was not. However, what is not debatable now is that Tudor is not ready for, or worthy of, either reinstatement or tenure today. To turn her loose on a student population, workplace, and university already vulnerable to insufficient funding and resources, as well as alignment divides within the institution, would only exacerbate the situation for all involved, likely set up Dr. Tudor for continued failure, but most certainly set her would-be students up for an education that fails to meet their needs. Dr. Tudor should be denied reinstatement and tenure.

#### **PROPOSITION IV: MONEY**

Dr. Tudor does not specifically ask this Court to award back pay, but does argue for "front pay for the period of time between the entry of the verdict and the date Tudor is reinstated." [Doc. 268, p. 9]. This request should be denied. Dr. Tudor found employment after leaving Southeastern. She was hired at Collin College, and earned salaries comparable to, or higher than, what she was paid at Southeastern. That is undisputed. The dispute is whether or not Dr. Tudor properly mitigated her own damages. She did not, and that is not the fault of SEOSU or RUSO. Dr. Tudor was not able to demonstrate work product sufficient to maintain her employment at Collin College. But for her own failures and deficiencies, she would still have that job today.

To begin with, plaintiffs securing equal or greater pay through subsequent employment are not entitled to back pay. *Blum v. Witco Chem. Corp.*, 829 F.2d 367 (3d Cir. 1987). Back pay terminates when the plaintiff begins earning higher wages at his or her new job than he or she earned (or would be making) at the old job from which he or she separated. *Stephens v. C.I.T. Group Equipment Financing, Inc.* 955 F.2d 1023, 1029 (5th Cir. 1992). Back pay is typically reduced by any interim earnings (such as those earned by Tudor at Collin College), regardless of the type of work involved. *Merriweather v. Hercules*, 631 F.2d 1161 (5th Cir. 1980). Dr. Tudor's request for front pay now, after having lost her job teaching at a community college, (where she was earning pay comparable to that at SEOSU), is yet another attempt by her to have someone else fix deficiencies of her own making for her. This Court should not be taken down that path. Dr. Tudor asks for a front pay award of pro-rated portion of \$57,091, but she was actually earning more than that during her 2014-15 year at Collin College. That year, she made \$58,022 (2014-2015). (See Ex. 6 at CC 25 cited above). Again, Dr. Tudor's inability to keep a job should not affect SEOSU and RUSO's entitlement to the full mitigation of damages warranted by Tudor's finding other employment in the first place. Any final award bestowed upon Dr. Tudor should have deducted from it the salaries she earned at Collin College, and any back pay should be limited to the time between her separation from SEOSU in 2011 and when she started working at Collin College in 2012.

Additionally, regarding the jury verdict, the statutory cap on damages, and related cost and fee issues, Defendants anticipate submitting a separate motion for remittitur within the appropriate deadlines after this Court imposes the final verdict, based on

Tudor's position. Finally, Defendants strongly disagree that there was any discrimination or retaliation. This will be appealed.

### CONCLUSION

Dr. Rachel Tudor convinced some people at Southeastern Oklahoma State University to hire her in 2004. In the ensuing thirteen years, she's only been able to convince one entity to hire her: Collin College. Legitimate concerns at SEOSU over Dr. Tudor's lack of promise of future success and contributions were drowned out by Dr. Tudor's howls of discrimination, and the accusations she cast about at her colleagues, administrators, and students. Dr. Tudor's most recent work history, job performance, and her ability to interact with students and colleagues in a professional way clearly show that she should not be teaching in higher education. At this point, reinstatement of Dr. Tudor to a classroom of students is both unwarranted and unwise. Sending her back to a department divided over her is a recipe for future litigation. Forcing a university and the State of Oklahoma into a condition of servitude by giving Dr. Tudor tenure at this point would be a waste of taxpayer resources and contrary to common sense. The State of Oklahoma asks this Court to deny Dr. Tudor's requests for reinstatement and tenure.

Respectfully submitted,

/s/ Jeb E. Joseph

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*State University and The Regional University*

*System of Oklahoma*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of December 2017, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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Jeb E. Joseph

Jury Trial - Volume 3  
November 15, 2017

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-15-324-C
	)	
SOUTHEASTERN OKLAHOMA STATE	)	
UNIVERSITY and THE REGIONAL	)	
UNIVERSITY SYSTEM OF	)	
OKLAHOMA,	)	
	)	
Defendants.	)	
	)	

VOLUME 3  
TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBIN J. CAUTHRON  
WEDNESDAY, NOVEMBER 15, 2017; 9:15 a.m.  
OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography,  
transcript produced by computer.

Sherri Grubbs, CSR, RPR, RMR, RDR, CRR  
United States District Court, Western District of Oklahoma  
(405) 609-5203 - sherri\_grubbs@okwd.uscourts.gov

Jury Trial - Volume 3  
November 15, 2017

1 correct?

2 A. Correct. I was on the tenure promotion committee in  
3 2009.

4 Q. And can you help explain for us here today what your role  
5 on that committee in 2009 was?

6 A. My role was to review the portfolio, attend the meeting,  
7 discuss the merits of the portfolio and her work in the  
8 department. And a vote was taken, and the results were passed  
9 on to the department chair.

10 Q. Okay. And do you recall what that vote was?

11 A. Yes.

12 Q. Okay. And what was that vote?

13 A. The vote was 4 to 1 in favor of tenure and promotion.

14 Q. So the committee then at that point recommended tenure  
15 for Dr. Tudor?

16 A. The committee did, yes.

17 Q. And who was the one dissenter?

18 A. Me.

19 Q. Okay. And what was your reasoning for voting against  
20 tenure at that time?

21 A. Well, I -- the cover letter lacked professional  
22 competence. Dr. Tudor made an argument that three people on  
23 campus who weren't qualified for tenure deserved tenure, and,  
24 therefore, she did.

25 And as writing instructors, we teach for audience and

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November 15, 2017

1 purpose. And she was addressing this to a group of people  
2 with doctorates and tenure -- and tenure. It didn't make  
3 sense.

4 Q. I see. And so you didn't -- you disagreed with the cover  
5 letter.

6 Did you know of any publications that Dr. Tudor had at  
7 that time?

8 A. She had one.

9 Q. Okay. And were there other professors who had earned  
10 tenure that had only one publication at that time?

11 A. I can't speak -- I don't remember.

12 Q. Okay. Now, ultimately, though, the committee votes and  
13 takes a position as a committee; is that correct?

14 A. Correct.

15 Q. And do you stand behind the committee's decision to --

16 A. Well, as part of the committee, yes.

17 Q. Okay. So you stand behind the committee's decision to  
18 recommend tenure and promotion?

19 MR. JOSEPH: Objection, Your Honor. Leading.

20 THE COURT: Sustained.

21 Q. (BY MS. NOVOTNY) Were you familiar with Dr. Tudor's work  
22 other than publications and the cover letter you spoke of?

23 A. In 2009?

24 Q. Yes.

25 A. Yes. I visited her classroom once or twice. Twice, I

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November 15, 2017

1 Q. Okay. And I believe you mentioned an application letter,  
2 and you said it was poor. Was that your word?

3 A. It wasn't professionally competent. I think that's the  
4 term I used.

5 Q. Okay. Was -- can you expand briefly on what you mean by  
6 that?

7 MS. NOVOTNY: Objection. He's already testified to  
8 this.

9 THE COURT: Sustained.

10 MR. JOSEPH: Okay.

11 Q. (BY MR. JOSEPH) In terms of the letter, did it appear to  
12 you that the letter understood its intended audience?

13 MS. NOVOTNY: Objection. He's already testified to  
14 that. Duplicative.

15 THE COURT: Sustained.

16 MR. JOSEPH: Okay.

17 Q. (BY MR. JOSEPH) In terms of her portfolio, was there a  
18 collection of poetry included with that document?

19 A. It was a collection of poems in a journal with "open mic"  
20 put on top of it.

21 Q. And by "open mic," do you know what that term means?

22 A. I know it's in reference to sometimes open poetry  
23 readings where people can just gather to read.

24 I wasn't sure -- it seemed as if she were passing off  
25 journal -- a personal journal as a form of publication.



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November 15, 2017

1 Q. And, in your opinion in 2009-2010, was that an  
2 appropriate publication for a tenure and portfolio  
3 application?

4 A. No, it wasn't.

5 Q. Okay. Is Corey Delashaw a tenured member of the faculty?

6 A. No, she isn't.

7 Q. Okay. Is Kim McGeehee?

8 A. No, he wasn't -- he's retired since, but he wasn't at the  
9 time.

10 Q. Okay. And was Theresa Anderson at that time a tenured  
11 member of the faculty?

12 A. No.

13 Q. Okay. So to the extent that Dr. Tudor's portfolio  
14 referenced them, do you have an opinion about whether or not  
15 that was appropriate?

16 A. It wasn't appropriate.

17 Q. What is a chapbook?

18 A. A chapbook is a small collection of poetry, 20, 30, 40  
19 pages maybe.

20 Q. And is the chapbook the same thing as the open mic book  
21 that you referenced a moment ago?

22 A. No. Chapbooks have their own publishers.

23 Q. Okay. Did Dr. Tudor include any chapbooks in her  
24 portfolio?

25 A. Not that I -- except for the open mic. That's the only

Jury Trial - Volume 3  
November 15, 2017

1 one I recall.

2 Q. Okay. And was there anything that you found problematic  
3 with Dr. Tudor's actual publication or publications in the  
4 2009-10 application committee meeting?

5 A. It seemed to be -- there weren't very many recent  
6 references, and the field is somewhat dynamic. And it didn't  
7 show -- didn't quite show promise; right?

8 As I think I might have mentioned -- maybe I didn't --  
9 tenure for me is not just a reward but a promise of what  
10 further work one is going to do in a field, and I didn't see  
11 that promise.

12 Q. And by that you mean a promise from the candidate  
13 demonstrating potential?

14 A. Yeah.

15 Q. Okay. Did you consider Dr. Tudor's work on Southeastern  
16 University's Native American Symposium to be a work of  
17 scholarship or was it a work of service?

18 A. A work of service, I would categorize it.

19 Q. Did you consider it to be noteworthy for appropriate  
20 purposes of tenure and promotion?

21 A. It certainly wasn't outstanding, but it was -- it added  
22 to it.

23 Q. Okay. How many -- I believe you may have testified to  
24 this; I just couldn't hear you earlier.

25 How many total professors were on Dr. Tudor's 2009-10

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November 15, 2017

1 MR. JOSEPH: I'm sorry if I'm blowing anyone's  
2 eardrums out, Your Honor. I apologize.

3 Q. (BY MR. JOSEPH) Dr. Prus, did anyone in particular take  
4 over any duties that were slotted for Dr. Tenure [sic] had she  
5 been given tenure and promotion?

6 A. No.

7 Q. Okay. As the current chair of the English, Humanities,  
8 and Languages department at Southeastern, do you think it  
9 would be a good thing for that department if Dr. Tudor came  
10 back to work there now?

11 A. No.

12 Q. Do you think it would be a good thing for those students  
13 if Dr. Tudor came back to work now?

14 A. No.

15 Q. Do you think it would be a good thing for the university  
16 if Dr. Tudor came back to work there now?

17 A. No.

18 Q. Okay.

19 MR. JOSEPH: Nothing further, Your Honor.

20 Thank you, Dr. Prus, ladies and gentlemen.

21 THE COURT: Ms. Novotny.

22 MS. NOVOTNY: Judge, if I may approach briefly just  
23 to confer?

24 THE COURT: Yes.

25 (The following proceedings were had at the bench and out

Jury Trial - Volume 3  
November 15, 2017

1 Q. Isn't it true that many folks who review tenure  
2 applications will, you know, skim certain parts of it and  
3 focus on the parts that they think are most important?

4 MR. JOSEPH: Objection, Your Honor. Calls for  
5 speculation.

6 THE COURT: Overruled.

7 THE WITNESS: I would hope not, but I'm sure they  
8 do.

9 Q. (BY MS. NOVOTNY) Now, you indicated before that you were  
10 not necessarily sure you would welcome Dr. Tudor back.

11 Do you think other faculty in the English department  
12 would welcome Dr. Tudor back at Southeastern?

13 MR. JOSEPH: Objection, Your Honor. Calls for  
14 speculation.

15 THE COURT: Overruled.

16 You may answer if you know.

17 THE WITNESS: I -- we didn't discuss it formally as  
18 a department, but informally, I spoke with my colleagues, and  
19 it might be split at best, you know. There are a few -- there  
20 are those who would object to it for a variety of reasons.

21 Q. (BY MS. NOVOTNY) Now, you are currently the chair of a  
22 department at Southeastern.

23 Is your boss at Southeastern in the room right now?

24 A. Yes.

25 Q. So many professors move up the ranks and eventually move

Jury Trial - Volume 1  
November 13, 2017

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-15-324-C
	)	
SOUTHEASTERN OKLAHOMA STATE	)	
UNIVERSITY and THE REGIONAL	)	
UNIVERSITY SYSTEM OF	)	
OKLAHOMA,	)	
	)	
Defendants.	)	
	)	

VOLUME 1  
TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBIN J. CAUTHRON  
MONDAY, NOVEMBER 13, 2017; 9:00 a.m.  
OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography,  
transcript produced by computer.

Sherri Grubbs, CSR, RPR, RMR, RDR, CRR  
United States District Court, Western District of Oklahoma  
(405) 609-5203 - sherri\_grubbs@okwd.uscourts.gov

Jury Trial - Volume 1  
November 13, 2017

1 application 2010-2011 would succeed.

2 Q. Do you trust Randy Prus's judgment?

3 A. Yes.

4 Q. Is he a truthful person?

5 A. Yes.

6 Q. Dr. Tudor, why don't we move forward in time.

7 Do you know what happened after you met with Randy Prus?

8 What was the next step in your 2010-11 application?

9 A. Randy Prus began assembling the tenure review committee  
10 to look at my portfolio and to make a decision on my tenure  
11 application for that year.

12 Q. Dr. Tudor, did something significant happen in early  
13 October 2010?

14 A. Yes. Randy Prus and myself received -- we received  
15 notice to go to Dean Scoufos's office.

16 Q. Did Dean Scoufos tell you what that meeting was about  
17 before you arrived?

18 A. No. We -- she did not tell me, and she did not tell  
19 Randy Prus either. When I went to his office, we walked over  
20 to Dean Scoufos's office together. Her office is in a  
21 different building. He had no idea what the meeting was  
22 about.

23 Q. Was that unusual?

24 A. I believe so, yes. He's the department chair. I believe  
25 that he should be kept in the loop about -- and -- about

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Jury Trial - Volume 2  
November 14, 2017

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-15-324-C
	)	
SOUTHEASTERN OKLAHOMA STATE	)	
UNIVERSITY and THE REGIONAL	)	
UNIVERSITY SYSTEM OF	)	
OKLAHOMA,	)	
	)	
Defendants.	)	
	)	

VOLUME 2  
TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBIN J. CAUTHRON  
TUESDAY, NOVEMBER 14, 2017; 9:15 a.m.  
OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography,  
transcript produced by computer.

Sherri Grubbs, CSR, RPR, RMR, RDR, CRR  
United States District Court, Western District of Oklahoma  
(405) 609-5203 - sherri\_grubbs@okwd.uscourts.gov

Jury Trial - Volume 2  
November 14, 2017

1 Q. Did you follow those guidelines to the best of your  
2 ability?

3 A. To the best of my ability, yes.

4 Q. Can professional people in a workplace have legitimate  
5 differences of opinion without it being discriminatory?

6 A. On some topics, yes.

7 Q. Do you respect Dr. Randy Prus?

8 A. I do.

9 Q. Do you trust him?

10 A. Yes.

11 Q. Do you respect Dr. Claire Stubblefield, the former  
12 affirmative action officer at the school?

13 A. I have concerns about her.

14 Q. Did you trust Dr. Stubblefield's word?

15 A. Which word in particular?

16 Q. In general, did you find Dr. Claire Stubblefield -- you  
17 worked with Dr. Claire Stubblefield -- at least your tenure  
18 there overlapped at the university; correct?

19 A. Yes. Yes.

20 Q. Did you trust Dr. Stubblefield?

21 A. I was aware that her job was --

22 Q. Did you trust her? It may be a yes-or-no question.

23 A. If it has to be a yes-or-no question, the answer is no.

24 Q. Okay. If Dr. Claire Stubblefield testifies that she  
25 conducted, in her opinion, a conscientious and thorough



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November 16, 2017

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-15-324-C
	)	
SOUTHEASTERN OKLAHOMA STATE	)	
UNIVERSITY and THE REGIONAL	)	
UNIVERSITY SYSTEM OF	)	
OKLAHOMA,	)	
	)	
Defendants.	)	
	)	

VOLUME 4  
TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBIN J. CAUTHRON  
THURSDAY, NOVEMBER 16, 2017; 9:15 a.m.  
OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography,  
transcript produced by computer.

Sherri Grubbs, CSR, RPR, RMR, RDR, CRR  
United States District Court, Western District of Oklahoma  
(405) 609-5203 - sherri\_grubbs@okwd.uscourts.gov

Jury Trial - Volume 4  
November 16, 2017

1 MS. GALINDO: Thank you, Your Honor. Thank you.

2 Q. (BY MS. GALINDO) Do you think, when Mindy House was  
3 terminated, that was right?

4 A. That went before two committees, six people, I believe,  
5 on each committee. That's twelve people who recommended her  
6 termination based on the evidence that they gathered.

7 Q. Did you leave one person off the list of presidents?

8 A. I might -- that's what I said. I might have left one  
9 off.

10 Q. One of those you left off was your husband; isn't that  
11 right?

12 A. It was -- oh, he was interim president. I hope nobody  
13 tells him that I left him off. He was interim president for  
14 one year. I think it was one year. It might have been less.

15 Q. Dr. Prus was the only faculty member that disagreed as to  
16 Dr. Tudor; correct?

17 A. I don't know that.

18 Q. Well, you're pretty close to Dr. Prus; correct?

19 A. Close inasmuch as he's an outstanding department chair  
20 and I was his dean.

21 Q. And you're saying you don't know that because it's  
22 supposed to be confidential?

23 A. I don't know that because it's confidential, but I also  
24 know that we were advised from the very first not to discuss  
25 it at all.

Jury Trial - Volume 5  
November 17, 2017

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-15-324-C
	)	
SOUTHEASTERN OKLAHOMA STATE	)	
UNIVERSITY and THE REGIONAL	)	
UNIVERSITY SYSTEM OF	)	
OKLAHOMA,	)	
	)	
Defendants.	)	
	)	

VOLUME 5  
TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE ROBIN J. CAUTHRON  
FRIDAY, NOVEMBER 17, 2017; 9:15 a.m.  
OKLAHOMA CITY, OKLAHOMA

Proceedings recorded by mechanical stenography,  
transcript produced by computer.

Sherri Grubbs, CSR, RPR, RMR, RDR, CRR  
United States District Court, Western District of Oklahoma  
(405) 609-5203 - sherri\_grubbs@okwd.uscourts.gov

Jury Trial - Volume 5  
November 17, 2017

1 new rules so that they could break the law.

2 Now, you also heard from John Mischo. He was the former  
3 chair of the English department.

4 John Mischo wanted to give Rachel a chance to prove  
5 herself. He wanted to foster success in his department just  
6 like any administrator should.

7 But those other Southeastern administrators wouldn't let  
8 Dr. Mischo do that. They wouldn't let Dr. Mischo treat Rachel  
9 just like everyone else. They wanted her to be treated  
10 different. They needed her to be treated differently.

11 Now, I'll be honest with you again. It takes a little  
12 bit for you to get used to Dr. Randy Prus. He is a bit of a  
13 curmudgeon, but he's an honest curmudgeon. Randy critiqued  
14 Rachel, but he ultimately stood behind the department's vote  
15 in 2009-10. A true mark of a collegial and respectful  
16 colleague is to respect differences of opinion, which Randy  
17 does.

18 Now, Dr. Prus also told us a little bit about how he  
19 tried to help Rachel when she tried to reapply in 2010-11.

20 He told us that he helped edit her cover letter, gave her  
21 specific advice on things that should and shouldn't go in that  
22 portfolio.

23 He also told us something very important, that in  
24 2010-11, he looked at those materials, and he thought that if  
25 Rachel did what she did, did what he said, that she merited

# **Dr. Rachel Tudor's Personnel File at Collin College**

CC 1

11. Any action or event that the College determines creates a financial exigency and a need to reduce expenditures for personnel, including, but not limited to, declines in enrollment, tax revenues or funding shall constitute good cause and may result in termination of the Contract.
12. This Contract is conditioned on the Faculty Member's providing and/or having on file necessary experience records, and other records required by the College, including, but not limited to, records required for personnel and payroll purposes. Any intentional misrepresentation by the Faculty Member in any of these records shall be grounds for dismissal.
13. Employment in federally or categorically funded positions is expressly conditioned upon availability of full funding for the position and any reduction of such funding constitutes good cause for dismissal.
14. Supplemental duties may from time to time be assigned to the Faculty Member. No property right to continued employment exists in such supplemental duties regardless of whether stipends are paid. Such assignments may be terminated for any reason or for no reason, at the discretion of the President. The Faculty Member understands and agrees that only the President is authorized to establish stipends, and that any other representation made by any other person regarding stipends is void and of no effect.
15. The Contract is not valid unless signed and returned to the Human Resources Office of the College within thirty (30) working days, nor is this Contract valid without the approval of employment by the President. The President is authorized to sign this Contract with the approval of the Board.
16. The Faculty Member is entitled to all rights of due process as defined by law and as authorized in College policy.
17. This Contract supersedes all prior contracts concerning full-time employment of the Faculty Member, and any prior full-time employment contracts are of no force or effect.
18. Salary: The annual compensation for the 2012-2013 year is set at \$51,184, based on the approved calendar of 171 work days. As noted in Section 2 above, total salary paid may be pro-rate based on the actual number of days worked in the contract period.
19. Benefits: A Faculty Member employed full-time by the College shall receive employee benefits authorized by state law and adopted by the Collin County Community College Board of Trustees.

I HAVE READ THIS CONTRACT AND AGREE TO ABIDE BY ITS TERMS AND CONDITIONS.

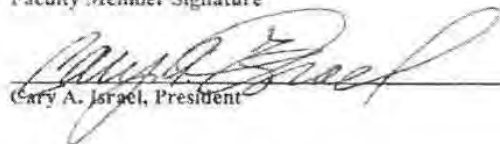
Faculty Member: Rachel Tudor

CWID: 100139507

Address: 1124 N 10th Avenue  
Durant, OK 74701-3236

  
\_\_\_\_\_  
Faculty Member Signature

7/3/2012  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Cary A. Israel, President

6/29/2012  
\_\_\_\_\_  
Date



JAN/25/2013

NEW FACULTY NAME:	Rachel Tudor
HIRE DATE:	8/14/2012
9-MONTH PAY CALCULATION (BASED ON 170 WORKING DAYS OR 12-MONTH PAY CALCULATION (BASED ON 225 WORKING DAYS)	9-Month
ACTUAL NUMBER OF WORKING DAYS:	170
DAYS NOT WORKED/REASON:	
REGULAR FULL-TIME OR TEMPORARY FULL-TIME:	Regular Full-time
ELIGIBLE FOR BENEFITS:	Yes
JOB TITLE:	Professor, English
DIVISION:	Communications & Humanities
CAMPUS:	Spring Creek Campus
VP/PROVOST:	Dr. Mary McRae
TRANSFER FACULTY OR TECHNICAL FACULTY:	Transfer Faculty
HIGHEST DEGREE LEVEL:	Doctorate
YEARS OF EXPERIENCE (max of 10 years exp credit for new hires or Collin staff employees; max of 25 years for Collin administrators transferring to faculty position):	10
BASE SALARY - 9 MONTH	\$42,023
ADDITIONAL AMOUNT FOR 12 MONTH ASSIGNMENTS	\$0
ADDITIONAL AMOUNT FOR HIGHER DEGREE:	
Doctorate	\$6,724
Professional Experience Credit (additional 0.5% of based salary for each year of experience, up to max)	\$2,437
ANNUALIZED STARTING SALARY	\$51,184
FACULTY MEMBER ACTUAL ANNUALIZED SALARY*	\$51,184

\*Please note that employment of Full-time Faculty is contingent upon approval of the Board of Trustees.

\*Note: Faculty Member's Actual Annualized Salary will be less than the Annualized Starting Salary if the Faculty Member will work less than the standard number of days (170 for 9-Month Assignments or 225 for 12-Month Assignments).

Note: Official transcripts must be received by the Collin College Human Resources Department no later than 30 days following employment, or employment will be terminated.

Kari Kimbrough  
Human Resources Representative Signature

8/13/12  
Date

**EMPLOYEE ACKNOWLEDGEMENT:**

I have reviewed the information on this worksheet, and agree with the information as stated. I understand and agree that any corrections approved in the future will not be made retroactively, and will be processed in the next available regular payroll within the published cut-off dates. I understand this worksheet is not a contract, but rather provides details regarding how my hiring salary was calculated. Note: Credentials used to satisfy employment requirements must be confirmed during the first thirty (30) days of employment, or your employment with Collin College will be terminated.

Rachel Tudor  
Employee Signature

8/14/12  
Date

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**COLLIN  
COLLEGE** | **MEMORANDUM**

To: Rachel Tudor  
Dept.: Communications-Humanities  
Campus: Spring Creek Campus  
From: Cary A. Israel, District President  
Date: August 31, 2012  
Re: Compensation for 2012-2013



I am pleased to share with you that at the August 28 meeting of the Collin College Board of Trustees, the base salary for faculty was approved to increase by 3.0%. This will result in an increase that will be applied to your compensation package for the 2012-2013 fiscal year and brings your annualized salary from \$51,184 to \$52,720. This new rate will be reflected on your September 28, 2012 payroll check.

It has been a great year for our college. Despite ongoing reductions in state funding, we continue to accomplish our strategic goals through the efforts of a committed, outstanding group of faculty, staff and administrators who are leading our students to success.

Our accomplishments this year have been numerous and I want to thank you for your contributions in helping us achieve these exciting milestones.

- National League of Nursing recognition as a Center of Excellence
- Recognition as a "Top Military-Friendly Institution"
- Partnership forged with Texas Tech Health Science Center for concurrent admission of our nursing students
- Program accreditation received for our EMT/Paramedic program
- Collin College's men's and women's tennis teams finished third and sixth, respectively, in the nation after competing at the national tournaments.
- Collin College was named the No. 1 college in the education category in a recent reader's choice poll conducted by Star Community Newspaper.
- *Collin Serves* contributed more than 3,000 hours in various volunteer projects across the district in 2011-2012. More than 930 students, faculty and staff contributed their time and efforts to various projects.
- More than 600 faculty, staff and students purchased SPIRIT t-shirts, contributing over \$11,000 toward scholarships for 2012-2013.

While these are only a few of our major successes this year, I value the contributions each of you make and I look forward to working with you as we begin the 2012-2013 academic year.

Stay well and have a terrific new year!

Collin County Community College District  
Collin Higher Education Center | 3452 Spur 399, McKinney, TX 75069  
P | 972.599-3100 | www.collin.edu

CWID: 100139507

CCCCD does not discriminate on the basis of race, color, religion, age, sex, gender, national origin, disability or veteran status.

CC 16





# MEMORANDUM

To: Rachel Tudor  
From: Cary A. Israel, District President  
Date: August 30, 2013  
Re: Compensation for 2013-2014

A handwritten signature in cursive, appearing to read 'Cary A. Israel'.

I am pleased to share with you that the Collin College Board of Trustees approved a general salary increase of 4% for the 2013-2014 fiscal year at the August 27th meeting. This brings your annualized salary from **\$52,720** to **\$54,829** and this new rate will be reflected on your September 30, 2013 payroll check.

It has been a tremendous year for our college, and we have made a great start to accomplishing our Vision 2016 Strategic Plan, including progress on our SACSCOC reaffirmation review and documentation process.

Our accomplishments this year have been numerous, and I want to thank you for your contributions in helping us achieve these exciting milestones.

- Designation as a National Center of Excellence in Convergence Technology by the National Science Foundation
- Recognition as a Phi Theta Kappa 5-Star Chapter
- Designation as a Presidential Award Finalist on the National Higher Education Community Service Honor Roll
- Recognition as one of the Top 10 Awesome Community Colleges in the Lone Star State
- Recognition of Dr. Gregory Sherman as a Texas Professor of the Year by CASE and the Carnegie Foundation for the Advancement of Teaching
- Continued recognition as a "Top Military-Friendly Institution"
- Our men's and women's tennis teams both finished third in the nation after competing at the national tournaments held at Collin College.

While these are only a few of our major successes this year, I value the contributions each of you make, and I look forward to working with you as we begin the 2013-2014 academic year. Stay well and have a terrific new year!

(Email: [rtudor@collin.edu](mailto:rtudor@collin.edu))  
(CWID: 100139507)

Collin County Community College District  
Collin Higher Education Center  
3452 Spur 399  
McKinney, Texas 75069  
[www.collin.edu](http://www.collin.edu)

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# MEMORANDUM

To: Rachel Tudor  
From: Cary A. Israel, District President  
Date: September 3, 2014  
Re: Compensation for 2014-2015

A handwritten signature in black ink, appearing to read 'Cary A. Israel', written over the 'Re:' line of the memorandum header.

As we prepare to embark upon a brand new academic year with new opportunities to enhance the academic and collegiate experiences of our 53,000 students, I am grateful to have a few minutes to reflect upon what a stellar year 2013-2014 has been for Collin College.

Several of Collin's outstanding faculty were in the spotlight, including notably, Ceilidh Charleson-Jennings, who was honored as 2013 Texas Professor of the Year by the Carnegie Foundation for the Advancement of Teaching and the Council for Advancement and Support of Education (CASE) and Dr. Kyle Wilkison, who was one of two community college professors in Texas to receive the prestigious Minnie Stevens Piper Award.

Many other of our outstanding faculty members wrote scholarly books, helped students obtain scholarships, served as sponsors for student organizations and honor societies, coached athletic teams, produced/choreographed theatrical, dance, and music performances, and served as mentors and advisors to students. Others were selected to serve on internal Collin committees/councils or by professional associations to serve in leadership roles and/or present academic papers.

Similarly, our staff employees have been involved on and off campus in representing the college in a myriad of student and community organizations, activities and programs and many have also received professional honors and/or accepted leadership positions with professional associations. As I often say, Collin is home to a blizzard of activity and many engaged colleagues!

Your efforts and accomplishments are greatly appreciated and I am pleased to be able to share that at the August 26th meeting of the Collin College Board of Trustees, a general salary increase for faculty of 4% + \$1000 for the 2014-2015 fiscal year was approved. This brings your annualized salary from **\$54,829** to **\$58,022** and this new rate will be reflected on your September 30, 2014 payroll check.

(Email: [rtudor@collin.edu](mailto:rtudor@collin.edu))  
(CWID: 100139507)

Collin County Community College District  
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3452 Spur 399  
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FACULTY PERFORMANCE APPRAISAL  
2014-2015

Faculty Member: Tudor, Rachel

Date: 1/11/16

CWID: 100139507

Annual Appraisal

Period Covered: Summer 2014-Summer 2015

Dean: Donald Weasenforth

Division: Communication and Humanities

INSTRUCTIONS

The primary purpose of the assessment process at Collin is to maintain high quality educational programs. The process focuses on the professional growth and development of each faculty member as an individual in relation to the position description, standards of excellence, divisional and institutional goals and priorities. The performance appraisal process is also used as a component in determining contractual status, including renewal, non-renewal, the awarding of multi-year contracts and termination.

The performance appraisal process is conducted in an atmosphere of open and honest communication between the employee and the supervisor. Each employee is responsible for providing the supervisor with evidence of professional accomplishments during the year that support the mission and goals of the division and the institution. Likewise, the supervisor is responsible for reviewing the employee's professional accomplishments to determine the degree to which the employee met the established objectives for the year. Conducted in an atmosphere of mutual trust and respect, the performance appraisal process provides a growth experience for all college faculty. See pages 53-55 of Faculty and Associate Faculty Handbook Fall 2014.

Criteria for excellence in the performance of faculty "Duties and Responsibilities" are listed by category on the following pages. Using the definitions and examples for these ratings, circle the appropriate rating that matches the individual's performance in each category.

- M Meets standards for excellence
- I Improvement needed
- N Not applicable

Definitions and Examples:

**MEETS:** One or more of the words usually, frequently, successfully, or effectively applies. This rating is appropriate for job performance that meets and may exceed required criteria for excellence in the category.

**IMPROVEMENT NEEDED:** One or more of the terms occasionally, marginally, inadequately, sometimes, or progressing applies. This rating describes performance in which many of the job duties and standards are met, but where improvement in one or more areas is required to meet the criteria for excellence. An action plan must be in place, or be established to accompany this appraisal to clearly identify specific skills or areas in need of continued growth, development and/or improvement.

**NOT APPLICABLE:** The activity is not part of the faculty member's job or position at the college.

PLEASE NOTE:

*In the comment area provided following each section, you must justify ratings that indicate a need for improvement.*

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## I. TEACHING

1. MIN Facilitates learning.
2. MIN Provides students with the fundamental body of knowledge of his/her discipline.
3. MIN Teaches students to apply that knowledge.
4. MIN Responds to the differing educational requirements of students.
5. MIN Employs current materials in classroom presentations and learning experiences.
6. MIN Uses innovative teaching and learning methods.
7. MIN Employs effective evaluation techniques.
8. MIN Meets classes as scheduled.

## COMMENTS:

**From Professor Tudor:**

Fall 2015 marks the end of the mentoring period prescribed at the conclusion of last year's appraisal. Consequently, the student evaluations from Fall 2015 should be used exclusively to evaluate the outcome. I am pleased to report that the evaluations overall were outstanding! For example, in English 1301.S54 EVERY response was unanimously "Strongly Agree" in EVERY category. The student comments supported the unanimous, "strongly agree" appraisal with such explanations as: "Great teacher—always knew what was expected"; "Her skills in the subject"; and two students remarked on my personable demeanor by stating that I am "very nice!" I am also pleased to report that another class, English 1302.S20 was also unanimously positive with EIGHT students marking "Strongly Agree" in every category. Students commented on my being "thorough with her assignments and what she expects"; being "very involved with the students"; "well-organized . . . presents her materials very well"; "Her unending desire to make us learn"; and "She uses a lot of things to explain her lessons." Students also commented on my use of "videos and readings of current events that were very helpful towards my writing." My English 2332.S03 evaluations were, as my literature courses always are, overwhelmingly positive. The students in this class noted: "very knowledgeable about the topics"; "Loved the class, great teacher 10/10"; "I liked the discussions and how open the class was"; "Dr. Tudor was really passionate . . . making the class discussion interesting"; "She encourages us to think outside the box"; "She involved all the students to participate in the discussions"; "Really challenged your thinking". There was only one negative evaluation and it was paired with comments that directly contradicted what the rest of the class wrote on their evaluations. My 1301.S13 was also overwhelmingly positive, it had 11 positive evaluations, 4 mixed, and only 1 negative. The students wrote that they liked my use of "various teaching techniques"; "different types of assignments"; use of "group work"; use of Blackboard (three stars in front of "updating Blackboard"); several students commented on my personable presence by noting "she's very understanding" "humble" "respectful"; and "great knowledge of the subject". The one student who was an anomaly is a student who wanted to write a paper that did not fall within the parameters of the class and was angry when I required him to follow the assignment's guidelines. The only course to fall outside the overwhelming positive parameters of the other classes was 1301.S01. Although it should be noted that this class too had more positive (7) than negative (4) evaluations and (2) mixed. It should be noted that this class was an anomaly in an otherwise overwhelmingly positive semester.

The portfolios of the students who successfully complete my classes demonstrate that they have met the learning objectives. I note that a few students may mistake the independent thinking I encourage for an absence of direction, but they are a minority. A few students prefer to be told precisely what to do instead of being given models of completed assignments and detailed evaluation rubrics. In the future, I will more strenuously encourage students who need more supervision to ask for it. I also plan to revise my grading policy for in-class writing assignments.

In reference to student evaluations for Fall 2014 and Spring 2015 I would like note to be taken of the following: Last year I adopted a new textbook for my 1302 classes, *Writing Arguments*, and this year I adopted a new textbook for my 1301 classes, *Composition in the Classical Tradition*. I reviewed numerous textbooks and materials to select texts that closely meet the learning outcomes of the courses. It should be noted that the textbooks used formerly also complied with the learning outcomes mandated for the courses. Most of the students who enroll in my classes successfully complete the classes. Most of my class evaluations are overwhelmingly POSITIVE and most of the individual student comments are

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positive. For example, in five of the classes I taught at Collin College I had a total of 1049 positive (strongly agree/agree) responses and only 92 negative (disagree/strongly disagree)—that is over a 90% positive rating. That is an exceptional outcome—if a student has over a 90% success rate, they would earn an A. The anomaly was one class that was only 2/3rds positive (147/102). Now, I want to address the classes I was assigned at Plano West. After last year's assessment, I brought to the administration's attention that a student wrote on her evaluation that the other high school students had colluded to subvert the evaluation process by discussing things they could write to get rid of me. It is important to note that I had the very same students in the Spring semester. The students continued their collusion by making spurious and ludicrous complaints to the Dean throughout the semester. I shared these with my mentor and she agreed that they ranged from not credible to patently absurd. Many of the comments on the Spring 2015 evaluations were a repetition of the same unfounded claims and bogus accusations they wrote on the Fall 2014 evaluations only more deliberately constructed and spitefully invective. The spurious nature of the negative comments is evidenced by the fact that I used the identical lesson plans at Plano West that I used on the on-campus courses and NOT ONE student at Collin College complained. In fact, the overwhelmingly positive responses from the student evaluations at Collin College is irrefutable evidence of the deceptiveness and malicious intent of the comments from the high school students. I request in the strongest terms possible that the student evaluations from Plano West not be used in my yearly assessment or in my multi-year contract assessment. It is also to be noted that I taught a composition class in the Summer 2015 at Collin College without complaint. It should also be noted that the total student enrollment in two sections of composition at Plano West is less than that of the enrollment in one composition class at Collin College—that fact gives Plano West a disproportionate and unfair impact. While I am always open to new ideas to improve my teaching, the problem at Plano West was not pedagogical.

Students from Collin, by contrast, wrote, for example, "Thank you so much for enthusiasm. New ways of thinking/experiencing literary ideas/discussion." "Very engaged with students during discussions . . . very knowledgeable and insightful on subject." "Fantastic professor! Loved the class!" "Very well-organized calendar format . . . timely updates when schedule changed." "She was very sensitive to opposing views." "The instructor is very positive and outgoing. She loves her job and to teach." "She is very descriptive of what she expects from you. Always offers help, and even posts helpful things online." "Dr. Tudor is the best." "She allows each student to participate in class activities." "Great attitude and energy in class." "Dr. Tudor is a great professor who really cares. She's awesome." "She is very nice and pleasant, easily approachable." "I like how Professor Tudor was enthusiastic about every topic we talked about in class discussion." "Gave us interesting points, videos, and articles to give us detailed insight on our topics." "The dynamic style of the class from the blogs to classroom discussions and interesting topics." "Knows the course material well and can explain the concepts to the class effectively." "I really enjoyed how she helped me thoroughly." "She did a very good job of teaching and making this class easy to understand." "She is very organized and was a very good teacher." "Asks questions to challenge me." "She explains things very well." "I like the content of the course and that she respected my opinions."

Finally, I would like to add the following anecdote from my colleague Dr. Michael Schueth: "One of my best 1301 students last year was enrolled in Dr. Tudor's English 1302 course in the Spring. When I ran into my student, I asked her how she was doing in her English 1302 class (without knowing who her professor was). The student energetically told me her assignments were challenging and interesting, and that her professor was helpful. She then pulled out papers she recently got back from Dr. Tudor so show me her work, her professor's helpful comments, and her high grades. I find moments like there entirely telling of what kinds of teaching happens around me, and I was so delighted that Professor Tudor's class pushed in the best ways possible on a talented student."

**From Dean Weasenforth:** In the Fall 2014 and Spring 2015 student evaluations, a notable number of students in Professor Tudor's dual credit classes and in one Collin College campus-based class report that Professor Tudor's instruction is not as clear as it should be and that her classroom management is lacking. Please see details below and in student evaluations. These comments are not universal in that some students/classes find her instruction clear and her classroom management conducive to learning, and there were more positive comments made in Spring 2015 evaluations than in Fall 2014 evaluations. I encourage Professor Tudor to continue providing clear instruction and effective classroom management, but to do so in a manner that promotes the learning of all students.

Professor Tudor has adequately addressed concerns about providing students with the fundamental body of knowledge of her discipline and teaching them to apply that knowledge. She has done so by changing her textbook selections and the themes/topics she uses as a basis for discussions/writing assignments.

While there were two students who reported collusion during completion of the evaluations, there is no indication of prejudice in students' comments. No individual student evaluations were removed, nor will any be removed from Fall

2014 or Spring 2015 sets of evaluations.

Furthermore, it was in the first draft of this document that Professor Tudor first reported explicit incidents of harassment. I have advised her that this information should have been provided when the incident occurred. I have also encouraged her to report future such incidents immediately to me and through a SOBI report/Student Incident Report.

## II. ASSISTING STUDENTS

1. **MIN** Understands current career and curriculum options, degree requirements and course transfer information within the discipline and provides timely and tailored advice to students.
2. **MIN** Helps students with education-based problems and/or directs students to appropriate college resources.
3. **MIN** Assists students in accessing appropriate college and community resources for non-educational problems.
4. **MIN** Is available to and approachable by students.

### COMMENTS:

**From Professor Tudor:** I volunteered for Collin College student mentor program and I am looking forward to formally mentoring students as I have been doing informally. I have one mentee assigned to me at present—Sophia Hermann. I encourage graduating seniors to continue their education by affirming their strengths and abilities. I frequently inform deserving students that they are welcome to ask for letters of recommendation and I provide letters of recommendation when requested. In reference to resources, I direct students to services and programs that will help them succeed at Collin College. For instance, some students were not aware that Pell Grants are not loans until I informed them. I have been here long enough now that students who formerly took my classes drop by for information—which I am pleased to provide. I require students to have an up-to-date portfolio and conferences to review their portfolio to give them an in-depth and concrete evaluation of their performances.

## III. COLLEGE SERVICE

1. **MIN** Participates in divisional and departmental meetings.
2. **MIN** Works individually and/or collaboratively with college employees to accomplish discipline, divisional and college missions, goals and objectives, by serving on college-wide task forces, search committees, faculty senate committees, advisory groups, student groups as a faculty adviser, professionally related community activities on behalf of the college, etc.

### COMMENTS:

**From Professor Tudor:**

- Chair of the Interdisciplinary Colloquium (Fall 2014-present)
- Contributor: Book-in-Common Study Guide
- Volunteer: Collin College Student Mentor Program (Summer 2015-present)
- Member: English Department Curriculum Review Committee (Fall 2012-present)
- Member: English Department Sourcebook Committee (Fall 2012-present)
- Reviewer/editor of Quest (Fall 2013-present)

I have held multiple meetings of the Interdisciplinary Colloquium and attendance is improving. I have had more than half a dozen faculty members attend a meeting. I expect higher attendance in the future. The Interdisciplinary Colloquium allows faculty from different disciplines to collaborate on teaching, research, share ideas, engage in community building, and self-improvement. Although chairing the Interdisciplinary Colloquium is a time and labor intense service, I believe the contributions it makes to the college are worth the effort.

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**From Dean Weasenforth:** Professor Tudor has provided adequate, albeit not outstanding, service to Collin.

Professor Tudor has provided valuable service by chairing the Interdisciplinary Colloquium, including promotion and facilitation of the discussions. Likewise, her contributions to the Book-in-Common Study Guide, student mentoring, and review of submissions for Quest are instances of valuable service. I applaud her for her plan to facilitate a panel discussion focused on Native American apocalyptic views, and I'm encouraged that she is scheduled to give this presentation in May of 2016.

Professor Tudor was a member of the English Department Curriculum Review Committee and the English Department Sourcebook Committee but was not asked to perform any duties for those two committees. I encourage Professor Tudor to take a more proactive approach to seeking out and performing service. I have, for instance, encouraged Professor Tudor to increase promotion of the Colloquium.

#### IV. PROFESSIONAL DEVELOPMENT

1. MIN Remains current and competent in the appropriate academic discipline.
2. MIN Participates in an on-going program of professional self-development.
3. MIN Contributes to and participates in college staff development programs, such as annual associate faculty meetings, all-staff activities and workshops, teleconferences, staff development classes, etc.

#### COMMENTS:

**From Professor Tudor:**

- Attended and presented: Texas Tech Comparative Literature Conference, "An Experiential Discourse on Gender and Race in Faculty Affective Relations," Spring 2015.
- Presented: Trends in Teaching College Composition Conference, "Teaching Argument as a Civic Virtue," Fall 2014.
- Attended: Blackboard Training, eLC Collin College, Summer 2015.
- Attended: Faculty Development Conference, "Scott Barry Kaufman," Fall 2014.
- Attended: Faculty Development Conference presentations: "Google Tools for Education," "Flipping Realities . . . Engaging Students in Critical Thinking," "Pythagoreans: The Mystical Mathematicians," "The Library as Textbook," "Getting Your Groove On: Learn the Apps and Tips to a More Efficient Workflow," "Creativity in Teaching: Using the Tools Available," Spring 2015.
- Participate in mentoring program with senior faculty members Lisa Roy-Davis and consulted with Scott Cheney, Fall 2014-Summer 2015.

**From Dean Weasenforth:** Professor Tudor has completed an adequate amount of professional development.

#### V. PROFESSIONAL INTERACTION

1. MIN Interacts professionally and courteously with students, teaching faculty and staff, including advising and assisting associate faculty when required or appropriate.
2. MIN Recognizes, respects and encourages ideas of others.

#### COMMENTS:

**From Professor Tudor:** In the Fall of 2014 some very hurtful transphobic remarks were made in my presence by a colleague. However, with the help of Dean Weasenforth and Human Resources the colleague apologized, and I accepted the apology without acrimony. I regularly attend and actively participate in all regularly scheduled department meetings and assist other members of the college community as needed.

**From Dean Weasenforth:** I don't frequently see Professor Tudor, but when I do, I've observed her interact invariably

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in a professional, collegial manner with others.

**VI. POLICIES, PROCEDURES AND TIME LINES**

1. MIN Performs duties and responsibilities in accordance with established policies and procedures.
2. MIN Meets time lines for assigned work.
3. MIN Provides timely notice for substitutes and class/schedule changes.

**COMMENTS:**

**From Professor Tudor:** I have responsibly performed my duties during the past year and completed additional training on policies and procedures from Human Resources in the Fall of 2014.

**From Dean Weasenforth:** Professor Tudor has fulfilled administrative responsibilities as expected.

**VII. OPTIONAL ACTIVITIES PERFORMED**

**VIII. ACADEMIC CHAIR ACTIVITIES**

*To be completed only for faculty members with Academic Chair responsibilities.*

1. MIN Performs Academic Chair duties and responsibilities in accordance with established policies and procedures.
2. MIN Meets time lines for assigned Academic Chair work.
1. MIN Ensures associate faculty meet criteria required for accreditation.
2. MIN Follows hiring procedures and completes related documentation on a timely basis.
3. MIN Conducts classroom visits and evaluates each associate faculty member at least one time per year.
4. MIN Ensures teaching excellence among associate faculty.

**COMMENTS:**

CC 304



## IX. DEAN'S ASSESSMENT OF STUDENT EVALUATIONS IN THIS EVALUATION PERIOD

## Fall 2014

Nearly all ratings for one class are favorable ("Agree" or "Strongly Agree"); most ratings for a second class are favorable; and for the remaining three classes—including both dual credit classes—there is a noticeable number of unfavorable ("Disagree" or "Strongly Disagree") ratings. Approximately half of students' comments are positive and most frequently refer to Professor Tudor's enthusiasm and portray her as nice. The negative comments most frequently refer to a perceived lack of clarity of Professor Tudor's instruction and her classroom management (cf. references to "awkwardness," "lack of confidence" and the view that she doesn't teach).

The comment immediately below is the only of its kind in that it criticizes other students' views and suggests collusion during completion of the evaluations.

- "The fact that the instructor is very passionate about what she is teaching gives her a positive contribution to my learning...Others will say that she is not helpful through her teaching, but in reality, the students themselves don't try to learn and only know how to slack off. Others, at this moment, are commenting on how the class is hard, but Professor Tudor is very lenient and forgiving to the class but the students take advantage of this characteristic."

The following comments are representative of critical comments related to clarity of instruction, instructional effectiveness, and classroom management.

- "She was just an average teacher. I didn't feel like she did much besides show us outside videos and have us peer review each others essay. She could interact with the class more. This class felt really detached and it was very confusing if you didn't ask others about what was going on."
- "She is very knowledgeable about the books but she doesn't explain anything about how to do assignments...She needs to give us better directions for our assignments... She explains nothing and I feel so lost in the material. The curriculum is repetitive and she gets very uncomfortable around us and whenever I ask a question she just stares at me blankly and tells me to look at the syllabus. Directions for our huge essays have about 3 sentences of explanations. English is my best subject but I have struggled so much in this class. This teacher has caused me to feel very behind in my education & I hope I have a new one next semester who knows how to educate me."
- "Mrs. Tudor is a great person but not the best to teach english...Be confident with material, be more involve and less shy."

The following comments are representative of the comments that note Professor Tudor's enthusiasm for the material and for teaching, her knowledge of the material, and her niceness.

- "She knows a lot about the curriculum and is passionate about what she teaches. The videos that she played in class really helped my thesis writing...She could answer questions more clearly and completely. She could be more open to talk to, and she could also let you know your grade in the class. She could try to have better social skills instead of making conversations awkward as well."
- "She did a very good job of teaching and making this class easy to understand...I think she did a wonderful job teaching, I have no complaints."
- "She is very organized and was a very good teacher...explain instructions better...She was a good teacher."

## Spring 2015

Nearly all ratings for one class are favorable ("Agree" or "Strongly Agree"); most ratings for a second class are favorable; and for the remaining three classes—including both dual credit classes—there is a noticeable number of unfavorable ("Disagree" or "Strongly Disagree") ratings. Approximately half of students' comments are positive and most frequently refer to Professor Tudor's enthusiasm and helpfulness. The negative comments most frequently refer to a perceived lack of clarity of Professor Tudor's instruction and her classroom management (cf. references to "timidity," "lack of interaction with students," and lack of "control").

The following examples are representative of students' critical remarks.

- "The characteristics of my professor that made a positive contribution to my learning were very limited. I had a lot of trouble learning in this course because the professor had so much trouble with answering questions and teaching the class. The only characteristic I saw as positive was her use of extensive resources to show us what we needed to learn...The instructor could have been more helpful in her actual teaching of the class, answering questions, and explaining how we can improve. We also had virtually no update on what our grades were throughout the semester or if we were meeting her standards or not. We also did the same thing every day in the class which provided no challenges for me...While I can see that Dr. Tudor is extremely knowledgeable in this field, it was difficult to learn from her because of her unease around students. She did not communicate with us or try to help us improve our skills...I also believe that our essays were graded with a strong bias which gave unfair grades to those students that did not agree with her points of view."

CC 305

- “I knew she graded hard so it pushed me to write better essays and pay more attention in class...Does not explain things well. We always did the same activities in class and would like the change that up...Personally, I liked her. I made good grades and she seemed to respect my ideas. However I noticed that she was grading unfairly of other peoples essay. At this point, I am the only one to have made a good grade. She helpt me a lot but put others down.”

The examples below are representative of complimentary comments made by students.

- “My instructor was genuinely knowledgeable about the content we explored in class. She also discussed much of what we went over with the whole class so we completely understood everything. She offers a lot of insight which was very beneficial to me...”
- “She is very descriptive of what she expects from you. Always offers help, and even post helpful things online... She does everything already...Dr. Tudor is the best.”
- “Very engager with students during disussions...very knowledgeable & insightful on subject...Take control more aggressively when class gets off topic...Fantastic Professor! Loved the course!”

**Discussion (Comparison with 2013-2014 annual appraisal and classroom observations)**

While there is some improvement in ratings and comments from Fall 2014 to Spring 2015, there is a notable number of unfavorable ratings and approximately half of the comments are critical in nature, something rarely seen when reviewing student evaluations. Students generally note Professor Tudor’s enthusiasm for the material, her knowledge of the field, and her “niceness.” However, a notable number of students report a lack of clear instruction and a lack of effective classroom management. It appears that Professor Tudor’s instruction is better received by more mature students, given the fact that she received more unfavorable ratings and negative comments from all her dual credit classes than she did from most of her Collin College classes. It should be noted that two students reported collusion among students during completion of the evaluations, but it’s not clear to what extent the alleged collusion actually affected students’ ratings and responses.

CC 306

OVERALL EVALUATION: Indicate below the overall appraisal rating which best describes a summary of the above ratings and comments.

MEETS STANDARDS OF EXCELLENCE  
 IMPROVEMENT NEEDED

Comments:

RECOMMENDATION TO THE COUNCIL ON EXCELLENCE

To be completed by the Division Dean when the faculty member has become eligible for award of a multi-year contract).

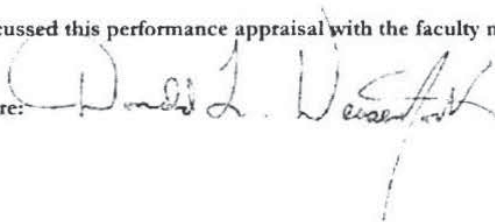
I \_\_\_\_\_ do X do not recommend this faculty member for a multi-year contract.

JUSTIFICATIONS/COMMENTS: Professor Tudor's professional development meets standards of excellence. However, her service is adequate, and student evaluations from Fall 2014 and Spring 2015 indicate a need for improvement in instruction and classroom management.

Division Dean's Statement:

I have reviewed and discussed this performance appraisal with the faculty member.

Division Dean's Signature:



Date: 1/20/16

CC 307



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- 90 Day Performance Appraisals
- Candidate References
- Complaints - Employees
- Complaints - Students
- Complaints - Students (HR)
- Employee Coaching and Discipline
- Faculty Credentials
- HR Action Item Manager
- HR Metrics
- Innovation Challenge
- Leave of Absences
- Online Employee Handbook
- Performance Appraisals - Staff
- Sick Leave Pool
- HRAdmin

## Employee Complaints

Employee Complaint Form | Search Employee Complaints | Notify Respondent #1 and Hearing Officer  
 Notify Respondent # 2 | Notice of Hearing and Hearing Instructions | Notice of Extension | Close or Add Appeal Info

Search Again

### EMPLOYEE COMPLAINT

#### PART 1: COMPLAINANT'S INFORMATION

**CWID**

**First Name** Rachel  
**Last Name** Tudor  
**Address**  
**City**  
**State**  
**Zipcode**  
**Phone Number**  
**College Email Address** rtudor@collin.edu  
**Job Title** Professor  
**Campus** Spring Creek Campus

#### PART 2: TYPE(S) OF COMPLAINT

**Wages Hours Conditions of Work**   
**Violations of College Policy**   
**Unlawful Discrimination or Harassment**

#### PART 3: DETAILS OF THE COMPLAINT

Please provide the name of the person(s) or entity against whom you are complaining.

Donald Weasenforth

Please provide the specific date(s) of the actions that led you to file this complaint.

14 September 2015

Please provide the details of your complaint. Please list each applicable event, incident or condition separately. Attach all of documents that support your complaint in Part 5 below.

Complaint

My present complaint originates with a biased performance evaluation by Donald Weasenforth, but it also entails ongoing violation of district policy with specific instances of unlawful discrimination/harassment based on sex that has not allowed me to exercise my legally protected rights.

On 14 September 2015 Dr. Weasenforth presented me with his annual appraisal that included, among other

**CC 1045**

things, that he does NOT recommend me for a multi-year contract and that overall improvement is needed.

In his appraisal, he writes, "There are more unfavorable ratings than I have seen for any other faculty member." He repeats this two more times in his evaluation. I asked him if he thought it necessary and appropriate to make such a pejorative and uncollegial remark in a formal assessment that will be viewed by administrators, colleagues, and become a public document of record. He cavalierly dismissed my concerns. I cannot imagine putting a similar comment on a student paper—even if were private—when assessing their performance. He attempts to support his disparaging claim by misrepresenting and distorting information. For example, in his presentation of alleged representative student comments for the Fall of 2014, he cites 11 comments—7 are from Plano West (I will explain the significance of this later); for the Spring 2015 semester, he cites 11 comments—8 are from Plano West. In addition, the first seven comments he cites from the Fall semester are from Plano West and eight out the nine of the first comments in the Spring of 2015 are also from Plano West. In total, 15 out of 22 comments are from Plano West and they are not only placed before the comments from the courses I taught on campus at Collin College, they are also quoted at length. For example, there are 438 words from Plano West (two classes) and only 95 words cited from all of the students I taught at Collin College (three classes) in Fall 2014; the misrepresentation is even more egregious in the Spring of 2015 where there are 529 words cited from Plano West (two classes—the exact same students) and only 92 from the students at Collin College (three classes). This constitutes a deliberate distortion of information.

In addition to the placement and selection of quotes to distort the information as a whole, Dr. Weasenforth makes factual misrepresentation of the data. He writes, for instance, "Nearly all ratings for one class are favorable; most ratings for a second class are favorable; and for the remaining three classes—including both dual credit classes—there is a marked number of unfavorable ratings. There are more unfavorable ratings than I have seen for any other faculty member." I will call your attention to the data itself which clearly indicates that almost all of the responses in two classes was positive (177 to 21 and 142 to 12) and two-thirds (147 to 102) of the responses in the third class was positive. It was ONLY in SEE ATTACHED DOC "COMPLAINT" FOR MORE INFO

**Please provide the name(s) of any witnesses, if applicable.**

Lisa Roy-Davis

**Describe what information the witnesses, if any, named above have or know about your complaint.**

She was my mentor for 2014-2015

**Have you discussed the situation with anyone or attempted to resolve this situation prior to filing this complaint? If so, please explain.**

Sent an email with a detailed explanation of my cares and concerns to Dr. Weasenforth, but he has failed to respond.

**RELIEF REQUESTED**

My annual appraisal to be revised to more accurately represent the facts.

Policy and procedures implemented to address discrimination.

**PART 5: UPLOADED SUPPORTING DOCUMENTS (Note: If this section is blank, no files were uploaded)**

TUDOR Faculty Performance Evaluation 14-15 (2) with comments from Don.docx

**PART 6: AFFIRMATION AND ELECTRONIC SIGNATURE**

**Electronic Signature**

Rachel Tudor

**Signature Date**

09/25/2015

CC 1046

11/15/2016 11:47 AM

**Timestamp**  
09/25/2015 04:23:12

**HR CASE ASSIGNMENT INFORMATION:**

**HR Representative**  
Tonya Jacobson

**Hearing Officer**  
Mary McRae

**Hearing Date**  
10/28/2015

**HO Response Due Date**  
12/14/2015

**HO Response Sent**  
12/14/2015

**Case Summary Notes**

ARP scheduled to review for appeal - 1/27/16  
 ARP meeting continued to 2/1/16  
 2/2/16 - ARP decision sent out to R. Tudor

**Date Resolved**  
02/02/2016

**Resolved in Complainants Favor?**  
Yes + No

**Appeal Due Date**  
01/13/2016

**Appeal Filed Date**  
01/11/2016

**Update** **Back**

Online Database by Caspio

Collin College Human Resources  
3452 Spur 399  
McKinney, Texas 75069  
972-785-3783

CC 1047

**COLLIN COLLEGE BOARD POLICY DGBA (LOCAL)  
HEARING OFFICER FINDINGS/RESPONSE TO COMPLAINT**

<b>Complainant:</b>	Rachel Tudor
<b>Respondent(s):</b>	Donald Weasenforth
<b>Date Complaint Filed:</b>	9/25/2015
<b>Date of Hearing:</b>	10/28/2015
<b>Witnesses at Hearing:</b>	Lisa Roy-Davis
<b>Hearing Officer:</b>	Mary McRae
<b>HR Representative:</b>	Norma Allen & Tonya Jacobson

**Section A. Complaint Types Filed by Complainant and Hearing Officer Findings:**

*Each complaint type filed by Complainant is marked with an "X" in the left hand column below. After a review of the complaint, Collin College policy and procedures, the testimony offered by Complainant and witnesses, and further investigation into this complaint, the Hearing Officer makes the findings below regarding each complaint type filed by Complainant. (Please note that the hearing officer may find that additional complaints types are substantiated even though Complainant may not have selected that complaint type, if the hearing officer believes the record and the evidence supports such finding).*

<b>Complaint Type(s) Filed by Complainant</b>		<b>Substantiated</b>	<b>Not Substantiated</b>
<input checked="" type="checkbox"/>	Complaints concerning an employee's wages, hours, or conditions of work, including performance evaluations or reviews.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Violations of Collin College Policy.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	Specific allegations of unlawful discrimination or harassment based on sex, race, color, religion, national origin, age, veteran's status, disability, or any other legally-protected classification.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	Specific allegations of unlawful discrimination or retaliation based on the exercise of legally protected rights.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Specific allegations of adverse personnel action based on the employee's good faith report to an appropriate law enforcement authority of a violation of law by the College District or a College District employee, i.e., "whistleblower complaints."	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Complaints arising from the termination of an at-will employee.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Complaints arising from the non-renewal of a contract employee.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Any other complaint brought by an employee against another employee, supervisor, manager, student, vendor or the College District.	<input type="checkbox"/>	<input type="checkbox"/>

**Section B. Relief Requested:**

<b>List Specific Relief Requested by Complainant:</b>		<b>Denied</b>	<b>Granted in Part</b>	<b>Granted</b>
1	I would like for the annual assessment to exclude recognizable prejudicial content and comments.	<input checked="" type="checkbox"/>		
2	I would like for the assessment to take into consideration the hostile environment faced transgender faculty.	<input checked="" type="checkbox"/>		
3	It is important to develop some permanent policy and procedures to address and compensate for anti-trans bias in the assessment and evaluative process.	<input checked="" type="checkbox"/>		

CC 1049

### Section C. Summary of Complaint

On September 25, 2015, Dr. Rachel Tudor, Professor of English, submitted to Collin College a complaint against Dr. Don Weasenforth, Dean of Communication and Humanities. On October 21, 2015, Dr. Tudor submitted a revised complaint.

Dr. Tudor complained about her annual Faculty Performance Appraisal for 2014-2015, and her allegations that Dr. Weasenforth purportedly violated Collin College policy "with specific instances of unlawful/discrimination/harassment based on sex" that, according to Dr. Tudor, allegedly have not allowed her to exercise her legally protected rights.

On October 28, 2015, a hearing was held regarding the complaint filed by Dr. Tudor. At the hearing, Professor Lisa Roy-Davis served as a witness for Dr. Tudor. Professor Roy-Davis's testimony did not support the allegation that Dr. Weasenforth had acted in a discriminatory manner towards Dr. Tudor. Professor Roy-Davis was asked the specific question "have you ever witnessed any discriminatory or harassing behavior from Dr. Weasenforth?" Professor Roy-Davis responded "No." Professor Roy-Davis further indicated that this included any behavior directed by Dr. Weasenforth at Dr. Tudor.

Dr. Tudor also complained about Dr. Weasenforth's handling of her complaint of an incident involving "transphobic remarks" allegedly made by Professor Leslie Richardson in August 2014. After Dr. Tudor brought her complaint to the attention of Dr. Weasenforth, he took action to investigate and address the complaint.

Professor Roy-Davis was a witness to the incident and she confirmed that Dr. Weasenforth met with all of the faculty members who attended the luncheon and witnessed the incident. Professor Roy-Davis testified that she believed that Dr. Weasenforth took Dr. Tudor's concerns seriously and that he met with each attendee to discern what happened at the luncheon. The end result of Dr. Weasenforth's investigation was an apology from Dr. Richardson to Dr. Tudor, which Dr. Tudor accepted. Therefore, it appears that Dr. Tudor's complaint over that incident was addressed, resolved, and no further complaints arose from that incident involving Dr. Richardson.

The main allegations concerning Dr. Tudor's complaint stem from her 2014-2015 annual Faculty Performance Appraisal (the "Appraisal"). Dr. Tudor complained that the dual-credit student evaluations she received from Plano West High School students were allegedly biased and should not have been taken into account as part of her Appraisal. Dr. Tudor alleges that her Appraisal does not reflect her "actual abilities, competencies, or performance." Dr. Tudor claims that the negative remarks reflected in the dual-credit student evaluations purportedly reflect bias against her because of her transgender status and that some of those evaluations were a result of collusion. Professor Roy-Davis testified that Dr. Tudor raised those concerns to her as her mentor. Professor Roy-Davis also testified that she did not "overtly" voice those concerns to Dean Weasenforth. While some of the dual-credit student evaluations are critical of Dr. Tudor, they do not contain any statements regarding Dr. Tudor's transgender status. Dr. Tudor testified that she did not discuss her transgender status with her dual-credit students, but she assumes that her students knew and were biased because a few of them allegedly called her "sir." Dr. Tudor alleges that she reported such comments to Dean Weasenforth, but not until she received her performance appraisal in September 2015. While Professor Roy-Davis was aware of the alleged comments and one inappropriate posting on the *Rate My Professor* website, there is no indication that Professor Roy-Davis discussed these comments with Dean Weasenforth. Professor Roy-Davis took action to flag the



inappropriate posting on the *Rate My Professor* website and it was immediately removed. The incident involving the *Rate My Professor* website occurred "more than a year ago." Dr. Tudor did not report any of the student comments to any other departments, such as the Dean of Students Office or the SOBI program.

At the hearing, Dr. Tudor also indicated that she thought Dr. Weasenforth was premature in his determination of the overall Appraisal by indicating in the Appraisal that he would be recommending a one-year contract instead of a multi-year contract. Professor Roy-Davis testified that she was also surprised that Dean Weasenforth made such a recommendation early. Dr. Weasenforth needed to complete and conduct the Appraisal by the end of September 2015. On the Appraisal form there is a box that a Division Dean must check indicating their recommendation to the Council on Excellence. That box specifically contains the following instruction: "*To be completed by the Division Dean when the faculty member has become eligible for award of a multi-year contract.*" The Division Dean then checks a box either recommending or not recommending a faculty member for a multi-year contract. On the box on the Appraisal, Dr. Weasenforth checked that he did not recommend Dr. Tudor for a multi-year contract. In the comments section provided as part of the box, Dr. Weasenforth provided specific observations and comments for such a recommendation, including both positive and constructive comments about Dr. Tudor's overall performance. Therefore, Dr. Weasenforth acted in accordance within his scope as the Division Dean of Communication and Humanities and within Collin College's performance evaluation cycle.

Nonetheless, I am making the recommendation that Dr. Weasenforth follow-up with the Appraisal in January 2016 by reviewing all of Dr. Tudor's Fall 2015 student evaluations. In January 2016, the Council on Excellence will review all items from Professor Tudor's COE file and will make a final recommendation regarding whether to issue a multi-year contract or a non-renewal.

At the conclusion of the hearing I asked Dr. Tudor what specific relief she was seeking. She stated the following:

- 1) **Relief requested: Dr. Tudor requested that the annual assessment exclude recognizable prejudicial content and comments.**

There is no evidence of prejudicial comments in the Appraisal. Neither Dr. Weasenforth nor the dual-credit students made any prejudicial comments in their respective evaluations of Dr. Tudor's classroom performance. Dr. Tudor's subjective belief that the dual-credit students were purportedly biased against her is not evident in the student evaluations. The dual-credit students gave her both positive and negative evaluations, with several being critical of her classroom performance. As a result, I will instruct Dr. Weasenforth to re-format the Appraisal to point out both positive comments and constructive criticism based on a larger sampling of student comments in both categories. Dr. Tudor may also include her own comments in the faculty comment section of the Appraisal.

- 2) **Relief requested: Dr. Tudor requested that the assessment take into consideration the hostile environment faced by transgender faculty.**

As part of the hearing, Dr. Tudor provided a written report of the results of Executive Summary, Injustice at Every Turn; A Report of the National Transgender Discrimination Survey. Considering that report, I find no discrimination or bias in the Appraisal prepared by Dr. Weasenforth. I also do not find any discriminatory or harassing conduct by Dr. Weasenforth directed at Dr. Tudor based on her transgender status. In fact, Professor Roy-Davis testified that she had not witnessed any discriminatory or harassing

CC 1051

behavior by Dr. Weasenforth directed at Dr. Tudor. I wish Dr. Tudor would have promptly reported that dual-credit students at Plano West High School were addressing her by the improper pronoun of "sir." If this would have been promptly reported to Dr. Weasenforth, me, or the staff at Plano West High School, I am confident that such conduct would have been immediately corrected. However, Dr. Tudor only reported this to Dr. Weasenforth during the discussion about her Appraisal in late September of 2015. The timing of her reporting this alleged behavior was several months after the fact. In addition, effective Fall 2015 semester, Dr. Tudor was no longer teaching dual-credit students.

- 3) **Relief requested: Dr. Tudor requested that "it is important to develop some permanent policy and procedures to address and compensate for anti-trans bias in the assessment and evaluative process."**

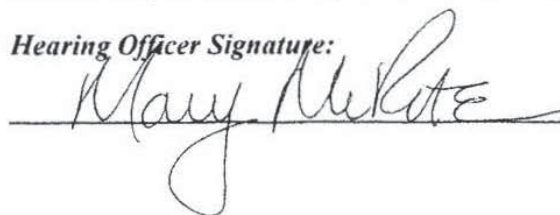
Dr. Tudor suggested the creation of policy and procedures to address alleged bias against transgender faculty in the performance evaluation process at the College. The creation of College-wide policy and procedures is not a type of specific relief that I can grant as Vice President/Provost of the Spring Creek Campus. Dr. Tudor is encouraged to seek the development of such policy or procedures which she feels may be lacking or not addressed by currently existing College policies and procedures. Additionally, Dr. Tudor expressed interest in developing awareness programming on campus or getting involved with Book in Common, the Dignity Initiative, the Auteur Film Series, and/or the Working Class Studies Program. I would encourage Dr. Tudor to pursue these options if interested. Not only could it be beneficial for our students, but it could also provide Dr. Tudor another venue to develop her service requirements. Since this type of relief is not available from the Hearing Officer, it will not be granted.

**END OF HEARING OFFICER SUMMARY**

<p><b><i>Notice of Right to Appeal Hearing Officer's Findings/Response</i></b></p> <p><i>Pursuant to DGBA (Local), this decision:</i></p> <p> <input type="checkbox"/> <i>Is final and cannot be appealed.</i>  <input type="checkbox"/> <i>May be appealed by Complainant to Level II (appropriate Leadership Team Member)</i>  <input checked="" type="checkbox"/> <i>May be appealed by Complainant to Level III (an Administrative Review Panel)</i>  <input type="checkbox"/> <i>May be appealed by Complainant to Level IV (the President)</i> </p> <p><i>All permitted appeals must be filed in writing using the attached Appeal Form within fifteen (15) days of receipt of this response by submitting the attached completed and signed Appeal Form to the Associate Vice President of HR &amp; Organizational Development. The Associate Vice President of HR &amp; Organizational Development will log the appeal and forward the appeal and all supporting documents to the appropriate party. Please see DGBA (Local) for further information regarding the appeal process.</i></p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

*All other complaints and/or requests for relief not specifically addressed herein are hereby denied.*

**Hearing Officer Signature:**



Date: 12.14.15

CC 1052

From:

**COLLIN COLLEGE  
DGBA (LOCAL) APPEAL FORM**

PART 1: COMPLAINANT'S CONTACT INFORMATION		
Name: Rachel Tudor		
Address:		
City: Plano	State: TX	Zip Code: 75024
Phone #:	Email Address: rtudor@collin.edu	
Please check one of the following: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Student <input type="checkbox"/> Other		

PART 2: DECISION THAT YOU ARE APPEALING	
Date of Response/Findings:	11/14/16
Hearing Officer that issued Response/Findings:	Mary McRae

PART 3: REASON FOR YOUR APPEAL
<p>Please provide the reason you are appealing the decision:</p> <p>There is not sufficient room in this space to post my reasons. Please see attached document.</p>

AFFIRMATION:	
I hereby affirm that the information provided herein is true and correct to the best of my knowledge.	
<u>Rachel Tudor</u>	<u>1/11/16</u>
Signature	Date

FOR HR USE ONLY PART 4: LEVEL OF APPEAL
Type of Complaint: _____
<b>Level of Appeal:</b> <input type="checkbox"/> Level Two to Leadership Team <input type="checkbox"/> Level Three to Administrative Review Panel <input type="checkbox"/> Level Four to President/Board of Trustees

Appeal Form 11.3.2015

Last update: 11/2015j

CC 1054

01/11/2016 15:34

#031 P.003/005

From:

RE: Reason for Appeal

I wish to appeal based on substantive errors of fact and findings appear in the decision.

First, Dr. Lisa Roy-Davis did not appear as a witness "for Dr. Tudor" as alleged in the finding. As a matter of fact, it is very clear in the testimony that I interviewed Dr. Roy-Davis because she had information that I required and she was an "uncooperative" witness. I had to ask HR to compel her to attend the hearing. This is important because the findings in reference cite her at length and imply that my witness did not substantiate my allegation when, in fact, she was not "my" witness. In addition, the findings Dr. Roy-Davis' testimony is alleged to support are facts that she did not, in fact, have knowledge of. For example, Dr. McRae cites her response that she did not witness any harassing or discriminatory behavior. The main cause of action against Dr. Weasenforth was his biased, discriminatory, and retaliatory content of the annual appraisal. Dr. Roy-Davis did not see or review the appraisal nor did she attend the conference I had with Dr. Weasenforth about the appraisal. Therefore, Dr. Roy-Davis cannot be used to invalidate the grounds of the complaint. The other substantive ground for my complaint against Dr. Weasenforth was his removal of me from a search committee and replacing me with the faculty member who committed an act of anti-trans aggression for which she was compelled by HR to apologize for. Again, Dr. Roy-Davis had no first-hand knowledge of the event. The fact that Dr. Roy-Davis had no first-hand knowledge of the events does not mean that they did not happen or invalidates my testimony or evidence presented.

Second, Dr. Weasenforth's handling of my complaint against Dr. Leslie Richardson is likewise misrepresented. There is no evidence cited refuting my testimony that Dr. Weasenforth only acted after I said I would take my complaint to HR myself if he did not act. Dr. Roy-Davis only confirmed that Dr. Weasenforth interviewed the witnesses and concluded that Dr. Richardson had indeed violated policy. There is no addressing of Dr. Weasenforth subsequently removing me from the search committee and replacing me with Dr. Richardson on the committee.

Third, and most disturbing, is the finding that the bar to substantiate anti-trans bias are explicit anti-trans comments: "they [the dual credit evaluations] do not contain any statements regarding Dr. Tudor's transgender status." This is a near impossible standard to meet and is not the standard used in the policy and procedures of businesses, colleges, and universities in compliance with Department of Education guidelines, EEOC rules, Department of Justice causes for litigation, or rulings by numerous courts of law. In fact, one student actually reported collusion occurring between the students during the evaluation in order to injure me. That undisputed fact is omitted from the findings as a compelling reason not to consider the dual credit evaluations credible. And, no mention was made of the fact that Dr. Weasenforth relied

CC 1055

01/11/2016 15:35

#031 P.004/005

From:

almost exclusively on the dual credit evaluations in his appraisal. No note was made of Dr. Weasenforth's extensive representation of them as representative of my classes as a whole or that the dual credit classes from the fall and spring semester were from the SAME students. However, mention was made of Dr. Roy-Davis' stating she was "aware of the alleged comments and one inappropriate posting on the Rate My Professor website". If you review the transcript, her actual testimony was that the comment was explicitly anti-trans, I believe she used the term "hate speech"—not "inappropriate". Likewise, Dr. Roy-Davis testimony that she was not aware of other postings should not be used as evidence that there have not been other hateful postings. I testified that there were and that I have been regularly monitoring the cite and flagging them for removal.

Fourth, the findings suggest that my complaint should be dismissed because I did not "report any of the student comments to any other departments or the SOBI team." I would call attention to the fact that there are no policies or procedures or training in reference to transgender faculty, staff, or students. No mention was made of the suffering and distress raising such complaints may cause trans employees when there are no specific policies, procedures, or education to support them. No mention was made in the facts that the result of my complaint—which was substantiated—resulted in me being removed from the search committee and replaced by the person who committed a hurtful act. No mention was made of the impact such retaliatory behavior has on reporting anti-trans acts by faculty or students. It is also critical to note that the result of my bringing the anti-trans bias of many of the dual-credit students was Dr. Weasenforth citing those evaluation extensively and almost exclusively.

Finally, the directive to Dr. Weasenforth to include "both positive comments and constructive criticism based on a larger sampling of student comments" in inconsistent with the findings that his appraisal was not originally biased, discriminatory, and retaliatory. It is also to be noted that Dr. Wasenforth has not followed the recommendation of Dr. McRae. He has not substantively changed his appraisal. In fact, he deleted the following information I wrote:

**Fall 2015 marks the end of the mentoring period prescribed at the conclusion of last year's appraisal. Consequently, the student evaluations from Fall 2015 should be used exclusively to evaluate the outcome. I am pleased to report that the evaluations overall were outstanding! For example, in English 1301.S54 EVERY response was unanimously "Strongly Agree" in EVERY category. The student comments supported the unanimous, "strongly agree" appraisal with such explanations as: "Great teacher—always knew what was expected"; "Her skills in the subject"; and two students remarked on my personable demeanor by stating that I am "very nice!" I am also pleased to report that another class, English 1302.S20 was also unanimously positive with eight students marking "Strongly Agree"**

CC 1056

01/11/2016 15:35

#031 P.005/005

From:

in every category. Students commented on my being "thorough with her assignments and what she expects"; being "very involved with the students"; "well-organized . . . presents her materials very well"; "Her unending desire to make us learn"; and "She uses a lot of things to explain her lessons." Students also commented on my use of "videos and readings of current events that were very helpful towards my writing." My English 2332.S03 evaluations were, as my literature courses always are, overwhelmingly positive. The students in this class noted: "very knowledgeable about the topics"; "Loved the class, great teacher 10/10"; "I liked the discussions and how open the class was"; "Dr. Tudor was really passionate . . . making the class discussion interesting"; "She encourages us to think outside the box"; "She involved all the students to participate in the discussions"; "Really challenged your thinking". There was only one negative evaluation and it was paired with comments that directly contradicted what the rest of the class wrote on their evaluations. My 1301.S13 was also overwhelmingly positive, it had 11 positive evaluations, 4 mixed, and only 1 negative. The students wrote that they liked my use of "various teaching techniques"; "different types of assignments"; use of "group work"; use of Blackboard (three stars in front of "updating Blackboard"); several students commented on my personable presence by noting "she's very understanding" "humble" "respectful"; and "great knowledge of the subject". The one student who was an anomaly is a student who wanted to write a paper that did not fall within the parameters of the class and was angry when I required him to follow the assignment's guidelines. The only course to fall outside the overwhelming positive parameters of the other classes was 1301.S01. Although it should be noted that this class too had more positive (7) than negative (4) evaluations. My explanation for this anomaly is that there were a couple of students who demonstrated personal animus toward me because of their hostility toward transgender people in general, and that had a negative impact on the classroom experience for everyone.

In addition, he removed all of the comments I posted on the appraisal.

For all of the foregoing reasons, I appeal the findings in my original complaint against Dr. Weasenforth.

CC 1057

**COLLIN COLLEGE DGBA (LOCAL)  
LEVEL III - ADMINISTRATIVE REVIEW PANEL RESPONSE**

<b>Complainant:</b>	<u>Rachel Tudor</u>
<b>Respondent:</b>	<u>Donald Weasenforth</u>
<b>Date of Complaint:</b>	<u>September 25, 2015</u>
<b>Administrative Review Panel:</b>	<u>Brenda Carter, Alicia Huppe, Abe Johnson</u>
<b>HR Representative:</b>	<u>Tonya Jacobson</u>
<b>Date Issued:</b>	<u>February 2, 2016</u>

After a review of the Complaint and supporting documentation provided by the Complainant, Respondent's response to the complaint, Collin College policy and procedures, and all other relevant data, the Administrative Review Panel hereby finds that the decision of the Level Two Hearing Officer is:

- Affirmed
- Affirmed in part and reversed in part (see explanation below)
- Reversed (see explanation below)

**Administrative Review Panel Comments:**

The Administrative Review Panel (ARP) reviewed Section C: Summary of Complaint, 1) Relief requested. Per the directive of Dr. McRae, Dr. Weasenforth was to:

- 1) re-format the Appraisal
- 2) point out positive and constructive criticism
- 3) base comments on a larger sampling of student comments

It was unclear to the ARP whether the larger sample was used. Dr. Weasenforth was contacted and he confirmed utilization of all available student evaluations for the appraisal period.

**Administrative Review Panel Signatures:**

Alicia Huppe 2/2/16  
Date

Alicia Huppe 2.2.16  
Date

\_\_\_\_\_  
Date



**Donald Weasenforth - Student trying to pass a confusing class.**

**From:** [REDACTED]  
**To:** <dweasenforth@collin.edu>  
**Date:** 4/1/2014 4:07 PM  
**Subject:** Student trying to pass a confusing class.

My name is [REDACTED] and I go to Collin College and me and several other class mates are having a problem with my composition two professor Rachel Tudor. She is very vague on instructions and and does not explain what she wants in our essays. The whole class is lost on what we are supposed to be writing about because there is no prompt and she explains nothing. If we personally talk to her she tells us to look at the syllabus but the answer we need is not in the syllabus. I tried to get help on my paper and even went to the writing center but they could not help me because the instruction were vague and they didn't know what I had to write about. The examples for this paper I'm writing do not help me at all. My dad and sister couldn't even help me on this paper and they are really smart. For the paper we are basically just picking a topic out of the blue and start writing about it. Her teaching is very unprofessional and the whole class is having problems with her. My groups paper was supposed to be edited by the class the week before spring break March 6th and it never got edited. Then she told us our papers were going to be edited the week after spring break march 18th but they never got edited. She took of ten points off my groups paper because she would not let the class edit our groups papers. And I emailed the professor on Tuesday march 18th saying that know one could help me on my paper and I also said the whole class is having trouble on this essay. On Thursday march 20th she puts my email up for the whole class to see and she starts correcting my grammar and says that there are clear instruction for the essay. There is not clear instructions for the essay because the instruction are vague and the whole class is having a problem with the essay. I did not give her consent for her to show my email to the whole class. This was very unprofessional of her to show my email to the whole class. This class is very confusing and we never no what we are doing because she changes what we are doing the day we get to class. She never emails the students back but for some reason she only emails me. The whole class is confused on what to do but they don't want to tell the professor because she will not help us at all. And on wednesday march 26 she puts an announcement on blacking board telling our class that someone in our class is a hateful troll. And on thursday march 27 she told the class if we don't participate in the on circle we fail the whole class. The thing is we did an on circle on tuesday march 25 and we some of the class did not participate in the on circle including me. So now i and many others are going to fail her class because we did not participate in the on circle. She always tells us things at last minute when it's to late to do anything about it.

file://C:\Users\Administrator\AppData\Local\Temp\XPgrpwise\533AE458SCC\_Dom2SCC..CG\1067



used the Norton field guide of writing book. As I understand the class is meant to concentrate on learning how to write different forms of papers such as an analytical argument, a theoretical argument or a rhetorical argument. The major concern I have with this professor was in class; she informed the class that a complaint had been made about her. She put the complaint up on the overhead projector for the class to read, asking us if we agreed or disagreed with the student's complaint. I feel rather uncomfortable with this. I also feel this is highly unethical. She asked the students to go to the dean saying that the statement the student made was not true. I also have concerns about the set up of her class schedule as students from the last group handed in their first paper after the spring break meaning they have wasted over two months in class doing nothing to help themselves. Being part of this group I feel I have no idea of my standing in this class grade wise. I ~~do~~ do not want to fail this course but at this point I feel I maybe left with no other alternative which concerns me deeply. I have asked for outside help from this professor who seem quite reluctant to do so. I've also asked to use the writing center.

CC 1069

Dear: Communication & Humanities Division.

By the following letter of complaint, I would like to express my un-satisfaction about how she exposed my essay in front to my classmate, teaching method, grades, and assignment submission.

1. On 10/26/15 the professor exposed my paper in front to my classmate, without my permission. She used my paper as bad example. I felt so embarrassed, because my name was on it and everybody knew it was my paper. Also, before I turned my first draft, I asked the teacher to explain the assignment because I did not understand, the teacher replay is about everything. But she didn't give me a clear explanation, when I went to her office; I felt I wasn't welcoming to her office. She was uncomfortable speaking with me for that reason; I didn't tell al my doubts that I had about the paper.
2. Teaching method. She only put some videos and gave us paper with the assignment, and we have to look in the book, and do it, then with discus with the classmate, but she doesn't give the class and explanation she just says read chapter so and so. My thought was. I pay to the class to learn, I go the class I don't receive any knowledge from her; I feel that I am in an online class. My opinion of the teacher is that they teach and help you understand, and with her I don't feel that way.
3. Grades. I feel really confuse, how she grade, because she doesn't give assignment that she grade, like my other class. Only papers that we do in class that sometimes we give to her for grading. After we read it, and we ask her a question concerning to the material all the information is in the chapter. I have not received any of the assignments back.
4. Assignment submission. I don't see the point to submit the draft, if I will not have a feedback from her. She just said to review the draft between the classmate, and we all have to check the paper, not only giving and opinion of what we think about the paper, but also checking the grammar and this was our first paper. I looked for help in that area and found in writing center and personal tutoring I know that one of my weaknesses is grammar. The writing center and the personal tutoring helped me to correct my paper. The teacher stated that my classmate were to grade the grammar. I wanted the teacher to give me feedback, because I think she is the expert, and we are there to learn.

I want to finish saying that I don't agree with my grade. I have the grade how is (D), because she hasn't done her job. I haven't learn much, everything that I did so far, is what I understand, I don't feel any support from her, to explain or talk to me about my concerns of the assignments. Please consider changing me to different class. I really want to pass this class with good grade and learning about the class that will be helpful for my others classes. I don't want waste more time and I don't want any repercussion from the teacher.

Thank you [REDACTED]

CC 1073

Student Complaint Form  
Communication and Humanities

Today's date: 11/9/15 Student: [Redacted]  
 CWID: [Redacted] Email: [Redacted]

Person with whom you have a concern: Dr Tudor

Course (or other context) in which the concern was raised: 1301.507

Date(s) on which the concern was raised: 11/9/15

Have you discussed your concerns with the person noted above?  YES  NO

General nature of your concern:  Instructional (e.g., teaching method, grades, assignment submission)  
 Other (Please specify: \_\_\_\_\_)

Your specific concerns (provide examples): Professor does not give specific instructions to students, and makes fun of student work though they may have accommodations on spelling. Professor assigns papers to students in a confusing way and instead of explaining she tells them to look at blackboard.

I. If your concern is related to instruction in your class, please discuss your concern with the professor and ask him/her to complete the following section before you submit this form to the dean.

Professor: \_\_\_\_\_ Date: \_\_\_\_\_

I've discussed the student's concerns and responded as follows:

\_\_\_\_\_

II. If you do not receive an adequate response from your professor, please contact the Communication and Humanities office at 972-881-5810 (B189) to make an appointment to meet with the dean to discuss your concerns. Bring this form with you to the meeting with the dean.

Dean's response:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CC 1074

**Student Complaint Form  
Communication and Humanities**

Today's date: <u>11/23/2015</u>	Student: <u>[REDACTED]</u>
CWID: <u>[REDACTED]</u>	Email: <u>[REDACTED]</u>
Person with whom you have a concern <sup>1</sup> : <u>Rachel Tudor</u>	
Course (or other context) in which the concern was raised: <u>Eng 1301 S01</u>	
Date(s) on which the concern was raised: <u>All semester</u>	
Have you discussed your concerns with the person noted above? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
General nature of your concern <sup>2</sup> : <input checked="" type="checkbox"/> Instructional (e.g., teaching method, grades, assignment submission) <input checked="" type="checkbox"/> Other (Please specify: <u>Bully</u> )	
Your specific concerns (provide examples): <u>she is a bully with higher power! she is retaliating against me because I complained her before and she fabricated my attendance! Have met with <del>Sister</del> Rachel Tudor 11/23/2015. Her methods of taking attendance is inconsistent</u>	

I. If your concern is related to instruction in your class, please discuss your concern with the professor and ask him/her to complete the following section before you submit this form to the dean.

Professor: \_\_\_\_\_

I've discussed the student's concerns and responded as

Available  
Mon am- before 9,  
Afternoon  
1-4 pm

II. If you do not receive an adequate response from your Humanities office at 972-881-5810 (B189) to make an appointment, bring this form with you to the meeting with the dean.

and  
r concerns.

Dean's response:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CC 1076

Student Complaint Form  
Communication and Humanities

Today's date: 12-2-15 Student: [Redacted]  
 CWID: \_\_\_\_\_ Email: [Redacted]  
 Person with whom you have a concern: Prof Juder  
 Course (or other context) in which the concern was raised: Composition I 507 - MW 9:00  
 Date(s) on which the concern was raised: Several  
 Have you discussed your concerns with the person noted above?  YES  NO  
 General nature of your concern:  Instructional (e.g., teaching method, grades, assignment submission)  
 Other (Please specify: \_\_\_\_\_)  
 Your specific concerns (provide examples): not very helpful with questions  
bias grading I feel like all the work we do is  
just busy work I dont feel like I have learned anything  
this year

I. If your concern is related to instruction in your class, please discuss your concern with the professor and ask him/her to complete the following section before you submit this form to the dean.

Professor: \_\_\_\_\_ Date: \_\_\_\_\_

I've discussed the student's concerns and responded as follows:

\_\_\_\_\_

II. If you do not receive an adequate response from your professor, please contact the Communication and Humanities office at 972-881-5810 (B189) to make an appointment to meet with the dean to discuss your concerns. Bring this form with you to the meeting with the dean.

Dean's response:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CC 1078

Student Complaint Form  
Communication and Humanities

Today's date: 2-5-16 Student: [Redacted]  
 CWID: [Redacted] Email: [Redacted]

Person with whom you have a concern: Rachel Tudor

Course (or other context) in which the concern was raised: Composition I

Date(s) on which the concern was raised: 2-5-16

Have you discussed your concerns with the person noted above?  YES  NO

General nature of your concern:  Instructional (e.g., teaching method, grades, assignment submission)  
 Other (Please specify: \_\_\_\_\_)

Your specific concerns (provide examples): I have been flagged on blackboard for the use of the word "illegal". She has made a rule that "illegal" will result in expulsion from the class. I can't turn in my required blog posts due to her removing me from Blackboard discussion board. I fear my grade will suffer because I don't align with her politically

I. If your concern is related to instruction in your class, please discuss your concern with the professor and ask him/her to complete the following section before you submit this form to the dean.

Professor: \_\_\_\_\_ Date: \_\_\_\_\_

I've discussed the student's concerns and responded as follows:

\_\_\_\_\_ [Redacted] \_\_\_\_\_

II. If you do not receive an adequate response from your professor, please contact the Communication and Humanities office at 972-881-5810 (B189) to make an appointment. Bring this form with you to the meeting with the dean.

Communication and  
to discuss your concerns.

Dean's response: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CC 1082

DECLARATION OF HOLLY NEWELL

1. I am the Sponsored Programs Compliance Officer at Seminole State College within the Human Resources department.
2. I started working at Seminole State College in 2008.
3. I have been at my current position for 2.5 years.
4. My job duties include ensuring that 15 federal grants under Seminole State College are in compliance with state and federal regulations, Title IX Deputy for Employees, assist in all Human Resource responsibilities, and Travel Clerk.
5. I was in charge of the candidate search for an English Instructor at Seminole State College in Summer, 2017.
6. Dr. Rachel Tudor applied for the English Instructor position at Seminole State College in Summer, 2017.

**HIRING PROCESS FOR ENGLISH INSTRUCTOR**

7. The hiring process for a Seminole State College English Instructor is as follows:
  - a. Advertisements for the position were placed in multiple newspapers, as well as online with various job search websites.
  - b. Upon receipt of the resumes, all resumes are housed in the Human Resources Office.
  - c. A Candidate Application Packet is requested in the job description for all candidates which includes: Resume, Cover Letter, Academic Transcripts, and three (3) professional letters of recommendation.
  - d. The Department Chair creates a scoring rubric for all applicants upon which each candidate packet will be scored.

- e. The Department Chair selects an Interview Committee, which must be approved by the Director for Human Resources, to review the candidate packets for each applicant.
- f. Candidate packets are distributed to each Interview Committee member for their review and scoring.
- g. The candidates are ranked on a point system created within the scoring rubric from the Department Chair.
- h. I compile all of the scores from the Interview Committee and enter the scores into a spreadsheet.
- i. The spreadsheet is then sorted with scores from the highest to the lowest.
- j. The top qualified candidates based on the scores of their respective candidate packets are then selected for an interview with the Interview Committee, including the Department Chair.
- k. The Department Chair creates a scoring rubric for all applicants upon which each interview will be scored.
- l. The interview score is worth double what the candidate packet is worth in the final scoring of a candidate in order to emphasize the importance of the interview.
- m. The top qualified candidates selected for an interview with the Interview Committee are notified of their selection for an interview by me and I schedule their interview either in person or via video conference.
- n. I am present for the interviews of all the candidates.
- o. The top qualified candidates present a teaching demonstration and answer questions from the Interview Committee and Department Chair and are given the opportunity to ask questions of the committee.
- p. At the conclusion of the interview, each of the Interview Committee members scores the candidates using the rubric provided by the Department Chair.
- q. The top three (3) candidates are sent to the President of Seminole State College for final review and recommendation.



- r. The President of Seminole State College is not given the rankings or the scores for any of the top three (3) candidates.
- s. The President of Seminole State College then determines who to offer the position to and contacts the Chair of the Department and the Director of Human Resources with the name of the candidate who has been selected for hire.

#### **DR. RACHEL TUDOR'S APPLICATION PROCESS**

8. Dr. Tudor sent in her application for the English Instructor position in Summer, 2017.

9. After the initial scoring of Dr. Tudor's Candidate Application Packet, she was considered a top applicant for the position and was invited to interview for the position with the Interview Committee.

10. There were five (5) other applicants for the position chosen to participate in the interview process for the position.

11. Three (3) of the candidates were local, residents of Oklahoma, and three (3) of the candidates were not local, two from Texas, and one from the Marianas Islands.

12. All three (3) local candidates chose to interview in person at Seminole State College with the Interview Committee.

13. Two (2) of the non-local candidates, including one from Texas and one from the Marianas Islands elected to interview via video conference.

14. Dr. Tudor declined to interview in person or via video conference, and instead chose to interview via telephone only.

15. Dr. Tudor was informed that part of the interview was a teaching presentation which may not be as effective over a telephone call and it would be better to present her material via video conference in order to allow the Interview Committee to evaluate Dr. Tudor's presence and presentation.

16. Dr. Tudor declined to interview via video conference.

17. Dr. Tudor indicated that the cost of video conferencing applications was cost prohibitive.

18. I explained to Dr. Tudor that there were free video conferencing applications, including Skype, available for her to conduct the interview.

19. Dr. Tudor, again, declined a video conference interview and instead opted for a telephonic interview only.

20. I offered to assist Dr. Tudor with setting up video conference for free on Dr. Tudor's computer and Dr. Tudor, again, declined by indicating that telephone interviews were always sufficient for her in the past.

#### **DR. RACHEL TUDOR'S INTERVIEW**

21. Dr. Tudor interviewed, via telephone, in Summer, 2017.

22. All of the remaining five (5) candidates interviewed in Summer, 2017.

23. All candidates were scored by the Interview Committee following each of their respective presentations.

24. I collected all of the scores from the Interview Committee and entered them into a spreadsheet.

25. Each candidate was then ranked based on their interview score.

26. Dr. Rachel Tudor was ranked sixth (6th) out of six (6) candidates.

27. Then all of the scores from the Candidate Application Packets and the interviews were combined and ranked according to total score by the Interview Committee.

28. Dr. Rachel Tudor was, again, ranked sixth (6th) out of six (6) candidates.

29. Comments from the Interview Committee regarding Dr. Tudor's interview included that Dr. Tudor was "not engaging," "monotone," "disappointing," and "lacked energy."

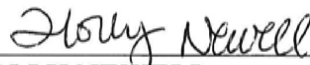
30. The position was ultimately offered to another candidate who was not local, who interviewed via video conference.

31. Dr. Tudor was informed that she was not selected for the position via email on August 11, 2017.

32. At the time of receiving Dr. Tudor's application, I, the Interview Committee nor the Department Chair were aware of her lawsuit pending against SEOSU or her transgender status. However, on the morning of Dr. Tudor's interview, the Director of Human Resources called me into her office to discuss Dr. Tudor and some information that I needed to be made aware of in light of some news that was brought to her attention. The Director for Human Resources informed me that the LAH Division Chair had "Googled" all of the candidates and discovered that Dr. Tudor had been involved in a law suit against SEOSU regarding her termination involving her gender identity. She wanted me to be aware so that I could monitor the committee and any conversation that took place to ensure that no bias was exercised or discussed

and that "business would go on as usual" with no mention of anything disclosed to me. The Director for Human Resources directed the LAH Division Chair to write a statement declaring that she would not discuss her discovery with anyone and would proceed with the interview process professionally as if she never discovered any information about Dr. Tudor; the LAH Division Chair submitted her statement and the interviews of all candidates proceeded in a normal fashion that day. These elements did not influence the Committee or Department Chair's scoring during Dr. Tudor's interview.

I state under penalty of perjury that the foregoing is true and correct. Executed on this 16<sup>th</sup> of December 2017 in Seminole, Oklahoma.



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HOLLY NEWELL  
SPONSORED PROGRAMS COMPLIANCE  
OFFICER AT SEMINOLE STATE  
COLLEGE WITHIN THE HUMAN  
RESOURCES DEPARTMENT

**FY18-English Composition Instructor**

Overall Totals


	Pre-Interview Scores						Interview Scores						Overall Scores					
	70	68	72	70	56	<b>336</b>	149	146	146	149	147	<b>737</b>	219	214	218	219	203	<b>1073</b>
	59	68	72	75	54	<b>328</b>	135	139	141	149	135	<b>699</b>	194	207	213	224	189	<b>1027</b>
	58	73	65	68	54	<b>318</b>	137	134	142	137	140	<b>690</b>	195	207	207	205	194	<b>1008</b>
	57	66	73	75	53	<b>324</b>	109	121	141	139	122	<b>632</b>	166	187	214	214	175	<b>956</b>
	68	74	72	67	63	<b>344</b>	107	139	86	119	132	<b>583</b>	175	213	158	186	195	<b>927</b>
<b>Dr. Rachel Tudor</b>	75	75	74	75	60	<b>359</b>	86	96	122	92	80	<b>476</b>	161	171	196	167	140	<b>835</b>
	60	71	73	74	52	<b>330</b>						0	60	71	73	74	52	<b>330</b>
	66	70	71	70	45	<b>322</b>						0	66	70	71	70	45	<b>322</b>
	68	63	65	67	47	<b>310</b>						0	68	63	65	67	47	<b>310</b>
	62	68	70	64	43	<b>307</b>						0	62	68	70	64	43	<b>307</b>
	64	60	74	62	43	<b>303</b>						0	64	60	74	62	43	<b>303</b>
	48	67	67	61	50	<b>293</b>						0	48	67	67	61	50	<b>293</b>
	52	64	64	64	48	<b>292</b>						0	52	64	64	64	48	<b>292</b>
	53	57	66	67	47	<b>290</b>						0	53	57	66	67	47	<b>290</b>
	61	70	61	53	33	<b>278</b>						0	61	70	61	53	33	<b>278</b>
	60	63	62	26	39	<b>250</b>						0	60	63	62	26	39	<b>250</b>
	37	51	63	41	22	<b>214</b>						0	37	51	63	41	22	<b>214</b>
	40	51	42	22	36	<b>191</b>						0	40	51	42	22	36	<b>191</b>
	53	37	38	31	23	<b>182</b>						0	53	37	38	31	23	<b>182</b>
	50	34	53	35	10	<b>182</b>						0	50	34	53	35	10	<b>182</b>
						0						0	0	0	0	0	0	0
						0						0	0	0	0	0	0	0
	643	565	848	641	437	5753	723	775	778	785	756	3817	1884	2025	2075	1952	1634	9570

**DECLARATION OF DR. RANDY PRUS**

1. As a member of Dr. Rachel Tudor's tenure and promotion committee in 2009-10, it was my opinion then that she did not demonstrate the promise for future success as a tenured professor.
2. As the current Chair of the English, Humanities, and Languages Department ("EHL") at Southeastern Oklahoma State University, it is my opinion that it would not be good for this department if Dr. Rachel Tudor were to return to work here.
3. As the current Chair of the EHL Department at Southeastern Oklahoma State University, it is my opinion that it would not be good for this university if Dr. Rachel Tudor were to return to work here.
4. As the current Chair of the EHL Department at Southeastern Oklahoma State University, part of my duties involves assigning faculty members to teach certain classes and subjects. At present, there is no need for an additional professor, let alone an additional tenured professor, in the EHL Department. Further, there is no available budget for an additional professor.
5. As the current Chair of the EHL Department at Southeastern Oklahoma State University, and a teacher of students here, it is my opinion that it would not be good for the students if Dr. Rachel Tudor were to return to work here.
6. As the current Chair of the EHL Department at Southeastern Oklahoma State University, I have firsthand knowledge from colleagues in this department that, at most, half of the faculty would potentially accept it if Dr. Rachel Tudor were to return to work here, but at least half of the faculty oppose Dr. Rachel Tudor's possible return to work here. This will be detrimental to department functioning and collegiality.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Execute on this 20<sup>th</sup> day of December, 2018, in Tulsa, OK.

  
\_\_\_\_\_  
Dr. Randy Prus

From: [Rachel Tudor](#)  
To: [Kristi Mallett](#)  
Subject: Asst Prof of Humn  
Date: Friday, March 25, 2016 4:07:43 PM  
Attachments: [app letter 2012.docx](#)  
[26\\_May\\_2011vita\\_publication\\_emphasis.docx](#)  
[philosophy of teaching.rtf](#)  
[phd trans page.pdf](#)  
[Mischo rec letter.pdf](#)  
[allen\\_rec\\_letter\\_2011.pdf](#)  
[dr\\_coleman\\_letter\\_of\\_rec\\_25aug2011.pdf](#)  
[univ\\_of\\_houston\\_transcript.pdf](#)

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Please find my application materials attached.

Thank you,  
Dr. Rachel Tudor

Dr. Rachel Tudor

[racheltudor3731@gmail.com](mailto:racheltudor3731@gmail.com)

24 February 2012

Dear Members of the Search Committee,

I was pleased to see your recent advertisement for an Assistant Professor of Humanities in HigherEdJobs. My unique qualifications and extensive experience make me a superb choice for Rogers State University. My whole-hearted commitment to higher education is demonstrated by my award-winning dissertation, faculty senate recognition award for excellence in scholarship, years of dedicated service on department and university committees, superior student evaluation scores, and practice of the arts.

Areas of concentration in my PhD studies were American and Native American literature with an equal emphasis on Modernity and Theory. The leading professional society of Native American scholars and writers awarded me "Writer of the Year" in academic prose for my dissertation. As a faculty member, I have published articles on a broad range of topics in a number of professional journals. In addition to articles focusing on American literature, I have written articles and presented at conferences on such varied topics as Greece's atavistic myths, medieval dream poetry, Latin American magical realism, gender studies, memoir, post-colonialism, genre, and philosophy. Thus, my postgraduate scholarship demonstrates a diverse and ever-increasing fluency in literature and philosophy across time and culture. My peers honored my scholarship by awarding me the Faculty Senate Recognition Award for Excellence in Scholarship.

I have eleven years full-time faculty-level experience teaching in the classroom and on the web. As a faculty member at a teaching university serving students from diverse ethnic and socioeconomic backgrounds, I regularly taught undergraduate courses in philosophy, humanities, literature, and composition. In addition, I have taught upper division and graduate courses in American literature as well as individual directed readings. I have been repeatedly and consistently nominated by my students and colleagues for teaching awards, earned exceptional peer evaluations, and received overwhelmingly positive student evaluations. I credit my classroom success to the extensive training I have pursued in the use of technology and pedagogy coupled with a passion to see my students succeed. As part of my commitment to constantly upgrade my skills, I have developed online and hybrid courses as well as completed on-line credited courses in computer science and internet pedagogy. In addition to developing new courses within my department, I had the privilege of being the campus coordinator of the Oklahoma Scholar-Leadership Enrichment Program and developing an interdisciplinary course with the renowned scholar Dr. Rennard Strickland.

In terms of service, I had the privilege of being elected to Southeastern Oklahoma State University's faculty senate. While serving in the senate, I also served on the senate Planning Committee and Personnel Policies Committee. In addition to my university-wide service, I chaired my department's most demanding committee, the Assessment, Planning, and Development Committee from 2007-2010. As chair, I wrote the department's annual assessment report. I was also a member of several other vital



department committees. However, one of my most rewarding experiences was serving as a core member of the Native American Symposium Committee and co-editing the Symposium's proceedings. I particularly appreciate the opportunity the Symposium provided to reach out into the broader community and welcome visiting students and scholars to our campus. My commitment to active service is longstanding. As an undergraduate and graduate student, I was elected by my peers to serve on the student senate and served as an executive officer of the Native American Student Association.

Perhaps what distinguishes me the most from other candidates for the position is my successful practice of the arts. As an undergraduate, I wrote and directed a two-hour play that was performed in the university's theater with a cast of students, faculty, staff, and community members. A local theater group was so impressed with the play that they commissioned me to write and help direct a version of my play for them the following year. As a graduate student, my poetry was recognized with the award of a residential fellowship by the Virginia Center for the Creative Arts. As a faculty member, my art work was juried-selected to appear in Southeastern Oklahoma State University's Centre Art Gallery. My love for the liberal arts is not merely theoretical, but hands-on. I believe that my experience as an artist provides depth and perspective on the arts that enriches the classroom experience of my students.

I am confident that I have much to offer your department and students, and I would be honored to visit with you to answer any question you may have. Thank you for reviewing my application.

Cordially yours,

Dr. Rachel Tudor

**Rachel Tudor**

**Education**

- 2000 Ph.D. English, University of Oklahoma  
Concentration: *American and Native American Literature & Modernity and Theory*
- 1994 M.A. Humanities, University of Houston-Clear Lake  
Concentration: *Philosophy*
- 1991 B.A. Multi-Cultural Studies, University of Houston-Clear Lake  
Concentration: *History*

**Academic Teaching Experience**

- 2004-2011 Assistant Professor of English and Humanities, Southeastern Oklahoma State University
- 2002-2004 Professor of Humanities, College of the Mainland
- 2001-2002 Visiting Assistant Professor of English, University of Idaho
- 2000-2001 Post-Doctoral Lectureship, Meritoriously Awarded Position, University of Oklahoma
- 1997-2000 Teaching Associate, University of Oklahoma
- 1995-1997 Teaching Assistant, University of Oklahoma

**Professional Interests**

Philosophy  
Modernity and Theory  
American and Native American Literature

**Publications**

**Articles:**

- 2012 "The Ethics and Ethos of Eighteenth-Century British Literature." *ASEBL Journal*.  
(Accepted, publication pending)

Tudor 2

- 2011 "Genre and the Native American Novel." *Parnassus: An Innovative Journal of Literary Criticism*. Issue 2/3, July, 2011.
- 2011 "Sara Suleri: A Study in the Idioms of Dubiety and Migrancy in *Boys Will Be Boys* and *Meatless Days*." *disClosure: A Journal of Social Theory*. Number 20, April, 2011
- 2011 "*Pearl*: A Study in Memoir and First-Person Narrative Poetry." *Diesis: Footnotes on Literary Identities*. Spring, 2011
- 2010 "A Reading of Jonathan Swift's 'A Modest Proposal' Using Roman Jakobson's Poetic Function." *The Atrium: A Journal of Academic Voices*. Winter, 2010
- 2010 "Romantic Voyeurism and the Idea of the Savage." *The Texas Review*. Spring/Summer 2010
- 2010 "Memoir as Quest: Sara Suleri's *Meatless Days*." *Research and Criticism*. Special Issue on Contemporary Literature and Theory. Volume 1, 2010
- 2010 "N. Scott Momaday's *The Ancient Child* and the American Dime Novel." *Indian Review of World Literature in English*, Volume 6, Number II, July 2010
- 2010 "*House Made of Dawn*: A New Interpretation." In *Diasporic Consciousness: Literature From the Postcolonial World*. Ed. Smirti Singh. Berlin, Germany: VDM Verlag, 2010 ISBN: 3639302036
- 2010 "Latin American Magical Realism and the Native American Novel." *Teaching American Literature: A Journal of Theory and Practice*. Spring/Summer 2010
- 2009 "Historical and Experiential Postmodernism: Native American and Euro-American." *Journal of Contemporary Thought*. Winter 2009

**Editor:**

- 2008 Co-Editor. *Symposium Proceedings*. "Sixty-Seven Nations and Counting: Proceedings of the Seventh Native American Symposium."
- 2006 Co-Editor. *Symposium Proceedings*. "Native Women in the Arts, Education, and Leadership: Proceedings of the Sixth Native American Symposium."

**Book Review:**

- 1997 Book Review. *Outlaws, Renegades, and Saints: Diary of a Mixed-Up Halfbreed*. Tiffany Midge. *World Literature Today*. Winter, 1997
- 1996 Book Review. *Deadly Medicine*. Peter C. Mancall. *American Indian Libraries Newsletter*. Winter 1996
- 1995 Book Review. *Shadow Distance: A Gerald Vizenor Reader*. Comp. A. Robert Lee. *American Indian Libraries Newsletter*. Spring, 1995

**Creative:**

2007 Open-Mic Chapbook. *AlienNations*

2005 Open-Mic Chapbook. *Diaspora*

1992 Play. *The Trial of Columbus*

**Effective Teaching**

***Internet Courses***

Humanities 1213 *Ancient to Medieval*

***Hybrid Courses***

English 1113 *Intro to Composition*

English 1213 *Composition*

Humanities 1213 *Ancient to Medieval*

Philosophy 1213 *Intro to Philosophy*

***New Courses***

Oklahoma Scholar Leadership Enrichment Program: *Native American Life, Law, and Literature*

This course was created with the assistance of the renowned Native American legal scholar Dr. Rennard Strickland and introduces students to current events in Native American law, life, and literature through the prism of American jurisprudence.

English 4853 *Great Books*

English 4563/5103 *Native American Literature*

***Other Courses at Southeastern***

English 1113 *Intro to Composition*

English 1213 *Composition*

English 2313 *Intro to Literature*

English 4563/5103 *Native American Literature*

Humanities 1213 *Ancient to Medieval*

Philosophy 2113 *Intro to Philosophy*

***Courses Taught at College of the Mainland***

English 1301 *Composition and Rhetoric in Communication*

English 1302 *Composition and Reading*

English 2328 *American Literature II*

Humanities 1301 *Ancient to Medieval*

Humanities 1302 *Renaissance to Modern*  
Philosophy 2306 *Ethics*

***Courses Taught at the University of Idaho***

English 208 *Personal and Expository Writing*  
English 295 *American Indian Drama*  
English 484 *American Indian Literature*

***Courses Taught at the University of Oklahoma***

English 1113 *College Composition I*  
English 1213 *College Composition II*  
English 2213 *Introduction to Fiction*  
English 2223 *Poetry*

**Committees and Special Assignments**

***Southeastern Oklahoma State University***

*2010-2011 Faculty Senate Personnel Policies Committee*

- Reviewed and assessed policy and procedure changes in reference to their impact on the faculty
- Proposed policy changes to the Faculty Senate in reference to salary, teaching, and tenure

*2009- 2011 Faculty Senate*

- Reviewed, evaluated, and made recommendations for changes in undergraduate and graduate academic policies and procedures
- Reviewed and made recommendations for changes in the Policy and Procedures Manuel

*2009-2010 Faculty Senate Planning Committee*

- Facilitated the development and implementation of long-term goals relating to curriculum

*2007-2010 Chair, Assessment, Planning, and Development Committee, Department of English, Humanities, and Languages*

- Composed yearly assessment report for the department
- Compiled, distributed, and tabulated department assessment of upper-level capstone student papers
- Compiled, distributed, and tabulated department assessment of junior-level student papers
- Organized meetings and agendas

Tudor 5

2004-2010 *Native American Symposium Committee*

- Moderated panels
- Recommended themes and speakers
- Edited the 6<sup>th</sup> and 7<sup>th</sup> Symposium proceedings
- Provided transportation for speakers and guests to and from hotels and Dallas Airport

2007 *Oklahoma Scholar Leadership Enrichment Program*

- Recommended Dr. Rennard Strickland as guest scholar
- Assisted Dr. Strickland prepare a course curriculum and syllabus for program
- Served as local director and supervising professor of Dr. Strickland's course
- Graded student presentations and papers

2004-2011 *Hiring Committee*

- Reviewed applications of prospective faculty members
- Interviewed prospective faculty
- Participated in deliberations and evaluations of applicants

2004-2011 *Five-Year Program Review Committee*

- Compiled pertinent paperwork
- Contributed to review of curriculum
- Assisted outside reviewer with assessment report

2004-2006 *Assessment, Planning, and Development Committee, Department of English, Humanities, and Languages*

- Evaluated upper-level capstone student papers
- Evaluated junior-level student papers
- Participated in regular meetings and deliberations of committee

*College of the Mainland*

2002-2004 *Curriculum Committee*

- Recommended revisions of curriculum to align with Texas' *Academic Course Manual*
- Reviewed new course proposals

2002-2004 *Multi-Cultural Team*

- Organized multicultural activities on campus
- Promoted and publicized events
- Invited speakers to campus
- Hosted guest speakers on campus

2002-2004 *Estrella Award Committee*

- Reviewed nominees and applications for award to honor outstanding Hispanic student leaders in the community

*University of Idaho*

2001-2002 *Native American Advisory Board*

- Advised on issues important to the Native American community
- Liaison between the university and local Native American tribes

**Professional Activities**

- 2011 Presentation. "Modern Media's Translation of Greece's Atavistic Myths." 13<sup>th</sup> Annual McCleary Interdisciplinary Symposium. Texas Southern University
- 2009 Presentation. "Native American Protest Fiction." 11<sup>th</sup> Annual McCleary Interdisciplinary Symposium. Texas Southern University
- 2007 Art Exhibit. "Kachinas and Gourds." Centre Art Gallery, Southeastern Oklahoma State University, Juried Art Show
- 2005 Presentation. "The Lynching of Ward Churchill." Sixth Annual Native American Symposium. Southeastern Oklahoma State University
- 1998 Presentation. "Charlotte Bronte's Indians" SAGES Conference, University of Oklahoma, Norman, Oklahoma
- 1996 Presentation. "Self-Selected and Other-Attributed Gender Performance: A Theoretical and Experiential Investigation." Culture Studies/Cultural Intervention, University of Colorado, Boulder, Colorado.
- 1995 Presentation. "What is Native American Literature?" Southwest/Texas Popular Culture Association, Regional Meeting, Oklahoma State University, Stillwater, Oklahoma
- 1994 Presentation. "Suicide or Genocide? Self-Inflicted Death in Native American Novels." English Graduates for Academic Development. East Texas State University, Annual Conference
- 1992 Director. *The Trial of Columbus*. Performed at the Mecotha Theater, Houston, Texas

**Professional Training and Continuing Education**

- 2011 *Faculty Grant Writing Workshop*, Dr. Kathryn Plunkett, Digital Information Literacy Librarian, Southeastern Oklahoma State University

- 2009 *PowerPoint to Windows Media Player*, Center for Instructional Development and Training, Southeastern Oklahoma State University
- 2009 *SMARTBoard Basics*, Center for Instructional Development and Training, Southeastern Oklahoma State University
- 2009 *Getting Started: Toward Online Teaching*, The Sloan Consortium
- 2009 *Blackboard Assessments*, Center for Instructional Development and Training, Southeastern Oklahoma State University
- 2009 *PowerPoint to Windows Media Video*, Center for Instructional Development and Training, Southeastern Oklahoma State University
- 2009 *Respectful Workplace*, Southeastern Organizational Leadership Development, Southeastern Oklahoma State University
- 2009 *Legal Aspects of the Faculty*, Southeastern Organizational Leadership Development, Southeastern Oklahoma State University
- 2008 *On Media, Culture, Violence, and the College Student*, Southeastern Office of Violence Prevention, Southeastern Oklahoma State University
- 2008 *Teacher Tube*, Center for Instructional Development and Training, Southeastern Oklahoma State University
- 2008 *BlackBoard Discussion Forums*, Center for Instructional Development and Training, Southeastern Oklahoma State University
- 2008 *Using Microsoft Office Powerpoint*, Center for Instructional Development and Training, Southeastern Oklahoma State University
- 2007 *New Technologies for Enhancing Instruction*, Center for Instructional Development and Training, Southeastern Oklahoma State University
- 2007 *Customizing Your Blackboard Course*, Center for Instructional Development and Training, Southeastern Oklahoma State University
- 2007 *Grading Documents Electronically*, Center for Instructional Development and Training, Southeastern Oklahoma State University
- 2003 *Introduction to Microsoft Powerpoint*, Department of Continuing Education, College of the Mainland, Texas City, Texas
- 2003 *Interactive Instruction Training*, Department of Continuing Education, College of the Mainland, Texas City, Texas

**Awards and Honors**

Faculty Senate Recognition Award for Excellence in Scholarship, Southeastern Oklahoma State University, 2011



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Nominee, Faculty Senate Recognition Award for Excellence in Scholarship, Service, and Teaching, Southeastern Oklahoma State University, 2010  
Nominee, Faculty Senate Recognition Award for Excellence in Teaching, Southeastern Oklahoma State University, 2008  
Nominee, Teacher of the Year, College of the Mainland, 2003  
Writer of the Year, Wordcraft Circle of Native Writers and Storytellers, 2000  
Post-Doctoral Lectureship, University of Oklahoma, 2000  
Residential Writing Fellowship, Virginia Center for the Creative Arts, 2000  
Merit Tuition Scholarship, University of Oklahoma, 1996-1999  
Roy and Florena Hadsell Award for Research, University of Oklahoma, 1995  
Sigma Tau Delta, Rho Omega Chapter of the National English Honor Society, 1993  
Omicron Delta Kappa, Atrium Circle Chapter of the National Leadership Honor Society, 1992

### Professional Memberships

- Modern Language Association
- Wordcraft Circle of Native Writers and Storytellers

### References

- **Dr. Margaret Cotter-Lynch.** (Associate Professor) Department of English, Humanities, and Languages, School of Arts & Sciences, Southeastern Oklahoma State University, 1405 North 4<sup>th</sup> Avenue, Durant, Oklahoma, 74701. mcotter@se.edu (580) 745-2986
- **Dr. Daniel Althoff.** (Professor) Department of English, Humanities, and Languages, School of Arts & Sciences, Southeastern Oklahoma State University, 1405 North 4<sup>th</sup> Avenue, Durant, Oklahoma, 74701. dalthoff@se.edu (580) 745-2584
- **Dr. Lisa Coleman.** (Professor) Department of English, Humanities, and Languages, School of Arts & Sciences, Southeastern Oklahoma State University, 1405 North 4<sup>th</sup> Avenue, Durant, Oklahoma, 74701. lcoleman@se.edu (580) 745-2770
- **Dr. Virginia Parrish.** (Associate Professor) Department of English, Humanities, and Languages, School of Arts & Sciences, Southeastern Oklahoma State University, 1405 North 4<sup>th</sup> Avenue, Durant, Oklahoma, 74701. vparrish@se.edu (580) 745-2594
- **Dr. Mark Spencer.** (Associate Professor) Department of English, Humanities, and Languages, School of Arts & Sciences, Southeastern Oklahoma State University, 1405 North 4<sup>th</sup> Avenue, Durant, Oklahoma, 74701. mspencer@se.edu (580) 745-2921
- **Dr. Paula Allen.** (Professor) Department of English, Humanities, and Languages, School of Arts & Sciences, Southeastern Oklahoma State University, 1405 North 4<sup>th</sup> Avenue, Durant, Oklahoma, 74701. psmithallen@se.edu (580) 745-2592

Philosophy of Teaching  
Dr. Rachel Tudor

I love teaching because I find my life is enriched by helping students improve their lives. The reason students enroll in college is to improve the quality of their lives, and it is our responsibility as educators to help them achieve their goal. Although students generally expect us to help them increase their skills and abilities, it is my goal to help them gain wisdom as well. In other words, I consider students' apprehension of material as important as their comprehension of it. For instance, while there is value in knowing the names of the main actors in Homer's *Iliad* and being able to knowledgeably outline the plot of the story, it is life-changing to apprehend the significance of a father (Priam) loving his son (Hector) more than he hates the man (Achilles) who killed him.

Teaching is as much an art as it is a science. I have spent more nights than I can count laying awake asking myself why a seemingly pedagogically sound lesson failed to meet its goal. As an inexperienced teacher, I was often puzzled why the very same lesson plan that succeeded in one class was a failure in another--sometimes in a class held immediately after the successful class. As an experienced teacher, I know that each class has its own personality. Each class has its own needs and abilities. I cannot expect a class to adapt to my lesson plan; I must adapt my lesson plan to fit the personality, needs, and gifts of each class.

I have yet to discover a magic formula for success (if you have one, please share), but I do know that students need to feel a sense of connection (to the material, to one another, and to the teacher), recognition for their effort, and power (also known as "agency").

In classrooms with movable desks, I build a sense of connection by having the students move their desks in a circle so we are all facing one another. It is important for students to see one another's faces when talking to build interpersonal classroom relationships. No one is talking to the back of someone else's head, and no one is trying to listen to an unfamiliar disembodied voice behind them. In

order for the students to feel a connection with me, I think it is important to sit with the students. To facilitate connection with the material, I might ask a student what difference it would make in his or her life to share Priam's values. What difference does it make in the quality of one's life to value love more than vengeance?

Students feel a sense of recognition when a teacher practices active listening. Active listening requires taking student contributions and questions seriously. It requires the flexibility and improvisation that is only acquired through experience and frequent critical reflection on what happens in the classroom. Students are intelligent enough to know when a teacher is fishing for the right answer. Fishing for "right" answers humiliates students who stray from the lesson plan script and intimidates other students from contributing. When students do not voice anticipated responses, I am curious why. Discovering why is an opportunity for students and teachers to recognize one another. Of course, written assignments are another opportunity for students to feel recognized if evaluations are inquisitive instead of punitive. For instance, asking a student why they repeatedly commit an error is more helpful than simply penalizing a student for an error.

Students feel power when they are given responsibilities and choices. Small group assignments and peer revisions are excellent opportunities for students to take leadership roles and make decisions in reference to the material we are covering. I explain the purpose and goals of our activities. I invite students to comment on and offer suggestions in reference to our activities. In addition, after we finish reading a text or complete an assignment, I ask them if they would recommend the text or assignment for the next class. This is not an empty exercise; I have gained valuable insight into making connections with students simply by listening to their lived classroom experience. Facilitating connection, recognition, and power are mutually reinforcing strategies for successful teaching and learning.

Student response to my philosophy of teaching has been positive. For example, student demand for my *Introduction to Philosophy* class necessitated opening additional sections as well as adding

another philosophy class, *Ethics*, to the course schedule. Also, I have been informed by a number of colleagues that students cited their experience in my class as their reason for selecting a major in our department. We all need to feel connection to one another, recognition for our contributions, and some sense of agency over our lives to be happy. My philosophy of teaching is simply my philosophy of life brought into the classroom.

THE UNIVERSITY OF OKLAHOMA, NORMAN, OK 73019

OFFICE OF ADMISSIONS AND RECORDS

**NAME** Rachel Jona Tudor  
**BIRTH PLACE:** ,  
**BIRTH DATE:** 7/26/XX

**HIGH SCHOOL NAME:**  
**HIGH SCHOOL PLACE:**

**PRINT DATE**  
2/11/11  
**PAGE:** 1

**STUDENT ID** 112387811  
**SSN** \*\*\*\*\*6848  
**SEX** F

**SUBJ NO.** COURSE TITLE CRED GRD PTS R  
 Institution Information continued:  
 ENGL 5113 Teach Coll Comp/Lit 3.000 A 12.00  
 Term: Ehrs: 6.000 Qpts: 21.00  
 GPA-Hrs: 6.000 GPA: 3.50  
 Good Standing

**Course Level:** Graduate  
**Major(s)** College : College of Arts and Sciences  
 Major : English  
**Maj/Concentration :** Composition/Rhetoric/Literacy  
**Awarded Doctor of Philosophy** 06-MAY-2000  
 Major : English

**INTERPRETATION OF GRADES**  
 A = Excellent  
 B = Good  
 C = Average  
 D = Poor  
 F = Failing  
 I = Incomplete  
 AW = Adm'n. Withdrawal  
 W = Withdrawn  
 S = Satisfactory  
 U = Unsatisfactory  
 P = Pass  
 NP = No Pass  
 AU = Audit  
 X = Work in Progress  
 E = Conditional  
 WF = W Failing  
 N = No Report

**INSTITUTION CREDIT:**  
 Term: Fall 1994  
 GRAD COL ENGL Adv Lit Analysis 3.000 A 12.00  
 ENGL 5003 20th Cnt Am Ind Lit 3.000 A 12.00  
 Term: Ehrs: 6.000 Qpts: 24.00  
 GPA-Hrs: 6.000 GPA: 4.00  
 Good Standing

**GRADE POINTS PER SEM. HOUR SINCE 1990**  
 A=4 D=1  
 B=3 F=0  
 C=2 WF=0  
 Other Grades Not Computed in GPA

**Term:** Spring 1995  
 GRAD COL ENGL Sem-Medieval Lit 3.000 B 9.00  
 ENGL 5523 Philosophy of Mind 0.000 W .00  
 Term: Ehrs: 3.000 Qpts: 9.00  
 GPA-Hrs: 3.000 GPA: 3.00  
 Good Standing

**Term:** Fall 1996  
 GRAD COL ENGL Cont Crit Thought 3.000 A 12.00  
 ENGL 5903 Feminism/Postmodern 3.000 A 12.00  
 Term: Ehrs: 6.000 Qpts: 24.00  
 GPA-Hrs: 6.000 GPA: 4.00  
 Good Standing

**Term:** Fall 1995  
 GRAD COL ENGL Romanticism Lang/Idn 3.000 B 9.00  
 ENGL 5003 \*\*\*\*\* CONTINUED ON NEXT COLUMN \*\*\*\*\*

**Term:** Spring 1997  
 GRAD COL ENGL Directed Readings 3.000 S .00  
 ENGL 5960  
 Term: Ehrs: 6.000 Qpts: 12.00  
 GPA-Hrs: 3.000 GPA: 4.00  
 Good Standing

**Term:** Spring 1998  
 \*\*\*\*\* CONTINUED ON PAGE 2 \*\*\*\*\*

**Term:** Spring 1998  
 \*\*\*\*\* CONTINUED ON PAGE 2 \*\*\*\*\*



*Jamie Lindsey*  
 Assistant Director, Academic Records

This official transcript is printed on burgundy security paper and signed in DUPLICATE (pre-printed signature in white ink and laser produced identical signature in black ink) on each page by the Assistant Director of Academic Records, Laurie Tinsley. A raised seal is not required. When photocopied, the word VOID should appear. A BLACK AND WHITE OR COLOR COPY OF THIS TRANSCRIPT SHOULD NOT BE ACCEPTED.

*Jamie Lindsey*

STUDENT IS IN GOOD STANDING UNLESS NOTED. THIS DOCUMENT REFLECTS ONLY THE ACADEMIC RECORD OF THE STUDENT.



DEPARTMENT OF ENGLISH, HUMANITIES, & LANGUAGES

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4127  
DURANT, OK 74701-0609

580-745-2066  
FAX 580-745-7406  
WWW.SE.EDU

August 24, 2011

To Whom It May Concern:

I am writing this reference in support of Dr. Rachel Tudor and her application to an academic position.

Dr. Tudor's teaching practice exemplifies her commitment to the humanities, in particular to the areas of classical literature, philosophy, and Native American literature. I have twice observed—in my former capacity as department chair—her philosophy classes for purposes of faculty development. Her teaching style clearly motivates students: group work, discussion and lecture are blended effectively. In one class in particular I was impressed as to how the students were excitedly immersed in a discussion of Plato and Orwell. Dr. Tudor's classroom method could be described as Socratic, but in a non-confrontational way. Students were eager to participate. Dr. Tudor has a great deal of experience in teaching a varied range of courses at all undergraduate levels. At Southeastern she has regularly taught first-year composition, general sophomore-level Western humanities, and introduction to philosophy sections. She has twice taught an upper-division Native American Lit class. She also teaches an online version of our general Western Humanities class. As department chair during her time here at Southeastern I witnessed Dr. Tudor develop into a wonderfully engaged teacher.

In terms of service, Dr. Tudor's greatest contribution to Southeastern has been her involvement with our Native American Symposium. The logistics of coordinating even a small conference can be incredibly time consuming. She has also been involved with editing the conference proceedings. She has also been involved in bringing a noted scholar in Native American studies, Rennard Strickland, to teach as a visiting scholar here in the Oklahoma Scholar-Leadership Enrichment Program.

Dr. Tudor has recently been extremely successful in securing forthcoming publication for her scholarly manuscripts. In the past two years she has had about ten articles published or accepted. Particularly impressive is the range of her publications, which focus on topics as varied as Latin American realism, classical literature, medieval literature, Swift, and especially Native American writers.

Sincerely,

A handwritten signature in black ink that reads "John Brett Mischo".

Dr. John Brett Mischo  
Professor

[jmischo@se.edu](mailto:jmischo@se.edu)

(580) 745-2590

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SOUTHEASTERN OKLAHOMA STATE UNIVERSITY



DEPARTMENT OF ENGLISH, HUMANITIES, & LANGUAGES

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4127  
DURANT, OK 74701-0609

580-745-2066  
FAX 580-745-7406  
WWW.SE.EDU

August 19, 2011

To whom it may concern:

I am writing to recommend Dr. Rachel Tudor for your position opening. Dr. Tudor was my colleague as a professor of English in the English, Humanities, and Languages Department at Southeastern Oklahoma State University from 2004 until 2011.

At Dr. Tudor's first interview, I was very impressed at the description of her teaching methodologies and the depth of her research in several scholarly areas, including Native American literature. She has since acknowledged that expertise both in her teaching and in the impressive number and quality of her publications. In terms of her teaching, Dr. Tudor spent considerable time in the design and implementation of the courses she taught and maintained high standards for her students in academic achievement.

As a colleague, Dr. Tudor endeavored to carry more than her share of the leadership and workload within the department. I recall that, while still relatively a newcomer within the EHL Department, Dr. Tudor led an assessment effort by the department with alacrity and foresight over a several-year period. She participated on committees at both departmental and university levels, and was very active and vocal in her service in Faculty Senate, a faculty-elected position. Needless to say, Dr. Tudor has earned the respect of her colleagues for her conscientious and dedicated professionalism.

I had the advantage of having the office next to Dr. Tudor's, which I believe gave me some insight into the efforts she made toward her professional duties. Though Dr. Tudor has a very quiet demeanor, she was generally hard at work when I came in, often very early in the morning, and still working in the late afternoon.

I find Dr. Tudor to be a likeable, responsible, and professional colleague in all respects pertinent to professional life within the University community. I believe Dr. Tudor's efforts and worthiness has been very apparent in her service to Southeastern, and those same qualities should sustain and promote her service elsewhere as well.

Sincerely,

A handwritten signature in cursive script that reads "Dr. Paula Smith Allen".

Paula Smith Allen, Ph.D.  
Professor of English, English Education Coordinator

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SOUTHEASTERN OKLAHOMA STATE UNIVERSITY



OFFICE OF THE HONORS PROGRAM

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 2766  
DURANT, OK 74701-0609

580-745-2771  
FAX 580-745-7495  
WWW.SE.EDU

25 August 2011

To Whom It May Concern:

I am writing in support of Rachel Tudor's application to a position in your department. I have known Dr. Tudor since 2004, and she has been an asset to the department of English, Humanities, and Languages, to our students, and to the greater Southeastern Oklahoma State University community. Dr. Tudor is sincerely and deeply interested in student success, and she conscientiously makes every effort to determine how she can best serve students while drawing their attention to the values and the conflicts that inform Western culture in general and American culture, in particular. As a specialist in Native American literature and culture within the context of American history and literature, and as a Native American herself, she is highly cognizant of the fraught situation that arises when Native American literature is taught as separate and distinct from American literature. She performs her culture's ethos by insightfully pointing to the disparities that exist between Native American and American culture; but she accomplishes this pointing in such a way that one is gently led both to understand the disparities and the idea that since these cultural differences are not necessary but chosen, different choices could be made.

Dr. Tudor's teaching is exemplary. She has been nominated in the past three consecutive years (2009-2011) for the Faculty Senate Excellence in Teaching Award for the School of Arts and Sciences. The most recent departmental evaluation of Dr. Tudor's teaching supports those nominations and points, in particular, to the mindful way in which the class is taught and the emphasis that is placed on student success and how to achieve it in the given assignment--constructing PowerPoint slides, for example, for a course in ancient humanities. In his assessment letter, a faculty observer positively noted the camaraderie between Dr. Tudor and her students and commended her for the careful way she placed the day's work in the context of the course. Her teaching reflects the numerous courses she has taken in the Curriculum Instruction and Development in Technology at Southeastern to hone her skills in creating hybrid courses that draw upon online and in-class activities. She has also participated in leadership development courses and assisted in student crisis interventions.

In terms of curriculum, Dr. Tudor has constructed several new courses for the department including one on Great Books, which she suggested in response to a student survey of desired departmental changes. She also devised the course on Native American literature and worked in tandem with the renowned Native American scholar, Rennard Strickland, who taught a course on our campus at the invitation of OSLEP, or the Oklahoma Scholar-Leadership and Enrichment Program, after Dr. Tudor suggested to me that he would be a good speaker for OSLEP to consider. As the OSLEP representative on our campus at the time, I took her suggestion to OSLEP and they immediately tendered the invitation to Dr. Strickland to be the OSLEP guest lecturer at Southeastern in 2007, the first OSLEP speaker at Southeastern since the 1990's.

The OSLEP program requires that there be a campus coordinator to work with the visiting scholar to help devise the course and assess student involvement. Dr. Tudor took on this task and executed it

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SOUTHEASTERN OKLAHOMA STATE UNIVERSITY



successfully. Dr. Strickland then became the keynote speaker at Southeastern's biennial Native American Symposium for 2007, a conference that Dr. Tudor helped to coordinate as a member of the Native American Symposium Committee.

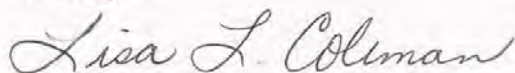
As the narrative of Dr. Tudor's experience with the OSLEP program suggests, her service has been an asset to a community far wider than that of Southeastern alone. By serving on the Native American Symposium committee since 2004 and by making suggestions in terms of theme and speaker more than once, Dr. Tudor has served the greater Southeastern community as well. In 2005 she suggested that the topic be "Native Women in the Arts, Education, and Leadership" and was a key player in seeing to it that Native American radio host Jacqueline Battiste attended the 2005 symposium.

From 2009 to 2011, Dr. Tudor has also served as a Faculty Senator, elected by the faculty at large. During her tenure on this prestigious committee, she also served on the Personnel Policies Committee within the Faculty Senate. She has served as Chair of the Assessment, Planning, and Development Committee, the most innovative committee of the English, Humanities, and Languages Department. She has also served on hiring committees and on the Five-Year Program Review Committee that I chaired, in which she made a very valuable written contribution that thoughtfully articulated the teaching mission of the department.

In the area of scholarship, Dr. Tudor made a great breakthrough beginning in 2010 and continuing to the present moment in 2011. While she has co-edited the Native American Conference proceedings on two occasions and has had articles accepted for publication previously, 2010-2011 have been banner years for her burgeoning record of scholarship, with numerous publications in a broad array of venues that range from journals of literary criticism, to Native American collections, to philosophy journals, to journals of social theory, all indicative of Dr. Tudor's interest in Native American studies, American and British literature, humanities, social theory, and philosophy. In recognition of Dr. Tudor's outstanding scholarship production in 2011, she won Southeastern's Faculty Senate Award for Excellence in Scholarship for the School of Arts and Sciences. In addition to her teaching, service, and scholarship in the world of academia, Dr. Tudor is also an accomplished artist and poet.

Dr. Tudor's passion for teaching and her commitment to her students' success are matched by the high expectations she has for her own scholarship and university service. She will be a thoughtful contributor to any department that is fortunate enough to hire her. If you have any questions or concerns, I would be happy to visit by phone or email.

Sincerely,



Lisa L. Coleman, Ph.D.  
Honors Program Director  
Professor of English

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TUDOR, RACHEL JONA

Prepared: 05/19/94

Birth Date: 07/29/88

Page # 1

COURSE NO	COURSE TITLE	HRS	GRADE	COURSE NO	COURSE TITLE	HRS	GRADE	
Transferred From				G/DS SPRING 1992				
SAN JACINTO C CENTRAL CAM				COMM 5733	SEMNR IN WRITING FICTION	3	B+	
				FUTR 6234	VISIONARY FUTURES	3	B A	
				LITR 4237	VICTORIAN LITERATURE	3	A	
				LITR 5537	AMERICAN POETRY	3	A	
U/DS SPRING 1989				G/DS SUMMER 1992				
ASTR 3131	MODERN ASTRONOMY I	3	A	LITR 5034	WORKSHOP IN POETICS	3	A	
BIOL 3332	BIO-ECOLOGY	3	A	LITR 5931	TOPIC:AMERICAN DRAMA	3	A A	
U/DS SUMMER 1989				G/DS FALL 1992				
BIOL 4931	TOPIC:FIELD BIOLOGY	3	A	HIST 5031	RESEARCH & METHODS SEMINAR	3	A-	
COMM 3135	TECHNICAL WRITING	3	B	HUMN 5931	TOPIC:AMERICAN PHILOSOPHY	3	A	
U/DS FALL 1989				LITR 5538				CONTEMPORARY AMERICAN LITR
BIOL 3133	PLANT ANATOMY	3	B	LITR 5939	IS:CONT MINORITY LITERATURE	3	A	
BIOL 4231	MARINE BIOLOGY	3	A	G/DS SPRING 1993				
BIOL 4336	GENETICS	3	C	HIST 5035	PHILOSOPHY OF HISTORY	3	A	
MATH 3038	COMPUTATIONAL STATISTICS	3	WX	LITR 6939	MASTER'S THESIS RESEARCH	3	CR	
U/DS SPRING 1990				LITR 6939				MASTER'S THESIS RESEARCH
ANTH 4532	INTRO ARCHAEOLOGY & PREHISTORY	3	A	G/DS SUMMER 1993				
COMM 3037	ADVANCED WRITING	3	B	EDUC 5931	TOPIC:COGNITION AND INSTRUCTION	3	A	
HUMN 3031	BASIC TEXTS WSTRN TRADITION I	3	A	LITR 6939	MASTER'S THESIS RESEARCH	3	CR	
LITR 3334	MYTHOLOGY	3	B	G/DS FALL 1993				
U/DS SUMMER 1990				HUMN 5336				PHILOSOPHY AND RELIGION
PSYC 4131	SOCIAL PSYCHOLOGY	3	A	LITR 6939	MASTER'S THESIS RESEARCH	3	CR	
SOCI 4535	MINORITIES IN AMERICA	3	A	PHIL 5939	IS:FEMINIST PHILOSOPHY	3	A	
PRESIDENT'S LIST				G/DS SPRING 1994				
U/DS FALL 1990				LITR 4238				RISE DEVELOP ENGLISH NOVEL
ANTH 3134	MEDICAL ANTHROPOLOGY	3	A	LITR 6939	MASTER'S THESIS RESEARCH	3	A	
ANTH 4333	INDIANS OF CENTRAL AMERICA	3	A	LITR 6939	MASTER'S THESIS RESEARCH	3	A	
PSYC 4661	RESEARCH DESIGN AND STAT MEAS	6	B	Name: TUDOR, RACHEL JONA				
U/DS SPRING 1991				Degree: MASTER OF ARTS				
ANTH 3136	ANTHROPOLOGY OF RELIGION	3	A	Major: HUMANITIES				
ANTH 4334	INDIANS OF NORTH AMERICA	3	A	Conferred: MAY 14, 1994				
HIST 4839	NATIVE AMERICAN HISTORY	3	A	*****				
PSYC 4839	PSYCHOLOGYRESEARCH	3	A	*****				
SILG 4135	THEORIES OF AMERICAN PLURALISM	3	A	*****				
SOCI 4132	SOC STRUCTUR:CLASS,POWER,STATUS	3	A	*****				
PRESIDENT'S LIST				*****				
Name: TUDOR, RACHEL JONA				*****				
Degree: BACHELOR OF ARTS				*****				
Major: MULTI-CULTURAL STUDIES				*****				
Conferred: MAY 11, 1991				*****				
G/DS SUMMER 1991				*****				
HIST 5432	STUDIES IN EUROPEAN HIST	3	A	*****				
SOCI 5238	NEGOTIATING ACROSS CULTURES	3	A	*****				
G/DS FALL 1991				*****				
FUTR 5131	STUDY OF THE FUTURE	3	B	*****				
FUTR 5132	QUALITATIVE FUTURES	3	WX	*****				
HIST 5939	IS:TOPIC:THIRD WORLD	3	A	*****				



*Darella L. Banks*

Darella L. Banks, Registrar  
University of Houston-Clear Lake

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

RACHEL TUDOR,

Plaintiff,

v.

SOUTHEASTERN OKLAHOMA STATE  
UNIVERSITY, and THE REGIONAL  
UNIVERSITY SYSTEM OF  
OKLAHOMA,

Defendants.

**Case No. 15-cv-324-C**

**DEFENDANTS' REPLY BRIEF ON THE  
MEASURE OF DAMAGES AWARDED BY THE JURY**

Plaintiff's response contains numerous inconsistencies, misstatements, and incorrect legal theories. For brevity's sake, Defendants will focus on five of the most egregious and noteworthy instances in reply (although there are plenty more):

1. Plaintiff asserts that Defendants have never before raised the issue of Title VII's statutory damages cap of \$300,000 against Plaintiff's discrimination and retaliation claims. This is false. On October 17, 2017, Plaintiff co-filed with Defendants the Joint Pretrial Report. [Doc. 207]. On pages 13 and 14 of that report (according to Plaintiff), Defendants only stated that the cap applied to the hostile work environment claim, rather than all of the claims. But just a handful of pages earlier, Defendants explicitly listed the Title VII damages cap under both the "Discrimination" and "Retaliation" headings in the "Legal Issues" section. (*Id.* at 7-8). And if that were not enough to prove Plaintiff wrong, the "Stipulated Facts" section—*i.e.* a part that *both parties agreed on*—states that "[b]ased on the number

of Defendants’ total employees, the \$300,000 damage cap at 42 U.S.C. § 1981a(b)(3)(D) *applies to this case.*” (*Id.* at 5 (emphasis added)). This stipulation alone means there can be zero doubt: the Title VII cap has not been waived.<sup>1</sup>

2. Plaintiff admits on page 15 of her brief that the jury compensated Plaintiff for “mental anguish” and “emotional pain and suffering,” while also reiterating that Plaintiff is not seeking—and has never sought—emotional distress damages. [Doc. 290, at 15, 18]. Put simply, Plaintiff now concedes that the jury awarded damages *that it should not have awarded because Plaintiff has disavowed them.* This admission against interest is rather extraordinary, and it is even further reason for the Court to reduce Plaintiff’s damages well below the \$300,000 statutory cap.

3. With emotional distress off the table, one will search Plaintiff’s brief in vain for a thorough explanation of what other evidence in the record actually supports the massive verdict here. Tellingly, even when the underlying evidence is discussed, ever so briefly, Plaintiff still cannot help but rely on testimony *about emotional distress*, despite having disavowed those damages. In footnote 8, for instance, Plaintiff claims the award is “further buttress[ed]” by testimony about Plaintiff’s “injuries” such as “shock and fright,” “fear,” “emotional toll,” “humiliation,” “anxiety,” and “depression”—all of which go to the foresworn assertion of emotional distress. [Doc. 290, at 17 n.8]. Plaintiff cannot have it both ways.

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<sup>1</sup> Of course, this was not the only time Plaintiff acknowledged the statutory cap. At trial, Plaintiff’s counsel affirmatively represented to the Court that “all” Plaintiff’s claims are “subject to the same cap.” [Doc. 266, at 843.]

To be sure, Plaintiff does briefly attempt to claim, based on trial testimony from Dr. McMillan and Dr. Snowden, that a tenured job was worth between \$1 and \$5 million. [Doc. 290, at 12]. But this clearly goes to front pay, and the jury did not have the authority to award front pay; that was the province of the Court. *See Abuan v. Level 3 Commc'ns, Inc.*, 353 F.3d 1158, 1176 (10th Cir. 2003). And even if we assume the doctors' testimony concerned back pay (which it could not have), Defendants explained in their opening brief why the jury could only award back pay for the period from the end of May 2011 until September 2012. [Doc. 289, at 4-6]. McMillan and Snowden, on the other hand, were testifying about multi-decade careers of tenured professors, and even then their testimony was not about the income and benefits Plaintiff would have received. Rather, they testified about the cost the State (or rather, a State university) incurs when it tenures a professor. [Doc. 265, at 676; Doc. 266, at 767-68]. Regardless, Plaintiff points to no case where a similar award was upheld on this basis alone, with emotional distress off the table.

4. This leads to the next point. Plaintiff claims the Tenth Circuit “as a rule . . . expressly disavows the comparator method” when determining damages. But Plaintiff's brief cites an unpublished decision for this supposed “rule,” *McInerney v. United Air Lines, Inc.*, 463 F.App'x 709 (10th Cir. 2011), and even that non-binding opinion does not expressly disavow ever using other cases as comparisons. *See id.* at 723 (stating only that “comparisons with other cases are not dispositive”). Moreover, earlier in the same brief Plaintiff criticizes Defendants for citing an unpublished Tenth Circuit case, *Nelson v. Rehab. Enters.*, 1997 WL 476111 (10th Cir. Aug. 21,

1997), even though Defendants only cited *Nelson* as an example of a way the Tenth Circuit has acted in the past (and not necessarily as laying out an absolute “rule”). Again, Plaintiff cannot have it both ways.

5. Finally, Plaintiff claims that any future filing of a Rule 50(b) motion would be “wildly untimely” because the Court’s deadline has already passed. [Doc. 290, at 21 n.16]. This misreads the law and the Court’s statement, which contextually and legally can only have been referring to Rule 50(b) motions addressing “a jury issue not decided by a verdict,” Fed. R. Civ. P. 50(b), as the deadline for those motions is not contingent on judgment being entered. Judgment has not been entered here, meaning that Rule 50(b)’s primary 28-day clock has yet to start ticking. *Id.* (“No later than 28 days after the entry of judgment . . . the movant may file a renewed motion for judgment as a matter of law. . . .”).

Respectfully submitted,

/s/ Dixie L. Coffey

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**JEB E. JOSEPH, OBA #19137**

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*Attorneys for Defendants Southeastern*

*Oklahoma State University and The Regional*

*University System of Oklahoma*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of May, 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/Dixie L. Coffey

Dixie L. Coffey

~ 6 ~



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

DR. RACHEL TUDOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA	)	
STATE UNIVERSITY,	)	
	)	
and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
	)	
Defendants.	)	

**PLAINTIFF DR. RACHEL TUDOR’S MOTION AND  
INCORPORATED BRIEF FOR PREJUDGMENT INTEREST,  
POST-JUDGMENT INTEREST, AND TAX PENALTY OFFSET**

On June 6, 2018, this Court awarded Plaintiff damages in the amount of \$420,081.54. Pursuant to Fed. R. Civ. P. 59(e), Dr. Tudor respectfully moves this Court to conform its judgment to include prejudgment interest, post-judgment interest, and a tax penalty offset.

**Background**

The jury awarded Dr. Tudor damages totaling \$1,165,000, compensating her for injuries due to Defendants’ discrimination in the 2009-10 and 2010-11 tenure process and retaliation in the 2010-11 tenure process. After post-trial motions related to the damages, this Court entered judgment for Dr. Tudor with an award of damages of \$60,040.77 in back pay, \$60,040.77 in front pay, and \$300,000 in general damages<sup>1</sup>.

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<sup>1</sup> Dr. Tudor is appealing this Court’s ruling on remittitur and front pay, and will not be making those arguments here.

## I. PREJUDGMENT INTEREST

Prejudgment interest is an element of complete compensation to a prevailing plaintiff. In Title VII actions, “prejudgment interest is an element of complete compensation in back pay awards.” Reed v. Mineta, 438 F.3d 1063, 1066 (10th Cir. 2006) (internal quotation marks omitted) (quoting Loeffler v. Frank, 486 U.S. 549, 558, 108 S.Ct. 1965, 100 L.Ed.2d 549 (1988)). The Court noted in Reed that “district courts ‘should calculate interest on back pay and past damages based on the date of the adverse employment action.’” (quoting Thomas v. Texas Dep't of Crim. Justice, 297 F.3d 361, 372 (5th Cir.2002)). Since those monetary injuries are incrementally sustained with each pay period that Plaintiff went unpaid after her termination, the interest is to be calculated accordingly. See Reed at 1067. “Prejudgment interest, as the term suggests, accrues for the period *before* entry of judgment. Interest after entry of judgment is addressed through postjudgment interest, which accrues on the amount of a damage award, including prejudgment interest, from the date judgment was entered to the date of payment.” *Id.* “Courts commonly look to state statutory prejudgment interest provisions as guidelines for a reasonable rate.” Weber v. GE Group Life Ins. Co., 541 F.3d 1002, 1016 (10th Cir. 2008) (citing Allison v. Bank One, 289 F.3d 1223, 1244 (10th Cir. 2002)).

Here, Dr. Tudor was terminated May 31, 2011. Judgment was entered in Plaintiff’s favor on June 6, 2018. Therefore, Dr. Tudor requests prejudgment interest be added to her back pay award for the period between May 31, 2011 and June 6, 2018. Per this Court’s Memorandum Opinion and Order, Dr. Tudor was awarded back pay for 14 months in the amount of \$60,040.77. The prejudgment interest rate set by the State of Oklahoma set in accordance with 12 O.S. 2013 Supp. §727.1(I) for 2018 is 0.92%. The attached chart shows the calculation of the

prejudgment interest here. (See Exhibit 1). Accordingly, Dr. Tudor requests the judgment be conformed to include the prejudgment interest in the amount of \$3,567.42.

## **II. POST-JUDGMENT INTEREST**

Post-judgment interest should be awarded to plaintiff pursuant to 28 U.S.C. §1961, which states that “[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court.” Additionally, “interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding.” See 28 U.S.C. §1961. Said rate was 2.28% on June 1, 2018, the calendar week preceding the entry of judgment.

“Interest after entry of judgment is addressed through post-judgment interest, which accrues on the amount of a damage award, including prejudgment interest, from the date judgment was entered to the date of payment.” See Reed at 1067. Here, the total award for which post-judgment interest is to be calculated, includes the entire \$420,081.54 awarded in the judgment entered on June 6, 2018 plus the prejudgment interest discussed above in the amount of \$3,567.42 for a total judgment of \$423,648.96. Accordingly, Plaintiff requests post-judgment interest of \$740.98 be added to the award and the judgment conformed to reflect the same.<sup>2</sup>

## **III. TAX PENALTY OFFSET**

As discussed previously, this Court has broad discretion in ensuring the Plaintiff is made whole, and another way the Court can ensure that is to award a tax penalty offset, “which compensates victims for additional tax liabilities they would incur as a result of a lump-sum payment.” See EEOC v. Beverage Distributors Co., LLC, 780 F.3d 1018, 1023, (10<sup>th</sup> Cir. 2015).

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<sup>2</sup>  $\$423,648.96 \times (.0228/365) \times 28 = \$740.98$

Here, the taxes on the damages awarded for back pay and general damages, as well as any damages awarded by the court for front pay, will be paid during one tax year, which will cause Dr. Tudor to be in a higher tax bracket for the year in which she receives the award, and thereby penalized by paying a higher tax rate. Accordingly, Dr. Tudor respectfully request the Court award an additional amount to offset the penalties Dr. Tudor will have to pay in federal and state income taxes.

Here, Dr. Tudor will be paying taxes on back pay, front pay, and prejudgment interest totaling \$123,648.96 in a single year, rather than over the 28 months for which the pay was awarded. Were Dr. Tudor to have earned the same naturally, but for the unlawful termination, her tax liability would be on \$52,992.41 annual salary, rather than on the larger lump sum. Pursuant to IRS Notice 1036 issued in January 2018, Dr. Tudor's tax burden for earning \$52,992.41 would be \$6,783.83.<sup>3</sup> (See Exhibit 2 – Annual Tax Table). Dr. Tudor's tax burden for earning \$123,648.96 in 2018 would be \$23,077.25.<sup>4</sup> (Id.). This leaves Dr. Tudor facing an additional tax burden of \$16,293.42. Accordingly, Dr. Tudor requests a tax offset of \$16,293.42 be added to the award and judgment conformed to reflect the same.

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<sup>3</sup> Annual tax of \$4,453.50 plus 22% of \$10,592.41 calculated from \$52,992.41 - \$42,400.

<sup>4</sup> Annual tax of \$14,089.50 plus 24% of \$37,448.96 calculated from \$123,648.96 - \$86,200.

**Conclusion**

Dr. Tudor requests this court award prejudgment interest in the amount of \$3,567.42, post-judgment interest in the amount of \$740.98, and a tax penalty offset in the amount of \$16,293.42 and the judgment conformed to include the same for a total award of \$440,683.36.

Dated: July 3, 2018

/s/ Brittany M. Novotny  
Brittany M. Novotny (Okla. Bar No. 20796)  
National Litigation Law Group, PLLC  
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brittany.novotny@gmail.com  
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## Percentage Method Tables for Income Tax Withholding

(For Wages Paid in 2018)

TABLE 1—WEEKLY Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:		If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over \$71 . . . . .		\$0		Not over \$222 . . . . .		\$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
\$71	—\$254 . .	\$0.00 plus 10%	—\$71	\$222	—\$588 . .	\$0.00 plus 10%	—\$222
\$254	—\$815 . .	\$18.30 plus 12%	—\$254	\$588	—\$1,711 . .	\$36.60 plus 12%	—\$588
\$815	—\$1,658 . .	\$85.62 plus 22%	—\$815	\$1,711	—\$3,395 . .	\$171.36 plus 22%	—\$1,711
\$1,658	—\$3,100 . .	\$271.08 plus 24%	—\$1,658	\$3,395	—\$6,280 . .	\$541.84 plus 24%	—\$3,395
\$3,100	—\$3,917 . .	\$617.16 plus 32%	—\$3,100	\$6,280	—\$7,914 . .	\$1,234.24 plus 32%	—\$6,280
\$3,917	—\$9,687 . .	\$878.60 plus 35%	—\$3,917	\$7,914	—\$11,761 . .	\$1,757.12 plus 35%	—\$7,914
\$9,687 . . . . .		\$2,898.10 plus 37%	—\$9,687	\$11,761 . . . . .		\$3,103.57 plus 37%	—\$11,761

TABLE 2—BIWEEKLY Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:		If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over \$142 . . . . .		\$0		Not over \$444 . . . . .		\$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
\$142	—\$509 . .	\$0.00 plus 10%	—\$142	\$444	—\$1,177 . .	\$0.00 plus 10%	—\$444
\$509	—\$1,631 . .	\$36.70 plus 12%	—\$509	\$1,177	—\$3,421 . .	\$73.30 plus 12%	—\$1,177
\$1,631	—\$3,315 . .	\$171.34 plus 22%	—\$1,631	\$3,421	—\$6,790 . .	\$342.58 plus 22%	—\$3,421
\$3,315	—\$6,200 . .	\$541.82 plus 24%	—\$3,315	\$6,790	—\$12,560 . .	\$1,083.76 plus 24%	—\$6,790
\$6,200	—\$7,835 . .	\$1,234.22 plus 32%	—\$6,200	\$12,560	—\$15,829 . .	\$2,468.56 plus 32%	—\$12,560
\$7,835	—\$19,373 . .	\$1,757.42 plus 35%	—\$7,835	\$15,829	—\$23,521 . .	\$3,514.64 plus 35%	—\$15,829
\$19,373 . . . . .		\$5,795.72 plus 37%	—\$19,373	\$23,521 . . . . .		\$6,206.84 plus 37%	—\$23,521

TABLE 3—SEMIMONTHLY Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:		If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over \$154 . . . . .		\$0		Not over \$481 . . . . .		\$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
\$154	—\$551 . .	\$0.00 plus 10%	—\$154	\$481	—\$1,275 . .	\$0.00 plus 10%	—\$481
\$551	—\$1,767 . .	\$39.70 plus 12%	—\$551	\$1,275	—\$3,706 . .	\$79.40 plus 12%	—\$1,275
\$1,767	—\$3,592 . .	\$185.62 plus 22%	—\$1,767	\$3,706	—\$7,356 . .	\$371.12 plus 22%	—\$3,706
\$3,592	—\$6,717 . .	\$587.12 plus 24%	—\$3,592	\$7,356	—\$13,606 . .	\$1,174.12 plus 24%	—\$7,356
\$6,717	—\$8,488 . .	\$1,337.12 plus 32%	—\$6,717	\$13,606	—\$17,148 . .	\$2,674.12 plus 32%	—\$13,606
\$8,488	—\$20,988 . .	\$1,903.84 plus 35%	—\$8,488	\$17,148	—\$25,481 . .	\$3,807.56 plus 35%	—\$17,148
\$20,988 . . . . .		\$6,278.84 plus 37%	—\$20,988	\$25,481 . . . . .		\$6,724.11 plus 37%	—\$25,481

TABLE 4—MONTHLY Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:		If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over \$308 . . . . .		\$0		Not over \$963 . . . . .		\$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
\$308	—\$1,102 . .	\$0.00 plus 10%	—\$308	\$963	—\$2,550 . .	\$0.00 plus 10%	—\$963
\$1,102	—\$3,533 . .	\$79.40 plus 12%	—\$1,102	\$2,550	—\$7,413 . .	\$158.70 plus 12%	—\$2,550
\$3,533	—\$7,183 . .	\$371.12 plus 22%	—\$3,533	\$7,413	—\$14,713 . .	\$742.26 plus 22%	—\$7,413
\$7,183	—\$13,433 . .	\$1,174.12 plus 24%	—\$7,183	\$14,713	—\$27,213 . .	\$2,348.26 plus 24%	—\$14,713
\$13,433	—\$16,975 . .	\$2,674.12 plus 32%	—\$13,433	\$27,213	—\$34,296 . .	\$5,348.26 plus 32%	—\$27,213
\$16,975	—\$41,975 . .	\$3,807.56 plus 35%	—\$16,975	\$34,296	—\$50,963 . .	\$7,614.82 plus 35%	—\$34,296
\$41,975 . . . . .		\$12,557.56 plus 37%	—\$41,975	\$50,963 . . . . .		\$13,448.27 plus 37%	—\$50,963

Percentage Method Tables for Income Tax Withholding (continued)

(For Wages Paid in 2018)

TABLE 5—QUARTERLY Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:		If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over \$925 . . . . .		\$0		Not over \$2,888 . . . . .		\$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
\$925	—\$3,306 . .	\$0.00 plus 10%	—\$925	\$2,888	—\$7,650 . .	\$0.00 plus 10%	—\$2,888
\$3,306	—\$10,600 . .	\$238.10 plus 12%	—\$3,306	\$7,650	—\$22,238 . .	\$476.20 plus 12%	—\$7,650
\$10,600	—\$21,550 . .	\$1,113.38 plus 22%	—\$10,600	\$22,238	—\$44,138 . .	\$2,226.76 plus 22%	—\$22,238
\$21,550	—\$40,300 . .	\$3,522.38 plus 24%	—\$21,550	\$44,138	—\$81,638 . .	\$7,044.76 plus 24%	—\$44,138
\$40,300	—\$50,925 . .	\$8,022.38 plus 32%	—\$40,300	\$81,638	—\$102,888 . .	\$16,044.76 plus 32%	—\$81,638
\$50,925	—\$125,925 . .	\$11,422.38 plus 35%	—\$50,925	\$102,888	—\$152,888 . .	\$22,844.76 plus 35%	—\$102,888
\$125,925 . . . . .		\$37,672.38 plus 37%	—\$125,925	\$152,888 . . . . .		\$40,344.76 plus 37%	—\$152,888

TABLE 6—SEMIANNUAL Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:		If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over \$1,850 . . . . .		\$0		Not over \$5,775 . . . . .		\$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
\$1,850	—\$6,613 . .	\$0.00 plus 10%	—\$1,850	\$5,775	—\$15,300 . .	\$0.00 plus 10%	—\$5,775
\$6,613	—\$21,200 . .	\$476.30 plus 12%	—\$6,613	\$15,300	—\$44,475 . .	\$952.50 plus 12%	—\$15,300
\$21,200	—\$43,100 . .	\$2,226.74 plus 22%	—\$21,200	\$44,475	—\$88,275 . .	\$4,453.50 plus 22%	—\$44,475
\$43,100	—\$80,600 . .	\$7,044.74 plus 24%	—\$43,100	\$88,275	—\$163,275 . .	\$14,089.50 plus 24%	—\$88,275
\$80,600	—\$101,850 . .	\$16,044.74 plus 32%	—\$80,600	\$163,275	—\$205,775 . .	\$32,089.50 plus 32%	—\$163,275
\$101,850	—\$251,850 . .	\$22,844.74 plus 35%	—\$101,850	\$205,775	—\$305,775 . .	\$45,689.50 plus 35%	—\$205,775
\$251,850 . . . . .		\$75,344.74 plus 37%	—\$251,850	\$305,775 . . . . .		\$80,689.50 plus 37%	—\$305,775

TABLE 7—ANNUAL Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:		If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over \$3,700 . . . . .		\$0		Not over \$11,550 . . . . .		\$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
\$3,700	—\$13,225 . .	\$0.00 plus 10%	—\$3,700	\$11,550	—\$30,600 . .	\$0.00 plus 10%	—\$11,550
\$13,225	—\$42,400 . .	\$952.50 plus 12%	—\$13,225	\$30,600	—\$88,950 . .	\$1,905.00 plus 12%	—\$30,600
\$42,400	—\$86,200 . .	\$4,453.50 plus 22%	—\$42,400	\$88,950	—\$176,550 . .	\$8,907.00 plus 22%	—\$88,950
\$86,200	—\$161,200 . .	\$14,089.50 plus 24%	—\$86,200	\$176,550	—\$326,550 . .	\$28,179.00 plus 24%	—\$176,550
\$161,200	—\$203,700 . .	\$32,089.50 plus 32%	—\$161,200	\$326,550	—\$411,550 . .	\$64,179.00 plus 32%	—\$326,550
\$203,700	—\$503,700 . .	\$45,689.50 plus 35%	—\$203,700	\$411,550	—\$611,550 . .	\$91,379.00 plus 35%	—\$411,550
\$503,700 . . . . .		\$150,689.50 plus 37%	—\$503,700	\$611,550 . . . . .		\$161,379.00 plus 37%	—\$611,550

TABLE 8—DAILY or MISCELLANEOUS Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) divided by the number of days in the payroll period is:		The amount of income tax to withhold per day is:		If the amount of wages (after subtracting withholding allowances) divided by the number of days in the payroll period is:		The amount of income tax to withhold per day is:	
Not over \$14.20 . . . . .		\$0		Not over \$44.40 . . . . .		\$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
\$14.20	—\$50.90 . .	\$0.00 plus 10%	—\$14.20	\$44.40	—\$117.70 . .	\$0.00 plus 10%	—\$44.40
\$50.90	—\$163.10 . .	\$3.67 plus 12%	—\$50.90	\$117.70	—\$342.10 . .	\$7.33 plus 12%	—\$117.70
\$163.10	—\$331.50 . .	\$17.13 plus 22%	—\$163.10	\$342.10	—\$679.00 . .	\$34.26 plus 22%	—\$342.10
\$331.50	—\$620.00 . .	\$54.18 plus 24%	—\$331.50	\$679.00	—\$1,256.00 . .	\$108.38 plus 24%	—\$679.00
\$620.00	—\$783.50 . .	\$123.42 plus 32%	—\$620.00	\$1,256.00	—\$1,582.90 . .	\$246.86 plus 32%	—\$1,256.00
\$783.50	—\$1,937.30 . .	\$175.74 plus 35%	—\$783.50	\$1,582.90	—\$2,352.10 . .	\$351.47 plus 35%	—\$1,582.90
\$1,937.30 . . . . .		\$579.57 plus 37%	—\$1,937.30	\$2,352.10 . . . . .		\$620.69 plus 37%	—\$2,352.10

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

DR. RACHEL TUDOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA	)	
STATE UNIVERSITY,	)	
	)	
and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
	)	
Defendants.	)	

**PLAINTIFF DR. RACHEL TUDOR'S AMENDED MOTION FOR  
POST-JUDGMENT INTEREST AND TAX OFFSET**

On June 6, 2018, this Court awarded Plaintiff damages in the amount of \$420,081.54. Pursuant to Fed. R. Civ. P. 59(e), Dr. Tudor respectfully moves this Court to, at an appropriate time, conform its judgment to include post-judgment interest and a tax offset upon resolution of Tudor's pending appeal to the U.S. Court of Appeals for the Tenth Circuit.<sup>1</sup>

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<sup>1</sup> An earlier version of this motion was filed on July 3, 2018 in error (see ECF No. 311). Tudor respectfully requests that the earlier motion be struck as moot, and this amended motion be ruled upon.



## BACKGROUND

The jury awarded Dr. Tudor damages totaling \$1,165,000 (ECF No. 262), compensating her for injuries due to Defendants' discrimination in the 2009–10 and 2010–11 tenure process and retaliation in the 2010–11 tenure process. After post-trial motions related to the damages, this Court remitted the jury's award from \$1,165,000 to \$360,040.77—labeling \$300,000 as compensatory damages and labeling \$60,040.77 as backpay (ECF No. 292 at 5). In addition to the remitted jury's award, the Court awarded Tudor front pay in the amount of \$60,040.77, entering final judgment in the amount of \$420,081.45 on June 6, 2018 (ECF No. 293).

Dr. Tudor filed a timely Notice of Appeal to the United States Court of Appeals for the Tenth Circuit on June 6, 2018, seeking review of this Court's orders, including those remitting the jury's award and granting limited front pay and denying reinstatement (ECF No. 294). Dr. Tudor anticipates that if she prevails on any of the issues before the Tenth Circuit, that the damages awarded in this matter will necessarily be modified.

In an excess of caution, because Fed. R. Civ. P. 59(e) mandates that any motion to alter or amend a judgment be filed within 28 days of the entry of judgment Tudor files the present motion seeking post-judgment interest and tax offset. Given that Dr. Tudor's appeal strips this Court of the power to review the earlier orders, Tudor files the instant motion to preserve her right

to properly seek post-judgment interest and tax offset upon the resolution of her appeal by the Tenth Circuit. At the appropriate time, Tudor will move this Court to conform the final judgment in this matter—as modified, if at all, by the Tenth Circuit—to reflect appropriate post-judgment interest and tax offset amounts according to the formulas set forth below.

### **I. POST-JUDGMENT INTEREST**

Post-judgment interest should be awarded to Tudor pursuant to 28 U.S.C. §1961, which states that “[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court.” Additionally, “interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding.” *See* 28 U.S.C. §1961. Said rate was 2.28% on June 1, 2018, the calendar week preceding the entry of judgment.

“Interest after entry of judgment is addressed through post-judgment interest, which accrues on the amount of a damage award, including prejudgment interest, from the date judgment was entered to the date of payment.” *See Reed v. Mineta*, 438 F.3d 1063, 1067 (10th Cir. 2006). Thus, the Court should award post-judgment interest using this formula: total damages x (interest rate/ 365 days) x days since judgment was entered.

## II. TAX PENALTY OFFSET

As discussed previously, this Court has broad discretion in ensuring Dr. Tudor is made whole, and another way the Court can ensure that is to award a tax penalty offset, “which compensates victims for additional tax liabilities they would incur as a result of a lump-sum payment.” *See EEOC v. Beverage Distributors Co., LLC*, 780 F.3d 1018, 1023 (10th Cir. 2015).

Here, the taxes on the damages awarded, will be paid during one tax year, which will cause Dr. Tudor to be in a higher tax bracket for the year in which she receives the award, and thereby penalized by paying a higher tax rate. Accordingly, Dr. Tudor respectfully requests the Court award an additional amount to offset the penalties Dr. Tudor will have to pay in federal and state income taxes.

Upon payment of the judgment, Tudor will pay taxes on any damages labeled as back pay, front pay, and post-judgment interest in a single tax year rather than over multiple tax years, as would be her situation but for Defendants’ illicit conduct. Upon the Tenth Circuit’s resolution of Tudor’s appeals of this Court’s prior orders pertaining to damages, the Court should apply the following formula to ascertain the appropriate tax offset in this matter: total amount Tudor would owe on taxable portions of the final award less the amount Tudor would have owed in income taxes based on projected earnings at Southeastern if she had not been terminated in that same

taxable year. If Tudor's appeal is resolved by the Tenth Circuit in calendar year 2018, then the federal rates in IRS Notice 1036 should be used (*see* Exhibit 1).<sup>2</sup>

### CONCLUSION

For all of the foregoing reasons, Dr. Tudor respectfully requests the Court, at an appropriate time, award post-judgment interest be entered at a rate of 2.28%, accruing on the judgment amount awarded from the date of entry of judgment. Additionally, Tudor requests that the Court award a tax penalty offset in an appropriate amount once Tudor's appeal to the Tenth Circuit is finally resolved. At an appropriate time, Tudor will move this Court to conform the final judgment in this matter (ECF No. 293) to include the appropriate amounts of post-judgment interest and tax offset.

Dated: July 5, 2018

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<sup>2</sup> The undersigned represents that Dr. Tudor is currently a resident of the State of Texas, which does not tax income.

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CASE NO. 15-cv-324-C

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

---

RACHEL TUDOR,

Plaintiff,

v.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY, and THE REGIONAL  
UNIVERSITY SYSTEM OF OKLAHOMA,

Defendants.

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DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF  
LAW AND, IN THE ALTERNATIVE, FOR NEW TRIAL

---

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July 5, 2018

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

RACHEL TUDOR,

Plaintiff,

v.

SOUTHEASTERN OKLAHOMA STATE  
UNIVERSITY, and THE REGIONAL  
UNIVERSITY SYSTEM OF  
OKLAHOMA,

Defendants.

**Case No. 15-cv-324-C**

**DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER  
OF LAW AND, IN THE ALTERNATIVE, FOR A NEW TRIAL**

Plaintiff failed to put forth sufficient factual evidence to sustain the jury verdicts here. Most prominently, Plaintiff put on a transgender identity case, which is not encompassed by Title VII under Tenth Circuit precedent, rather than a sex-stereotyping case. As such, Defendants renew their motion for judgment as a matter of law under Rule 50(b) of the Federal Rules of Civil Procedure. In the alternative, Defendants move under Rule 59 for a new trial because: (1) Plaintiff's evidence was insufficient and tainted by religious bigotry; (2) Plaintiff's expert should not have been allowed to testify, as was made apparent by his unfounded and subjective trial testimony; and (3) even with the Title VII statutory cap applied, Plaintiff's award was wrongly based on emotional distress and otherwise unsupported by the evidence.

**I. RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW**

A federal district court may consider a motion for judgment as a matter of law on an issue at any time before a case is submitted to a jury. Fed. R. Civ. P. 50(a). Such

a motion “must specify the judgment sought and the law and facts that entitle the movant to the judgment.” *Id.* Judgment as a matter of law is appropriate where “the evidence points one way and is not susceptible to reasonable, contrary inferences supporting the non-movant.” *Perez v. El Tequila, LLC*, 847 F.3d 1247, 1255 (10th Cir. 2017); *see also* Fed. R. Civ. P. 50(a) (court may grant judgment if “a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue”). After trial, and no later than 28 days after judgment has been entered, a court may consider a renewed motion for judgment as a matter of law. Fed. R. Civ. P. 50(b). “Arguments presented in a Rule 50(b) motion cannot be considered if not initially asserted in a Rule 50(a) motion.” *Perez*, 847 F.3d at 1255.

During trial, Defendants moved for judgment as a matter of law on all four of Plaintiff’s Title VII claims—which consist of two discrimination claims, a hostile work environment claim, and a retaliation claim—arguing that each was unsupported by sufficient evidence to be submitted to a jury. The Court denied Defendants’ motion. With the hostile work environment claim having been resolved in Defendants’ favor, Defendants now renew their motion on the retaliation and discrimination claims only.

No direct evidence of discrimination or retaliation has been produced, thus the U.S. Supreme Court’s *McDonnell Douglas* framework applies, through which this Court must “evaluate whether circumstantial evidence of discrimination presents a triable issue.” *Fassbender v. Correct Care Solutions, LLC*, 890 F.3d 875, 884 (10th Cir. 2018). This well-known framework requires Plaintiff first to establish a *prima facie* case of discrimination. *Id.* If accomplished, the burden of production shifts to

Defendants to articulate legitimate, non-discriminatory reasons for their actions. *Id.* When Defendants do so, the burden shifts to Plaintiff to “show there is a genuine issue of material fact as to whether the proffered reasons are pretextual.” *Id.* (quoting *Plotke v. White*, 405 F.3d 1092, 1099 (10th Cir. 2005)). In the end, Plaintiff “bears the ultimate burden of persuasion to show discrimination.” *DePaula v. Easter Seals El Mirador*, 859 F.3d 957, 969 (10th Cir. 2017).

**A. Plaintiff produced insufficient evidence that Defendants discriminated in denying Plaintiff tenure in 2009-10.**

*1. Plaintiff forsook a prima facie case by relying on transgender identity*

To make a *prima facie* case of discrimination or retaliation, Plaintiff must demonstrate membership in a protected class. *See Fassbender*, 890 F.3d 875 at 885. Before trial, Defendants filed both a motion to dismiss and a motion for summary judgment arguing that this case should be disposed of because it was improperly relying on Plaintiff’s transgender identity, which is not a protected class under Title VII. [Docs. 30 and 177]; *see also Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1222 (10th Cir. 2007) (“[T]ranssexuals are not a protected class under Title VII and Etsitty cannot satisfy her prima facie burden on the basis of her status as a transsexual.”). The Court denied both of those motions on the ground that Plaintiff was *not*, according to the Court, “complaining that transgender persons were treated different,” but rather was contending “that Dr. Tudor, once she was a woman, was treated differently.” Trial Transcript Vol. I, p. 8; *see also Etsitty*, 502 F.3d 1215 (distinguishing an impermissible transgender identity claim from a sex-stereotyping claim).

At trial, however, Plaintiff repeatedly abandoned this posture and painted the proceedings for the jury as being about transgender identity, as well as about bathrooms, religious objections, and pronouns, etc.—all of which have little to do with sex stereotyping and everything to do with the current cultural controversies on transgenderism. (The bathroom issue, in particular, was explicitly *foreclosed* by *Etsitty* as being part of a sex-stereotype claim.<sup>1</sup>) Here are just a select few of the most egregious examples, from various stages of trial:

- *Opening Statements:*
  - Plaintiff’s attorney: “My client ... is transgender. That fact right there is why we’re all here today.” Trial Transcript Vol. 1, p. 17.
  - Plaintiff’s attorney: “Doug McMillan wanted Rachel gone because she’s transgender.” *Id.* at 20.
  - Plaintiff’s attorney: Defendants are “counting on you to not like transgender people.” *Id.* at 27.
- *Plaintiff Testimony:*
  - Plaintiff’s attorney: “Now, Rachel, we’re obviously all here today because you went through a gender transition.” *Id.* at 40.
  - Plaintiff: Cathy Conway “told me that Doug McMillan, when he discovered that I’m transgender, that he wanted to summarily fire me.” *Id.* at 42.
- *Cotter-Lynch Testimony:*
  - Plaintiff’s attorney: “Today, [Cotter-Lynch,] would you recommend Southeastern as a good place for transgender students to attend? ...

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<sup>1</sup> The entire *Etsitty* case revolved around bathrooms: “However far *Price Waterhouse* reaches,” the *Etsitty* panel wrote, referencing *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), “this court cannot conclude it requires employers to allow biological males to use women’s restrooms. Use of a restroom designated for the opposite sex does not constitute a mere failure to conform to sex stereotypes.” *Id.* at 1224.

[W]ould you recommend that transgender professors apply for positions at Southeastern?” Trial Transcript Vol. 2, pp. 351-52.

- *Scoufos Testimony:*
  - Plaintiff’s attorney: “So you right away, right out the gate, started classifying Dr. Tudor’s portfolio in the transgender stack, is that correct?” Trial Transcript Vol. 4, p. 604.
  - Plaintiff’s attorney: “And you understand that the allegations of discrimination is that – it’s because Dr. Tudor’s transgender; correct? You understand that?” *Id.* at 623-24.
- *McMillan Testimony:*
  - Plaintiff’s attorney: “Do you recall, when your deposition was taken, that you indicated you didn’t know which restroom transgender people should use?” *Id.* at 698.
- *Closing Argument:*
  - Plaintiff’s attorney: “[I]f Rachel Tudor were not a transgender woman, we would not all be here today.” Trial Transcript Vol. 5, p. 828.
  - Plaintiff’s attorney: “Professors who are transgender women are still scared to apply there, to go there. Things can’t ever be right down at Southeastern if Rachel Tudor doesn’t get justice.” *Id.* at 833-34.
  - Plaintiff’s attorney: “Conway projected her own animus of transgender women onto other folks at Southeastern.” *Id.* at 840.

It is difficult to look at all of these statements, accompanying testimony, and the record as a whole, and not conclude that Plaintiff put on a transgender identity case. Whether or not one agrees with the current state of the law, this is impermissible under Title VII. If allowed to stand, this case would make a mockery of the *Etsitty* distinction; indeed, it is hard to imagine, with this verdict as precedent, how anyone could ever be barred from putting on a transgender identity case by *Etsitty*, even though the decision plainly said transgender identity is not included in

Title VII and in fact kept the plaintiff in that case from bringing such a claim. In other words, if not corrected, this case would be a radical expansion of *Etsitty*, and the Tenth Circuit has explicitly stated its “reluctance to expand the traditional definition of sex in the Title VII context.” *Etsitty*, 502 F.3d at 1222.

The Court gave Plaintiff every chance to put on a sex-stereotyping case that complied with *Etsitty*, and Plaintiff repeatedly refused to do so. In *Etsitty*, the Tenth Circuit stated that “an individual’s status as a transsexual should be *irrelevant* to the availability of Title VII protection.” *Id.* (emphasis added). But rather than treat Plaintiff’s transgender identity as irrelevant, Plaintiff made it the centerpiece of trial. This is out of line with Title VII, it nullifies Plaintiff’s attempt at making a *prima facie* case, and the Court should grant judgment to Defendants. *See id.* at 1220-21 (Title VII “should not be treated as a ‘general civility code’ and should be ‘directed only at discrimination because of sex.’”); *id.* at 1222 n.2 (“If transsexuals are to receive legal protection apart from their status as male or female ... such protection must come from Congress and not the courts.”).<sup>2</sup>

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<sup>2</sup> This is all assuming, of course, that the Court is indeed correct that Plaintiff—a biological male—could legitimately claim to be a member of the protected class of women under Title VII, as the Court held in its motion to dismiss and summary judgment orders. *See* [Doc. 34, at 5]. Although Defendants grant this foundational point for purposes of the above argument, they still contest it as a matter of law.

To allow such a claim, the Court’s earlier order misreads *Etsitty* and its footnote 2 citation of *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004). Most tellingly, the Tenth Circuit in that very same footnote favorably quoted the Seventh Circuit for the proposition that if “the term ‘sex’ as it is used in Title VII is to mean more than biological male or biological female, *the new definition must come from Congress.*” *Etsitty*, 502 F.3d at 1222 (emphasis added) (quoting *Ulane v. E. Airlines*, 742 F.2d 1081, 1087 (7th Cir. 1984)). This is the official position of the United States



2. *Plaintiff did not make a prima facie case that Plaintiff was qualified*

To make a *prima facie* case that Defendants unlawfully discriminated when not awarding tenure during the 2009-10 school year, it must be demonstrated—by Plaintiff, by a preponderance of the evidence—that Plaintiff was truly qualified for the position being sought at the specific time in question. *See DePaula*, 859 F.3d at 969–70. This means Plaintiff must introduce “credible evidence” of meeting Defendants’ “objective requirements necessary to perform the job.” *Kilcrease v. Domenico Transportation Co.*, 828 F.3d 1214, 1220–21 (10th Cir. 2016).

Here, Plaintiff failed to do so. It is undisputed that Plaintiff was unable to produce the actual tenure portfolio submitted in 2009. Plaintiff’s most favorable witnesses openly acknowledged this absence. Robert Parker, for example, admitted the portfolio he was given to analyze as an expert was “partial” and incomplete. Trial Transcript Vol. 2, p. 229. Meg Cotter-Lynch admitted she never reviewed the 2009 portfolio at all nor saw a complete copy of it. *Id.* at 358-59. And so on. Without the original portfolio, it is nearly impossible to know the extent of Plaintiff’s qualifications (or lack thereof) as they appeared to Defendants in 2009-10. Thus, it can hardly be

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government, as well. *See* Brief for United States as Amicus Curiae at 4, *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2nd Cir. 2018) (No. 15-3775), 2017 WL 3277292 (“[T]he word ‘sex’ means biologically male or female.” (citation omitted)). And, importantly, it does not contradict *Smith*. There, *Smith* was a biological male who the Sixth Circuit ruled could bring a claim *as a male* who faced discrimination because of his increasingly feminine behavior. *See Smith*, 378 F.3d at 570 (“*Smith* is a member of a protected class. His complaint asserts that he is a male with Gender Identity Disorder” who was treated differently “on account of his non-masculine behavior and GID.”). Plaintiff did not bring this claim as a biological man, and thus did not fall within Title VII’s strictures.

said Plaintiff has produced substantial evidence, much less a preponderance of the evidence, of meeting Defendants' basic requirements for a tenured professorship.

Several factors from trial further cement this reality. First, Plaintiff could have theoretically attempted to address this glaring deficiency on the stand, and yet did not do so. That is to say, Plaintiff made little effort to testify comprehensively as to the precise contents of the 2009 portfolio. A *prima facie* case was Plaintiff's burden to meet, by a preponderance of the evidence, and Plaintiff chose to ignore a gaping hole in the case. Second, Plaintiff's failure to preserve the critical portfolio was made even worse by Cotter-Lynch's admission that she preserved her own tenure portfolio from 2008. *See* Trial Transcript Vol. 2, p. 314 ("I've, to this day, kept it in my home."). If Cotter-Lynch could preserve her portfolio, why could Plaintiff not? Plaintiff never enlightened us as to the reason for her spoliation. Third, Parker testified that it is improper for a university to consider documents that are *not* in a portfolio when making a tenure decision because doing so would "open the door to bias, to misinformation, to personal whim, to all sorts of inappropriate things." *Id.* at 240. In other words, Plaintiff's own expert—the sole expert in the case—emphasized that the portfolio *is all that matters* for tenure qualification. Yet despite this, and despite Plaintiff bearing the burden of production, we still do not know precisely what was in Plaintiff's portfolio in question, how it was arranged, or how it was presented. Fourth, there was uncontested testimony from at least one other witness in the case that the contents of the trial portfolio were in question. Specifically, Lucretia Scoufos testified that she believed original documents were missing from the portfolio shown at trial,

and she testified that there were documents in the trial version that were *not* in the original portfolio. Trial Transcript Vol. 4, pp. 583-84. This testimony went un rebutted. For all these reasons, judgment should be entered in favor of Defendants.

Even if Plaintiff had produced the 2009 portfolio, it still would not be enough to establish a *prima facie* case. That is because there was undisputed testimony—from Plaintiff’s own witnesses—that: (1) one of Defendants’ objective qualifications for tenure was that candidates have multiple peer-reviewed publications; and (2) Plaintiff did not have multiple peer-reviewed publications in 2009.

As to the first point, Plaintiff testified that a tenure candidate must publish “articles”—plural—“to demonstrate good scholarship.” Trial Transcript Vol. 1, p. 51. John Mischo, who testified for Plaintiff, agreed that more than one peer-reviewed publication was necessary: “Typically, I would say you would need one and a half publications.” Trial Transcript Vol. 3, p. 418. Another of Plaintiff’s witnesses, Mark Spencer, testified that it became “clear” to him during his tenure process three years earlier that multiple peer-reviewed articles were needed. *Id.* at 452. And, significantly, Spencer testified that he told this directly to Plaintiff: “[T]he advice I gave was immediately after my experience in 2006-2007 ... [I advised Plaintiff that] I wouldn’t go up for tenure without two articles.” *Id.* at 451.

Spencer, for obvious reasons, was “surprised” that Plaintiff failed to take his advice. *Id.* at 452. Plaintiff’s 2009 application, he testified, “wasn’t a strong application because there was just the one article.” *Id.* at 443. (Remember, Spencer was *Plaintiff’s* witness.) And although Mischo (also Plaintiff’s witness) could not

remember on the stand how many articles Plaintiff's original portfolio contained, he acknowledged that his contemporaneous evaluation mentioned a "Published article"—singular—and nothing more. *Id.* at 402, 421. Furthermore, Mischo testified that if Tudor only submitted one article at the time, it would not meet his criteria of "one and a half publications," and he admitted that he had advised Plaintiff at one point that Plaintiff was not doing enough in the areas of research and scholarship to qualify for tenure. *Id.* at 421-23. Finally, Department Chair, Randy Prus—another one of Plaintiff's witnesses—testified that Plaintiff "had one" publication in the 2009 application. *Id.* at 466.

These are Plaintiff's words and Plaintiff's own witnesses, testifying together that Plaintiff's 2009 tenure portfolio failed to meet Defendants' objective standard for tenure.<sup>3</sup> Defendants' witnesses back this up. *See, e.g.*, Trial Transcript Vol. 4, p. 581 (Scoufos: "She had only one publication [in 2009] and – by a peer review, and so her scholarship was lacking."). Regardless of what Defendants' witnesses have to say, however, Plaintiff own case-in-chief clearly failed to produce a preponderance of the evidence indicating that Plaintiff's 2009 portfolio met this basic qualification for tenure.

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<sup>3</sup> To be sure, Parker's expert report was based around the idea that Plaintiff had two published, peer-reviewed articles. This has no relevance, however, given that Parker did not claim any foundation on which he could know how many articles were in the original portfolio; to the contrary, he openly admitted the version he was given years later was not the original. In short, Parker's report was erroneous on this point.

3. *Plaintiff failed to provide sufficient evidence of pretext*

Even assuming Plaintiff somehow made a prima facie case without producing the 2009 portfolio, Defendants clearly put forth legitimate, non-discriminatory reasons for the denial of tenure: a lack of scholarship and service. *See, e.g.*, Trial Transcript Vol. 4, pp. 581-82, 591 (Scoufos testimony); *see also DePaula*, 859 F.3d at 970 (“The defendant’s burden is ‘exceedingly light,’ as its stated reasons need only be legitimate and non-discriminatory ‘on their face.’” (citations omitted)). Thus, the burden would return to Plaintiff to provide legitimate evidence that Defendants’ articulated reasons were pretextual. *See id.* Plaintiff may do so by attacking Defendants’ proffered reasons or by providing evidence that unlawful discrimination was a primary factor in the decision. *Id.* Here, taking a bit of a sawed-off shotgun approach, Plaintiff has attempted both in various ways, and failed.

We will start with accusations of unlawful discrimination. During trial, it was repeatedly emphasized that Plaintiff faced hostility due to the 2007 gender transition. There are several problems with viewing this as sufficient to establish pretext, however. First, the jury declined to find a hostile work environment. Second, as was discussed thoroughly above, the vast majority of the evidence presented went to transgender identity—which is not protected under Title VII—rather than to any kind of a sex-stereotyping claim. Third, the only testimony that could even arguably be construed as pertaining to sex stereotyping was provided by Mindy House, and it concerned Dean Scoufos only. *See* Trial Transcript Vol. 3, pp. 520-21 (House: Scoufos criticized Plaintiff’s clothing and other efforts to appear feminine and mocked

Plaintiff's voice). But even if we accept House's testimony as true, "isolated and tangential comments about [Plaintiff's] appearance are insufficient to alone permit an inference of pretext." *Etsitty*, 502 F.3d at 1226. And regardless, it is undisputed that Scoufos was not the decision maker here, or even second-in-command. *See, e.g.*, Trial Transcript Vol. 4, p. 690 (McMillan: Plaintiff "wasn't turned down at that level [by Scoufos]. ... [I]t was a recommendation. ... [A]ll levels of the review process are independent of one another."); Trial Transcript Vol. 5, pp. 788-89 (former President Jesse Snowden: A tenure application "goes through all levels. And it can be changed at any succeeding level going up. For example, if the dean—and this happened to me as dean a couple of times—did not recommend promotion and tenure, the vice president could recommend it or the president could. ... It's important to state that these are only recommendations until it gets to the president."). Indeed, Plaintiff admitted that each level of review "has an *independent* obligation ... to thoroughly review the portfolio and determine if it is sufficient for tenure." Trial Transcript Vol. 1, p. 187 (emphasis added).

President Larry Minks was the ultimate decision maker here, and there was zero evidence presented of sex stereotyping on his part. Moreover, even if Dr. McMillan was the force behind the tenure denial, as Plaintiff asserted,<sup>4</sup> House did

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<sup>4</sup> During closing, Plaintiff's attorney claimed that "All of this, it all went back to Doug McMillan" and that "McMillan pulled the puppet strings to push Rachel out of that university." Trial Transcript Vol. 5, pp. 837, 841. The only mention of Scoufos was to use her as a battering ram against McMillan: "Scoufos told you it was all Doug McMillan's fault." *Id.* at 840. Wholly absent was any mention of the actual final decision maker, Dr. Larry Minks, and his recommendation to the Board of Regents.

not testify to sex-stereotyping on his part, either. Indeed, she explicitly declined to accuse him of the same statements and actions as she did Scoufos. *See* Trial Transcript Vol. 3, p. 522 (House: I never heard Doug McMillan make fun of Dr. Tudor.). Thus, one of Plaintiff's biggest hooks for pretext—House's testimony—is gone.

Plaintiff also attempts to undermine Defendants' non-discriminatory reasons by repeatedly asserting that Defendants failed to provide an explanation for negative recommendations during the tenure evaluation process. This, according to Plaintiff, could have allowed improvements to the application. Plaintiff produced no evidence, however, that any explanation was required *before* the end of the process. Rather, the Academic Policies and Procedures Manual provision Plaintiff points to (Policy 3.7.4) states that the governing board and president should provide in detail their compelling reasons in the rare instance that they disagree with a faculty judgment on faculty status such as tenure. This policy requires nothing of a dean or a vice president, rendering irrelevant Plaintiff's red-herring complaint that "I never received an explanation from Lucretia Scoufos or Doug McMillan for their reasons for denying me tenure [in 2009]." Trial Transcript Vol. 1, p. 71. Moreover, to the extent the policy requires an explanation,<sup>5</sup> it can only apply *after* a president has actually made the decision to grant or deny tenure—meaning, logically, that a reason does *not*

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<sup>5</sup> Several witnesses denied that the policy required any explanation at all—before or after the decision. For purposes of judgment as a matter of law, this brief assumes that these witnesses were incorrect.

have to be given during the process. Thus, this entire line of argument does little to demonstrate pretext.

Nevertheless, Plaintiff points to Spencer in an attempt to bolster the assertion that an earlier explanation would have allowed for improvements. Spencer testified that, during his evaluation, he was able to proactively track down the dean, vice president, and president to discuss his portfolio, and that their advice helped him to fix flaws in his application. Trial Transcript Vol. 3, p. 435. But Spencer's tenure process took place three years earlier—which is hardly close enough in time to be a legitimate comparator—and there were different officials serving at that time. *Id.* at 432-35 (testifying that Snowden was the acting president and C.W. Mangrum the dean). Moreover, Spencer admitted his own experience—not Plaintiff's—was viewed as the outlier. *See id.* at 447 (Spencer: Claire Stubblefield “was definitely of the opinion that you shouldn't be allowed to intervene” like happened with me, and she told me my situation was “unusual.”). Regardless, this all ignores the fact that it is undisputed that before denying tenure, Defendants *did* offer Plaintiff the chance to improve. *See, e.g.*, Trial Transcript Vol. 1, p. 68 (Plaintiff: Scoufos “said, in return for withdrawing my application, that, in the following year, I could ... [re]apply for tenure, and then the year after that, for promotion.”). In other words, the end result for Spencer and Plaintiff was essentially the same—if Plaintiff had accepted Defendants' offer, that is.

Plaintiff also cites the fact that the faculty committee recommended tenure to attack Defendants' reasons for denying tenure. But a disagreement between faculty



and the administration, no matter how fierce, simply cannot be the basis to discredit the administration's legitimate non-discriminatory reasons for denying tenure. *Cf. DePaula*, 859 F.3d at 970–71 (“Evidence that the employer ‘should not have made the termination decision—for example, that the employer was mistaken or used poor business judgment—is not sufficient to show that the employer’s explanation is unworthy of credibility.” (citation omitted)). That is especially the case here, where two of Plaintiff’s own witnesses testified that a positive view of Plaintiff’s transgender identity—rather than a purely objective look at Plaintiff’s qualifications—potentially led the faculty committee to recommend tenure in the first place. *See* Trial Transcript Vol. 3, p. 454 (Spencer: “Lisa Coleman did raise the transgender issue. ... [I]t was going ... against her [Plaintiff], and then ... this [issue] gets thrown out there and people talk about it .... Then, finally ... a vote is taken and it was the majority to approve.”); *Id.* at 476-77 (Prus: “The transgender issue was there [during the discussion].”). Right or wrong, the administration certainly wasn’t required to take the same view.

Finally, Plaintiff relies on Parker’s expert report comparing the qualifications of various tenure candidates to demonstrate pretext. *See Etsitty*, 502 F.3d at 1227 (“[P]laintiff may show pretext ‘by providing evidence that he was treated differently from other similarly-situated, nonprotected employees.’” (citation omitted)). But this fails for the same reason mentioned above. That is, Plaintiff has not produced the 2009 portfolio, Parker admitted as such, and thus his testimony as to the relative merits between Plaintiff’s original portfolio and other tenure candidates has no

foundation and cannot be used to demonstrate pretext. Indeed, for these and other reasons discussed below, Defendants believe Parker's testimony should have been excluded altogether. Defendants incorporate those arguments here.

**B. Plaintiff produced insufficient evidence that Defendants discriminated by denying Plaintiff the opportunity to reapply for tenure in 2010-11.**

Assuming Plaintiff made out a *prima facie* case of discrimination in Defendants' denial of the opportunity to reapply for tenure, Defendants provided at least two legitimate, non-discriminatory reasons for doing so: (1) Defendants' rules and practices do not allow for multiple applications; and (2) Plaintiff was nevertheless offered the opportunity to reapply for tenure and turned it down. The burden thus shifts back to Plaintiff, who has not provided sufficient evidence of pretext.

First, the relevant rule states—as various witnesses acknowledged at trial—that a tenure-track candidate can apply for tenure in their “fifth, sixth, *or* seventh” year. (*See Excerpt from Plaintiff's Trial Exhibit 4 (Rule 4.6.3)*, at Bates EEOC000331-32, attached as Exhibit 1). The use of the word “or” (rather than “and”) makes it plain that tenure-track professors must pick one of those years to see their application all the way through. Certainly, various witnesses testified at trial that it was their understanding that multiple applications were allowed, and the faculty appellate committee held so, as well. *See, e.g.*, Trial Transcript Vol. 3, p. 501 (Knapp); Trial Transcript Vol. 5, p. 811 (Charles Weiner). But this cannot be sufficient to dispute the plain text of the rule when none of these witnesses, including Plaintiff, was able to point to a single person in school history who was allowed to reapply for tenure

after being denied by the President.<sup>6</sup> *See, e.g.*, Trial Transcript Vol. 3, p. 506 (Knapp). In other words, their opinion on the rule appears to have no actual foundation in reality; at minimum, none was provided, and it was Plaintiff's burden to have done so.

The plain text view, on the other hand, is buttressed by other evidence. Former President Snowden, for example, testified that “[a]t the seven universities where I’ve worked, I don’t know of any case where someone has been able to reapply for tenure after they’ve been denied.” Trial Transcript Vol. 5, pp. 787-88. This view was further supported by at least one of Plaintiff’s own witnesses, Prus, who agreed that a candidate could only apply in one year and not three. Trial Transcript Vol. 3, p. 487. It was also supported by the actions of Plaintiff and Plaintiff’s supporters. If Rule 4.6.3 allowed for multiple re-applications, as Plaintiff alleges, then Plaintiff’s withdrawing of a tenure application in 2008 makes zero sense. Why not see it through, just in case, and then reapply later? We were never told. And why did the faculty need to rewrite the policy afterward, as Cotter-Lynch testified, to allow for multiple reapplications? Trial Transcript Vol. 2, p. 370. Again, this action makes little sense if the rule already allowed for successive reapplications. In the end, the burden was on Plaintiff to provide enough evidence to show that Defendant’s reliance on the plain language of the policy was pretextual, and Plaintiff failed to do so. *See DePaula*, 859 F.3d at 970-71 (“In determining whether the proffered reason for a decision was

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<sup>6</sup> When asked at trial, Plaintiff refused to even attempt to address this glaring deficiency. Trial Transcript Vol. 1, p. 185.

pretextual, we examine the facts as they appear to the person making the decision, and do not look to the plaintiff's subjective evaluation of the situation. ... [T]he relevant inquiry is whether the employer honestly believed those reasons and acted in good faith upon those beliefs." (citation and internal marks omitted)).

Second, it is undisputed that Defendants actually *did* offer to let Plaintiff reapply for tenure, *if* Plaintiff would withdraw the 2009 application (as Plaintiff had done in 2008). *See, e.g.*, Trial Transcript Vol. 1, pp. 133-34 (Plaintiff); Vol. 3, p. 403 (Mischo); Vol. 4, pp. 590-91 (Scoufos). Plaintiff refused to do so. Plaintiff claims that this offer was an illegitimate ultimatum, but there was precious little evidence of illegitimacy introduced, and certainly not enough to allow a reasonable jury to find pretext on the part of Defendants. Most prominently, of course, Plaintiff alleges that the offer wasn't legitimate because it wasn't in writing. But, despite claiming to have documented the entire situation thoroughly, Trial Transcript Vol. 1, p. 119, Plaintiff never complained about that fact at the time of the offer, nor indicated that Plaintiff had ever even *asked* for the offer to be in writing. *Id.* at 133-34. And regardless, even if Defendants had refused to put it in writing, Plaintiff has pointed to no requirement that an offer be put in writing before it can become legitimate. In the end, Plaintiff was given an opportunity to reapply, and declined to do so. Plaintiff has not produced sufficient evidence to dispute these facts in the least.

Finally, the same point made for the previous claim—that no sex-stereotyping evidence against the actual decision maker has been produced—applies here but even more so. Plaintiff makes it perfectly clear, as does other evidence, that Scoufos had

nothing to do with denying Plaintiff the ability to reapply for tenure. *See, e.g., id.* at Trial Transcript Vol. 1, p. 92 (Plaintiff: “Doug McMillan had made the decision that I was not to be allowed to reapply for tenure promotion in 2010-11.”); *id.* at 111 (Plaintiff: President Minks was the deciding vote on appeal); Vol. 4, pp. 593, 617 (Scoufos: I was not involved with the decision to deny Plaintiff the opportunity to reapply for tenure.); *id.* at 678 (McMillan: I had President Minks’ permission to extend offer to Plaintiff giving an extra year for tenure.). Thus, any evidence of sex stereotyping on Scoufos’s part is irrelevant.

**C. Plaintiff failed to produce any evidence that Defendants retaliated because of Plaintiff’s complaints.**

Plaintiff claims that it is virtually self-evident that Defendants’ declining to allow Plaintiff to reapply for tenure in 2010-11 was retaliation for Plaintiff complaining about Defendants’ allegedly discriminatory behavior in denying tenure in 2009-10. Trial Transcript Vol. 1, p. 95. Plaintiff, however, did not produce actual evidence sufficient to send a retaliation claim to the jury.

1. *Plaintiff failed to make a prima facie case of retaliation by demonstrating a causal connection between the reapplication denial and Plaintiff’s complaints.*

To make a Title VII retaliation claim, a plaintiff must establish a *prima facie* case, meaning she must show: “(1) she engaged in protected opposition to discrimination; (2) she suffered an adverse action that a reasonable employee would have found material; and (3) there is a causal nexus between her opposition and the employer’s adverse action.” *Williams v. W.D. Sports, N.M., Inc.*, 497 F.3d 1079, 1086 (10th Cir. 2007) (citation omitted). Here, Plaintiff failed to establish the third prong—

a causal connection—which requires “evidence of circumstances that justify an inference of retaliatory motive, such as protected conduct closely followed by adverse action.” *Stover v. Martinez*, 382 F.3d 1064, 1071 (10th Cir. 2004).

Most significantly, Plaintiff has provided no evidence showing that, when Plaintiff engaged in protected conduct, Defendants even considered it a possibility that Plaintiff could reapply for tenure. Rather, all the evidence points the other way, toward the rather obvious conclusion that Defendants believed themselves bound by the rules and situation to deny Plaintiff the opportunity to reapply for tenure from the moment they denied tenure in the first place. Indeed, this is “self-evident”—to borrow Plaintiff’s term—from the undisputed offer made to Plaintiff: Withdraw now in order to reapply later. Logically, this indicates that the moment Plaintiff refused the offer, Defendants—rightly or wrongly—felt they had no grounds on which to allow Plaintiff to reapply, and that any subsequent protected conduct was irrelevant to the equation. Plaintiff has produced no evidence indicating otherwise. Nor has Plaintiff produced evidence that Defendants’ allegedly retaliatory actions “closely followed” the protected conduct, although even if Plaintiff had, it wouldn’t nullify the first point.

*2. Plaintiff failed to demonstrate that Defendants’ non-discriminatory reasons for declining to allow Plaintiff to reapply for tenure were pretextual.*

Even assuming Plaintiff established a prima facie case that Defendants retaliated by declining to let Plaintiff reapply for tenure, Plaintiff’s claim would still fail as a matter of law for the same reason as Plaintiff’s second discrimination claim fails above. In short, Defendants have provided legitimate, non-discriminatory reasons—the rules do not allow it, and Defendants *did* offer Plaintiff a chance to

reapply—and Plaintiff failed to show those reasons are pretextual. Thus, the Court should grant Defendants judgment as a matter of law on retaliation.

## II. MOTION FOR A NEW TRIAL

Under Rule 59 of the Federal Rules of Civil Procedure, the Court may grant a new trial “for any reason for which a new trial has heretofore been granted in an action at law in federal court.” Fed. R. Civ. P. 59(1)(A). This encompasses a variety of issues, and as a result trial courts have wide discretion in deciding whether to grant a new trial. *See Snyder v. City of Moab*, 354 F.3d 1179, 1187–88 (10th Cir. 2003). Here, Defendants move for a new trial on three different grounds: (1) Plaintiff produced insufficient and tainted evidence of discrimination and retaliation; (2) the Court should not have allowed Parker to testify as an expert, and (3) a clearly excessive amount of damages was awarded by the jury.

### **A. Plaintiff’s evidence of discrimination and retaliation was insufficient and illegitimately tainted by religious bigotry.**

“Where a new trial motion asserts that the jury verdict is not supported by the evidence, the verdict must stand unless it is clearly, decidedly, or overwhelmingly against the weight of the evidence.” *Id.* (citation omitted). Here, the verdicts were clearly against the weight of the evidence in this case, for reasons thoroughly detailed above. Most significantly, Plaintiff insisted on putting on an impermissible transgender identity case rather than a sex stereotyping case. Several additional and important points should be mentioned, however, even if they do not fit neatly into one of the aforementioned categories discussed above (*e.g.*, *prima facie* case, pretext, etc.).

For starters, it is not insignificant that Plaintiff's cover letter for the 2009-10 tenure application was undisputedly poor and ill-conceived, as acknowledged by Plaintiff's own witnesses. *See, e.g.*, Trial Transcript Vol. 2, p. 285 (Parker: Plaintiff's 2009-10 cover letter contained a grammatical error); Trial Transcript Vol. 3, p. 441 (Spencer: Plaintiff's "letter of application was unprofessionally written. I mean ... my heart sort of sank when I first read it."); *Id.* at 464-65 (Prus: "[T]he cover letter lacked professional competence. ... It didn't make sense."). Anyone who screens job applicants—a judge screening for law clerks, to give one familiar example—knows well that first impressions really do matter. And despite some testimony that Plaintiff was comparable to others who were awarded tenure, nary a soul testified that these other candidates submitted as poor a cover letter as did Plaintiff.

Far more disturbingly, the evidence in this case was tainted by Plaintiff's repeated (and unproven) insinuation that McMillan's religion and religious beliefs caused him to discriminate against a transgender person. This anti-religious animus first became apparent during House's testimony, where Plaintiff asked if McMillan "frequently" brought "up his religion at work"—heaven forbid!—whether that made House feel "uncomfortable," and whether McMillan ever made "an employment decision ... on the basis of his religion[.]" *Id.* at 511. What Plaintiff's attorney omitted—and what Defendants were forced to spend precious time revealing—was that the employment decision referenced was when McMillan found House a new job, rather than let her go, in part because "the Bible says that we take care of our widows." *Id.* at 541. That this gracious example was used underhandedly to insinuate



wrongdoing by McMillan is disgusting, and is itself a form of religious bigotry that should have no place on our legal system.

Things would only get worse from there, however, when Plaintiff's attorney had the temerity to attack McMillan on cross-examination for having "felt the need to discuss [his] faith here today" when it was Plaintiff who had raised religion in the first place, forcing Defendants to rebut. Trial Transcript Vol. 4, p. 697. Finally, in the closing, Plaintiff's attorney made the following astounding statement: "Frankly, you'd think that a *true* man of faith might just come out and confess to doing the obvious. Something was rotten at Southeastern. I guess he's not yet ready to admit it. But we all saw it. As Knapp told us, it all went back to McMillan." Trial Transcript Vol. 5, p. 841 (emphasis added). In other words, Plaintiff's closing argument was anchored by the scurrilous accusation that McMillan wasn't the sincere religious adherent he supposedly claimed to be because he wouldn't admit his guilt.<sup>7</sup> As the Supreme Court's recent *Masterpiece Cakeshop* opinion made clear, there is no place in our court system for this kind of religious hostility and animus. *See Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S.Ct. 1719, 1729 (2018) ("The neutral and respectful consideration to which Phillips was entitled was compromised here ... [by] a clear and impermissible hostility toward [his] sincere religious beliefs .... [T]hese

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<sup>7</sup> Plaintiff never actually asked McMillan to describe his religious beliefs or respond to House, nor did Plaintiff ever offer any evidence at all that McMillan's religious beliefs somehow compelled him to take issue with Plaintiff's gender identity, all of which indicates that Plaintiff's bringing up the religion issue in the first place was less about getting to the truth and more about perniciously insinuating, without proof, that McMillan was bigoted simply because he was religious.

disputes must be resolved with tolerance, without undue disrespect to sincere religious beliefs . . .”). The Court could grant a new trial on this issue alone.

Finally, Defendants were handicapped throughout trial by Plaintiff’s procedural follies and bizarre actions. Examples abound: (1) Plaintiff’s attorneys waited until the literal last second to provide and label exhibits and subpoena witnesses, *see, e.g.*, Trial Transcript Vol. 1, p. 6 (Court to Plaintiff’s attorneys: “Do you have sticker numbers on each exhibit? . . . That should have been done days if not weeks ago.”); *Id.* at 190 (Court to Plaintiff’s attorneys: “I understand that defendants have *been at a disadvantage* without having marked exhibits. . . . This is just not acceptable.” (emphasis added)), (2) Plaintiff’s attorneys released expedited transcripts of the trial on the Internet as soon as they were received, Trial Transcript Vol. 4, p. 557 (Court: “I’ve never had this come up before . . . . It makes me very uncomfortable.”), and (3) Plaintiff essentially refused to answer questions on the stand, *see, e.g.*, Trial Transcript Vol. 1, p. 172 (Court: “If this witness would only answer a question, I would stand up and cheer. This is painful. . . . You do have to let her answer the question even if she’s never going to answer a question.”). True, in the Tenth Circuit a motion for a new trial probably does not include credibility determinations, *see Snyder*, 354 F.3d at 1187–88,<sup>8</sup> but it is still widely accepted that motions for a new trial give courts more flexibility and discretion than motions for

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<sup>8</sup> “[T]he Tenth Circuit’s position regarding the standard for viewing the evidence when determining a rule 59 motion for new trial is in tension with the weight of modern authority.” *Sec. & Exch. Comm’n v. Goldstone*, 233 F.Supp.3d 1169, 1198 n.15 (D.N.M. 2017) (collecting cases). The Tenth Circuit should reverse this wayward line of cases, which would allow this Court to take credibility into account.

judgment as a matter of law, in part because the remedy (a new trial, rather than judgment) is less harsh for the opposing party. *Cf. Tidewater Oil Co. v. Waller*, 302 F.2d 638, 643 (10th Cir. 1962) (Murray, C.J., authoring) (“[T]he granting of a new trial involves an element of discretion which goes further than the mere sufficiency of the evidence. It embraces all the reasons which inhere in the integrity of the jury system itself.”). Here, due to the lack of evidence produced, the religious hostility evinced, and the procedural shenanigans undertaken, the Court should grant a new trial.

**B. Parker’s expert testimony should have been excluded.**

Before trial, Defendants moved to exclude Plaintiff’s proposed expert, Parker, from testifying, arguing (among other things) that tenure decisions are inherently subjective and that Parker’s analysis was flawed and unreliable. [Doc. 98]. The Court denied this motion, holding that Parker would be allowed to testify as to his “consideration of Dr. Tudor’s work, and his comparison of that work to other applications who were offered tenure” because it would “be helpful to the jury,” which “has no experience or knowledge of how the tenure process works” and “what methodology is used to evaluate their qualifications or scholarship.” [Doc. 163, at 3-4]. Defendants now incorporate their earlier arguments, *see* [Docs. 98 and 155], and emphasize the following additional points—based on Parker’s actual testimony—for why Parker should have been excluded and why Defendants were unfairly prejudiced by his testimony, and therefore the Court should grant a new trial.

First, Parker admitted that his testimony lacked foundation. Specifically, as referenced above, Parker admitted that the version of Plaintiff's portfolio he was given to analyze as an expert was partial and incomplete. Trial Transcript Vol. 2, pp. 229, 250; *see also Id.* at 278 (Parker: "I don't know what was submitted [in 2009].") This alone means he should not have been allowed to testify. For, even assuming his expertise was otherwise reliable, how could he accurately compare different portfolios if he did not have the complete versions or know what was in them?

Second, Parker's trial testimony turned out to be remarkably subjective. On the stand, he emphasized that a "good syllabus . . . tells a story." *Id.* at 249. He noted that he "really enjoyed" Plaintiff's "wonderful" course descriptions, which were "fun to me." *Id.* at 250. In commenting on Plaintiff's articles, he talked about how "serious" they were, how "strong" they were, and how much they "advance[d] a discussion." *Id.* at 263-64. None of this is the language of an objective analysis, and it certainly didn't merit an explicit label of "expert." This is especially the case when every other witness who testified, with the exception of House, also had a level of expertise on tenure applications and yet did not get the label "expert" bestowed on them. *Compare, e.g., id.* at 224 (Parker: I have reviewed 25 portfolios outside my own university), *with* Trial Transcript Vol. 5, pp. 765-66 (Snowden: I have reviewed maybe a "thousand" tenure and promotion portfolios at multiple universities.). Furthermore, it is worth noting that Plaintiff's own witness and tenured professor, Mischo, backed up Defendants' arguments about the subjective nature of a tenure decision. On the stand, Mischo agreed that the process of evaluating tenure and promotion portfolios

is “inherently subjective,” and that two professionals can look at the same tenure portfolio and come to completely different conclusions. Trial Transcript Vol. 3, pp. 415-16.

Third, even if Parker had Plaintiff’s full and original 2009 portfolio (which he did not), his testimony did not take into account key local factors, which makes it utterly unreliable. It was undisputed at trial that then-Dean Scoufos had very strict formatting and procedural requirements for tenure portfolios, and no one has challenged the legitimacy of these requirements. Cotter-Lynch, for example, testified that Scoufos “told me what font to use. She told me what store to go to [in order] to buy which shade of blue binder that would match the school colors. It was really detailed.” Trial Transcript Vol. 2, p. 311; *see also* Trial Transcript Vol. 3, p. 513 (House: “[Scoufos] adopted how she wanted each portfolio to look, you know, the same. And so she had them put them in sleeves, certain sleeves, books, binders, and in a certain category order.”). And Spencer, another of Plaintiff’s witnesses, testified that Plaintiff’s application strayed from this formatting: “There were three binders, so it seemed, if anything, there was too much. I was under the impression that we had a set format we were supposed to submit .... So that was a bit unusual, as well.” *Id.* at 442-43. Parker, however, openly admitted that he had not seen Scoufos’s technical and formatting requirements, “so I can’t comment on that.” Trial Transcript Vol. 2, p. 280. But these requirements were undisputedly a critical part of Defendants’ tenure process at the time. For Parker not to even know what they are, much less

how they affected the portfolios he reviewed, renders his testimony highly unreliable and an unhelpful and misleading influence for a jury.

Parker's lack of knowledge likely helps explain why his testimony was so different from the testimony of Plaintiff's own witnesses. While Parker repeatedly testified that all of the candidates he reviewed were "impressive" and "strong," *id.* at 254, and indeed, "stronger than I'm accustomed to seeing," *id.* at 255,<sup>9</sup> Spencer testified that Plaintiff's application "was *not* a strong application ... I would even say it was weak." Trial Transcript Vol. 3, pp. 444-45 (emphasis added). But even though Parker didn't have foundation, or knowledge of the original portfolio or the local procedures—like Spencer did—Parker received the label of "expert." *See, e.g.*, Trial Transcript Vol. 2, p. 218 (Plaintiff's attorney: "I think it would be very helpful for our jury to sort of understand these concepts better coming from an expert."). This is unfair, and it was unfairly prejudicial. A new trial should be granted.

**C. Plaintiff failed to provide sufficient evidence to support the award, therefore a new trial or remittitur is appropriate.**

Prior to judgment being entered, Defendants argued that the Court should reduce Plaintiff's award below the Title VII statutory cap of \$300,000 because of a near-total lack of evidence supporting a \$300,000 award. [Docs. 289 and 291]. Defendants renew and incorporate those arguments now. In sum, Plaintiff has now affirmatively waived emotional distress damages, which were allowed at trial, and Plaintiff offered very little evidence or case law in support of a \$300,000 award for

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<sup>9</sup> This quote is yet another reason to disallow Parker as an expert. He is basically admitting that he is out of his element in analyzing these candidates.

reputational or other non-emotional distress harms only. Thus, the current award is excessive and the Court should order a new trial or remittitur to a more reasonable amount.

Respectfully submitted,

/s/ Dixie L. Coffey

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5. An instructor, upon making official notification to the administration of the completion of a doctoral program, may receive immediate promotion to the rank of assistant professor with approval of the Regional University System of Oklahoma Board of Regents.
6. The application for promotion may be submitted during the year which completed the requirements for the rank as outlined in Section 4.5.2.1, with a successful application causing promotion effective the following academic year.
7. A faculty member must complete at least two years of employment at Southeastern before applying for promotion to the rank of Associate Professor or Professor.
8. Any exception to the policy on promotion in rank is the domain of the president of the University.

## 4.6 Tenure

Source: See Policy Manual of the Regional University System of Oklahoma Board of Regents (Academic Affairs, 3.3)

### 4.6.1 Academic Tenure

Tenure is a privilege and a distinctive honor. Tenure is defined as continuous reappointment which may be granted to a faculty member in a tenure-track position, subject to the terms and conditions of appointment. The tenure decision shall be based on a thorough evaluation of the candidate's total contribution to the mission of the University. While specific responsibilities of faculty members may vary because of special assignments or because of the particular mission of an academic unit, all evaluations for tenure shall address at a minimum whether each candidate has achieved excellence in (1) teaching, (2) research or creative achievement, (3) professional service, and (4) University service. Each University may formulate standards for this review and determine the appropriate weight to be accorded each criteria consistent with the mission of the academic unit.

Tenure is granted by the Regional University System of Oklahoma Board of Regents upon recommendation of the University president. Determination of merit and recommendation for granting tenure shall comport with the minimum criteria and policies and procedures contained in this chapter.

The terms and conditions of every appointment or reappointment shall be stated in writing and copies in the possession of both the institution and faculty member before the appointment is approved. Tenure shall be granted only by written notification after approval by the Board. Only full-time faculty members holding academic rank of assistant professor, associate professor, or professor may be granted tenure. Qualified professional librarians shall be considered faculty members if they are given academic rank.

Tenure does not apply to administrative positions, but a tenured faculty member appointed to an administrative position retains tenured status as a member of the faculty.

The Board intends to reappoint tenured personnel to the faculties of the institutions under its control within existing positions that are continued the next year. The Board reserves the right to terminate tenured faculty at the end of any fiscal year if the Legislature fails to allocate sufficient funds to meet obligations for salaries or compensation.

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#### 4.6.2 Periods of Appointment and Tenure

Faculty members holding academic rank above the level of instructor (assistant professor, associate professor, professor) may receive tenure at any time. Normally, faculty members shall be on probation for five (5) years after date of first being employed by the University in a tenure-track position. (Years of experience in a non-tenure-track position may be used for probation only if approved by the University). Seven (7) years shall be the maximum probationary period for the eligible faculty member to be granted tenure. If, at the end of seven (7) years any faculty member has not attained tenure, there will be no renewal of appointment for the faculty member unless a specific recommendation for waiver of policy from the President to the contrary is approved by the Regional University System of Oklahoma Board of Regents. This procedure applies every year thereafter.

For the purpose of determining probationary employment of faculty members for tenure consideration, sabbatical leave counts as a part of the period of probationary employment, but a leave of absence is not included as part of the probationary period.

#### 4.6.3 Procedure for Granting Promotion and Tenure (replaces 4.5.3. Promotion Process) Rev. 9/03

The normal procedure for granting tenure is initiated by the faculty member during the fifth, sixth, or seventh year of service to the University in a tenure-track position. The normal procedure for granting promotion is initiated by the eligible faculty member. The following steps outline the normal process:

Step 1-

By October 15, the faculty member files a written request for promotion and/or tenure with the department chair. The request must be accompanied by a portfolio exhibiting documentation of effective teaching, research/scholarship, contributions to the institution and profession, and performance of non-teaching or administrative duties, if appropriate.

Step 2-

By November 15: A Promotion and Tenure Review Committee shall be formed. If there are at least five (5) tenured faculty members within the department, all serve as the Promotion and Tenure Review Committee. In Promotion cases, only tenured faculty at or above the rank sought shall serve on the committee. In the event that the number of faculty at the appropriate rank or tenured faculty members in the department is fewer than five (5), the tenured faculty within the department plus additional tenured faculty members appointed by the dean of the school and the chair of the department to form a group of at least five (5) tenured faculty members will serve as the Promotion and Tenure Review Committee. Since department chairs will independently review Promotion and Tenure Review Committee recommendations, and make an independent recommendation to the dean, they should not be members of Promotion and Tenure Review committees.

The chair/dean shall call a meeting of the Promotion and Tenure Review Committee to initiate discussion of the request. After each member of the Promotion and Tenure Review Committee critiques the portfolio and each performance criterion, the faculty member's performance shall be reviewed, discussed, and evaluated by the Promotion and Tenure Review Committee. This review shall be conducted in a manner that allows for input from non-tenured colleagues, students, alumni, and administrative information from the department chair. After completion of

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

RACHEL TUDOR,

Plaintiff,

v.

SOUTHEASTERN OKLAHOMA STATE  
UNIVERSITY, and THE REGIONAL  
UNIVERSITY SYSTEM OF  
OKLAHOMA,

Defendants.

**Case No. 15-cv-324-C**

**DEFENDANTS' RESPONSE IN OBJECTION  
TO PLAINTIFF'S MOTION TO STRIKE**

Defendants, Southeastern Oklahoma State University (“SEOSU”) and the Regional University System of Oklahoma (“RUSO”), (collectively “Defendants”), and provide their Response in Objection to [Doc. 318], Plaintiff’s Motion to Strike, (“Motion to Strike”). As a preliminary matter, Plaintiff cites to no Federal or Local Rule for the authority to wholesale strike Defendant’s motion for judgement notwithstanding the verdict or in the alternative for new trial. Federal Rule of Civil Procedure 12(f) authorizes a district court to “strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 7 defines what constitutes a “pleading,” and none of the seven (7) items listed therein are a motion for judgment notwithstanding the verdict or for a new trial. Regardless, in case the Court is inclined to entertain Plaintiff’s Motion to Strike, and classify Defendants’ motion as a pleading subject to striking, then Defendants submit the following for the Court’s consideration:

## FUNDAMENTAL FACTS

1. Judgment in this case was not final until the Court entered it on June 6, 2018. *See* [Doc. 293], and Fed. R. Civ. P. 58.

2. According to Fed. R. Civ. P. 50(b), Defendants could “file a renewed motion for judgment as a matter of law” addressing “a jury issue not decided by the verdict, no later than 28 days after the jury was discharged.”

3. Fed. R. Civ. P. 50(b) further provides that “[n]o later than 28 days after the ***entry*** of judgment . . . [Defendants] may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59.” (Emphasis added).

2. According to Fed. R. Civ. P. 59(e), Defendants could file a motion to alter or amend judgment no later than 28 days after the entry of judgment.

3. According to Fed. R. Civ. P. 59(b), Defendants could file a motion for new trial no later than 28 days after the entry of judgment.

4. Given that the Court entered judgment on June 6, 2018, Defendants had until Wednesday, July 4, 2018 to file motions under Fed. R. Civ. P. 59. However, since July 4 was the Federal Independence Day holiday, Defendants’ motion to alter or amend was due on or before July 5, 2018. *See* LCvR 6.1.

5. On July 5, 2018, Defendants timely filed their Motion for judgment notwithstanding the verdict and in the alternative for new trial. [Doc. 316]

6. Despite the somewhat casual colloquy now pointed to by Plaintiff, which took place very briefly at the very end of a long morning of awaiting a jury’s verdict,

which itself followed after a week-long trial, the Federal Rules of Civil Procedure make clear that motions for judgment notwithstanding the verdict and motions for new trial may be filed within twenty-eight (28) days of the entry of judgment. Fed. R. Civ. P. 58(a) also makes clear that a written judgment “must” be entered “in a separate document,” and the Court made very clear that it was not entering judgment that day in December 2017.<sup>1</sup>

### ARGUMENT AND AUTHORITY

“A cat can have kittens in the oven but that don’t make ‘em biscuits.” Dr. Frasier Crane, *Frasier*. Similarly, just because Plaintiff cries that something is late does not mean that it is. Plaintiff’s coupled misreading of the law and the Court’s isolated statement near the end of the proceedings after the jury’s verdict was read, is either disingenuous, or simply craven in the face of Defendant’s Motion for Judgment Notwithstanding the Verdict or Alternatively for New Trial. The brief verbal exchange pointed to by Plaintiff between The Court and Mrs. Coffey at the end of the last day of trial proceedings can only have been referring to a Rule 50(b) motion addressing a “jury issue *not* decided by a verdict,” Fed. R. Civ. P. 50(b), (emphasis added), because the deadline for such motion is not contingent on judgment being entered, but rather runs from the date the jury is discharged.

In addition, as a precautionary measure, Mrs. Coffey contacted Judge Cauthron’s courtroom deputy, Linda Goode, for clarification of the application of the

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<sup>1</sup> “Okay. Well, I’ll just not enter judgment then.” The Honorable Robin Cauthron, Trial Transcript Vol. 6, p. 873, ln. 20-21.

December 11, 2017 deadline. Specifically, counsel indicated Fed. R. Civ. P. 50(b) and 59(e) set certain deadlines based upon the entry of judgment, which, of course, had not yet occurred, and thus, wanted to be certain it was not Judge Cauthron's intent to set a deadline to apply to those motions. After consulting with Judge Cauthron, Ms. Goode relayed to Mrs. Coffey the deadlines set forth in the federal rules were applicable. And, as noted above in the "Fundamental Facts" section, *supra*, the Court "must" enter the judgment as a separate document, and that event then begins the period of twenty-eight (28) days within which parties may file motions for judgment notwithstanding the verdict or motions for new trial under Fed. R. Civ. P. 50(b) and 59. As all parties are aware, Defendants' Motion was timely filed within the twenty-eight (28) days afforded them (and all parties) by the Federal Rules of Civil Procedure.

### CONCLUSION

The Federal Rules of Civil Procedure are clear. The date judgment was entered in this case is undisputedly June 6, 2018. The fact that Fed. R. Civ. P. 50(b) affords Defendants twenty-eight (28) days from the date the Court enters judgment to file a renewed motion for judgment as a matter of law that may include an alternative or joint request for a new trial is undisputed. The fact that Defendants filed their Motion within twenty-eight (28) days of the Court's entry of judgment is undisputed. The fact that those kittens born in the oven are still kittens, (and not biscuits), is manifest. Plaintiff's Motion to Strike should be denied.

Respectfully submitted,

/s/ Jeb E. Joseph

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of August 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/ Jeb E. Joseph

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UNITED STATES DISTRICT COURT  
for the  
WESTERN DISTRICT OF OKLAHOMA

RACHEL TUDOR,

Plaintiff,

v.

Case No. 15-cv-324-C

SOUTHEASTERN OKLAHOMA STATE  
UNIVERSITY and THE REGIONAL  
UNIVERSITY SYSTEM OF OKLAHOMA

Defendants.

**NOTICE OF APPEAL**

Notice is hereby given that the Southeastern Oklahoma State University and The Regional University System of Oklahoma, defendants in the above named case, hereby appeal to the United State Court of Appeals for the Tenth Circuit from the final judgment entered in this action on June 6<sup>th</sup>, 2018 and the order denying defendants' Renewed Motion for Judgment as a Matter of Law, in the alternative, for a New Trial entered in this action on September 18<sup>th</sup>, 2018.

Date: September 28, 2018.

Respectfully submitted,

/s/ Zach West  
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## CERTIFICATE OF COMPLIANCE

This document was scanned for viruses using Symantec Endpoint Protection version 14.2. Any required paper copies to be submitted to the court are exact copies of the version submitted electronically. Additionally, all required privacy redactions have been made in accordance with Fed. R. App. P. 25(a)(5) and 10th Cir. 25.5.

## CERTIFICATE OF SERVICE

I certify that on January 9, 2019, I caused the foregoing to be filed with this Court and served on all parties via the Court's CM/ECF filing system. A single hard copy of the foregoing, which is an exact copy of the document filed electronically, will be dispatched via commercial carrier to the Clerk of the Court for receipt within 2 business days.

s/ Zach West

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