

Nos. 18-6102 / 18-6165

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

RACHEL TUDOR,

Plaintiff-Appellant/ Cross-Appellee,

v.

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

Defendants-Appellees/ Cross-Appellants.

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

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

REVISED VOLUME 12 (FILED UNDER SEAL)

ZACH WEST

Assistant Solicitor General

ANDY N. FERGUSON

Staff Attorney

OFFICE OF ATTORNEY GENERAL

STATE OF OKLAHOMA

313 N.E. 21st Street

Oklahoma City, OK 73105

Phone: (405) 522-4798

zach.west@oag.ok.gov

andy.ferguson@oag.ok.gov

Counsel for Defendants-Appellees/ Cross-Appellants

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Exhibit 13

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
RACHEL TUDOR,)	
)	
Plaintiff Intervenor,)	
)	
-vs-)	No. 5:15-CV-00324-C
)	
SOUTHEASTERN OKLAHOMA STATE)	
UNIVERSITY, and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendant.)	

DEPOSITION OF THE HONORABLE JUDGE RICHARD OGDEN

TAKEN ON BEHALF OF THE PLAINTIFF INTERVENOR

IN OKLAHOMA CITY, OKLAHOMA

ON AUGUST 26, 2016

REPORTED BY: JENNI L. GUNTER, CSR

DEPOS@DODSONREPORTING.NET WWW.DODSONREPORTING.NET

Honorable Judge Richard Ogden

1 Q (By Mr. Young) Were there any policies
2 or practices in place at the time that required
3 notification of the board by someone at
4 Southeastern of such claims?

03:06PM

5 A That, I don't know. I don't -- I just --
6 I don't know.

7 Q At some point did RUSO take steps to
8 investigate Dr. Tudor's complaints?

03:07PM

9 A When you talk about RUSO, what do you
10 mean?

11 Q Say, the board.

12 A Okay. I would say the board took steps
13 to gather information, but not to conduct an
14 investigation.

03:07PM

15 Q Can you explain to me how you're
16 differentiating gathering information as opposed
17 to conducting an investigation?

18 A Yes.

19 Q So please explain.

03:07PM

20 A Well, I believe that investigation is
21 very comprehensive. It is a -- in terms of
22 employment discrimination issues, it has its own
23 term of art. And I don't believe that what the
24 board did was conduct an investigation within the
25 confines of that definition. Rather I believe

03:07PM

Honorable Judge Richard Ogden

1 that the board did its job, in terms of trying to
2 gather information in order for us to do our job.

3 Q Okay. To your recollection, when did the
4 RUSO board start gathering information?

03:08PM 5 A Very soon after the reports in the media.

6 Q I believe you previously testified that
7 you believe those reports emerged sometime towards
8 the end of the 2010/2011 school year?

9 A I believe it was sometime in April of
03:08PM 10 2011, but I just am not totally certain. It could
11 have been -- I know it was before the end of the
12 academic year.

13 Q And who at RUSO was involved in gathering
14 information?

03:08PM 15 A I believe that would have been initially
16 myself, Charlie Babb, Sheridan McCaffree, and to a
17 far lesser degree, Connie Reilly.

18 Q And who is Connie Reilly?

19 A She was the chair of the board at the
03:09PM 20 time.

21 Q To your recollection, what was Mr. Babb's
22 involvement?

23 A Mr. Babb's involvement would have been --
24 to my recollection and my knowledge, he probably
03:09PM 25 had some independent information gathering going

Honorable Judge Richard Ogden

1 magistrate position?

2 A Yes.

3 Q And I presume you did not get that
4 position?

05:35PM 5 A That's correct.

6 Q Do you have any understanding as to why
7 you didn't get that position?

8 A No.

9 Q Do you recall ever hearing any rumors
05:35PM 10 about why you didn't receive that position?

11 A No.

12 Q After the magistrate position, were there
13 any other judgeships that you sought before the
14 current one that you have now?

05:36PM 15 A No.

16 Q Okay. Do you know a Robert Henry?

17 A Yes.

18 Q Who is Robert Henry?

19 A He is the former attorney general for the

05:36PM 20 State of Oklahoma, former dean of the OCU --

21 Oklahoma City University College of Law, former

22 Tenth Circuit Judge and now president of Oklahoma

23 City University, and friend.

24 Q And a friend. Okay. I'd like to focus

05:37PM 25 on the time that Judge Henry was serving on the

Honorable Judge Richard Ogden

1 Tenth Circuit.

2 A Yes.

3 Q To clarify for the record, that's the

4 United States Tenth Circuit Court of Appeals. Is

05:37PM 5 that correct?

6 A Yes.

7 Q Do you know what years he served on that

8 court?

9 A He's been president of Oklahoma City

05:37PM 10 University for maybe five years, maybe longer. So

11 I believe he probably served about 10 years on the

12 circuit -- on the Tenth Circuit, but I'm not

13 certain.

14 Q Were you friends with him when he served

05:37PM 15 on the Tenth Circuit?

16 A Yes.

17 Q Do you recall being friends with him the

18 entire time he was on the Tenth Circuit?

19 A Yes.

05:37PM 20 Q Do you recall ever discussing cases that

21 Judge Henry ruled on, with Judge Henry?

22 A Yes.

23 Q Just as friends?

24 A Yes.

05:38PM 25 Q Are you familiar with a case title

Honorable Judge Richard Ogden

1 Etsitty versus Utah Transit Authority?

2 A The name -- the title -- the name of the
3 case is unfamiliar.

4 Q Okay. Let me see if I can help you out
5 here to see if you have any knowledge here.

05:38PM

6 Are you aware that at some point in time
7 the Tenth Circuit issued a decision in a Title VII
8 case regarding the coverage of Title VII's sex
9 discrimination provision of persons who were
10 transgender?

05:38PM

11 A Yes.

12 Q Okay. I'll state for the record that the
13 title of the case I just provided to you is that.

14 Would it be okay if I referred to that long case
15 regarding transgender people and Title VII as

05:38PM

16 Etsitty?

17 A That's fine.

18 Q Thank you.

19 Have you ever had occasion to discuss
20 this case with Judge Henry?

05:38PM

21 A Yes.

22 Q Can you please describe your discussions
23 with Judge Henry about this case? The Etsitty
24 case, to clarify.

05:39PM

25 A Well, it was a very brief discussion.

1 And Judge Henry was no longer on the Tenth
2 Circuit.

3 Q And what was the substance of that
4 conversation?

05:39PM 5 A I was at his home and we were getting
6 ready to go to dinner. And I believe he had
7 mentioned his ruling on this case. It was a
8 fairly brief conversation.

9 Q Do you recall saying anything to
05:39PM 10 Judge Henry?

11 A About the case?

12 Q Yeah.

13 A Whether I agreed with his ruling or not
14 agreed with his ruling?

05:40PM 15 Q Anything. Let's start with anything and
16 work from that.

17 A Okay. I mean, I don't recall
18 specifically what I said, but I'm sure it was --
19 I'm sure I said something. I'm sure it wasn't
05:40PM 20 without word.

21 Q Why are you sure that you said something?

22 A Well, only because that's the way
23 conversations usually work. If he had brought it
24 up, I don't think I would have just been silent.

05:40PM 25 I just don't recall what I said.

1 Q Do you ever recall expressing
2 disagreement with Judge Henry about that case?

3 A No.

4 Q Do you have a recollection of what the
05:40PM 5 ruling of that case was, generally? I'm not
6 asking you to give me a point of law. I'm just...

7 A Yes.

8 Q Okay. What -- what's your general
9 recollection of that case?

05:40PM 10 A Transgendered persons were extended some
11 type of protection.

12 Q Do you remember discussing that general
13 understanding of the case with Judge Henry?

14 MS. COFFEY: Object to form, asked and
05:40PM 15 answered.

16 A He, I think, generally advised me of what
17 that opinion was.

18 Q (By Mr. Young) And Judge Henry told you,
19 generally, that that ruling was that transgender
05:41PM 20 people were extended some sort of protection under
21 Title VII?

22 MS. COFFEY: Object to form.

23 A I think it was more of a conversation
24 that -- I'm sure that the topic came up. And
05:41PM 25 I'm -- I can't remember who wrote the opinion.

Honorable Judge Richard Ogden

1 But it seemed that the topic was brought up. I
2 don't know if Judge Henry was the author of the
3 opinion or not.

05:41PM

4 Q (By Mr. Young) Do you have any
5 recollection as to whether Judge Henry sat on the
6 panel?

7 A It seems to me that he did.

05:41PM

8 Q Do you happen to recall whether this
9 conversation with Judge Henry was after you had
10 learned of Dr. Tudor's grievances?

11 A I do believe it was.

12 Q Did Dr. Tudor come up during this
13 conversation with Judge Henry?

14 A Yes.

05:42PM

15 Q To your recollection, what was said about
16 Dr. Tudor?

17 A I believe I brought up Dr. Tudor.

18 Q Okay. What's your recollection? Why did
19 you bring up Dr. Tudor?

05:42PM

20 A I believe I was expressing, I think, the
21 same level of concern that you had asked me about
22 relative to the Faculty Senate or the committee,
23 and that I found concern.

24 Q Uh-huh. If you could help me here

05:43PM

25 connect the dots. So you had concern about

Honorable Judge Richard Ogden

1 Dr. Tudor. So you discussed this decision with
2 Judge Henry, this Etsitty decision.

3 A Well, not --

05:43PM

4 MS. COFFEY: Object to form, misstates
5 his testimony.

6 A President Henry brought up this case.

7 Q (By Mr. Young) What did he say about
8 this case?

05:43PM

9 A Just something to the effect that -- that
10 he -- I think whether he authored it or whether or
11 not he was on the panel, but that -- something
12 that he wanted to share.

13 Q Is there anything else that you recall
14 about this conversation you had with Judge Henry?

05:44PM

15 A Well, it was -- in terms of the pertinent
16 part being Dr. Tudor or this case, then not too
17 much more, no. But it was -- I mean, I was at his
18 house, we went to dinner, so a lot of conversation
19 took place.

05:44PM

20 Q To clarify, there was unrelated
21 conversation?

22 A Much, yes.

23 Q Okay. Thank you.

05:44PM

24 Sitting here today, do you personally
25 believe that President Minks acted appropriately

1 just that it was not -- not -- not the place of
2 the regents.

05:50PM

3 Q Do you believe that it is the place of
4 the regents to ensure that discrimination does not
5 happen on RUSO member school campuses?

6 A Absolutely.

7 Q To your understanding, did Southeastern
8 have policies prohibiting transgender
9 discrimination?

05:50PM

10 A I don't know if transgender was a part or
11 enumerated classification.

12 Q To your understanding, if transgender
13 discrimination happened on Southeastern's campus
14 during this time period, was that something that
15 was prohibited by policy?

05:50PM

16 A I don't know that being prohibited by
17 policy.

05:51PM

18 Q To your understanding, if transgender
19 discrimination happened on Southeastern's campus
20 during this time period, would it have been
21 prohibited by law?

22 MS. COFFEY: Objection, calls for a legal
23 conclusion.

05:51PM

24 A Well, whether or not it would be
25 prohibited by case law or regulation, it wouldn't

CERTIFICATE OF COMPLIANCE

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/s/ Zach West

CERTIFICATE OF SERVICE

I certify that on March 11, 2019, I filed the foregoing with this Court and served a copy 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

ZACH WEST, OBA #30768

Assistant Solicitor General

ANDY N. FERGUSON

Staff Attorney

OFFICE OF ATTORNEY GENERAL

STATE OF OKLAHOMA

313 N.E. 21st Street

Oklahoma City, OK 73105

Phone: (405) 522-4798

zach.west@oag.ok.gov

Counsel for Defendants-Appellees/ Cross-Appellants