

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 FOR REINSTATEMENT
AND INCORPORATED BRIEF**

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I. Introduction

Dr. Tudor comes before this Court seeking closure on a difficult chapter in her life and the opportunity to do the job she earned and loves.

At trial, Dr. Tudor showed the jury evidence that Defendants discriminatorily denied her tenure in the 2009-10 cycle and then discriminatorily and retaliatory denied her the opportunity to reapply in the 2010-11 cycle, resulting in Tudor's separation from Southeastern Oklahoma State University ("Southeastern") in May 2011. In spite of what she has endured, Tudor testified that she wants to return to Southeastern and put her life back together.

Having prevailed on two claims of discrimination and one claim of retaliation under Title VII before a jury of her peers, Dr. Tudor respectfully asks that the Court to exercise its powers pursuant to 42 U.S.C. § 2000e-5(g) and order Tudor's immediate reinstatement at Southeastern with tenure and the title of Associate Professor as well as front pay from the date of the jury's verdict through the date of her reinstatement¹ Granting Tudor reinstatement

¹ At this time, Dr. Tudor is moving this Court for reinstatement with limited front pay because it is her preferred remedy and she is presumptively entitled to it under Title VII. Dr. Tudor is entitled to front pay for the period between the date of the jury's verdict and the date her reinstatement is awarded. *See Pollard v. E.I. du Pont de Nemours & Co.*, 532 U.S. 843, 847 (2001) (observing front pay may be awarded for lost compensation between entry of verdict and reinstatement).

In the event that the Court denies reinstatement, Dr. Tudor reserves her right to appeal that decision and/or petition the Court for front pay in lieu of

on these terms will place her in the position she should have been in but for the illicit actions from Defendants during the 2009-10 and 2010-11 cycles.

Tudor can never get back the time she lost fighting for her job or undo the heartache Defendants' Title VII violations sowed. But, ordering Defendants to grant Tudor the job she earned will go a long way towards making Tudor whole.

Given Title VII's strong preference for reinstatement, the balance of equities, Defendants' inability to present evidence that reinstatement is infeasible, and other factors showing Tudor's is the kind of case justifying judicial involvement in the tenure process to remedy violations of Title VII, the Court can and should grant Tudor's motion for reinstatement.

II. Background

The Court held a 5-day jury trial beginning on November 13, 2017 (ECF No. 246, 263, 264, 265, and 266). At the conclusion of the trial, the jury found for Dr. Tudor on her two claims of discrimination and her one claim of retaliation, awarding \$1.165 million in damages (ECF No. 267).

Among the evidence presented at trial was the testimony of Dr. Tudor, Dr. Robert Parker, and Dr. Margaret Cotter Lynch. Tudor testified that she wants to return to Southeastern. *See, e.g.*, ECF No. 246 at 130:2–4 (“I would

reinstatement. *See Pollard*, 532 U.S. at 847 (noting front pay is available where district court deems reinstatement infeasible).

just like to reiterate that this is not about money. I just want my job back. I just want to go home and see my friends again.”). Tudor spoke about her difficulties finding work in her field after being denied tenure at Southeastern. *See, e.g.*, ECF No. 246 at 124:8–25 and 125:1–6). Tudor also testified that even though she is deeply hurt by what happened to her at Southeastern that she does not harbor ill-will towards the university (see, e.g., ECF No. 246 at 38:14–25 and 39:1–8) and believes that she is capable of returning (see, e.g., ECF No. 246 at 119:16–24; *id.* 128:11–25 and 129:1–25 and 130:1–4).

Dr. Parker testified to Tudor’s strong teaching (ECF No. 263 at 254:23–25 and 255:1–5 [characterizing Tudor’s teaching as “very strong”), scholarship (*id.* 260–69 [discussing strengths of Tudor’s scholarship record), and service at Southeastern (*id.* at 271:16–20 [describing Tudor’s service record as comparable to tenured professor comparators in the English Department]).

Dr. Cotter-Lynch, a close friend and colleague of Tudor’s and current Southeastern administrator, testified to Tudor’s strengths as a professor. *See, e.g., id.* at 339:5–7 (“She’s really good at what she does. She’s an excellent teacher.”). Cotter-Lynch also testified that, to her knowledge, no one in the English Department opposed Tudor’s return to Southeastern. *Id.* at 253:15–18. Cotter-Lynch shed light on how career derailing tenure denial is for a

professor, testifying that based on her own experience serving on hiring committees, if an applicant failed to get tenure in a previous position that is held against them. *Id.* at 333:1–21. Cotter-Lynch also added that in order for Southeastern to move past what happened to Tudor, Tudor must return. *Id.* at 352:6–17 (testifying that she could not recommend that a transgender colleague apply for a professor position at Southeastern until Tudor is allowed to return).

In turn, Defendants failed to rebut Tudor’s strong evidence of discrimination and retaliation and did not present evidence showing reinstatement is infeasible at this juncture.

II. Standard of Review

District Court’s role. Reinstatement is a preferred remedy. *Jackson v. City of Albuquerque*, 890 F.2d 225, 231 (10th Cir. 1989) (quoting *EEOC v. Prudential Ass’n*, 763 F.2d 1166 (10th Cir. 1985)). Award of “make-whole” equitable remedies, such as reinstatement, is ultimately up to the discretion of the district court but tempered by Congress’ overarching desire to eradicate workplace discrimination in American workplaces and deter illicit acts in the future. The exercise of the district court’s discretion to devise appropriate remedies for Title VII violations “must be tied to Title VII’s twin purposes of ‘providing an incentive to employers to avoid discriminatory practices’ and ‘making persons whole for injuries suffered on account of

unlawful employment discrimination.’” *Zisumbo v. Ogden Reg’l Med. Ctr.*, 801 F.3d 1185, 1203 (10th Cir. 2015) (quoting *Estate of Pitre v. Western Elec. Co., Inc.*, 975 F.2d 700, 704 (10th Cir. 1992)) (cleaned up).

Reinstatement and other make-whole remedies should only be denied where there are “reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination.” *Albermale Co. v. Moody*, 422 U.S. 405, 421 (1975). Reinstatement is only to be denied where the district court finds it infeasible. *Jackson*, 890 F.2d at 235 (denial of reinstatement inappropriate where it is possible for employee to return to work and employee desires reinstatement). Where the district court denies reinstatement, the rationales for denial must be explicated with particularity. *See, e.g., Weaver v. Amoco Prod. Co.*, 66 F.3d 85, 89 (5th Cir. 1995) (remanding to district court to articulate with particularity rationales supporting denial of reinstatement based on finding of infeasibility).

Tudor’s burden. Dr. Tudor bears the initial burden to demonstrate that she is legally entitled to reinstatement. This burden is met where the employee shows she prevailed on her discrimination and retaliation claims. *See, e.g., Donnellon v. Fruehauf Corp.*, 794 F.2d 598, 602 (11th Cir. 1986) (there is a “presumption that prevailing Title VII claimants are entitled to

reinstatement”); *Garza v. Brownsville Indep’t Sch. Dist.*, 700 F.2 253, 255 (5th Cir. 1983) (“reinstatement or hiring preference remedies are to be granted in all but the unusual cases”).

Defendants’ burden. Defendants bear a substantial burden in opposing reinstatement. They must show with particularity that reinstating Dr. Tudor is infeasible. Infeasibility can only be demonstrated in rare circumstances where the employer shows that non-illicit reasons weigh strongly against award of Title VII’s preferred remedy.

Reinstatement should not be denied simply because it could make things awkward in the workplace or displace new hires. *Jackson*, 890 F.2d at 233–34 (quoting *Reeves v. Claiborne Cnty. Bd. of Educ.*, 828 F.2d 1096, 1101–02 (5th Cir. 1987) (“While reinstatement may displace an innocent employee, the enforcement of constitutional rights (may have) disturbing consequences. Relief is not restricted to that which would be pleasing or free of irritation’.”)).

The mere fact that Tudor seeks reinstatement with tenure at a university is not something that renders the relief she seeks infeasible as a matter of law. Award of tenure is an appropriate Title VII remedy where it is the only means of making whole a professor who experienced discrimination and/or retaliation in the tenure process. “[T]o deny tenure because of the intrusiveness of the remedy and because of the University’s interest in

making its own tenure decisions would frustrate Title VII's purpose of 'making persons whole for injuries suffered through past discrimination.'" *Brown v. Trustees of Boston Univ.*, 891 F.2d 337, 360 (1st Cir. 1989), *cert. denied*, 110 S.Ct. 3217 (1990) (quoting *Albermale Co. v. Moody*, 422 U.S. 405, 421 (1975)).

III. Analysis & Authorities

A. The Court should order Tudor's reinstatement at Southeastern.

1. Reinstatement is Title VII's preferred remedy.

Dr. Tudor wants to be reinstated at Southeastern. Tudor's desired resolution and Title VII's remedial scheme are aligned.

Where discrimination is proven, Title VII provides for "make-whole relief." *Albermale*, 422 U.S. at 418 (recognizing imperative to "make persons whole" with court's "full equitable powers"). Remedies, including reinstatement, back pay, and front pay, are intended to compensate the employee for the effects of discrimination, both past and future, and to bring the employee to the position which she would have occupied but for the illegal acts. *Selgas v. Am. Airlines, Inc.*, 104 F.3d 9, 12 (1st Cir. 1997). Where Title VII violations result in employment separation, "reinstatement is the preferred remedy." *Jackson*, 890 F.2d at 231. Reinstatement is an important part of make-whole relief and is expressly provided for in Title VII's text. *See*

42 U.S.C. § 2000e-5(g) (court may “order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees”).

Reinstatement is important for two reasons. First, it allows the employee to return to the job she was unjustly denied. Even where substantial money damages are available, courts recognize that money alone cannot heal the sting of losing one’s job for discriminatory reasons. As the Tenth Circuit observed in *Jackson*,

The rule of presumptive reinstatement is justified by reason as well as precedent. When a person loses his job, it is at best disingenuous to say that money damages can suffice to make that person whole. The psychological benefits of work are intangible, yet they are real and cannot be ignored.

Jackson, 890 F.2d at 234 (quoting *Allen v. Autauga Cnty. Bd. of Educ.* 685 F.2d 1302, 1306 (11th Cir. 1982)). Indeed, Tudor echoes this sentiment—money alone cannot heal her. **Exhibit 1** ¶ 8 (“I am grateful for and humbled by the damages the jury awarded me. However, I know that money alone cannot replace my career.”); *id.* ¶ 10 (“it is abundantly clear to me that I will not fully heal if I cannot return to Southeastern”).

Second, grant of reinstatement deprives the employer of the benefit it sought by excluding the employee from the workplace in the first place. *Cf. Allen*, 685 F.2d at 1306 (“If an employer’s best efforts to remove an employee for unconstitutional reasons are presumptively unlikely to succeed, there is,

of course, less incentive to use employment decisions to chill the exercise of constitutional rights”). This is important because, without the availability of reinstatement employers would be perversely incentivized to eject employees on discriminatory or retaliatory grounds without consequence. Indeed, Cotter-Lynch attests that since Tudor’s departure there have not been any other transgender professors at Southeastern and she believes it unwise for such persons to even apply for positions until Tudor is permitted to return. ECF No. 263 at 352:6–17.

If the Court awards Tudor reinstatement, it should also award her front pay for the period of time between the entry of the verdict and the date Tudor is reinstated at Southeastern. An award of front pay in this situation compensates Tudor for the period of lost compensation between the entry of the verdict and reinstatement—a period not covered by a back pay award. See *Pollard*, 532 U.S. at 846. Tudor should be compensated at a rate equivalent to what tenured professors at the Associate Professor level with Tudor’s years of seniority are paid. Tudor’s years of seniority should be computed as if she had never separated from Southeastern—with the 2017-18 school year being treated as her twelfth year of service. Dr. Tudor estimates that she should be entitled to a yearly salary of approximately \$57,091 (**Exhibit 1 ¶ 11(a)–e**), of which she should receive a pro-rated amount to cover the term of unemployment between the verdict and her date

of reinstatement.

2. Equities weigh in favor of Dr. Tudor's return to Southeastern.

Granting Dr. Tudor reinstatement is a patently fair and equitable resolution to this case.

First and foremost, Dr. Tudor desires to return to Southeastern. Tudor attests that she feels safe and at home at Southeastern. **Exhibit 1** ¶ 6(a)–(b). In spite of everything Tudor has endured, she feels certain that she can make a successful transition back to Southeastern if given the chance to return. *Id.* ¶ 7(a)–(c). Equity favors granting Tudor the remedy she desires, and trusting her to make a wise decision based on everything she knows about Southeastern and her personal career needs. *Cf. DuBose v. Boeing Co.*, 905 F.Supp. 953, 958 (D.Kan. 1995) (observing that it would be “turning equity on its head” to order an employee to return to a workplace against his wishes).

Second, Tudor earned her job at Southeastern and deserves the opportunity to work there. Dr. Tudor worked hard to prove herself at Southeastern and earn tenure and promotion to Associate Professor. As Tudor and others testified to at trial, Tudor worked hard the entire time she was at Southeastern all for the reward of tenure and promotion. Tudor excelled in the areas of teaching, scholarship, and service. In spite of her

separation from Southeastern, Tudor remains ready and able to serve as a Southeastern professor. **Exhibit 2** ¶ 4(e) (“Though Dr. Tudor has been away from Southeastern since May 2011, it is my belief that she has expended significant efforts to ensure that she is ready and able to return to the classroom and be reintegrated into the faculty and university community.”); **Exhibit 1** ¶ 7(e) (“During my time away from Southeastern, I have endeavored to keep my skills sharp and stay abreast of developments in my field.”). Tudor is a passionate, skilled teacher. *See, e.g., Exhibit 2* ¶ 7(a). Tudor is an strong researcher and scholar. *See, e.g., id.* ¶ 7(c). Tudor is also dedicated to service. *See, e.g., id.* 7(b).

Third, reinstating Tudor at Southeastern would go a long way towards helping her rehabilitate a career which has been sidelined for almost a decade because of Defendants’ illicit actions. Tudor’s career should have proceeded as Dr. Cotter-Lynch’s did—with salary increases, successive promotions, better opportunities for publication, and job security. *See* ECF No. 263 at 329–31. But because of Defendants’ illicit actions, Tudor was kicked to the curb and forced to endure lengthy legal battles and scramble to find a new job while living with the black mark of Southeastern’s discriminatory tenure denial. ECF No. 246 at 96:2–8 (Tudor testifying in reference to the impact being denied tenure as had on her that, “it’s really impossible to overcome that kind of black mark on our reputation”). *See also*

Exhibit 1 ¶ 9 (“I believe my only real option to get my career back is to return to Southeastern.”). Tudor can never get back the time she has spent fighting Defendants or undo the heartache their illicit deeds sowed. But, a return to Southeastern in the position she earned would go a long way toward making Tudor whole. **Exhibit 1** ¶ 8 (“I very much want to start a new chapter in my life, and rebuild what I have lost. The jury’s verdict is an important part of my next chapter, but without my career I cannot completely move forward.”); *id.* ¶ 10 (“I think returning to the classroom at Southeastern is essential to me regaining my confidence and self-esteem.”).

Fourth, for Tudor, the prospect of returning to Southeastern means more than just job security and rehabilitating her career—it brings with it the pride and satisfaction of working at a university that sits within the historic boundaries of the Chickasaw Nation and which serves a large portion of Chickasaw students. *See, e.g.*, ECF No. 246 at 78:1–6 (Tudor testifying that “it was an honor to represent the Chickasaw Nation in my service at Southeastern”); **Exhibit 1** ¶ 5(c) (“the Chickasaw students Southeastern serves are particularly special to me”).

Throughout this litigation, Tudor has been upfront that she was uniquely injured by being forced to leave Southeastern because she is Chickasaw. *See, e.g.*, Tudor Complaint, ECF No. 24 ¶¶ 122–29. When Tudor lost her job, she lost the ability to work on land that holds special import to

her as a Chickasaw citizen and was deprived of the privilege of serving the critical mass of Chickasaw college students whom matriculate at Southeastern. Tudor Complaint, ECF No. 24 ¶ 129; **Exhibit 1** ¶ 5(c) (“I took great pride in teaching all of my students at Southeastern, but it was especially rewarding to serve at Southeastern and be a resource and possibility model for the Chickasaw students.”). Given Tudor’s unique connection to the land Southeastern sits on and its Chickasaw students, neither money nor the prospect of another job are fair alternatives to the tenured job Tudor earned at Southeastern. **Exhibit 1** ¶ 5(c) (“In 2004, when I was evaluating offers for tenure-track positions, I chose to accept Southeastern’s offer because I wanted to return to Oklahoma and make my life there because this is the location of the relocated Chickasaw Nation, of which I am a citizen.”); *id.* (“The pain and suffering of Indian Removal and the promise of a new chapter in our Nation’s history makes Southeastern Oklahoma a special place for us for which there is no equivalent.”).

Fifth, neither Dr. Tudor nor Southeastern can be made whole again with anything short of Tudor’s reinstatement. Though Tudor has been vindicated by the jury’s verdict, money damages alone cannot salve her wounds. As per Tudor,

As grateful as I am for what the jury did, I know that I cannot be made whole unless I am allowed to return to Southeastern with tenure and the title of Associate Professor. For me, my case has

always been about getting my job back and making things tolerable at Southeastern.

Exhibit 1 ¶ 2. Tudor’s focus on reinstatement is understandable. Tudor spent many years training and working towards becoming a permanent, tenured professor at Southeastern. *See, e.g.*, ECF No. 246 at 50:18–22 (Tudor testifying that all of her time at Southeastern counted as work towards earning tenure); *id.* 51:15–23 (Tudor testifying that it takes “many years of preparation” to prepare oneself to write scholarly articles needed for tenure). Defendants’ illicit actions have deprived Tudor of her career and life’s work—“it is at best disingenuous to say that money damages can suffice to make [Tudor] whole.” *Allen*, 685 F.2d at 1306. Similarly, the Southeastern community has endured many long years waiting for Tudor’s situation to be righted. The pall of what happened to Tudor cannot be lifted without allowing Tudor to return. ECF No. 263 at 352:6–11 (Cotter-Lynch testifying that things will not be right at Southeastern until Tudor returns).

B. Defendants have not and cannot present evidence showing reinstatement is infeasible.

1. Tension due to this litigation is no grounds to deny reinstatement.

Any argument by Defendants that reinstatement is not feasible because this litigation has sown tensions between Tudor and Defendants is without merit.

Tudor and her colleagues attest that no irreconcilable tensions precluding reinstatement exist. At trial, Tudor testified that despite everything she has endured, she wishes to return to Southeastern (ECF No. 246 at 130:2–4). Tudor has reaffirmed those sentiments via declaration. **Exhibit 1** ¶ 2; *id.* ¶ 4 (“I can say without any hesitation that I absolutely want to return to Southeastern. Southeastern feels like home for me. I love Southeastern even though, for many years, it has hurt me to love it so much.”). Tudor’s colleagues at Southeastern similarly testified that Tudor would be welcomed back. Indeed, Cotter-Lynch has provided a declaration in support of Tudor’s motion affirming that there are no ill feelings towards Tudor on campus at this time. See **Exhibit 2** ¶ 5(a) (no ill will towards Tudor in the English Department); *id.* ¶ 6 (Tudor’s return will not be opposed en masse); *id.* ¶ 8(a)–(c) (no tensions between Tudor and remaining administrators at Southeastern).

Additionally, there is no apparent public pressure that would make Tudor’s return to Southeastern infeasible. Even though the jury’s verdict garnered national attention, none of the resulting coverage in Oklahoma or elsewhere has been anything but positive towards Tudor.² This suggests that

² See, e.g., Tara Fowler, “Transgender Professor Awarded \$1.1M After School Denied Her Tenure and Fired Her,” ABC NEWS, Nov. 21, 2017, <http://abcnews.go.com/US/transgender-professor-awarded-11m-school-denied-tenure-fired/story?id=51288162>; John Paul Brammer, “Jury Awards Transgender

Defendants will not face substantial public pressure to keep Tudor from returning to Southeastern if so ordered by this Court. Even if there were public pressure to deny Tudor reinstatement, this alone does not justify denial of reinstatement. *See Jackson*, 890 F.2d at 232 (holding that absent concrete evidence of an inability to work with the public in a public facing job, existence of past complaints or prospective tensions is insufficient grounds to deny reinstatement).

Lastly, there have been no public statements from current Southeastern employees which suggest Tudor's reinstatement would be infeasible. At trial, the only overwhelmingly negative statements about Tudor's return were attributed to former Southeastern employees. *See, e.g.*, ECF No. 264 at 524:5–9 (Mindy House testifying that Scoufos threatened to quit if Tudor returned to Southeastern). Precedent makes clear that negative statements or sentiments from former employees alone are insufficient grounds to deny reinstatement. *See Jackson*, 890 F.2d at 232. Moreover, there is evidence that current Southeastern personnel do not harbor ill-will

Professor \$1.1 Million in Discrimination Case,” NBC NEWS, Nov. 21, 2017, <https://www.nbcnews.com/feature/nbc-out/jury-awards-transgender-professor-1-1-million-discrimination-case-n822646>; Kyle Schwab, “Jurors Award Transgender Woman \$1M in Discrimination Lawsuit Against State University,” THE OKLAHOMAN, Nov. 21, 2017, <http://newsok.com/jurors-award-transgender-woman-1m-in-discrimination-lawsuit-against-state-university/article/5573019>; Lili Zheng, “Oklahoma Transgender Professor Awarded \$1.1 Million in Landmark Case,” KFOR, Nov. 21, 2017, <http://kfor.com/2017/11/21/transgender-professor-awarded-1-1-million-in-landmark-case/>.

towards Tudor. For example, on the day the jury returned a verdict in Tudor's favor Southeastern's president, Sean Burrage, sent an email to faculty and issued a press release acknowledging and expressing respect for the verdict. See **Exhibit 2** ¶ 8(c)(i) and accompanying **Exhibit A** (authenticating Nov. 20, 2017 press release).

If Defendants do endeavor to present some yet to be revealed evidence of hostilities purportedly caused by Tudor's litigation, these should not be afforded significant weight. Denying reinstatement purely because an employee has zealously invoked her Title VII rights requires *extreme* hostility and is greatly disfavored. As explained by the Eighth Circuit,

To deny reinstatement to a victim of discrimination merely because of the hostility engendered by the prosecution of a discrimination suit would frustrate the make-whole purpose of reinstatement. Antagonism between parties occurs as the natural bi-product of any litigation. Thus, a court might deny reinstatement in virtually every case if it considered the hostility engendered from litigation as a bar to relief.

Taylor v. Teletype Corp., 648 F.2d 1129, 1138 (8th Cir. 1981). Similarly, denying reinstatement simply because it would be awkward is against the weight of precedent. See, e.g., *Shaw v. Mast Advertising & Pub., Inc.*, 1991 WL 128223 at *6 (10th Cir. 1991) ("Reinstatement by its very nature is always awkward to a greater or lesser extent after the parties have spent months or years opposing each other in litigation. Nevertheless reinstatement is the preferred remedy, and Shaw will not be supervised by

anyone who was involved in the termination of her job.”).

2. Past issues are unlikely to recur if Tudor is reinstated.

Defendants may argue that the discrimination and retaliation Tudor endured in the past makes reinstatement infeasible. If such an argument is raised it should be cast aside.

New policies and protections in place will ease Tudor’s transition. Tudor’s core grievances at Southeastern involved the tenure process—issues that would not arise again if she is reinstated with tenure. Tudor also grieved environmental issues which are unlikely to recur given Southeastern’s changed policies. For example, in this lawsuit Tudor grieved an illicit exclusion in Southeastern’s fringe benefit health plan, restroom restrictions, make-up restrictions, and dress restrictions, and alleged she endured being called by the wrong gender referent and other hostilities. Tudor Complaint, ECF No. 24 ¶¶ 130–59. Since Tudor’s departure, Southeastern has revised its own policies several times, most recently adopting a comprehensive sex nondiscrimination policy which speaks with particularity to the core issues Tudor grieved as hostile. **Exhibit 2** ¶ 10 and accompanying **Exhibit B** (authenticating copy of Southeastern’s new sex policies which expressly protect transgender persons). Additionally, Southeastern’s insurance bargaining unit resolved in late 2016 to remove the transgender exclusion from their fringe benefit health plan policies, which is

all Tudor has ever asked for them to do with respect to health insurance. *Compare* Tudor Complaint, ECF No. 24 ¶ 146 (alleging that transgender exclusion in health plan which denied coverage for therapy, pharmaceuticals, and surgical care contributed to hostilities) *with* **Exhibit 4** at PI002065 and PI02121 (removing transgender exclusion from health plan).

Lastly, as a condition of a non-confidential compromise agreement with the U.S. Department of Justice (**Exhibit 3**), Defendants have adopted and/or are in the process of adopting comprehensive policies. Under the terms of the compromise agreement, Defendants are barred from violating Title VII (*id.* ¶ 15), they are under the United States' supervision for a two-year period (*id.* ¶ 37), they must provide adequate training to all employees regarding protections Tudor and others like her are to be afforded (*id.* ¶¶ 31–34), they must change Southeastern's so as to provide ensure employees are afforded the full protections of Title VII (*id.* ¶¶ 21–30); and Tudor is expressly protected from further discrimination and retaliation at Southeastern (*id.* ¶ 16).

Given these significant changes in policy coupled with the robust terms of the compromise agreement entered into between Defendants and the United States, there are no longer any real impediments to Tudor's return to Southeastern. Any barriers to return that may have existed in the past should no longer stand in the way of Tudor returning to campus and

assuming the job she earned and which the jury decided she was unlawfully denied.

Dismissal of key decision makers and others with bias. Since Tudor's departure from Southeastern in May 2011, the university administration has been restructured and decision makers and persons whom Tudor has otherwise accused of discrimination have separated. Among others, the three key decision makers during the tenure process—President Larry Minks, Vice President Douglas McMillan, Dean Lucretia Scoufos—have all left Southeastern. Additionally, human resources, affirmative action, and counseling personnel—Ms. Cathy Conway, Dr. Claire Stubblefield, and Ms. Jane McMillan, have also departed Southeastern. RUSO has also experienced substantial personnel changes, including the departure of former general counsel Mr. Charles Babb. **Exhibit 1** ¶ 6(a); **Exhibit 2** ¶ 8(b).

Individuals who are in the high levels of the administration at Southeastern currently are ones whom Tudor either does not personally know or whom she had passing and/or neutral interactions with in the past. **Exhibit 1** ¶ 6(b); **Exhibit 2** ¶ 8(b); *id.* ¶ 9. There is absolutely no evidence or reason to believe that Tudor could not forge professional working relationships with these new colleagues. *See also Carr v. Fort Morgan Sch. Dist.*, 4 F.Supp.2d 989, 996 (D.Colo. 1998) (finding no “insurmountable hostility” between parties rendering instatement infeasible in part based

upon civil interactions during hearings and trial).

As to persons at Southeastern whom worked there during Tudor's employ, there is no evidence or reason to believe Tudor will be unable to work with them going forward. Persons whom Tudor is likely to interact with at Southeastern most often—mostly tenured faculty in the English Department, such as Dr. John Mischo, Dr. Margaret Cotter-Lynch, Dr. Mark Spencer, Dr. Dan Althoff, Dr. Randy Prus, and others—are persons whom Tudor continues to enjoy collegial relationships despite her long absence. *See, e.g., Exhibit 1 ¶ 5(a); Exhibit 2 ¶ 5(a).*

C. Title VII violations allow for court involvement in the tenure process.

Defendants may argue that reinstating Tudor with tenure and the title of Associate Professor is improper because the Court would be involving itself in the tenure process at Southeastern. If such argument is raised, it can and should be quickly disposed of. Title VII forbids discriminatory and/or retaliatory animus from factoring into employment decisions—tenure decisions are no exception.

Title VII does not privilege universities to make illicit personnel decisions that are otherwise forbidden in other white- and blue-collar workplaces. Congress enacted Title VII to root out the scourge of employment discrimination from American workplaces—there is no statutory carve out for

universities.

Where illicit bias sows its ugly head, district courts are empowered to order reinstatement with tenure as part of a make-whole remedy. While universities may desire to hold themselves out as special places of employment their desire for independence and other interests are subordinate to Title VII's principals. As explained by the First Circuit,

[O]nce a university has been found to have impermissibly discriminated in making a tenure decision, as here, the University's prerogative to make tenure decisions must be subordinated to the goals embodied in Title VII.

Brown v. Trustees of Boston Univ., 891 F.2d 337, 359 (1st Cir. 1989), *cert. denied*, 110 S.Ct. 3217 (1990). *See also Ford v. Nicks*, 741 F.2d 858, 864–65 (6th Cir. 1984) (affirming district court's order to reinstate professor with tenure).

VI. Conclusion

For the reasons set forth herein, Dr. Tudor respectfully requests the Court grant Dr. Tudor's motion for reinstatement.

Dated: December 11, 2017

/s/ Ezra Young
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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2017, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young
Ezra Young (NY Bar No. 5283114)