

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**PUBLISH**

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

**September 13, 2021**

**Christopher M. Wolpert**  
**Clerk of Court**

DR. RACHEL TUDOR,

Plaintiff - Appellant/Cross-Appellee,

v.

Nos. 18-6102 & 18-6165

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

Defendants - Appellees/Cross-  
Appellants.

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NATIONAL WOMEN’S LAW CENTER;  
A BETTER BALANCE; ALLIANCE FOR  
A JUST SOCIETY; AMERICAN  
ASSOCIATION OF UNIVERSITY  
WOMEN; AMERICAN FEDERATION  
OF TEACHERS; ATLANTA WOMEN  
FOR EQUALITY, CALIFORNIA  
WOMEN LAWYERS; COLORADO  
WOMEN’S BAR ASSOCIATION;  
COLORADO ORGANIZATION FOR  
LATINA OPPORTUNITY AND  
REPRODUCTIVE RIGHTS; DC  
COALITION AGAINST DOMESTIC  
VIOLENCE, END RAPE ON CAMPUS;  
GENDER JUSTICE; GIRLS FOR  
GENDER EQUITY; IF/WHEN/HOW:  
LAWYERING FOR REPRODUCTIVE  
JUSTICE; IN OUR OWN VOICE;  
NATIONAL BLACK WOMEN’S  
REPRODUCTIVE JUSTICE AGENDA;

LAWYERS CLUB OF SAN DIEGO;  
LEGAL AID AT WORK; LEGAL  
VOICE; NATIONAL ASIAN PACIFIC  
AMERICAN WOMEN'S FORUM;  
NATIONAL CRITTENTON; NATIONAL  
EMPLOYMENT LAWYERS  
ASSOCIATION; NATIONAL LGBTQ  
TASK FORCE; NATIONAL NETWORK  
OF ABORTION FUNDS; NATIONAL  
ORGANIZATION FOR WOMEN  
FOUNDATION; NATIONAL  
PARTNERSHIP FOR WOMEN &  
FAMILIES; NATIONAL WOMEN'S  
POLITICAL CAUCUS; OKLAHOMA  
COALITION FOR REPRODUCTIVE  
JUSTICE; SARGENT SHRIVER  
NATIONAL CENTER ON POVERTY  
LAW; SISTERREACH; THE WOMEN'S  
LAW CENTER OF MARYLAND;  
WOMEN'S LAW PROJECT; WOMEN'S  
BAR ASSOCIATION OF THE DISTRICT  
OF COLUMBIA; LAMBDA LEGAL  
DEFENSE & EDUCATION FUND, INC.,

Amici Curiae.

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**Appeals from the United States District Court  
for the Western District of Oklahoma  
(D.C. No. 5:15-CV-00324-C)**

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Jillian T. Weiss, Law Office of Jillian T. Weiss, P.C., Brooklyn, New York (Ezra Ishmael Young, Law Office of Ezra Young, Brooklyn, New York; Brittany M. Novotny, National Litigation Law Group PLLC, Oklahoma City, Oklahoma; Marie Eisela Galindo, Law Office of Marie E. Galindo, Lubbock, Texas, on the briefs), for Plaintiff-Appellant.

Zachary West, Assistant Solicitor General (Andy N. Ferguson, Staff Attorney, with him on the briefs), Office of Attorney General, Oklahoma City, Oklahoma, for Defendants-Appellees.

Erica C. Lai, Cohen & Gresser LLP, Washington, D.C. (Emily Martin and Sunu P. Chandy, National Women's Law Center, Washington, D.C.; Melissa H. Maxman and

Danielle C. Morello, Cohen & Gresser LLP, Washington, D.C.; Danielle E. Perlman, Cohen & Gresser LLP, New York, New York, with her on the brief), for Amici Curiae National Women’s Law Center, et al.

Gregory R. Nevins, Lambda Legal Defense and Education Fund Inc., Atlanta, Georgia, for Amicus Curiae Lambda Legal.

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Before **HARTZ**, **EBEL**, and **McHUGH** Circuit Judges.

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**EBEL**, Circuit Judge.

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Dr. Rachel Tudor sued her former employer, Southeastern Oklahoma State University, under Title VII, claiming discrimination on the basis of sex, retaliation, and a hostile work environment after Southeastern denied her tenure, denied her the opportunity to reapply for tenure, and ultimately terminated her from the university. A jury found in favor of Dr. Tudor on her discrimination and retaliation claims and awarded her damages. The district court then applied the Title VII statutory cap to reduce the jury’s award, denied Dr. Tudor reinstatement, and awarded front pay.

Both parties appeal. Southeastern challenges evidentiary rulings and the jury verdict. Dr. Tudor, on the other hand, attacks several of the court’s post-verdict rulings, challenging the district court’s denial of reinstatement, calculation of front pay, and application of the statutory damages cap.

We reject Southeastern’s challenges. But, regarding Dr. Tudor’s appeal, we hold that there was error both in denying reinstatement and in calculating front pay, although there was no error in applying the Title VII damages cap. Exercising

jurisdiction under 28 U.S.C. § 1291, we AFFIRM in part and REVERSE in part and REMAND for further proceedings.

## I. BACKGROUND<sup>1</sup>

### A. General Background

Dr. Tudor is a transgender woman who is a dual citizen of the United States and Chickasaw Nation. She earned a Ph.D. in English from the University of Oklahoma in 2000. In 2004, Dr. Tudor began working at Southeastern Oklahoma State University as a tenure-track assistant professor in the English, Humanities, and Languages Department (“English Department”). Southeastern is part of the Regional University System of Oklahoma (RUSO), the other defendant in this case.

When Dr. Tudor started teaching at Southeastern, she presented as a male. Approximately three years later, in the spring of 2007, however, Dr. Tudor informed Southeastern’s Human Resources Office that she planned to transition from male to female over the summer. She returned to teaching in the next semester now presenting as a woman, Rachel Tudor.

### B. Tenure Applications

Southeastern’s tenure application process involves review of the applicant’s portfolio by a faculty committee, the department chair, the college dean, and the vice

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<sup>1</sup> Because the jury found in favor of Dr. Tudor on her discrimination and retaliation claims and because Southeastern challenges the sufficiency of the evidence to support that verdict, we recount the facts that were presented to the jury at trial in the light most favorable to Dr. Tudor. Webco Indus., Inc. v. Thermatool Corp., 278 F.3d 1120, 1128 (10th Cir. 2002).

president of academic affairs. Each entity issues a recommendation to the university president, who then makes the final tenure determination and seeks approval from the RUSO governing board. To obtain tenure, then, Dr. Tudor needed to receive a favorable recommendation from: (1) a tenure committee comprised of five faculty members; (2) the then English Department Chair, John Mischo; (3) the then Arts and Sciences dean, Lucretia Scoufos; (4) the then vice president for academic affairs, Doug McMillan; (5) the then university president, Larry Minks; and (6) RUSO's governing board. RUSO's governing board generally approves the recommendation given by the university president. Southeastern's tenure-application process assesses applicants for excellence in three areas: scholarship, service, and teaching.

**1. Application for Tenure in 2008**

In fall 2008, Dr. Tudor submitted her tenure portfolio to a faculty committee, the first level of review in the application process. The committee voted against tenure, and Dr. Tudor withdrew the application.

**2. Application for Tenure in 2009-10**

In fall 2009, Dr. Tudor again applied for tenure, providing evidence of all three above criteria—teaching, scholarship, and service—in her portfolio. For example, her portfolio contained a regional conference presentation, two articles accepted for publication in peer-reviewed journals, a poetry book, and service on multiple committees at Southeastern.

The five-faculty-member tenure committee recommended Dr. Tudor receive tenure by a 4-to-1 vote (Dr. Randy Prus, who would only later become the

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