



STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

JUN 16 2023

IN THE DISTRICT COURT IN AND FOR CLEVELAND COUNTY
STATE OF OKLAHOMA

THE SUSTAINABLE JOURNALISM)
FOUNDATION d/b/a NONDOC MEDIA,)
and WILLIAM W. SAVAGE III,)
Plaintiffs,)
)
)
vs.)
)
THE STATE OF OKLAHOMA ex rel.)
BOARD OF REGENTS OF)
THE UNIVERSITY OF OKLAHOMA,)
Defendant.)

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CV-2021-1770
Judge Walkley

**PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF MATERIAL FACTS
AND STATEMENT OF ADDITIONAL MATERIAL FACTS**

Pursuant to Oklahoma District Court Rule 13(b), Plaintiffs respectfully submit this filing responding to Defendant's Statement of Material Facts filed February 13, 2023, along with additional Material Facts set forth in support of the arguments and authorities in Plaintiffs' concurrently filed Opposition to Defendant's Motion for Summary Judgment.

I. Plaintiffs' Response to Defendant's Statement of Material Facts

1. The University's investigative policy relevant to the allegations in the above-styled case represent [sic] to students and faculty that "[i]ndividuals wishing to make legally confidential reports have the option of reporting those matters to the OU Advocates, the University Ombudsperson (for faculty/staff) licensed counselors, health professionals, clergy and attorneys to the extent the complainant engages them in such private capacity." Ex. 1-B, *Investigative Process for Internal Complaints under the Sexual Misconduct Discrimination and Harassment Policy*, UNIVERSITY OF OKLAHOMA (Sep. 1, 2014).

Plaintiffs' Response: Disputed. The quoted portion of the policy is not relevant to either of the requested records. The Alumni Donor Report did not involve complaints of sexual misconduct, discrimination, or harassment. See Def. Ex. 3 at 1; Def. Ex. 2 (Long Aff.) at 1(1); Nick Hazelrigg, *OU Employs Law Firm to Investigate Misreporting of Alumni Donations During Boren Tenure*, OU Daily (Dec. 10, 2018), <https://perma.cc/6VYQ-SX4X>. And the Sexual

Misconduct Report was written and compiled by attorney investigators engaged by the University—not those engaged by complainants in a private capacity. *Compare* Def. Ex. 1-B at 3, *with* Def. Ex. 4 at 2 (confirming engagement by the University).

The cited policy also applies only to complainants—meaning those who “file their complaints in writing” with specified people within the University’s Sexual Misconduct Office, Institutional Equity Office, and Equal Opportunity Office. Def. Ex. 1-B at 1. Thus, this fact does not cover “witness statements” generally, as Defendant claims. *See* Def. MSJ Br. at 12.

To the extent the cited policy is relevant, it disclaims, rather than promises, confidentiality and privacy. Def. Ex. 1-B at 3 (“Although University officials will maintain an individual’s privacy to the best of his or her ability, individuals should know that University officials . . . may not be able to maintain legal confidentiality. . . . The University shall inform complainants if it is unable to ensure privacy.”).

2. In 2018, the University received allegations of personnel (1) misreporting alumni information to a new[s] media organization, and (2) engaging in sexual harassment or other misconduct. Ex. 2, Long Affidavit (June 28, 2022) (Filed Under Seal - Copy Provided to Judge Walkley’s Chamber).

Plaintiffs’ Response: Disputed. This statement mischaracterizes both Ms. Long’s affidavit and the University’s impetus for hiring Jones Day.

Ms. Long’s affidavit does not say that the University “receive[d] allegations of personnel . . . misreporting alumni information” to “a new[s] media organization,” *see* Def. Ex. 2 ¶ 1, and that does not accurately describe how the University’s Office of Legal Counsel came to hire Jones Day. Instead, James Gallogly and the University of Oklahoma Foundation (a separate legal entity from the University) discovered that the University had, from 2015–2017, misdescribed a gift of software as a cash donation in the Voluntary Support of Education survey (“VSE”). Pls. Ex. G at

4–5; Board of Regents, Minutes of a Regular Meeting at 26, 134 (Sept. 13, 2018), <https://perma.cc/3Rnk-QBG2>. In July 2018, as the VSE data was being examined, an employee within the University’s Development office compiled “a file containing emails and letters from their supervisors directing them to falsify U.S. News & World data for years.” Pls. Ex. G at 4–5; [REDACTED]; *see generally* Pls. Ex. J (file containing emails and letters directing members of the development office to falsify data). The University hired Jones Day thereafter.

Ms. Long’s affidavit also does not say that the University “receive[d] allegations of personnel . . . engaging in sexual harassment” in 2018, *see* Def. Ex. 2 ¶ 1, and that statement lacks important context. Rather, Plaintiffs believe that in July or August 2017, a University employee and former University student named Jess Eddy told his then-supervisor, Dr. Belinda Biscoe, that former President David Boren had made unwanted sexual advances toward Eddy while Eddy was working for Boren and enrolled as a student, starting in November 2010. Affidavit of Jess Eddy In Support of Pls. Reponse to Def. Mot. for Summary Judgment (Eddy Aff.) ¶ 5. Biscoe reported that information to another member of the University administration on or around November 8, 2018. Eddy Aff. ¶ 9; Pls. Ex. A.

3. On July 26, 2018, the University retained the law firm Jones Day for the purpose of “conducting an internal investigation regarding OU’s reporting of certain data to external publications.” That Engagement Letter Regarding Data Reporting Investigation goes [sic] define the scope of relationship between the University and Jones Day as an attorney-client relationship. Ex. 2, Long Affidavit (June 28, 2022); Ex. 3, Engagement Letter Regarding Data Reporting Investigation, JONES DAY (July 27, 2018) (Filed Under Seal — Copy Provided to Judge Walkley’s Chamber).

Plaintiffs’ Response: Disputed in part. The part of this statement that is not a direct quotation contains legal conclusions and characterizations, not facts. Moreover, attorney-client relationships in Oklahoma are controlled by statute, Okla. Stat. tit. 12, § 2502, and involve a fact inquiry into the nature of a specific communication, *Cooper v. State*, 1983 OK CR 154, ¶ 4, 671

P.2d 1168, 1172 (“Whether the attorney-client privilege is involved . . . is a question of fact for the trial court.”). Parties cannot deem, by mere agreement, that all communications between them will be subject to the attorney client privilege. “[T]he mere status of an attorney-client relationship does not make every communication between attorney and client protected by the privilege.” *Scott v. Peterson*, 2005 OK 84, ¶ 7, 126 P.3d 1232, 1234. Moreover, the attorney-client privilege does not apply when “an attorney is simply acting as a conduit for factual information.” *Atoka Precision Mach. Shop, LLC v. Peerless Ins. Co.*, 2013 WL 817279, *1 (E.D. Okla. 2013).

4. On November 15, 2018, the University retained the law firm Jones Day for the purpose of “conducting an internal investigation [of] possible misconduct by senior University personnel.” That Engagement Letter Regarding Confidential Investigation of Misconduct goes [sic] define the scope of relationship between the University and Jones Day as an attorney-client relationship. Ex. 2, Long Affidavit (June 28, 2022); Ex. 4, Engagement Letter Regarding Confidential Investigation of Misconduct, JONES DAY (Nov. 15, 2018) (Filed Under Seal— Copy Provided to Judge Walkley’s Chamber).

Plaintiffs’ Response: Disputed in part. The part of this statement that is not a direct quotation is disputed on the same grounds as those set forth above in Plaintiffs’ Response to Defendant’s Statement of Fact No. 3. In addition, the engagement letter attached as Defendant’s Exhibit 4 is unsigned by the University. *See* Def. Ex. 4 at 4.

5. Throughout both investigations, the University and Jones Day represented that Jones Day served as counsel to the University, the investigations were confidential, and the witnesses identifies [sic] would remain confidential to the best of the University’s ability, and any witness statement or information provided would be protected by privilege from disclosure and is protected work product. The witness further relied on these representations concerning the confidentiality of their identities, statements, and information in cooperating with investigations. Ex. 2, Long Affidavit (June 28, 2022).

Plaintiffs’ Response: Disputed. Ms. Long’s statement does not demonstrate her personal knowledge of (i) Jones Day’s representations to witnesses during its investigation, or (ii)

witnesses' reliance on any such representations. [REDACTED]

[REDACTED]

[REDACTED]

As to the Alumni Donor Report, this statement is contradicted by the University's disclosure of information about the University's misreporting to U.S. News and World Report, Pls. Ex. H; Pls. Ex. K ("The school told U.S. News that it had inflated its alumni giving data since 1999"); Pls. Ex. Q ("OU also disclosed to U.S. News that, for many years, its Health Sciences Center's data was incorrectly included with the OU data reported to U.S. News for our Best Colleges rankings."), as well as the public statements made about the misreporting by then-President James Gallogly and then-General Counsel Anil Gollahalli. Pls. Ex. G at 5; Hazelrigg (Dec. 10, 2018), *supra*; Nick Hazelrigg, *'We Believe it was Deliberate': OU Administration Believes Various Incidents of Misreporting Related to Donations Were Intentional*, OU Daily (Dec. 13, 2018), <https://perma.cc/8TYL-3FAF>.

As to the Sexual Misconduct Report, this statement is contradicted by the University's own policy, *see* Def. Ex. 1-B at 4, which disclaims, rather than promises, confidentiality and privacy.

The statement is also contradicted by the fact that the University provided Boren (the subject of the Sexual Misconduct Report and a person with adverse interests to the University), and his attorney [REDACTED]

[REDACTED], and (ii) portions of the Sexual Misconduct Report. [REDACTED]; Nolan Clay, *Special Counsel Appointed to Oversee Investigation of Former OU President David Boren*, The Oklahoman (Apr. 17, 2019), <https://perma.cc/G8S5-7KLR> ("Boren and his attorney, Clark Brewster, will now get to review the law firm's lengthy report on the allegations. They then will have five days to make a response."); Nolan Clay, *OU Pays Law Firm More than*

\$500K for David Boren, Financial Data Investigations, The Oklahoman (May 6, 2019), <https://perma.cc/DV7V-DKGC> (“Boren has responded in writing through his attorney to that report.”); Nolan Clay, *University of Oklahoma Regents Will Not Meet with Boren this Week* (May 9, 2019), <https://perma.cc/8QXJ-SHUS> (“Boren responded to the Jones Day report through his attorney April 29. That 16-page response, plus an additional 50 pages of attachments, has been given to regents for their review.”).

Further, the statement is also contradicted by Jess Eddy, a witness who was interviewed for the Sexual Misconduct Report. His identity was not kept confidential — Jones Day used his name in its report. Pls. Ex. D. A portion of the report was shared with Eddy, contradicting the claim that it would be “protected by privilege from disclosure and is protected work product.” Eddy Aff. ¶ 30. The witness did not rely on any such representations because no such representations were made to him.

Moreover, the statement is contradicted by the University’s Equal Opportunity Investigator, who wrote that a “review [of] the portions of” the Sexual Misconduct Report had been arranged for other witnesses in addition to Eddy. Pls. Ex. C at 10–11 (May 21, 2019 4:55 PM email); *see also* Def. Answer, July 26, 21 at 5 (Aff. Defs. ¶ 2).

6. On February 20, 2019, the Board of Regents entered into executive session to discuss the investigations with counsel. Ex. 2, Long Affidavit (June 28, 2022); Ex. 5, Minutes of a Special Meeting, THE UNIVERSITY OF OKLAHOMA BOARD OF REGENTS (Feb. 20, 2019).

Plaintiffs’ Response: Disputed in part. Ms. Long’s affidavit does not support this statement. *See* Def. Ex. 2. The meeting minutes do not indicate that Ms. Long was present at the described February 20, 2019, meeting. *See* Def. Ex. 5. The meeting minutes cited by Defendant are unsigned. *See id.* The meeting minutes cited by Defendant state only that the Board of Regents

entered executive session “to discuss personnel investigation(s) as stated on the agenda,” not “to discuss the investigations with counsel.” *Id.* The meeting minutes cited by Defendant do not indicate that a representative of Jones Day was present at the February 20, 2019, meeting. *See id.* Moreover, the implication of this statement seems to be that Jones Day’s work related to the Sexual Misconduct Report was completed on February 20, 2019. [REDACTED]

7. On May 1, 2019, Savage, on behalf of NonDoc, sent the University a written ORA request for “any and all reports created by the law firm Jones Day for the University of Oklahoma relating to David Boren or Jim ‘Tripp’ Hall.” Ex. 2, Long Affidavit (June 28, 2022); Petition at 6, ¶ 18; Ex. 6, Savage ORA Request (May 1, 2019).

Plaintiffs’ Response: Not disputed.

8. On June 12, 2019, the University responded to Savage stating that it considered his Request to seek records related to a specific employee and would not undertake a search for records that would not be released even if they existed. The University further stated that “any report that legal counsel, retained by the University, provides at the conclusion of any investigation of any employee would be confidential pursuant to 51 O.S. §§ 24A.5(1)(a), 24A.7(A), and 24A.12.” Ex. 2, Long Affidavit (June 28, 2022); Petition at 6, ¶ 19; Ex. 7, Open Records Eml., *OU Open Records Response - RE: Open Records Request* (June 12, 2019).

Plaintiffs’ Response: Disputed in part. Not disputed as to the content of the University’s email. Disputed with respect to the accuracy of the statements made by the University in that email, which contains legal conclusions and characterizations, not facts.

9. Plaintiffs contacted the University on May 26, 2021, asking the University to reconsider its position and release the requested records to Plaintiffs, or further detail its reasons for its denial. Ex. 2, Long Affidavit (June 28, 2022); Petition at 6, ¶ 20; Ex. 8, Garner Eml., *Re: Reconsideration of Oklahoma Open Records Act request* (May 26, 2021).

Plaintiffs’ Response: Not disputed.

10. Without waiting for the University to reconsider Plaintiffs' ORA request as requested, Plaintiffs filed their petition on June 10, 2021. Ex. 2, Long Affidavit (June 28, 2022); *Compare* Petition with Ex. 9, Long Ltr., Re: Your Request for Reconsideration dated May 26, 2011 (June 11, 2021) [hereafter "Final ORA Letter"].

Plaintiffs' Response: Disputed in part. This statement omits the necessary context that Plaintiffs requested a response from the University within ten days of May 26, Def. Ex. 8, and stated that if the University did not provide a response within that time, Plaintiffs would understand the lack of response as a decision to withhold the records. Def. Ex. 8.

11. On June 11, 2021, the University memorialized its reconsideration of Plaintiffs['] request, which Plaintiffs received and in part states: . . . Ex. 2, Long Affidavit (June 28, 2022); Ex. 9, Final ORA Letter; *see also* Tres Savage, *OU: Releasing reports on sexual misconduct, donor data 'serve the public's curiosity - not its interest'*, NonDoc (June 15, 2021). The letter continues: . . . *Id.*

Plaintiffs' Response: Disputed in part. Undisputed as to the accuracy of the quotation. However, the quotation contains legal conclusions and characterizations, not facts. Plaintiffs' response to these legal conclusions is set forth in the arguments and authorities section of their concurrently filed Opposition to Defendant's Motion for Summary Judgment.

II. Plaintiffs' Statement of Additional Material Facts

1. In recent years, numerous universities have commissioned and publicly released reports compiled by law firms on data they misreported to U.S. News & World Report—including several reports by Jones Day.¹ Numerous universities have also commissioned and publicly released numerous reports compiled by law firms involving high-ranking employees accused of sexual misconduct.²

2. Reports of this type include (i) a lengthy written summary of the investigation, (ii) appendices consisting of outside information considered and/or compiled during the investigation,

¹ *E.g.*, Jones Day, School of Education Rankings Data Reporting Investigation Prepared for University of Southern California Office of the General Counsel (Apr. 27, 2022), at 1, <https://perma.cc/WR9H-PFXG> (investigating “whether the USC Rossier School of Education [] misreported data to U.S. News & World Report”); Jones Day and Duff & Phelps, Investigative Report: University of Illinois College of Law Class Profile Reporting (Nov. 7, 2011), at 2, <https://tinyurl.com/z3mzhybv> (investigating “possible inaccuracies” with LSAT and GPA data provided to American Bar Association and U.S. News & World Report); *see also* O’Melveny & Myers LLP, Investigative Report Prepared on Behalf of the Board of Trustees of Claremont McKenna College (Apr. 17, 2012), at 1, <https://www.documentcloud.org/documents/339121-report-final.html> (investigating “discrepancies between internally and externally reported SAT statistics for the College’s 2011 incoming class”). As Defendant concedes, this Court may take judicial notice of the evidentiary bases for this fact, which are documents published online by institutions of higher education. *See* Def. MSJ Br. at 2 n.1 (citing *O’Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1226 (10th Cir. 2007) (“It is not uncommon for courts to take judicial notice of factual information found on the world wide web.”)).

² *E.g.*, Quinn Emanuel Trial Lawyers, *Final report for the Michigan State University Board of Trustees Regarding a Review of Title IX Policies and Procedures, Including the Departure of Sanjay Gupta as dean of the Eli Broad College of Business, and Policy Recommendation Arising from Such Review* (Mar. 31, 2023), <https://perma.cc/TVE9-XR3K> (investigating, *inter alia*, “a finding that [Dean Gupta] failed to report . . . the alleged sexual misconduct of an individual [] who served as a Broad faculty member and administrator”); Freeh Sporkin and Sullivan, LLP, *Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky* (Jul. 12, 2012), at 8, <https://tinyurl.com/muzrfu6f> (investigating “[t]he alleged failure of Penn State University personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky”).

and (iii) exhibits consisting of relevant documents and correspondence, including emails between university employees.³

3. In a meeting on June 20, 2017, the Board of Regents authorized “retention agreements” for certain University vice presidents. Board of Regents, *Minutes of a Regular Meeting* (Jun. 20, 2017), at 35701, <https://perma.cc/3RNK-QBG2>.⁴ The agreements authorized “supplemental payments” — bonuses — of 15% of the vice presidents’ base salaries in 2017, 2018, and 2019, and provided certain vice presidents with “a one-time lump sum payment equal to your annual University salary” in the event that “there is a change in administration at the Presidential level and you are removed from your current role.” Pls. Ex. T.

4. On September 21, 2017, University President David Boren announced that he would retire from his role as President on June 30, 2018, but would remain affiliated with and employed by the University in a teaching capacity.⁵ James Gallogly was named his successor as president on March 26, 2018, and took that office on a non-interim basis on July 1, 2018.⁶

The Alumni Donor Report

5. In 2018, prior to Boren’s retirement, then-interim University President James Gallogly and the University of Oklahoma Foundation (a separate legal entity from the University) discovered that the University had, from 2015–2017, misdescribed a gift of software as a cash donation in the Voluntary Support of Education survey (“VSE”), which is conducted yearly by

³ See nn.1–2, *supra*.

⁴ Those vice presidents were Kenneth Rowe, V.P. Admin and Finance; Nicholas Hathaway, V.P. Admin and Finance; Tripp Hall, V.P. Development; Clarke Stroud, V.P. Student Affairs; Anil Gollahalli, V.P. and General Counsel; and Chris Purcell, V.P. University Governance and Executive Secretary to the Board of Regents. *Id.*; Pls. Ex. U.

⁵ The University of Oklahoma, *Boren Announces Plan to Retire* (Sept. 21, 2017), <https://perma.cc/6UCT-3B7X>.

⁶ The University of Oklahoma, James L. Gallogly Selected as University President (Mar. 26, 2018), <https://perma.cc/VP94-TM8Z>.

CASE. Pls. Ex. G at 4–5; Board of Regents, Minutes of a Regular Meeting at 36236 & Ex. G (Sept. 13, 2018), <https://perma.cc/3RNK-QBG2>. The misdescription required the reclassification of over \$150 million per year in gifts that had been reported as cash gifts in 2015, 2016, and 2017 (totaling over \$500 million), as in-kind donations. *Id.* at 36236 & Ex. G.

6. In July 2018, as the VSE data was being examined, the University’s Development office compiled “a file containing emails and letters from their supervisors directing them to falsify U.S. News & World data for years.” Pls. Ex. G at 4–5. In other words, this file contained “routine university correspondence . . . and was not produced at the request of university lawyers or outside counsel.” Pls. Ex. G at 4–5; [REDACTED]; *see generally* Pls. Ex. J (file containing emails and letters directing members of the development office to falsify data).

7. The University engaged Jones Day on July 27, 2018. Def. Ex. 3 at 4.

8. Jones Day’s work for the University included a review of what data was incorrectly reported, what the correct data was, how long misreporting had occurred for, who was involved with the misreporting, and whether anyone was compensated (via bonus, agreement or other compensation) for participating in the misreporting or in a coverup of the misreporting. Pls. Ex. G at 5.

9. The Alumni Donor Report comprises a report written by Jones Day, a set of appendices that include external information considered by or compiled by Jones Day during the course of its investigation, and exhibits consisting of correspondence and documents collected by Jones Day during its investigation. Pls. Ex. G at 5; *see also supra* n.3. The exhibits to the Alumni Donor Report include routine correspondence between non-attorney employees of the University. Pls. Ex. G at 4; *see generally* Pls. Ex. J; [REDACTED].

10. The University released the information in the Alumni Donor Report to U.S. News & World Report, and provided U.S. News & World Report with new, accurate data. Pls. Ex. G at 5; Nick Hazelrigg, *'We Believe it Was Deliberate': OU Administration Believes Various Incidents of Misreporting Related to Donations Were Intentional* (Dec. 13, 2018), <https://perma.cc/TGB5-DCMH> (reporting that the disclosure to U.S. News & World Report took place in part in a November 1, 2018 letter from Susannah Livingood, Director of the University's Office of Institutional Reporting, to Keke Ellis of U.S. News); Pls. Ex. H; Pls. Ex. K (containing additional disclosures); Pls. Ex. Q.⁷

11. The University released information to U.S. News indicating that "it had inflated its alumni giving data since 1999." Robert Morse, *U.S. News Ranking Updates: Find Out More about the Schools that Misrepresented Data to U.S. News* (Feb. 7, 2019 update), <https://www.usnews.com/education/articles/us-news-rankings-updates> (Excerpted at Pls. Ex. K). The University was delisted in the rankings as a result. Susan Svrluga, *University of Oklahoma Forfeits its Ranking on the U.S. News List after Acknowledging Inflated Data* (May 24, 2019), <https://perma.cc/M6RK-X7MD>.

12. The Alumni Donor Report was not compiled in anticipation of litigation.⁸

⁷ Pls. Ex. Q is a letter from Brian Kelly & Robert Morse, U.S. News and World Report to Leslie Rainbolt-Forbes, OU Board of Regents & Joseph Harroz, Jr., OU President (Jul. 9, 2019) ("The University of Oklahoma ("OU") disclosed that it reported incorrect alumni giving data for several years to U.S. News & World Report. OU also disclosed to U.S. News that, for many years, its Health Sciences Center's data was incorrectly included with the OU data reported to U.S. News for our Best Colleges rankings."), available at <https://www.documentcloud.org/documents/6184582-U-S-News-OU-Letter-July-9>.

⁸ Nick Hazelrigg, *OU Employs Law Firm to Investigate Misreporting of Alumni Donations During Boren Tenure* (Dec. 10, 2018) ("There's no litigation," Gallogly said. "Instead of this being about somebody versus somebody else, when somebody comes in and says there's misreporting we either give it to the auditors so it's independent or we give it to a third party.")

13. James Gallogly and former University General Counsel Anil Gollahalli met with the press after the Alumni Donor Report was issued and shared information from the report at that press conference. Pls. Ex. G at 5; Hazelrigg, (Dec. 13, 2018), *supra*. Gollahalli also provided the press with a memo disclosing information in the Alumni Donor Report. *Id.*

14. Information regarding the Voluntary Support of Education Survey, which may have been included in the Alumni Donor Report, was also made public by the Board of Regents. Board of Regents, Minutes of a Regular Meeting at 36236 & Ex. G (Sept. 13, 2018), <https://perma.cc/3RNK-QBG2> (disclosing misreporting of in-kind donations as cash donations).⁹

15. The investigation at issue has ended and there are no pending claims regarding the Alumni Donor Report. *OU Employs Law Firm to Investigate Misreporting of Alumni Donations During Boren Tenure*, OU Daily (Dec. 10, 2018), <https://perma.cc/6VYQ-SX4X> (“The university found that incorrect data had been previously reported. . . . [T]he university conducted an inquiry in to[sic] this matter. *This review is now complete* and issues have been corrected.”) (statement of James Gallogly to the Board of Regents).

The Sexual Misconduct Report

16. In mid-2017, an employee and graduate of the University named Jess Eddy told his supervisor, Dr. Belinda Biscoe, Associate Vice President of Outreach, that Boren had made

⁹ [REDACTED]

unwanted sexual advances toward Eddy while he was working for him and enrolled as a student, starting in November 2010, and continuing on a sporadic basis in 2011 and 2012. Eddy Aff. ¶ 5.

17. Over a year later, on November 8, 2018, Dr. Biscoe reported Eddy's statement to another University administrator. Eddy Aff. ¶¶ 8, 9; Pls. Ex. A.

18. Biscoe's characterization of Eddy's statement was recorded by that University administrator as an "Intake Summary," which described an employee who reported "a long history of [Boren] having relationships with students [and] members of [Boren's] inner circle arranging for [Boren] to engage in sexual relationships with students." Pls. Ex. A.

19. The Intake Summary further described an incident in which Boren made an unwanted sexual advance toward the reporting student (Eddy). Pls. Ex. A.

20. The University provided Boren and his attorney with a copy of the Intake Summary. Eddy Aff. ¶ 9.

21. Biscoe's characterization of Eddy's statement reached Bobby Mason, then the University's Institutional Equity officer. Pls. Ex. G at 5-6; Eddy Aff. ¶ 8; [REDACTED]

22. The University chose not to have the Institutional Equity investigate Biscoe's characterization of Eddy's statement, but instead hired Jones Day for a second time. Pls. Ex. G at 6.

23. Jones Day was engaged by the University (in a separate agreement unrelated to the Alumni Donor Report engagement) on or around November 15, 2018. Def. Ex. 4 at 1. The November 15, 2018, engagement letter between Jones Day and the University does not indicate that Jones Day was hired in the capacity of a Title IX investigator. *Id.* Thereafter, Jones Day

embarked on an information-gathering exercise, and interviewed witnesses including Eddy. Eddy Aff. ¶¶ 11, 22.

24. [REDACTED]

25. Richard Deane and Deborah Sudbury were among the Jones Day investigators for the Alumni Donor Report. Eddy Aff. ¶ 11; [REDACTED]. Deane led the investigation. Eddy Aff. ¶ 22.

26. Jones Day approached witnesses for their participation in interviews. Savage Aff. ¶ 11; Tres Savage, *Harroz Spoke to Jones Day, Confirms Title IX Review*, NonDoc (June 27, 2019), <https://perma.cc/6NQ8-E4E8> [REDACTED]. At least some of the interviewees believed they were required to participate due to their employment with the University or due to terms in their employment or severance agreements. Eddy Aff. ¶ 12.

27. Jones Day told witnesses, including Eddy, that it had been asked by the University to gather facts, and that the University would subsequently determine what, if any, actions would be taken. Eddy Aff. ¶ 15.

28. Jones Day told witnesses, including Eddy, that it could not promise confidentiality, but that it would “try” to keep participants’ identities anonymous. Eddy Aff. ¶ 14; *see also* Def. Ex. 1-B at 3 (“Although University officials will maintain an individual’s privacy to the best of his or her ability, individuals should know that University officials . . . may not be able to maintain legal confidentiality.”); [REDACTED].

29. Other than Eddy, there is a genuine issue of fact as to whether the Sexual Misconduct Report names purported victims or witnesses. Pls. Ex. G at 6.

30. [REDACTED]

[REDACTED], and either the entire report or portions of the Sexual Misconduct Report. [REDACTED]; Nolan Clay, *Special Counsel Appointed to Oversee Investigation of Former OU President David Boren*, The Oklahoman (Apr. 17, 2019), <https://perma.cc/G8S5-7KLR> (“Boren and his attorney, Clark Brewster, will now get to review the law firm’s lengthy report on the allegations. They then will have five days to make a response.”); Nolan Clay, *OU Pays Law Firm More than \$500K for David Boren, Financial Data Investigations*, The Oklahoman (May 6, 2019), <https://perma.cc/DV7V-DKGC> (“Boren has responded in writing through his attorney to that report.”); Nolan Clay, *University of Oklahoma Regents Will Not Meet with Boren this Week* (May 9, 2019), <https://perma.cc/8QXJ-SHUS> (“Boren responded to the Jones Day report through his attorney April 29. That 16-page response, plus an additional 50 pages of attachments, has been given to regents for their review.”).

31. The University provided Eddy with a copy of a portion of the Sexual Misconduct Report. Eddy Aff. ¶ 30 and Pls. Ex. D; [REDACTED]. The copy provided to Eddy was watermarked “CONFIDENTIAL D.B.” Pls. Ex. D.

32. The University provided other witnesses the portions of the Sexual Misconduct Report that relate to their interviews with Jones Day. Pls.’ Ex. C at 10–11 (May 21, 2019 4:55 PM email).

33. The University did not proactively report the allegations against former president Boren to a law enforcement entity in the four months that passed between the University learning of Eddy’s allegations and Eddy reporting those allegations to law enforcement himself. Eddy Aff. ¶ 19–21; [REDACTED].

34. The University attempted to prevent Gallogly from reporting the allegations in the Sexual Misconduct Report, including Eddy's allegations, to law enforcement. *See* Pls. Ex. P at 3 (warning Gallogly against "going public," at his own legal peril, including by "commenting on confidential information to state and federal officials").

35. The University has stated that it provided the Sexual Misconduct Report to OSBI and a multi-county grand jury after receiving a multi-county grand jury subpoena. *See* Def. MSJ Br. at 2; [REDACTED]. Nolan Clay, *The Oklahoman*, *OSBI Gets Report on Former OU President Boren* (May 25, 2019), <https://perma.cc/5YZK-FENP>; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. The Sexual Misconduct Report was described by the former Chairperson of the Board of Regents, Leslie Rainbolt-Forbes, as "fair non-biased, thorough and objective." Sean Murphy, *Associated Press*, *OU Regents Chair: Investigation of Boren was Fair, Objective* (Apr. 9, 2019), <https://perma.cc/G896-LYG2>; *see also* Pls. Ex. G at 6. Jones Day found Eddy's allegations to be "generally credible." Ex. D. at 22.

37. According to Gallogly, the recommendations of the University's Title IX Coordinator were not followed by the Board of Regents. Pls. Ex. G at 6-7.

38. Any investigation into the conduct alleged in the Sexual Misconduct Report has concluded. *See* Def. MSJ Br. at 2 ("the grand jury decided the information provided was apparently not sufficient for indictments"); Def. Ex. 7 (email from University re: ORA request describing "report that legal counsel . . . provides at the conclusion of any investigation"); Def.

Ex. 9 (email from H. Long stating, in 2021, “the matter has been closed for more than two years”); Pls. Ex. L (Letter from Board of Regents Chairman describing “full *and complete* investigations by the University, independent counsel, the Oklahoma State Bureau of Investigation, and the Grand Jury”) (emphasis added); *id.* (“The numerous investigations into these matters have ended.”); *see also* Order of Dismissal with Prejudice, *Hilliard v. Hall*, No. CJ–2019–685 (Dist. Ct. Okla. Cleveland Cnty. July 8, 2020); Tres Savage, *Prosecutor Declines to Charge David Boren, Tripp Hall*, NonDoc (Oct. 20, 2020), <https://nondoc.com/2020/10/20/prosecutor-declines-to-charge-david-boren-tripp-hall/> (quoting Special Prosecutor Pat Ryan: “The OSBI investigation of David Boren and Tripp Hall has concluded. “); *id.* (quoting President Boren’s attorney: “I don’t think there’s been a federal investigation.”); *id.* (quoting President Gallogly: “The lawyers at the time said it probably never would be criminally prosecuted.”); Tres Savage, *OU regents: David Boren Resigns as Professor, ‘Brings this Matter to a Close’*, NonDoc (June 12, 2019), <https://nondoc.com/2019/06/12/ou-regents-david-boren-resigns-as-professor/> (“Board of Regents announced . . . Boren has resigned his professorship, a move the regents said concludes their Title IX process and ‘brings this matter to a close.’”).

39. The University paid Jones Day at least \$1.5 million collectively to compile the Alumni Donor and Sexual Misconduct Reports. Pls. Ex. M. In addition, OSBI conducted and completed its own special investigation in which it relied, in part, on the Reports. Trip Savage, *David Boren, Tripp Hall Remain Under OSBI Investigation*, NonDoc (Jan. 28, 2020), <https://perma.cc/Y2Y8-86HV>.

Respectfully submitted,

/s/ Lin Weeks

Lin Weeks, *admitted pro hac vice*

REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th Street NW, Suite 1020
Washington, D.C. 20009
lweeks@rcfp.org
Counsel for Plaintiffs



Blake Johnson, OBA No. 32433
Overman Legal Group
809 NW 36th St.
Oklahoma City, OK 73118
Telephone: (405) 605-6718
Facsimile: (405) 605-6719

CERTIFICATE OF SERVICE

I hereby certify that the above document was mailed on June 15, 2023, by depositing it in the U.S. Mail, postage prepaid to counsel of record for Defendant:

Michael Burrage, OBA No. 1350
J. Renley Dennis, OBA No. 33160
Austin Vance, OBA No. 33294
WHITTEN BURRAGE
512 N. Broadway Ave., Ste. 300
Oklahoma City, OK 73102
T: (405) 516-7800
mburrage@whittenburragelaw.com
jdennis@whittenburragelaw.com
avance@whittenburragelaw.com

Drew Neville, OBA No. 6641
MCAFEE & TAFT
10th Floor, Two Leadership Square
211 N. Robinson
Oklahoma City, OK 73102
T: (405) 235-9621
drew.neville@mcafeetaft.com



OVERMAN LEGAL GROUP, PLLC
809 NW 36th Street
Oklahoma City, OK 73118