

Confidential by email and EEOC Portal

Equal Employment Opportunity Commission

Attn: Lina Williams or Mark Brennan
RE: Byron J. Wilson v. The University of Texas at Austin
EEOC Charge No.: 451-2024-01587

Dear Ms. Williams and/or Mr. Brennan,

I am supplying my rebuttal to UT-Austin's position statement in this document. My responses follow the same notation as UT-Austin and my words are in sans serif fonts.

Thank you for your attention.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Byron Wilson".

Byron Wilson

Rebuttal for Byron Wilson for EEOC Charge No.: 451-2024-01587

Rebuttal for I.

Byron Wilson has an alternative fact background that is explained through his formal document of grievance. This grievance was dismissed by the UT-Austin and Dean Rivera-Servera. (EXHIBIT 1,A)

I. Factual Background

Wilson was offered and accepted an appointment at the University on July 1, 2022, as an Assistant Professor in the Department of Design in the School of Design and Creative Technologies within the College of Fine Arts. Exhibit 4. The appointment was for a three-year term starting on September 1, 2022, and concluding on May 31, 2025.² *Id.*

The initial appointment letter laid out terms and conditions of the job, including three main areas of job responsibilities. First, and foremost, Wilson was required to teach with 75% of his teaching responsibilities dedicated to the MA in Design in Health program and the other 25% of his teaching responsibilities distributed across other programs in the College. *Id.* Second, Wilson would serve as faculty lead for curriculum and practice for the MA in Design in Health program. In this role, he was charged with developing and delivering a thoughtful strategy for integrating design practice in health setting into the program's curriculum. Third, he had advising duties, including advising graduate students in all matters regarding their academic progress in the program. *Id.* Fourth, he had additional design consulting and project work. *Id.*

Notably, however, research was not a job duty identified in his letter of appointment. *Id;* *see also* Exhibit 5 (2023 letter of appointment also not referencing research as a job responsibility or duty).

Wilson initially struggled in his first year as a professor at UT Austin. Exhibit 3. Faculty receive feedback on their teaching performance in part through student course evaluation scores ("CES"). *Id.* For graduate courses, like the ones Wilson

taught, the College expected faculty to receive CES scores between 4.0 and 5.0. *Id.* In his first year of teaching, Wilson received scores below 4.0 for the majority of his courses, including a 1.75 teaching score in his capstone course. *Id.*

II. Position Statement

UT Austin is an equal opportunity employer and does not discriminate on the basis of race, color, religion, gender, national origin, age, disability, citizenship, veteran status, sexual orientation, gender identity, and gender expression. *See Exhibit 2.* In addition, UT Austin strictly prohibits retaliation against individuals who file discrimination complaints, participate in discrimination investigations, or otherwise engage in a protected activity. *Id.*

UT Austin disputes Wilson's allegations and contends that its evidence refutes any allegation that he was subjected to discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended.³

1. Wilson cannot establish a prima facie case for discrimination.

To establish a prima facie case of racial discrimination, an employee must show (1) he is a member of a protected class, (2) he was qualified for his position, (3) he was subject to an adverse employment action, and (4) he "was treated less favorably because of his membership in that protected class than were other similarly situated employees who were not members of the protected class, under nearly identical circumstances." *Paske v. Fitzgerald*, 785 F.3d 977, 985 (5th Cir. 2015). Wilson cannot establish the third and fourth elements of this test.

A. Wilson cannot establish a change to the terms, conditions, or privileges of his employment.

To meet the adverse action element, an employee must show discrimination with respect to the "terms, conditions, or privileges of employment." *Hamilton v. Dallas County*, 79 F.4th 494 (5th Cir. 2023) (en banc). Such an action must be more than de minimis workplace trifles and must be accompanied by "some harm." *Muldrow*, 601

U.S. at 350. Here, Wilson alleges he suffered three actions: (1) that he was investigated; (2) that he was placed on a plan; and (3) that he was prohibited from working on research projects and given a larger teaching load. In light of the factual evidence, none of those complaints constitute a change to the terms, conditions, or privileges of his employment.

First, as the facts show, the purported “investigation” was not a formal investigation but rather ordinary workplace monitoring and supervision. Mere supervision, or even a formal investigation, by itself does not constitute an adverse action unless it is accompanied by some harm (such as a suspension without pay pending investigation, which did not occur here). *See id* (plaintiff must allege “some harm” for the action to constitute a change to the terms, conditions, or privileges of employment); *see also Porto v. Chevron NA Expl. & Prod. Co.*, 2018 WL 3559103, at *15 (S.D. Tex. July 24, 2018) (“close” supervision combined with other alleged harassment did not constitute a change of the terms, conditions, or privileges of employment under a hostile work environment theory).

Second, the faculty development plan was a type of performance improvement plan that was aimed at supporting and developing Wilson’s teaching performance. Such a plan is not an adverse action, even post-*Hamilton* and *Muldrow*. *See Lemonia v. Westlake Management Serv., Inc.*, 2023 WL 6878915, at *7 (5th Cir. 2023).

Third, a change in job duties by itself does not constitute an adverse action because it does not establish a non-de minimis injury. *Fleming v. Methodist Healthcare System of San Antonio, Ltd., L.L.P.*, 2024 WL 1055120, at * 12 (W.D. Tex. Mar. 11, 2024); *Green v. Ochsner LSU Health Shreveport*, 2024 WL 1057217, at * 9 (W.D. La. Mar. 11, 2024) (“reduction in job responsibilities” did not constitute a material change in the terms, conditions, and privileges of employment). This is especially true in this case as research was never part of Wilson’s job duties. *See Exhibits 4 and 5*. Thus, an instruction to stop work on research and focus on teaching, does not constitute an adverse action when research duties were never a term, condition, or privilege of Wilson’s employment.

For all these reasons, Wilson cannot establish a prima facie case of discrimination.

Rebuttal for 1A.

An investigation was ordered by Dean Rivera-Servera on October 22, 2023 (Exhibit X)

On 10/22/2023 Dean Rivera-Serva sent an email to Doreen Lorenzo, Tim Creswick, Kate Canales, Tamie Glass, and Byron Wilson announcing an investigation into the MA in Design for Health program — the departmental program in question, which Byron J.

Wilson was appointed. Quoted below

"Dear Kate, Tamie, and Byron (cc'd Doreen and Tim),

I have concern for the state of the MA in Design for Health, especially the state of your expected collaborations with each other in leading this program into academic and financial viability. I too have concerns for the health of our relationship to DellMed relationship and our industry partnerships in this field. I am charging Doreen Lorenzo as assistant dean for the School of Design and Creative Technologies with conducting an investigation into the state of the program's operations, leadership, and partnerships. I expect that each of you will participate in at least a one-on-one interview with Doreen and that you will provide any materials that she request as part of this process."

The investigation included inquiry into the teaching of Byron Wilson and was done without his knowledge in a process that was outside of the UT Austin Handbook of Operation Procedures (HOP 2-2151) (EXHIBIT F)

The investigation into Professor Byron Wilson's teaching abilities was announced by Assistant Dean Doreen Lorenzo in a meeting on December 7, 2023. During this meeting, Lorenzo informed Wilson that she had been conducting an investigation into his teaching by interviewing past and present students of the MA in Design Focused on Health program. She revealed that some of the students had described him as "scary." However, Wilson was not informed about several key details of the investigation, such as:

- How many students were interviewed.
- How the students were chosen for interviews.
- The questions that were asked during the interviews.
- How many students described him as "scary."

Wilson was also not made aware of the investigation until this point, and it was done outside the formal evaluation process outlined in the UT Austin Handbook of Operating Procedures (HOP 2-2151)

Doreen Lorenzo used her authority as Dean to alter Byron Wilson's contracted role, responsibilities and employment rights by way of sanctions as a result of the investigation. (EXHIBIT G)

On December 8, 2023, Lorenzo issued Byron Wilson a letter (EXHIBIT G) detailing a list of sanctions she was imposing on me, including stripping me of my leadership positions (amounting to \$30,000 annually) for the MA in Design Focused on Health program, not authorizing any current or new research projects, requiring me to complete a faculty development support plan, reducing my summer administrative assignment for Summer of 2024 to \$10,000, and increasing my teaching assignment to a 3+3 course load in Fall of 2024. The sanctions imposed on me by the named persons deprived me of my Property Interest, without procedural due process, in my original July 1, 2022 3-year contract by substantially changing my contracted assignment of duties mid-

contract and prior to my having any formal faculty evaluation process completed by the School of Design and Creative Technologies Executive Committee, pursuant to UT Austin HOP (2-2151) and (UT System Board of Regents Rule 30501) - Quoted Below

"I told you that teaching is the area that the department most needs you to do and do well. In order to focus on teaching, I told you that I am relieving you of the leadership positions for the MA Design program (Faculty Lead for Curriculum and Practice and Graduate Advisor) and not authorizing you to pursue any current or new research projects. We also discussed and I am outlining below a faculty development support plan meant to provide measurable goals, guidance, and tools to be successful in teaching so that your expertise and experience in design for health can continue to benefit the design department."

Byron Wilsons contracted role required research to be executed and overseen by him (EXHIBIT D)

The contract for Byron Wilson states the requirement of him to oversee IRB activities. IRB stands for Institutional Review Board and is a commonly known requirement for the lawful involvement of human subjects as a means of research. There are other indicators of research being central to the initial job description (Develop Case Studies, Oversee interviewee recruitment and reimbursement, etc.). Quote Below

*"Faculty Lead for Curriculum and Practice:
The charge for this role is to develop and deliver a thoughtful strategy for integrating design practice in health setting into the curriculum for the MA in Design focused on Health. Doing so will require close partnership with the Faculty Director (Tamie Glass) to redefine the relationship and partnership to Dell Medical School, strengthen career outcomes for graduates and elevate the reputation of the program in the field. This role will serve as the primary interface between Dell Medical School and the Design program, working to integrate Dell's specific design-related projects into the MA curriculum, as well as find appropriate ways of serving additional Dell design work via the design department's research, practice, and curricular missions.*

In this role you'll lead the development of our position and point of view related to practice within the MA in Design. This includes the curricular relationship to practice as well as building capacity and function for delivery of design work via grants or other external funding. To start, the primary stakeholder in this initiative is the Dell Medical School. In the first year (or two) this role may include:

- *Review of current curriculum as related to practice, in the context of larger curricular framing from the Design Department and MA in Design.*
- *Interfacing with Dell Med on "core work" project opportunities (curricular or otherwise)*
- *Coordinating faculty and student design researchers and practitioners*

Specifically, this role will shape our foremost curricular practicum, the Capstone Studio experience for the MA:

*Reevaluate learning outcomes and structures for this educational experience
Lead the effort to secure capstone studio partners/clients (including Dell Med “core” work)*

- *Manage IRB process*
- *Oversee contractual agreements*
- *Oversee interviewee recruitment and reimbursement*
- *Development of case studies for program promotion*
- *Assist students in converting their work into journal articles, conference presentations or popular press articles.* “

Doreen Lorenzo and the Office of the Dean were aware of Byron Wilson's research activity associated with his role as Faculty Lead for Curriculum and Practice by advent of a faculty performance review done outside of policy. (EXHIBIT Y)

Professor Wilson received a notice from UT-Austin Research Management System (the digital platform responsible for the management of all sponsored University research) alerting him to the sharing of his confidential research activity to the Office of the Dean. This report would show his involvement with two active clinical research investigations—on of which he is principal investigator. And a third study where Byron Wilson is Principal Investigator would be submitted after 11/29/23 but before 12/07/24.

Byron Wilson's academic freedom was violated by the revocation of his authorization to conduct research. He contends that this decision directly affected his ability to meet teaching and service obligations in his program, and undermined his right to pursue research freely, as granted by his contract and academic standards. (EXHIBITS J,K)

B. Wilson cannot establish that similarly situated comparators outside of his class were treated better.

A similarly situated comparator is someone treated more favorably under “nearly identical” circumstances, including “essentially comparable violation histories.” *Lee v. Kan. City S. Ry.*, 574 F.3d 253, 260 (5th Cir. 2009); *see Crawford v. Formosa Plastics Corp., La.*, 234 F.3d 899, 902 (5th Cir. 2000). In this case, Wilson was placed on a plan that focused his duties on teaching, because of abnormally low teaching scores and student complaints. *See Ex. 3.* Wilson has not identified a

comparator with nearly identical low scores and student complaints, and none exist. *Id.* Accordingly, Wilson cannot establish this element of his *prima facie* case.

Rebuttal for 1B.

The initial order to investigate the Design in MA program was directed to all of the leadership group including: Byron Wilson, Kate Canales, and Tamie Glass. In this context they are all similarly situated in context of the Design in MA program leadership. Only Byron is categorized as Black. As of 12/08/2024 Doreen Lorenzo has taken negative action on Byron Wilson. Kate Canales is currently serving as Graduate Advisor for the program and enjoying the benefits therein. Tamie Glass has since received an award from Dean Rivera-Servera and the Office of the Dean for her performance and has not lost her position as Director of the Design in MA program. Neither women have lost their privileges to execute research. The treatment has been disparate between the similarly situated employees with race being the separator of the group.

2. UT Austin had legitimate, non-discriminatory reasons for its actions and Wilson cannot show they are pretextual. Under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), once an employee makes a *prima facie* showing, the employer must articulate a legitimate, non-discriminatory reason for its action. Then the burden shifts to the plaintiff to show that the employer's reasons were pretext for discrimination. *Owens v. Circassia Pharm., Inc.*, 33 F.4th 814, 825-26 (5th Cir. 2022). To the extent the Commission even reaches this part of the *McDonnell Douglas* framework, which it need not for the reasons explained above, UT Austin asserts that Lorenzo was assigned to look into the Design program due to complaints the Dean received about the program. See Exhibit 3. Further, Wilson was placed on a faculty development plan, including the plan's focus on teaching duties,⁴ due to low CES scores and student complaints. *Id.* Wilson has not alleged and cannot show that these reasons are pretext for discrimination. Accordingly, Wilson cannot meet his evidentiary burden to show that the UT Austin discriminated against him due to his race.

Rebuttal for 2.

Before 12/08/2023 Byron Wilson named that he had been victim to a sustained pattern of disparate treatment from Kate Canales and Tamie Glass such that it was affecting job performance to Dean Rivera-Servera. (EXHIBIT Z)

After receiving a letter outlining the nature of disparate treatment, Dean Rivera-Servera excluded Byron from a pivotal leadership discussions on the Design in MA program (also known as Option III/Opt. III); Tamie Glass, Kate Canales, Tim Creswick, and Doreen Lorenzo were included. Dean Rivera-Servera never accepted my requests to be updated on the outcome thereafter. I did not hear again from Dean Rivera-Servera on this issue until the investigation was announced. (EXHIBIT AA)

III. CONCLUSION

For these reasons, the Commission should dismiss the Charge and issue a “No Cause” finding.