UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

[1] BLACK EMERGENCY RESPONSE TEAM, et al. *Plaintiffs*, v. [l] JOHN O'CONNOR, in his official capacity As Oklahoma Attorney General, et al., *Defendants*.	Case No. 5:21-cv-1022-G Hon. Charles B. Goodwin

PLAINTIFFS' RESPONSE AND BRIEF IN OPPOSITION TO OU BOARD DEFENDANTS' MOTION TO STRIKE AFFIDAVITS

Plaintiffs Black Emergency Response Team (BERT), *et al.*, respectfully urge this Court to deny the University of Oklahoma (OU) Board Defendants' Motion to Strike the declarations of the organizational representatives of BERT and the University of Oklahoma chapter of the American Association of University Professors (OU-AAUP), and portions of the declaration of Plaintiffs' expert, Dr. Marvin Lynn. Defendants fail to recognize that in preliminary injunctions, the Federal Rules of Evidence do not apply and hearsay is permissible; ignore statements made by declarants reflecting their personal knowledge both as organizational representatives and as students and professors; mischaracterize statements as "mere beliefs" when they reflect facts and acceptable perceptions; misconstrue Plaintiffs' causes of action; and disregard precedent allowing expert testimony based on professional experience and expertise. For the reasons stated below, Defendants' Motion must be denied.

ARGUMENT

I. THIS COURT SHOULD DENY OU BOARD'S MOTION TO STRIKE THE BERT AND OU-AAUP DECLARATIONS BECAUSE EACH IS BASED ON PERMISSIBLE LAY WITNESS TESTIMONY AT THIS PRELIMINARY STAGE

Defendants challenge BERT's and OU-AAUP's declarations on the grounds that the statements include impermissible hearsay, are speculative and not based on personal knowledge, and fail to address Plaintiffs' claims and relief sought. Mot. to Strike at 2–5, ECF No. 59 (hereinafter "Mot.").[1] Defendants' arguments are unavailing.

A. Hearsay is Permissible at the Preliminary Injunction Stage and the Federal Rules of Evidence Do Not Apply

First, because this is a preliminary injunction and not a trial on the merits, the Court may consider hearsay. The Tenth Circuit recognizes that "[t]he Federal Rules of Evidence do not apply to preliminary injunction hearings." *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003) (citations omitted). This is because preliminary injunctions are "customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Id.* (quoting *University of Texas v. Camenisch,* 451 U.S. 390, 395 (1981)). Accordingly, it is widely recognized, including in the Tenth Circuit, that hearsay is permissible in a preliminary injunction. *See, e.g., SEC*

[1] In their Motion to Strike, Defendants mostly fail to specify which challenged statements are speculative, lack personal knowledge or are based on impermissible hearsay and instead make sweeping statements such as, "[e]very statement in the BERT and OU-AAUP affidavits relied upon by the Plaintiffs in their Preliminary Injunction Motion is either a belief or inadmissible hearsay," Mot. at 4, when that is clearly not the case. Nevertheless, Plaintiffs have endeavored to respond to the few specific objections raised by Defendants and ask the Court to wholly dismiss Defendants' general objections.

v. Cherif, 933 F.2d 403, 412 n.8 (7th Cir. 1991) ("hearsay can be considered in entering a preliminary injunction."), *cited with approval in Heideman*, 348 F.3d at 1188; *Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010) (courts may consider hearsay in preliminary hearings and citing six circuit courts); *Pharmanex, Inc. v. HPF*, *LLC*, 221 F.3d 1352, No. 99-4116, 2000 WL 703164, at *3 (10th Cir. Apr. 20, 2000) (unpublished) (citing James W. Moore, Moore's Federal Practice § 65.23 (1999) ("in the context of a preliminary injunction hearing the court may consider sworn proof including affidavits, including those based upon information and belief or hearsay (though it may affect the weight given))").[2] Thus, while Defendants' arguments concerning hearsay and lack of personal knowledge[3] may go to the *weight* of the evidence in responding to Plaintiffs' Motion for Preliminary Injunction, they are not grounds for excluding the declarations.

[2] *See also, Pillow Menu, LLC v. Super Effective, LLC*, No. 20-cv-03638-STV, 2021 WL 3726205, at *16 (D. Colo. Aug. 19, 2021) (citing *Pharmanex*, 221 F.3d 1352 at *3) (same); *Dunkin' Donuts Inc. v. Sharif, Inc.*, No. 03-925, 2003 WL 24128060 (D. New Mexico Nov. 20, 2003) (citing, in part, Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2949 (2d. 1990)).

[3] *See, e.g.,* Mot. at 3 (challenging BERT Decl. ¶¶ 16–17, statements by declarant BERT Community Projects Coordinator Lilly Amechi on the impact of H.B. 1775 on students' degree programs and education based on information received from BERT member, Jamelia Reed); Mot. at 4–5 (challenging OU-AAUP Decl. ¶ 12, statements by declarant OU-AAUP President Michael Givel regarding instructions from the Dean's Office to a fellow OU-AAUP faculty member to not test on critical race theory among other statements based on information received from other AAUP members). Defendants' hearsay objections to these statements have been further mooted out due to the submission of declarations by Ms. Reed and the faculty member appended to Pls.' Reply to their Motion for Preliminary Injunction. *See* Second BERT Decl. ¶ 11, ECF No. 66-1; John Doe Decl. ¶ 7, ECF No. 66-2.

B. Challenged Statements in BERT's and OU-AAUP's Declarations are Permissible and Reflect Facts and Substantiated Perceptions Based on the Organizational and Individual Experiences of Declarants

Second, Defendants' arguments that declarants' statements are speculative and mere beliefs fail to account for the personal knowledge that both lay witness declarants have developed through their dual roles and experiences as organizational representatives and respectively, as an OU student and faculty member. Additionally, Defendants fail to grasp the difference between an impermissible "belief" and permissible opinions and inferences. Even under the more stringent Federal Rules of Evidence (which do not apply here), Plaintiffs' challenged statements reflect the type of opinions and inferences that lay witnesses are permitted to testify where the opinions are (1) "rationally based on the perception of the witness," (2) "helpful to a clear understanding of the witness' testimony or the determination of a fact in issue," and (3) "not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." *United States v. Goodman*, 633 F.3d 963, 968 (10th Cir. 2011) (quoting Fed. R. Evid. 701);.[4] Here, and as shown below, each declarant establishes the foundation for each statement, whether as a fact or a perception, based on both their experiences as organizational representatives for BERT and OU-AAUP, respectively, and as individual students and faculty members.

[4] *See also Bowdish v. Federal Exp. Corp.*, No. CIV-07-400-D, 2008 WL 4361258 (W.D. Okla. Sept. 17, 2008); *James River Ins. Co. v. Rapid Funding, LLC*, 658 F.3d 1207, 1214 (10th Cir. 2011) (finding that lay witnesses are allowed "to offer 'observations [that] are common enough'" and that may "'require … a limited amount of expertise, if any,'" under Rule 701) (alteration in original) (citation omitted). Moreover, Rule 602, which reiterates a personal knowledge requirement for lay witnesses, clarifies that such "knowledge is not an absolute but may consist of what the witness thinks he knows from personal perception." Advisory Comm. Notes, Fed. R. Evid. 602.

1. BERT Declaration, Lilly Amechi.

Lilly Amechi is a Black female OU student in her junior year and has served as the Community Projects Coordinator for BERT since March 2020. BERT Decl. ¶ 2, ECF No. 27-3. BERT was founded in 2019 as "an independent organization of Black student leaders" that formed in direct response to anti-Black incidents occurring on OU's campus. *Id.* at ¶ 3–4. As part of her work for BERT, Ms. Amechi has had the opportunity to work alongside some of BERT's co-founders to achieve its mission of helping "students access support and resources when they experience racism on campus," "hold[ing] the University accountable for creating an inclusive community," and "advocat[ing] on behalf of Black students at [OU] to the administration." *Id.* at ¶¶ 3, 16.

During Ms. Amechi's time as BERT's Community Projects Coordinator, students "faced additional racist incidents" on OU's campus in the fall of 2020. *Id.* at ¶ 6. The events included multiple professors using the n-word in class. *Id*. In response to these harmful incidents, BERT hosted school-wide town halls to solicit feedback from students and created a list of demands for the University to consider, which included the creation of "a mandatory Diversity, Equity, and Inclusion (DEI) course for all incoming freshman and transfer students." *Id.* As a BERT Board Member, Ms. Amechi was intimately involved with working with the University over the course of a year to create such a program. *Id.* at ¶¶ 7–11. Ms. Amechi also draws from her personal experiences as a student to support her declaration. *Id.* at ¶¶ 1–2, 11–14, 17–18.

Defendants' failure to grasp the extent of Ms. Amechi's experiences as a BERT member and as a student lead them to wrongly assert that Ms. Amechi's declaration lacks

the foundational support for several statements related to the threats created by House Bill 1775 and OU's implementation of the Act. Mot. at 2–3. For example, based on Ms. Amechi's personal knowledge as a member of BERT, which has heard directly from students through townhalls and other forums, BERT Decl. ¶¶ 6–7, she can attest to her own experiences of feeling unsafe on campus, and to the fact that BERT members and others share similar concerns with safety. *Id.* at ¶¶ 12, 15. Contrary to Defendants' motion, these statements are not mere speculation, and nothing in the rules or case law require BERT to list physical "attempted attacks" to justify their fear. *See* Mot. at 3; BERT Decl. ¶¶ 16–17. Likewise, Ms. Amechi can attest to her own experiences, perceptions, and opinions that she and other BERT members have felt safer on campus when the University was permitted to actively educate and train students on issues of DEI, such as when OU was facilitating the mandatory Gateways to Belonging program.

Based on her experience as a female student of color and her personal knowledge acquired as a member of BERT, Ms. Amechi perceived that students who are unaware of or disregard DEI- and sexual harassment-related issues at-large do not often seek out education on the topic. *See* BERT Decl. ¶¶ 12–13. And based on Ms. Amechi's personal experience and her common knowledge as a member of BERT, OU's decision to remove mandatory courses, pursuant to H.B. 1775, now reverts the campus community to an environment where students are inconsistently prepared to address these issues in real life. *See id.* at ¶¶ 17–18. These "perceptions" based on her role as a BERT board member lay a sufficient foundation for her declaration.

Statements in the declaration further provide the Court with concrete examples of students, like BERT Co-Founder Jamelia Reed and organizational representative Ms. Amechi, who reasonably fear that their educational experience will be detrimentally affected by the enforcement of H.B. 1775. *See id.* at ¶¶ 16–17. For example, Ms. Reed, as an African American Studies major, is concerned that H.B. 1775 will prevent her teachers from engaging in necessary conversations about race and gender, or otherwise chill their efforts to have such discussions. *Id.* at ¶ 16; *see also* Second BERT Decl. ¶ 11. This well-founded fear is based on some of H.B. 1775's proponents specifically seeking to ban the teaching of critical race theory in state-funded schools, Compl. ¶¶ 117-120, ECF No. 50, which is a "foundational" concept in the field of African American Studies. BERT Decl. ¶ 16. And these statements find further support in the declaration of OU-AAUP. Accordingly, this Court should deny Defendants' Motion to Strike BERT's declaration.

2. OU-AAUP Declaration, Michael Givel.

Defendants similarly argue that the OU-AAUP declaration lacks personal knowledge from declarant, Michael Givel. Mot. at 3. However, like Ms. Amechi's declaration, each statement in the OU-AAUP declaration is supported by the personal knowledge acquired by Mr. Givel as President of the OU-AAUP and as an OU faculty member. *See* OU-AAUP Decl. ¶¶ 1–32, ECF No. 27-4.

Mr. Givel is a tenured professor of Political Science at the University of Oklahoma and has served as the President of the OU-AAUP for over a year. *Id.* at ¶¶ 2, 25. The OU-AAUP chapter seeks to "defend academic freedom at OU and throughout academe", *id.* at ¶ 4, as well as to advance the goals of the national non-profit to "define professional values,

promote the economic security of academic professionals, and ensure higher education's contribution to the common good." *Id.* at ¶ 3. The organization has 57 members of diverse races, ethnicities, genders, and sexual orientations. *Id.* at ¶ 4. As President of the OU-AAUP, Mr. Givel is privy to unique concerns raised to him by faculty and academic staff, including the statements given in his declaration, as it is necessary to advance their collective interests. *Id.*

Defendants first challenge Mr. Givel's statements referencing a directive from OU's Dean's Office of the College of Arts and Sciences to an anonymous instructor and member of the OU-AAUP to stop testing on critical race theory. Mot. at 4; OU-AAUP Decl. ¶ 12. Defendants claim that Mr. Givel is "not in a position to acquire personal knowledge of what instructions or discipline his coworkers receive." Mot. at 5. Defendants are wrong.

First, as noted above in Section I(A), this is a preliminary hearing where hearsay is allowed.[5] Second, the anonymous instructor is submitting his declaration with Plaintiffs' Reply on the Motion for Preliminary Injunction so the issue is moot. *See* n. 3. Third, Defendants fail to account for Mr. Givel's observations and the information he has learned in his position as OU-AAUP President, in which capacity he submits this declaration. Here, Mr. Givel directly learned of the instruction from the anonymous instructor in his role as the OU-AAUP President, where he is tasked with "protect[ing] and advance[ing]

[5] The same applies to Mr. Givel's other statements made in his capacity as OU-AAUP President and based on his own personal knowledge as a faculty member *See, e.g.,* OU-AAUP Decl. ¶¶ 4–11, 13–32.

the...interests of all faculty." OU-AAUP Decl. ¶ 4. As such, Mr. Givel is privy to faculty complaints regarding threats to academic freedom. *See id.* at ¶¶ 4, 6–26.

To the extent that Defendants are concerned that the statements cannot be sufficiently corroborated because the instructor is not named, Mr. Givel took additional steps to substantiate the statements by identifying the classes this instructor taught. OU-AAUP Decl. ¶ 12. Although the name of the instructor remains anonymous presently for fear of retaliation, *see id.*, Defendants have not argued—and cannot plausibly argue—that they are unable to identify the dean responsible for the instruction and have failed to present any evidence disputing Mr. Givel's statements.

Furthermore, the challenged statements are admissible as a statement against the OU Board's interest. Again, although the rules of evidence do not apply, under the rules the Dean's Office's instruction is a statement against interest made by the party's agent or employee on a matter within the scope of that relationship and while it existed. Fed. R. Evid. 801(d)(2)(D). Defendants do not and cannot argue that such a statement was not within the scope of the Dean's Office's role and such statement is admissible. Finally, the Dean's Office's instruction would be admissible under Rule 801(c) because instructions are neither true nor false and thus are not considered to be offered for their truth. *See, e.g.*, *U.S. v. Shepherd*, 739 F.2d 510 (10th Cir. 1984).

C. Defendants' Failure to Properly Construe Plaintiffs' Claims Proves Fatal to its Relevancy Objections

Defendants also wrongfully malign the OU-AAUP declaration on apparent relevancy grounds because it purportedly does not offer "evidence that anyone has been

disciplined or terminated for offering courses and materials or teaching subjects on race, gender, or sexual orientation." Mot. at 3. This is a fundamental misunderstanding of Plaintiffs' First Amendment claims against the OU Board. Plaintiffs seek to prevent the enforcement of a law that seeks to curtail academic freedom and limits access to information in the classroom. *See generally* Compl.; Pls.' Mot. for Prelim. Inj. § III(A)(2)-(3), ECF No. 27. As even Defendants acknowledge in their Motion to Dismiss, to maintain a First Amendment challenge, "Plaintiffs do not have to wait for a law to be enforced against them…." Mot. to Dismiss at 7, ECF No. 51 (citing *D.L.S. v. Utah*, 374 F.3d 971, 975 (10th Cir. 2004)). As discussed in Mr. Givel's declaration, OU-AAUP members are currently experiencing a very real chilling effect on their coursework. *See* OU-AAUP Decl. ¶¶ 5–26. The statements in the OU-AAUP declaration are clearly relevant.

This Court should deny OU Board's Motion to Strike the declaration of OU-AAUP.

II. THIS COURT SHOULD DENY THE OU BOARD'S MOTION TO STRIKE PORTIONS OF DR. MARVIN LYNN'S EXPERT DECLARATION AS IT IS WHOLLY ADMISSIBLE UNDER *DAUBERT*

The OU Board also challenges certain portions of Dr. Marvin Lynn's expert declaration addressing OU's decision to make sexual harassment training optional. They allege that Dr. Lynn lacks the expertise to opine on such matters, Mot. at 6–7, ignoring his substantial professional experience as a higher education administrator among other roles. Because Dr. Lynn's qualifications plainly meet the contours of *Daubert*, Defendants' motion must be denied.

Under *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* "an expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or

observation." 509 U.S. 579, 592 (1993). "Although an expert opinion must be based on 'facts which enable [her] to express a reasonably accurate conclusion as opposed to conjecture or speculation, ... absolute certainty is not required.'" *Gomez v. Martin Marietta Corp.*, 50 F.3d 1511, 1519 (10th Cir. 1995) (quoting *Jones v. Otis Elevator Co.,* 861 F.2d 655, 662 (11th Cir. 1988)). Moreover, a "witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." *Daubert*, 509 U.S. at 588 (quoting Fed. R. Evid. 702). Notably, "knowledge derived from previous professional experience falls squarely within the scope of Rule 702 and thus by definition outside of Rule 701." *James River Ins. Co. v. Rapid Funding, LLC*, 658 F.3d 1207, 1215 (quoting *United States v. Smith,* 640 F.3d 358, 365 (D.C. Cir. 2011)). And while credentials alone are insufficient to support an affidavit, Dr. Lynn has also presented research and prior professional experience to support his conclusions. *See Ho v. Michelin N. Am., Inc.,* 520 F. App'x 658, 664 (10th Cir. 2013) ("[w]e have no quarrel with the proposition that experience may qualify an expert").

Defendants aver that Dr. Lynn lacks experience and expertise on sexual harassment and LGBTQ+ issues. *See* Mot. at 6–7. These conclusory arguments fail to account for his substantial professional experiences engaged in interdisciplinary work and related experiences as a university administrator.

Dr. Lynn has worked extensively in the field of education for almost 30 years, is currently a professor at Portland State University, and previously served as its Dean of the College of Education. Lynn Decl. ¶ 1, ECF No. 27-10. His professional experience includes working as a professor and full-time academic dean in Colleges of Education in Indiana,

Illinois, Wisconsin, Maryland, and Oregon for the past two decades. *Id.* As dean at Portland State, for example, Dr. Lynn managed all aspects of the college, including faculty review, vision setting, external partnerships, and public relations. *Id.* at 16. Dr. Lynn was involved with hiring diverse employees, and also hired the inaugural Coordinator for Equity, Diversity & Inclusion at Portland State University. *Id.* at 15–16. He also presently serves on Portland State's Leadership & Infrastructure Taskforce for the Office of Global Diversity & Inclusion where he works with leaders from across campus to develop a set of strong recommendations for ensuring that university infrastructure would support the implementation of an equity plan. *Id.* In these varied roles, Dr. Lynn has had many professional experiences on multi-disciplinary, inclusive issues including issues related to sex, sexual harassment, and gender.

As he states in support of his opinion on the relationship between mandatory sexual harassment training and its connection to overall safer environments for women and girls, his substantial experience and observations as a university administrator have shown:

> an overall reduction in the number of complaints from faculty, staff, and students about discrimination and harassment along the lines of race, gender, and sexuality once faculty and staff became more actively engaged in professional development designed to increase their knowledge about various forms of discrimination that exist and how to avoid it. While I observed that there were always individuals who were not comfortable participating in training on gender discrimination, they were less likely to engage in discriminatory behavior and practices. As a result, employee complaints regarding other employees ceased to exist.

Lynn Decl. ¶ 33.

Dr. Lynn has also taught graduate courses in multicultural education and urban education, *id.* at ¶ 1, and received the American Educational Research Association Award

for Interdisciplinary Analysis, for his research drawing on multiple academic disciplines. *Id.* at 14. Dr. Lynn has authored, co-authored, and edited dozens of publications on the topics of race, ethnicity, class and gender, including serving as co-editor of "Theorizing race, class, gender & sexuality in critical race studies in education research" and as co-author of "Thoughts and ideas on the intersectionality of identity," both published in The Journal of Educational Foundations. *Id.* at 18, 22.

Dr. Lynn's broad and deep "knowledge derived from previous professional experience falls squarely within the scope of Rule 702," and helps inform his expert opinion on sexual harassment and LGBTQ+ issues. *James River Ins. Co.*, 658 F.3d at 1215 (quoting *Smith*, 640 F.3d at 365)).

Defendants next question Dr. Lynn's expert analysis when concluding that "making the DEI course and sexual harassment training voluntary will make the campus 'less safe, welcoming, and engaging for all students but especially marginalized students.'" Mot. at 6 (quoting Lynn Decl. ¶ 37). Defendants claim Dr. Lynn's conclusion is unsupported because his examination of research on such curriculum and training "only points to the positive outcomes of offering such curriculum" and thus amounts to mere speculation. *Id.* at 6–7. This argument too fails. Dr. Lynn's expert conclusions are entitled to "testimonial latitude unavailable to other witnesses on the 'assumption that the expert's opinion will have a *reliable basis in the knowledge and experience of his discipline*.'" *Kumho Tire Co., Lmtd. v. Carmichael*, 526 U.S. 137, 148 (1999) (citing *Daubert,* 509 U.S. at 592) (emphasis added); *see e.g., United States v. Foust,* 989 F.3d 842, 845–46 (10th Cir. 2021) (finding that experience-based expertise can be helpful to evaluate such testimony). Notably,

Kumho stated that "[e]xperts of all kinds tie observations to conclusions through the use of what Judge Learned Hand called 'general truths derived…from specialized experience.'" *Kumho,* 526 U.S. at 148 (citation omitted)). And "where such testimony's factual basis, data, principles, methods, or their application are called sufficiently into question, … the judge must determine whether the testimony has 'a reliable basis in the knowledge and expertise of [the relevant] discipline.'" *Id.* (alteration in original) (quoting *Daubert,* 509 U.S. at 592).

Contrary to Defendants' argument, Dr. Lynn's statements are sufficiently based on "professional studies," "personal experience," and "employ[]…the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Id.* at 152. Defendants incorrectly allege that Dr. Lynn failed to examine sufficient research on "sexual harassment on college campuses," Mot. at 6. n. 1, and that Dr. Lynn lacked the expertise to infer that "making the DEI course and sexual harassment training voluntary will make the campus 'less safe…." Mot. at 6. Experts are permitted to make inferences based on their professional experience and other reliable information considered when making conclusions. *See Daubert,* 509 U.S. at 592. Dr. Lynn's extensive professional knowledge as a dean, like other kinds of non-scientific knowledge, fits squarely within the confines of Rule 702, making Dr. Lynn's prior professional knowledge relevant to his analysis. *See James River Ins. Co.*, 658 F.3d at 1215. And his experience as a faculty member, coupled with his research and the reliable research reviewed on the positive effects of sexual harassment training in the workplace, enables him to make inferences as to the effects such changes could pose. Expert opinions need not be absolute, *see Gomez*,

50 F.3d at 1519, and the more appropriate challenge would be for Defendants to present their own expert— which they failed to do—and not seek to exclude Dr. Lynn's opinions on this matter.

Furthermore, this is a not a jury trial, where the courts tend to be more deferential in receiving and weighing testimony from experts, rather than excluding it. *See Att'y Gen. of Oklahoma v. Tyson Foods, Inc.*, 565 F.3d 769, 779 (10th Cir. 2009); *Cyprus Amax Mins. Co. v. TCI Pac. Commc'ns, Inc.*, No. 11-CV-0252-CVE-PJC, 2014 WL 693328 (N.D. Okla. Feb. 21, 2014) (quoting *In re Salem,* 465 F.3d 767, 777 (7th Cir. 2006) ("Where the gatekeeper and the factfinder are one—that is, the judge—the need to [determine whether expert testimony is admissible] prior to hearing the testimony is lessened.")); *see also SFF-TIR, LLC v. Stephenson*, 250 F. Supp. 3d 856, 1000 (N.D. Okla. 2017) (citing *United States v. Gomez*, 67 F.3d 1515, 1526 (10th Cir. 1995) ("Courts should, under the Federal Rules of Evidence, liberally admit expert testimony."). This Court should deny Defendants' Motion to Strike portions of Dr. Lynn's declaration.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully urge this Court to deny OU Board Defendants' Motion to Strike.

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Respectfully submitted,

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