

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.

FILED
JUN 10 2021
In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CV-2021-770

PETITION FOR RELIEF FOR
VIOLATIONS OF THE OKLAHOMA OPEN RECORDS ACT

Plaintiffs The Sustainable Journalism Foundation *d/b/a* NonDoc Media and William W. Savage III (collectively "Plaintiffs"), by and through their undersigned counsel, petition this Court pursuant to the Oklahoma Open Records Act ("ORA"), Okla. Stat. tit. 51, §§ 24A.1-24A.32, for (1) a declaration of the rights and responsibilities of The State of Oklahoma *ex rel.* Board of Regents of the University of Oklahoma ("Defendant") as to the public records sought by Plaintiffs; (2) an order requiring Defendant to immediately conduct an adequate search for records and enjoining Defendant from denying access to specific public records; and (3) a writ of mandamus pursuant to Okla. Stat. tit. 12, §§ 1451-1462 directing Defendant to produce the requested public records.

In support of this Petition, Plaintiffs allege and state the following:

PARTIES

1. Plaintiff The Sustainable Journalism Foundation *d/b/a* NonDoc Media ("NonDoc") is a nonprofit media company that produces news content for "the public good."

NonDoc makes its content freely and openly available on its website (nondoc.com) and various social media platforms.

2. Plaintiff William W. Savage III (“Savage”), also known in a professional capacity as Tres Savage, is a reporter and Editor in Chief of NonDoc.

3. Defendant the State of Oklahoma *ex rel.* Board of Regents of the University of Oklahoma is the governing body of the University of Oklahoma and a “public body” within the meaning of the ORA. Okla. Stat. tit. 51, § 24A.3(2).

STATEMENT OF FACTS

A. Background Facts

4. The University of Oklahoma (the “University”) is a public research university based in Norman, Oklahoma.

5. David Boren (“Boren”) served as the 13th president of the University from 1994 until his retirement on June 30, 2018. After his retirement, Boren continued to teach political science at the University while he enjoyed emeritus status and other benefits such as office space, football tickets, club membership, parking privileges, and an assistant. *See* Sean Murphy, *University of Oklahoma: Resignation Ends Ex-President Probe*, AP (June 12, 2019), <https://apnews.com/article/49a8fca716714b628f20c009d1952980>.

6. Beginning in 1999, while Boren was president, the University intentionally inflated the percent of alumni donors it reported to U.S. News & World Report (“U.S. News”). *See* Scott Jaschik, *Oklahoma Gave False Data for Years to ‘U.S. News,’ Loses Ranking*, Inside Higher Ed (May 28, 2019), <https://www.insidehighered.com/admissions/article/2019/05/28/university-oklahoma-stripped-us-news-ranking-supplying-false> [https://perma.cc/X83T-KFBM]. Alumni giving counts for 5

percent of the methodology in the rankings of “Best Colleges” published annually by U.S. News, which is used by many high school students to help them decide where to go to college. *Id.* As a result of the intentional misreporting, the University was removed from U.S. News’ “Best Colleges” ranking and several others for the 2019 cycle. *Id.*

7. In 2018, the University hired Jones Day, a private law firm, to conduct an internal review of the decades-long misreporting of alumni giving data to U.S. News. *See* Nick Hazelrigg, *OU Employs Law Firm to Investigate Misreporting of Alumni Donations During Boren Tenure*, *OU Daily* (last updated Oct. 18, 2019), https://www.oudaily.com/news/ou-employs-law-firm-to-investigate-misreporting-of-alumni-donations/article_36be23c6-fcd0-11e8-bc12-1f07baf0b20a.html [https://perma.cc/3JKL-4GZM].

8. On February 14, 2019, it was reported that the scope of the University’s internal review had been expanded to include allegations of whether Boren sexually harassed aides. *See* Nolan Clay, *Boren Under Investigation for Sexual Harassment*, *The Oklahoman* (last updated Feb. 14, 2019), <https://www.oklahoman.com/article/5622885/boren-under-investigation-for-sexual-harassment> [https://perma.cc/GFN8-P2VR].

9. Approximately six weeks later, in March of 2019, NonDoc published detailed allegations of sexual battery made by Jess Eddy (“Eddy”), a University graduate and former University employee, involving Boren and another former University official, Jim “Tripp” Hall III (“Hall”). *See* Tres Savage, *OU Graduate Alleges Sexual Battery by David Boren, Tripp Hall*, *NonDoc* (Mar. 26, 2019), <https://nondoc.com/2019/03/26/ou-grad-alleges-david-boren-tripp-hall-sexual-battery/> [https://perma.cc/VRC2-YJFN].

10. As reflected in NonDoc’s reporting, an excerpt of a report created for the University by Jones Day after Eddy spoke with investigators about his accusations against Boren

stated that investigators “ultimately assessed Mr. Eddy to provide generally credible information.” Tres Savage, *Jones Day Assessment: Jess Eddy ‘Generally Credible’ on Boren Allegation*, NonDoc (May 28, 2019), <https://nondoc.com/2019/05/28/jones-day-assessment-jess-eddy-generally-credible-on-boren-allegation/> [https://perma.cc/MD5Z-QPQ8].

11. Also in March of 2019, the Oklahoma State Bureau of Investigation reportedly began looking into the allegations against Boren and Hall, but the special counsel overseeing that investigation ultimately made the decision in October of 2020 “to not seek a Grand Jury criminal indictment relative to Boren’s and Hall’s alleged wrongful conduct while they were employed by the University of Oklahoma.” See Nolan Clay, *No Indictments Coming for David Boren, Tripp Hall*, The Oklahoman (Oct. 21, 2020), <https://www.oklahoman.com/story/news/columns/2020/10/21/no-indictments-coming-for-david-boren-tripp-hall/304583007/> [https://perma.cc/T55L-FNEB].

12. Boren announced his resignation from the University on June 12, 2019, severing all remaining ties between himself and the University. See Nolan Clay, *Boren Cuts Ties With the University of Oklahoma*, The Oklahoman (June 13, 2019), <https://www.oklahoman.com/article/5633768/boren-cuts-ties-with-the-university-of-oklahoma> [https://perma.cc/4Q3X-3UAJ]. The resignation also brought the University’s personnel matter against Boren to a close. *Id.*

13. The University has spent more than \$1 million investigating the accusations of sexual misconduct involving Boren and the misreporting of information to U.S. News while Boren was president of the University; more than \$1,030,000 has been paid to Jones Day. See Nolan Clay, *Cost of Two Investigations at OU Tops \$1 Million*, The Oklahoman (last updated

June 6, 2019), <https://www.oklahoman.com/article/5633220/cost-of-two-investigations-at-ou-tops-1-million> [<https://perma.cc/K7KY-4RHQ>].

14. Several public officials have called for the University to release more information about the allegations of sexual misconduct against Boren, including current United States Senator James Lankford, former Governor and current University Regent Frank Keating, and state legislator and education appropriations leader Representative Mark McBride. *See* Tres Savage, *James Lankford: 'There Will Have to be a Report' on Boren Investigation*, NonDoc (Oct. 8, 2019), <https://nondoc.com/2019/10/08/james-lankford-wants-report-boren-investigation/> [<https://perma.cc/L8S8-ZBCA>].

15. Eddy, one of the alleged victims, also has stated that Boren's "actions belong in the sunlight of public scrutiny." *See* Tres Savage, *Jones Day Assessment: Jess Eddy 'Generally Credible' on Boren Allegation*, NonDoc (May 28, 2019), <https://nondoc.com/2019/05/28/jones-day-assessment-jess-eddy-generally-credible-on-boren-allegation/> [<https://perma.cc/MD5Z-QPQ8>].

16. SoonerPoll, Oklahoma's only independent, non-partisan public opinion polling firm, asked poll participants in July of 2019 whether the University has "released enough details" about the findings of its internal investigation into allegations of sexual misconduct by Boren and found that 58.8% of polling participants thought the University "should release more" of the investigative report. *See* Matt Patterson & Tres Savage, *Among SoonerPoll Results, 56% Support Medicaid Expansion* (Aug. 12, 2019), <https://nondoc.com/2019/08/12/soonerpoll-survey-shows-56-support-for-medicaid-expansion/> [<https://perma.cc/W4B6-LFDH>].

17. As of the filing of this Petition, Jones Day's findings have not been made public, aside from the excerpt that NonDoc published in May of 2019.

B. Plaintiffs' Oklahoma Open Records Act Requests

18. On May 1, 2019, Savage, in his role as a journalist for 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” (hereinafter the “Request”). A true and correct copy of Plaintiffs’ Request is attached as **Exhibit A**.

19. 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.” A true and correct copy of the University’s response is attached as **Exhibit B**.

20. Plaintiffs’ counsel contacted the University via email on May 26, 2021, asking that the University reconsider its position and release the requested records to Plaintiffs, or further detail its reasons for its denial. A true and correct copy of Plaintiffs’ counsel’s correspondence to the University is attached as **Exhibit C**.

21. On June 4, 2021, a representative and Associate General Counsel of the University, Heidi Long, responded to Plaintiffs’ counsel stating in part the “University is in receipt of your correspondence dated May 26, 2021. We will respond to that correspondence on or before June 11, 2021.” A true and correct copy of the University’s June 4 response is attached as **Exhibit D**.

22. As of the filing of this Petition, the University has not made any records available to Plaintiffs in response to the Request or sent further correspondence to Plaintiffs’ counsel.

CAUSE OF ACTION

Violation of the ORA for Failure to Conduct an Adequate Search for Responsive Records and Unlawful Denial of Plaintiffs' Request and Withholding of Responsive Records

23. Plaintiffs repeat, reallege, and incorporate the allegations set forth in paragraphs 1 to 22 as though fully set forth herein.

24. The purpose of the ORA is to ensure and facilitate the public's right of access to, and review of, government records so they may efficiently and intelligently exercise their inherent political power. Okla. Stat. tit. 51, § 24A.2.

25. Under the ORA, "all records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction." *Id.* § 24A.5.

26. Unless a record falls within an exemption or exception to the ORA, the record must be made available for public inspection. *See Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City*, 2003 OK 65, ¶12, 73 P.3d 871 (citing *Merrill v. Oklahoma Tax Comm'n*, 1992 OK 53, ¶8, 831 P.2d 634).

27. Because of the strong public policy allowing public access to governmental records, the ORA's provisions must be construed to allow access unless an exception clearly applies. *Okla. Ass'n of Broads., Inc. v. City of Norman*, 2016 OK 119, ¶15, 390 P.3d 689, 694; *Citizens Against Taxpayer Abuse, Inc.*, 2003 OK 65, ¶12.

28. The burden is at all times on the public body seeking to deny access to show a record should not be made available. *Id.*; *see also* Okla. Stat. tit. 51, § 24A.2.

29. The records sought by Plaintiffs through the Request are records of public bodies and public officials, as defined by the ORA. *Id.* § 24A.3.

30. Defendant wrongfully refused to conduct an adequate search for records responsive to Plaintiffs' Request, in violation of its obligations under the ORA. *See* Ex. B.

31. Defendant also wrongfully denied Plaintiffs' Request, stating "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. B.

32. Okla. Stat. tit. 51, §§ 24A.5(1)(a), 24A.7(A)(1), and 24A.12 are not applicable to the records sought by Plaintiffs' Request and/or were improperly and unlawfully cited to deny Plaintiffs' Request.

33. Defendant wrongfully denied Plaintiffs' Request without exercising the appropriate discretion required by Okla. Stat. tit. 51, § 24A.7(A)(1), pursuant to which the records sought by the Request must be released.

34. Defendant's failure to conduct an adequate search for records as well as their denial and withholding of records requested by Plaintiffs is an abrogation of their duties under the ORA and a violation of the ORA.

REQUESTED RELIEF

Therefore, Plaintiffs respectfully request that the Court pursuant to Okla. Stat. tit. 51, § 24A.17(B):

A. Declare that the records sought by Plaintiffs are public records for the purposes of the ORA and that Plaintiffs are entitled to an adequate search for records in response to Plaintiffs' Request and prompt disclosure of said public records;

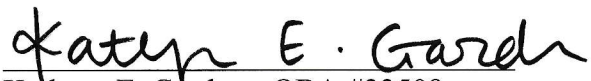
B. Grant an injunction requiring Defendant to immediately conduct an adequate search for records in response to Plaintiffs' Request and enjoining Defendant from denying access to said public records;

C. Issue a writ of mandamus pursuant to Okla. Stat. tit. 12, §§ 1451-1462 requiring Defendant to produce the requested public records;

D. Award Plaintiffs reasonable attorneys' fees in this action, pursuant to Okla. Stat. tit. 51, § 24A.17(B)(2); and

E. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

A handwritten signature in black ink that reads "Kathryn E. Gardner". The signature is written in a cursive, flowing style.

Kathryn E. Gardner, OBA #33509
Reporters Committee for Freedom of the Press
110 S. Hartford Ave., Ste. 2524
Tulsa, OK 74120
T: (918) 255-0060
kgardner@rcfp.org
Counsel for Plaintiffs
NonDoc and Savage

Exhibit A

Attention: Lauren Brookey
University of Oklahoma
660 Parrington Oval
Norman, OK, 73109

Wednesday, May 1, 2019

To: Ms. Brookey or the subsequent party in charge,

My name is William W. Savage III (Tres), editor in chief of NonDoc.com. We are a news organization in Oklahoma, and I am hereby requesting the following public records under the Oklahoma Open Records Act:

- Any and all reports created by the law firm Jones Day for the University of Oklahoma relating to David Boren or Jim "Tripp" Hall.

If possible, I request digital copies of this information in PDF or Excell format. Please contact me at (405) 808-0308 with any questions regarding this request. You may also reach me by e-mail at Savage@nondoc.com. Any estimate you can provide as to the timeframe for completion would be greatly appreciated.

Thank you very much for your time and effort.

Sincerely,

William W. Savage III

A handwritten signature in black ink, appearing to read "William W. Savage III". The signature is written in a cursive, flowing style with a horizontal line at the end.

Exhibit B

From: **Open Records** <openrecords@ou.edu>
Date: Wed, Jun 12, 2019 at 9:59 AM
Subject: OU Open Records Response - RE: Open Records Request
To: savage@nondoc.com <savage@nondoc.com>, Open Records
<openrecords@ou.edu>

Good morning Tres,

This University is in receipt of your Open Records Act request below. Your request seeks records related to a specific employee. The University will not undertake a search for records that would not be released even if they exist. 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. Please feel free to contact this office if you would like to clarify your request or have any questions or concerns.

(19-0583)

Thank you,

Open Records Office
University of Oklahoma
905 Asp Ave, Rm 114
Norman, OK 73019
(405) 325-0202
(405) 325-9034 (fax)
openrecords@ou.edu

Exhibit C

REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020
Washington, D.C. 20005
(202) 795-9300
www.rcfp.org

Bruce D. Brown
Executive Director
bbrown@rcfp.org
(202) 795-9301

STEERING COMMITTEE CHAIRMAN

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Gibson, Dunn & Crutcher LLP

MASSIMO CALABRESI
Time Magazine

MANNY GARCIA
Austin American-Statesman

EMILIO GARCIA-RUIZ
San Francisco Chronicle

JOSH GERSTEIN
POLITICO

ALEX GIBNEY
Jigsaw Productions

SUSAN GOLDBERG
National Geographic

JAMES GRIMALDI
The Wall Street Journal

LAURA HANDMAN
Davis Wright Tremaine

DIEGO IBARGÜEN
Hearst

KAREN KAISER
The Associated Press

DAVID LAUTER
The Los Angeles Times

MARGARET LOW
WBUR

JANE MAYER
The New Yorker

COLLEEN MCCAIN NELSON
The McClatchy Company

MAGGIE MULVIHILL
Boston University

JAMES NEFF
The Philadelphia Inquirer

NORMAN PEARLSTINE
New York, New York

THOMAS C. RUBIN
Stanford Law School

CHARLIE SAVAGE
The New York Times

JENNIFER SONDAG
Bloomberg News

NABIHA SYED
The Markup

ADAM SYMSON
The E.W. Scripps Company

PIERRE THOMAS
ABC News

SAUNDRA TORRY
Freelance

VICKIE WALTON-JAMES
NPR

JUDY WOODRUFF
PBS/The NewsHour

HONORARY LEADERSHIP COUNCIL

CHIP BOK
Creators Syndicate

DAHLIA LITHWICK
Slate

TONY MAURO
American Lawyer Media, ret

ANDREA MITCHELL
NBC News

CAROL ROSENBERG
The New York Times

PAUL STEIGER
ProPublica

*Affiliations appear only
for purposes of identification.*

May 26, 2021

The University of Oklahoma

Delivered via email to: regentspurcell@ou.edu, regentkeating@ou.edu,
regentcawley@ou.edu, regentalbert@ou.edu, regentshirley@ou.edu,
regentstevenson@ou.edu, regentnagel@ou.edu, regentholloway@ou.edu,
agollahalli@ou.edu, openrecords@ou.edu

Re: Reconsideration of Oklahoma Open Records Act request

To the University of Oklahoma Board of Regents and Open Records Office:

I represent NonDoc Media in connection with a request for public records sought by Tres Savage under the Oklahoma Open Records Act ("ORA"), Okla. Stat. tit. 51, §§ 24A.1-24A.32. NonDoc Media is a non-profit, award-winning media outlet in Oklahoma that works on behalf of the public interest. Mr. Savage is the Editor in Chief and a seasoned reporter at NonDoc Media, where he covers a variety of topics including education.

On May 1, 2019, Mr. Savage submitted an ORA request (a copy of which follows at page two) to the University of Oklahoma for "[a]ny and all reports created by the law firm Jones Day for the University of Oklahoma relating to David Boren or Jim 'Tripp' Hall."

The Open Records Office denied Mr. Savage's ORA request on June 12, 2019, citing Okla. Stat. tit. 51, §§ 24A.5(1)(a), 24A.7(A), and 24A.12. I respectfully ask you to reconsider your decision and release the requested records to Mr. Savage. If you remain firm in your original decision, please further detail your reasons for denial so that we may intelligently balance them against the public interest in these records.

Do not hesitate to reach out with any questions. Otherwise, I look forward to a response from you within ten days from the date of this letter. If we do not receive the requested records or a written response from you within ten days, we will accept this as a willful decision to withhold the requested public records. NonDoc Media and Mr. Savage reserve all rights in relation to this matter.

Thank you for your time and attention.

Respectfully,

Kathryn E. Gardner

Kathryn E. Gardner
Attorney | Local Legal Initiative Oklahoma
Reporters Committee for Freedom of the Press
110 S. Hartford Ave., Ste. 2524
Tulsa, OK 74120
(918) 255-0060
kgardner@rcfp.org

Attention: Lauren Brookey
University of Oklahoma
660 Parrington Oval
Norman, OK, 73109

Wednesday, May 1, 2019

To: Ms. Brookey or the subsequent party in charge,

My name is William W. Savage III (Tres), editor in chief of NonDoc.com. We are a news organization in Oklahoma, and I am hereby requesting the following public records under the Oklahoma Open Records Act:

- Any and all reports created by the law firm Jones Day for the University of Oklahoma relating to David Boren or Jim "Tripp" Hall.

If possible, I request digital copies of this information in PDF or Excell format. Please contact me at (405) 808-0308 with any questions regarding this request. You may also reach me by e-mail at Savage@nondoc.com. Any estimate you can provide as to the timeframe for completion would be greatly appreciated.

Thank you very much for your time and effort.

Sincerely,

William W. Savage III

A handwritten signature in black ink, appearing to read "William W. Savage III". The signature is stylized with a large "W" and "S", and a horizontal line at the end.

Exhibit D



The UNIVERSITY *of* OKLAHOMA®
OFFICE OF LEGAL COUNSEL

June 4, 2021

Ms. Kathryn Gardner
Reporters Committee for Freedom of the Press
110 S. Harford Ave., Ste. 2524
Tulsa, OK 74120

Re: Your Request for Reconsideration dated May 26, 2021

Dear Ms. Gardner:

The University is in receipt of your correspondence dated May 26, 2021. We will respond to that correspondence on or before June 11, 2021. Thanks for your courtesy.

Very truly yours,

A handwritten signature in cursive script that reads "Heidi Long".

Heidi J. Long
Associate General Counsel