No. 24-1476

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LEAH P. HOLLIS,

Plaintiff-Appellant,

v.

MORGAN STATE UNIVERSITY, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Maryland at Baltimore
Case No. 1:19-cv-03555, Hon. Lydia Kay Griggsby

REPLY BRIEF FOR PLAINTIFF-APPELLANT LEAH P. HOLLIS

Nathaniel Allen Deacon
Anshuman Siripurapu
Emma Watson
Student Counsel

Aderson B. Francois
CIVIL RIGHTS CLINIC
GEORGETOWN UNIVERSITY LAW CENTER

Regina Wang
Brian Wolfman
Becca Steinberg
GEORGETOWN LAW APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave., NW,
Suite 312
Washington, D.C. 20001
(202) 662-9549

Counsel for Plaintiff-Appellant Leah P. Hollis

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Introduction and Summary of Argument

The record provides ample support for a jury to find that Morgan State University discriminated against Dr. Hollis based on sex and then retaliated against her after she complained.

Starting with Dr. Hollis's wage- and sex-discrimination claims, MSU's central rejoinder is that Dr. Hollis was less qualified than the male professors in her department who MSU paid more and promoted sooner. But an evaluation of Dr. Hollis's qualifications using the objective criteria MSU itself routinely applied to other candidates shows otherwise. Ignoring this objective inquiry, MSU asks this Court to accept the subjective judgments of the very people Dr. Hollis accuses of discriminating against her. Taken to its logical conclusion, this position would render the EPA and Title VII unenforceable whenever evaluation of job qualifications and performance involves any degree of subjectivity. Caselaw—and common sense—reject that proposition.

MSU's other attempts to defeat Dr. Hollis's sex-discrimination claims also fail. MSU maintains that her 2016 promotion application was tardy, but a jury could find that explanation false. MSU's timeliness and exhaustion defenses fare no better. Dr. Hollis has consistently presented her sex-discrimination claims both in the original complaint and before the EEOC, so the claims in her amended complaint both relate back and are exhausted.

A jury should also decide whether MSU retaliated against Dr. Hollis when it took the unusual step of demoting her from tenure-track professor to at-will employee following her discrimination complaints. MSU in effect argues that its own foot-dragging in processing her appeal precludes a retaliation finding because too much time elapsed between the protected activity (her complaints) and the adverse action (her demotion). That, too, defies caselaw and common sense.

Argument

I. Summary judgment on Dr. Hollis's wage-discrimination claims should be reversed.

A. Disputed facts preclude summary judgment on Dr. Hollis's EPA and MEPEWA claims.

MSU does not dispute that Dr. Hollis made out a prima facie case of wage discrimination. It instead focuses only on its defense that a "factor other than sex" explains the salary gap between her and the male professors in her department. Resp. Br. 47, 49. For this defense to succeed at summary judgment, MSU must "prove[] [it] so convincingly that a rational jury could not have reached a contrary conclusion." *EEOC v. Md. Ins. Admin.*, 879 F.3d 114, 121 (4th Cir. 2018). MSU has failed to meet this burden because it (1) relies on disputed facts to justify the gap in starting salaries between Dr. Hollis and her comparators, and (2) uses the same disputed facts and an improperly narrow interpretation of the EPA to justify the persistence and growth of this wage gap.

1. MSU predicates its defense of the gap in starting salaries on disputed facts about the role qualifications played in the salary-setting process.

MSU says it set Dr. Hollis's starting salary lower than those of her male colleagues because they were more qualified for their positions. Resp. Br. 49. But whether an employer "in fact objectively weighed the comparators' qualifications as being more significant than the claimants' qualifications" is an "issue of fact for the jury." *Md. Ins. Admin.*, 879 F.3d at 123; *accord Fowler v. Land Mgmt. Groupe, Inc.*, 978 F.2d 158, 161 (4th Cir. 1992); *Keziah v. W.M. Brown & Son, Inc.*, 888 F.2d 322, 325 (4th Cir. 1989). A jury could find that Dr. Hollis's male comparators were not actually more qualified than she was and that their qualifications therefore do not explain the pay disparity.

Start with Drs. Davis and Gaulee, both hired as assistant professors in the Community College Leadership Program (CCLP). The sole justification MSU provides for their higher starting pay is their better "community college-related experience," which MSU defines to include both community-college work experience and having a specialized degree relevant to community colleges or higher-education administration. Resp. Br. 50. But a factual dispute exists over whether MSU actually gave this factor significant weight in setting salaries. MSU had no written policy saying it valued community-college experience, *see* JA161; the job posting did not mention community-college work experience as one of the eight listed qualifications, JA798; and none of the memoranda recommending starting salaries for CCLP assistant professors indicated that community-college experience was

given the greatest weight, JA895, 1335-41. Tellingly, the only evidence MSU cites is Dr. Prime's deposition, in which she testified not that she especially valued community-college experience but that she focused broadly on all qualifications described in the job posting. Resp. Br. 4, 49 (citing JA840-41).

A jury could discredit MSU's contention that it valued community-college experience so highly for another reason: It set CCLP assistant professor Dr. Bista's starting salary $10,000 higher than those of both Drs. Davis and Gaulee, two professors with stronger community-college experience. JA1292-96, 1336-41. When hired, Dr. Bista had never worked at a community college or published on the topic, JA2358-63, and his only community-college-related qualification was a specialized degree, JA2358, which Drs. Davis and Gaulee also had, JA1308, 2193. Yet Dr. Prime recommended, and MSU accepted, Dr. Bista's higher starting salary. JA1296, 1341.

Then there's Dr. Robinson. MSU provides three justifications for setting his starting salary higher than Dr. Hollis's. First, it cites his "higher rank" as an associate (rather than assistant) professor. Resp. Br. 51. But Drs. Robinson and Hollis were hired with similar qualifications for similar roles, *see* Opening Br. 21-22, and the EPA's mandate of equal pay for equal work cannot be circumvented by bestowing titles. "Job descriptions and titles, however, are not decisive. Actual job requirements and performance are controlling." *Brennan v. Prince William Hosp. Corp.*, 503 F.2d 282, 288 (4th Cir. 1974). Further, MSU's reliance on rank is self-defeating because MSU paid

Dr. Hollis less than Dr. Davis when she was an associate professor and he an assistant professor. *Compare* JA162, *with* JA77. Second, MSU cites Dr. Robinson's teaching and leadership experience, but a jury could find that Dr. Hollis's ten years of doctoral-level teaching experience and academic-leadership positions were at least equivalent to Dr. Robinson's "number of leadership positions" and "extensive" teaching experience. Resp. Br. 51; *see* Opening Br. 3, 27-28. Third, MSU relies on Dr. Robinson's "strong publication record," Resp. Br. 51, but a jury could find Dr. Hollis's four books and three journal articles superior or at least equivalent to his six book chapters and three articles published or in press, *see* Opening Br. 3; JA895, 1343-44.

MSU seeks to avoid the disputed facts by leaning on the "subjectivity" of the criteria it uses in setting salaries. Resp. Br. 48 (quoting *EEOC v. Aetna Ins.*, 616 F.2d 719, 726 (4th Cir. 1980)). But subjectivity of salary criteria weighs *against* summary judgment, *see Keziah*, 888 F.2d at 326, because jurors could reasonably disagree over whether a plaintiff or her comparator is more qualified absent objective standards. After all, "subjective ratings systems have a clear potential for abuse and may hide race or sex discrimination." *Wright v. Olin Corp.*, 697 F.2d 1172, 1181 (4th Cir. 1982).

MSU's reliance on *Aetna* is badly misguided. True, *Aetna* allowed the *use* of subjective criteria, but the Court underscored that the question whether those criteria justify a pay disparity is factual, not legal, by reviewing the district court's post-trial findings on the issue for clear error. 616 F.2d at 722;

see also Aka v. Wash. Hosp. Ctr., 156 F.3d 1284, 1298 (D.C. Cir. 1998) (en banc) ("[A]lthough employers may of course take subjective considerations into account in their employment decisions, courts traditionally treat explanations that rely heavily on subjective considerations with caution."). Dr. Hollis should have what the plaintiffs had in *Aetna*: a chance to prove her case at trial.

Finally, MSU observes that it paid other women more than the male comparators. Resp. Br. 49, 51. But that's irrelevant. "An EPA plaintiff is not required to demonstrate that males, as a class, are paid higher wages than females, as a class, but only that there is discrimination in pay against an employee with respect to one employee of the opposite sex." *Md. Ins. Admin.*, 879 F.3d at 122.

2. MSU's explanation for the persistence and growth of the wage gap is predicated on disputed facts and its erroneous understanding of the EPA's "factor other than sex" defense.

After setting Dr. Hollis's starting salary unlawfully low, MSU further violated the EPA by causing the pay gap to persist and grow throughout Dr. Hollis's tenure, even as she outperformed her male colleagues. *See* Opening Br. 14-15, 21-22; JA1447-58; JA1460-61. MSU never disputes that Dr. Hollis developed superior qualifications to her male colleagues while at MSU. Rather, it says that post-hiring events are irrelevant to Dr. Hollis's wage-discrimination claims because "salary differentials based on unequal starting salaries do not violate the Equal Pay Act if the employer can show

that the original disparity was based on a legitimate factor other than sex." Resp. Br. 52 (quoting *Hein v. Or. Coll. of Educ.*, 718 F.2d 910, 920 (9th Cir. 1983)). We've just explained (at 3-6) that a material dispute exists over the lawfulness of the original disparity. But even if it didn't, post-hiring qualifications would be relevant for two reasons.

First, the case MSU cites, *Hein*, does not preclude consideration of qualifications developed post-hiring when an employer has discretion over wage increases. *See Allender v. Univ. of Portland*, 689 F.Supp.2d 1279, 1288 (D. Or. 2010) (rejecting an argument based on *Hein* because the employer had discretion). Rather, discretionary merit raises must *actually* be based on merit, *Aetna,* 616 F.2d at 725, so qualifications developed post-hiring are relevant in assessing whether an employer *impermissibly* allowed an initial pay gap based on starting salaries to persist and grow. And, as Dr. Hollis's post-hiring qualifications show, MSU did just that by denying her requested (1) merit raises to bring her salary in line with male professors she was outperforming, *see* JA1460-61, 1452, and (2) promotions (with associated pay raises) that it granted to less qualified men, Opening Br. 21-22; *see infra* at 9-10, 20-22. Because this conduct caused a persistent and widening pay gap, it violated the EPA (and is also independently actionable as a Title VII failure-to-promote claim). *See Brinkley-Obu v. Hughes Training, Inc.*, 36 F.3d 336, 342-43, 353-54 (4th Cir. 1994); *see generally infra* at 8-23.

Second, salary history alone cannot justify a continuing wage gap. Citing this Court, the en banc Ninth Circuit effectively overruled *Hein*, holding that

an employee's "prior pay" is not a "factor other than sex" under the EPA because it is unrelated to current job performance. *Rizo v. Yovino*, 950 F.3d 1217, 1226-28 (9th Cir. 2020) (en banc) (citing *Md. Ins. Admin.*, 879 F.3d at 123). Qualifications developed post-hiring are therefore relevant to show whether a pay gap that was legitimate at the time of hiring remains so throughout the employee's tenure.

B. Disputed facts similarly preclude summary judgment on Dr. Hollis's Title VII and MFEPA wage-discrimination claims.

MSU relies on the same flawed reasoning to attack Dr. Hollis's Title VII and MFEPA claims, ignoring her evidence of pretext. *See* Resp. Br. 54-55. But the same facts that support her EPA and MEPEWA claims would also allow a jury to find Dr. Hollis more qualified than her male comparators, making MSU's proffered non-discriminatory reason for the pay gap false and thus pretext for discrimination. *Wannamaker-Amos v. Purem Novi, Inc.*, 126 F.4th 244, 257 (4th Cir. 2025). A jury could also infer that "discriminatory animus" motivated Dr. Prime's low-salary recommendation given her discriminatory comments, providing an independent path to prove pretext. *Id.* at 259-60; *see infra* at 10-13.

II. Summary judgment on Dr. Hollis's sex-discrimination claims should be reversed.

Dr. Hollis established a prima facie case of sex discrimination and demonstrated that MSU's reasons for denying her promotion to associate professor with tenure in 2016 were pretextual. With respect to MSU's failure

to promote her to full professor, Dr. Hollis's 2019 sex-discrimination claim is timely, and her 2020 sex-discrimination claim is exhausted. On the merits of those claims, she has established a prima facie case and demonstrated pretext with respect to those promotion applications.

A. MSU discriminated against Dr. Hollis based on sex when it failed to promote her to associate professor with tenure in 2016.

1. Dr. Hollis established a prima facie case of sex discrimination.

As our opening brief shows (at 35-37), Dr. Hollis has satisfied the "relatively easy test" of establishing a prima facie case of sex discrimination based on MSU's failure to promote her to associate professor with tenure in 2016. *See Young v. Lehman*, 748 F.2d 194, 197 (4th Cir. 1984). MSU seemingly challenges only the fourth element of the prima facie case, contending that Dr. Hollis proffered no evidence that MSU failed to promote her under circumstances giving rise to an inference of discrimination. *See* Resp. Br. 27-28. But Dr. Hollis's evidence establishes this inference in three ways: (1) Males in her department were promoted while she was not; (2) Dr. Prime, a key decisionmaker, made relevant discriminatory comments; and (3) MSU offered shifting explanations for denying her promotion. Opening Br. 38-42.

Showing that employees outside the protected class filled the position to which the plaintiff applied is generally enough, standing alone, to prove an inference of discrimination. *See, e.g.*, *Carter v. Ball*, 33 F.3d 450, 458 (4th Cir. 1994); *see* Opening Br. 38-39. Dr. Hollis has done exactly that. MSU promoted

a similarly qualified male professor, Dr. Gaulee, to associate professor with tenure in his second year. JA1388, 1872. Despite being at least as qualified for promotion, Dr. Hollis was denied promotion and tenure in spring 2017, her third year at MSU. *See* Opening Br. 36-37; JA1145. These facts create an inference of discrimination. *See Carter*, 33 F.3d at 458; *McCaskey v. Henry*, 461 F.App'x 268, 270 (4th Cir. 2012).

MSU runs from this precedent by overreading *Adams v. Trustees of the University of North Carolina-Wilmington*, 640 F.3d 550 (4th Cir. 2011), and overlooking the evidence demonstrating an inference of discrimination. Resp. Br. 34-35. In *Adams*, the plaintiff failed to prove his prima facie case because he compared only his professional qualifications to those of others in his department who were promoted, without pointing to facts suggesting a discriminatory motive. 640 F.3d at 559. Here, however, Dr. Hollis has produced evidence of "additional tie[s] to a [sex-based] motive for the decision not to promote [her]." *Id.* Recall that Dr. Prime, a key decisionmaker, made promotion-related discriminatory comments, calling Dr. Hollis a "reject lesbian who will never receive her tenure" compared to Dr. Prime's "boys" who "get the crown jewel," JA1412; Opening Br. 39. And, unlike the plaintiff in *Adams*, Dr. Hollis showed that MSU offered shifting explanations for denying tenure, which provides additional circumstantial evidence of discrimination. *See infra* at 13.

MSU's attempts to undermine the relevance of Dr. Prime's sex-based comments all fail. MSU relies on *Schafer v. Maryland Department of Health and*

Mental Hygiene, 359 F.App'x 385, 389 (4th Cir. 2009), to suggest that Dr. Prime had to have been the "ultimate" decisionmaker for her comments to matter. Resp. Br. 31. But *Schafer* required the speaker to be the "principally responsible" decisionmaker only because the plaintiff there was trying to definitively establish discrimination through direct evidence. 359 F.App'x at 389. Here, under the *McDonnell Douglas* framework, for the comments to support an inference of discrimination, the speaker need only be a "key decisionmaker," *Wannamaker-Amos v. Purem Novi, Inc.*, 126 F.4th 244, 259-60 (4th Cir. 2025), who was "'in a position to influence the alleged [adverse employment] decision,'" *id.* (quoting *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344, 355 (6th Cir. 1998)).

And she was. Under MSU's own Appointment, Promotion, and Tenure Policy, Dr. Prime was required to assemble a departmental committee to review Dr. Hollis's promotion application and then provide her own recommendation. *See* JA197-98, 207. After the departmental committee recommended Dr. Hollis's promotion, JA1879-80, Dr. Prime was the first person to recommend that her application be denied, JA1132-33. MSU presumably set up its review scheme so that each stage could influence the final decision. So, to assume, as MSU's argument necessarily does, that Dr. Prime could not have shaped others' views, defies the purpose of that system. Rather, because Dr. Hollis's application was ultimately denied, a jury could determine that Dr. Prime's negative recommendation influenced

the final outcome, making her a "key decisionmaker" in denying Dr. Hollis the promotion she deserved. *Wannamaker-Amos*, 126 F.4th at 259-60.

That Dr. Prime is a woman, *see* Resp. Br. 32, is irrelevant; a member of a protected class can discriminate against another of that class. *See Castaneda v. Partida*, 430 U.S. 482, 499 (1977); *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78-79 (1998). Further, although Dr. Prime's negative recommendation in the *2018* promotion-review process was not dispositive, *see* Resp. Br. 31, that does not preclude a jury from finding Dr. Prime was a key decisionmaker in denying Dr. Hollis's *2016* application. Nor is the two-year period between Dr. Prime's discriminatory remarks in 2014 and the adverse employment action in 2016 too remote to constitute circumstantial evidence of discrimination. *Wannamaker-Amos*, 126 F.4th at 260 (finding a two-year period sufficiently proximate); *contra* Resp. Br. 30. In fact, this two-year gap undermines MSU's attempt to dispel an inference of discrimination by showing that "the same person [who] hired" Dr. Hollis later "decided not to promote" her. Resp. Br. 30-31 (citing *Evans v. Techs. Applications & Serv. Co.*, 80 F.3d 954, 959 (4th Cir. 1996)). This same-actor inference applies only when the same individual hires and takes an adverse action against the plaintiff in a "relatively short time span" such as "less than six months," *Sempowich v. Tactile Sys. Tech., Inc.*, 19 F.4th 643, 653 (4th Cir. 2021) (quoting *Proud v. Stone*, 945 F.2d 796, 797 (4th Cir. 1991)), not the two years present here. All told, the discriminatory comments by Dr. Prime, a "key

decisionmaker," "qualify as evidence that [this] particular decision was discriminatory." *Wannamaker-Amos*, 126 F.4th at 259-60.[1]

MSU's "shifting and inconsistent justifications for its adverse employment" action also help "give rise to an inference of discrimination." *Billingslea v. Astrue*, 502 F.App'x 300, 302 (4th Cir. 2012) (citing *EEOC v. Sears Roebuck & Co.*, 243 F.3d 846, 852-54 (4th Cir. 2001)). MSU first denied Dr. Hollis's promotion based on her purported lack of qualifications. *See* JA1144-46. Later, MSU told Dr. Hollis her application was denied because it was (supposedly) late. JA1932. It is simply untrue that MSU "consistently maintained that its primary reason for denying" Dr. Hollis's tenure application was that she "did not meet the criteria for promotion and tenure." Resp. Br. 36. Indeed, Provost Gibson's post-appeal letter to Dr. Hollis gave only one explanation for her non-promotion: Her application "was late." JA1934. A jury could find MSU's reason for denying her promotion changed from lack of qualifications to lateness, and this shifting justification is evidence of discrimination. *Billingslea*, 502 F.App'x at 302.

[1] MSU also attacks the credibility of Steve LeBoon, Resp. Br. 30 n.5, the witness who internally reported Dr. Prime's discriminatory statements well before this litigation, *see* JA1412. But "the credibility of a witness is a factual issue which precludes summary judgment." *Cram v. Sun Ins. Off.*, 375 F.2d 670, 674 (4th Cir. 1967).

2. MSU's reasons for denying Dr. Hollis's promotion to associate professor with tenure are pretextual.

MSU offers two non-discriminatory reasons for not promoting Dr. Hollis: She was unqualified for the position, and her application was tardy. Resp. Br. 35-37. Both are pretext. *See* Opening Br. 41-43. MSU construes this Court's precedent as requiring plaintiffs to show both falsity of its proffered justifications *and* that discrimination was the real reason for her non-promotion to prove pretext. Resp. Br. at 35 (quoting *Adams*, 640 F.3d at 560). But, since *Adams*, this Court has held that once a plaintiff establishes a prima facie case, she can establish pretext by either (1) showing the employer's justifications for not promoting her are "unworthy of credence" or (2) "adducing other forms of circumstantial evidence sufficiently probative of discrimination," including evidence used to establish the prima facie case. *Wannamaker-Amos*, 126 F.4th at 257 (first quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 143 (2000); and then citing 530 U.S. at 147-48); *see* Opening Br. 40-41. Dr. Hollis has done both.

First, Dr. Hollis has shown that MSU's reasons for denying her promotion in 2016 are "unworthy of credence." *Wannamaker*, 126 F.4th at 257; Opening Br. 42-43. As for MSU's first justification for denying her promotion—that Dr. Hollis was unqualified—a jury could conclude that Dr. Hollis was just as qualified as Dr. Gaulee when he was promoted to associate professor. Contrary to MSU's assertion that Dr. Gaulee's scholarship was of better "quality and prestige," Resp. Br. 40, Drs. Gaulee and Hollis had

published the same number of unaffiliated non-pay-to-publish, peer-reviewed journal articles when they each applied for promotion to associate professor with tenure, Opening Br. at 36-37. Further, a jury could determine that they had comparable ratings in teaching and service. *Compare* JA1132-33, 1879-89, 1898-99, *with* JA2149-50, 2165-66.

A jury could also discredit MSU's other reason for failing to promote Dr. Hollis—that it believed her application was late, Resp. Br. 38—because she provided considerable evidence that MSU believed her contract had been renewed, which would have rendered her application timely. Contrary to MSU's position, Resp. Br. 8-9, evidence shows that Dr. Hollis *did* submit her first-year packet to renew her contract, JA915-16, 2692-93. Following that submission, Dr. Hollis never received the required notice of contract nonrenewal, JA197-98, 342, 345-47, 2106; MSU scheduled Dr. Hollis to teach classes after her first three-year contract supposedly expired, *see* JA1473, 1501; and MSU's faculty appeals committee's decision finding her eligible to reapply for tenure in 2017, 2018, or 2019 confirmed her contract renewal, JA1929-30; *see* Opening Br. 8-9. MSU does not dispute that if her contract had been renewed, Dr. Hollis would have had until fall 2018 to submit her application for tenure. JA199; Opening Br. 53. Because her contract was in fact renewed, her 2016 application was timely.

Second, Dr. Hollis has "adduc[ed] other forms of circumstantial evidence sufficiently probative of discrimination" in MSU's 2016 denial of promotion. *Wannamaker-Amos*, 126 F.4th at 257. In addition to "evidence establishing [Dr.

Hollis's] prima facie case," *Reeves*, 530 U.S. at 143, MSU also offered shifting, inconsistent justifications for denying her promotion, *see Sears*, 243 F.3d at 853-54; *supra* at 13, and the promotion review process was plagued by procedural irregularities, *see Wannamaker-Amos*, 126 F.4th at 260; Opening Br. 42-43.

MSU admits that "an employer's deviations from a procedure may be evidence of pretext," Resp. Br. 37-38, but then improperly extends *Dugan v. Albemarle County School Board*, 293 F.3d 716, 722 (4th Cir. 2002), in an attempt to dodge that evidence here. *Dugan* says only that procedural irregularities alone do not *prove* pretext, 293 F.3d at 722, not that those irregularities cannot be considered as *evidence* of pretext. MSU's deviations from proper procedure, together with Dr. Hollis's additional evidence, are more than sufficient for a jury to find pretext. *See Wannamaker-Amos*, 126 F.4th at 260.

B. MSU discriminated against Dr. Hollis when it failed to promote her to full professor in 2019 and 2020.

The district court erred in concluding that Dr. Hollis's 2019 sex-discrimination claims were untimely and that her 2020 sex-discrimination claims were not exhausted, and, as a result, erred in never considering the merits of those claims. Dr. Hollis's 2019 and 2020 claims should go to a jury.[2]

[2] At a minimum, this Court should remand so that the district court can consider the merits in the first instance. *Hulsey v. Cisa*, 947 F.3d 246, 252 (4th Cir. 2020).

1. Dr. Hollis's sex-discrimination claims are not procedurally barred.

Dr. Hollis's 2019 claims are timely. MSU argues that Dr. Hollis's 2019 sex-discrimination claims do not relate back to her 2016 sex-discrimination claims because the two do not "share a common core of operative facts." Resp. Br. 21. But Rule 15(c) requires only "some factual nexus," *Grattan v. Burnett*, 710 F.2d 160, 163 (4th Cir. 1983), not a complete factual overlap, and the 2016 and 2019 claims both involve the same employees, department, and university engaged in the same type of discriminatory conduct. *See* Opening Br. 30.

Even applying MSU's impermissibly strict understanding of Rule 15(c), which seemingly demands that the two claims arise out of the exact same conduct, *see* Resp. Br. 20, Dr. Hollis's 2019 claims would still relate back to the wage-discrimination claims in her initial complaint. Those original wage-discrimination claims were explicitly based in part on MSU's failure to grant her 2019 promotion and accompanying wage increase, and that is the same exact conduct that gives rise to her 2019 sex-discrimination claims. JA37-43 (original complaint describing Dr. Hollis's 2019 promotion application in support of wage-discrimination claims); *see supra* at 7-8.

Dr. Hollis's 2020 claims are exhausted. MSU argues that a court cannot reach the merits of Dr. Hollis's 2020 sex-discrimination claims for one reason only: her purported failure to exhaust administrative remedies. MSU agrees that a plaintiff may bring new claims in court so long as they are reasonably

related to the claims in her EEOC charge, *see* Opening Br. 31-32; Resp. Br. 23, but insists that conduct occurring after the conclusion of an EEOC investigation can never be reasonably related to an earlier EEOC charge. Resp. Br. 23-24. This invented categorical rule runs headlong into this Court's precedent and exhaustion's purposes.

This Court has rejected MSU's argument with respect to retaliation claims. In *Jones v. Calvert Group*, the defendants, like MSU here, argued that new claims relate back only when the alleged acts "occurred during the pendency of the administrative investigation of the prior EEOC charge." 551 F.3d 297, 302 (4th Cir. 2009). This Court disagreed, concluding that a judicial claim for alleged retaliation occurring *after* the conclusion of the EEOC investigation was reasonably related to a previous EEOC charge for retaliation (and therefore exhausted). *Id.* at 302, 304. "[B]ecause a second conciliation could not be expected to be any more fruitful than the first," the purpose of exhaustion would not be served by requiring additional administrative filings. *Id.* at 302.

Jones's rationale is not limited to retaliation claims. Here, the judicial claim involves the same actors, place of work, and type of discrimination as alleged in the EEOC charge. *See Sydnor v. Fairfax Cnty.*, 681 F.3d 591, 595 (4th Cir. 2012). And because MSU already rejected conciliation once, JA1517-18, a second conciliation attempt would likely have been futile, thus obviating any need for further exhaustion. *See Jones*, 551 F.3d at 302.

MSU cites out-of-circuit cases that are either inapposite or conflict with this Court's precedent. *See* Resp. Br. 24. In *Conner v. Illinois Department of Natural Resources*, the employee's EEOC charge related to a failure to promote to a *different* position from the position at issue in her judicial complaint, 413 F.3d 675, 677, 680 (7th Cir. 2005), whereas here Dr. Hollis applied for the same position under the same criteria twice and was denied both times, JA1237, 1877. And in *Martinez v. Potter*, the Tenth Circuit read the Supreme Court's decision in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), as requiring plaintiffs to separately exhaust "each individual discriminatory or retaliatory act," even when they are reasonably related to one another. 347 F.3d 1208, 1210-11 (10th Cir. 2003). This Court has expressly rejected that reading, explaining that *Morgan* "does not purport to address the extent to which an EEOC charge satisfies exhaustion requirements for claims of related, post-charge events." *Jones*, 551 F.3d at 303.

This Court has explained that exhaustion serves two key goals: providing notice to employers and encouraging pre-suit conciliation to avoid the cost and time of litigation. *See, e.g.*, *Sydnor*, 681 F.3d at 593. Here, Dr. Hollis has filed not just one, but two previous EEOC charges alleging sex discrimination and retaliation. Her first charge described the denial of her application for promotion to associate professor, her qualifications, and the involvement of Drs. Prime, Gibson, and Wilson. JA1346-56. Her second charge described the involvement of Drs. Prime and Wilson in the denial of her subsequent application for full professor. JA1362-65. Thus, MSU was on

notice that Dr. Hollis was alleging sex discrimination regarding her tenure and promotion, including specifically her promotion to full professor. No material difference exists between MSU's 2019 conduct (for which a charge was filed) and its 2020 conduct. *See* JA2803-33 (first application for full professor); JA2837-94 (second application); JA192-218 (MSU policies regarding promotion and tenure). And "[n]othing in the record ... suggests that [Dr. Hollis] was trying to circumvent the [Act's] exhaustion requirement." *Jones v. Southpeak Interactive Corp. of Del.*, 777 F.3d 658, 669 (4th Cir. 2015).

2. Dr. Hollis's 2019 and 2020 sex-discrimination claims should go to a jury.

Dr. Hollis established a prima facie case of sex discrimination. Dr. Hollis has satisfied the "relatively easy test" of establishing a prima facie case based on MSU's failure to promote her to full professor in 2019 and 2020. *See Young v. Lehman*, 748 F.2d 194, 197 (4th Cir. 1984). MSU disputes only the third and fourth elements of the prima facie case. Resp. Br. 32, 35.

As to the third element, a jury could find that Dr. Hollis was qualified for promotion because the evidence supports an inference that she satisfied the criteria for full professor at least as well as Dr. Robinson, a male in her department who was promoted to full professor in 2019. Opening Br. 37-38. MSU questions Dr. Hollis's qualifications by highlighting that some reviewers rated her "satisfactory" in teaching, research, and service. Resp. Br. 33. But these reviews come from the "alleged discriminator[s]" and

therefore do not support summary judgment for MSU. *Wannamaker-Amos*, 126 F.4th at 256. Further, other reviewers thought Dr. Hollis was qualified, underscoring that reasonable jurors could find the same. JA1995-96, 2001, 2040-42, 2054-55, 2061-62 (split votes in reviewing 2019 and 2020 promotion applications).

As to the fourth element, a jury could conclude that MSU rejected Dr. Hollis's promotions under circumstances giving rise to an inference of discrimination. That the positions Dr. Hollis applied for were filled by males alone establishes this inference. *See* Opening Br. 38-39. MSU attempts to defeat this inference by relying on *Adams v. Trustees of the University of North Carolina–Wilmington*, 640 F.3d 550, 559 (4th Cir. 2011). But as explained earlier (at 10), Dr. Hollis's case is not like *Adams* because she has presented additional circumstantial evidence that raises an inference of discrimination: the sex-based bias of Dr. Prime, a key decisionmaker, and the inconsistent application of MSU's review criteria. *See Wannamaker-Amos*, 126 F.4th at 256-59; *Billingslea v. Astrue*, 502 F.App'x 300, 302 (4th Cir. 2012).

For example, when Dr. Robinson applied for promotion to full professor in 2019, reviewers found his publication of zero books and one journal article in the five years since receiving tenure and zero publications in the year he applied for promotion to be "excellent" and worthy of promotion. JA2781, 2784-85, 2336. Yet when Dr. Hollis applied for the same promotion in the same year, reviewers refused to find her multiple peer-reviewed journal articles and one peer-reviewed book chapter published that year worthy of

promotion. JA1875, 2029, 2806, 2810. Other reviewers credited Dr. Robinson's in-progress manuscripts as evidence that he was qualified for promotion in 2019, JA2299, 2322, but didn't credit Dr. Hollis's ongoing research, JA2069. Dr. Robinson himself noted these inconsistencies and suggested that "race, gender, all of that and the [sic] some" must have played a role in MSU's decision to deny Dr. Hollis's promotion. JA1523-24. Dr. Hollis has made out a prima facie case of sex discrimination based on her 2019 and 2020 non-promotions.

MSU's stated reasons for failing to promote Dr. Hollis to full professor are pretextual. A jury could find that MSU's purported reason for denying Dr. Hollis's promotion to full professor in 2019 and 2020—that she was unqualified—was pretextual. As explained above (at 14), Dr. Hollis may prove pretext either by showing that MSU's reason was false or by providing sufficient circumstantial evidence of discrimination, which can include evidence used in her prima facie case. *Wannamaker-Amos*, 126 F.4th at 257. As to falsity, as we just explained, MSU inconsistently applied its own review criteria and promoted to full professor male applicants like Dr. Robinson, who was not more qualified than Dr. Hollis. *See Gillins v. Berkeley Elec. Co-op*, 148 F.3d 413, 416 (4th Cir. 1998). And Dr. Prime continued to be a "key decisionmaker" on the review committees in 2019 and 2020, so her earlier discriminatory comments about Dr. Hollis remain circumstantial evidence of pretext. *Wannamaker-Amos*, 126 F. 4th at 259-60; *see* Opening Br. 44; *supra*

at 10-13. And, as just noted, Dr. Robinson himself recognized that discrimination played a role in MSU's promotion process. JA1523-24.

III. The district court erred in granting MSU summary judgment on Dr. Hollis's retaliation claims.

Dr. Hollis has offered evidence sufficient to avoid summary judgment on her claims that MSU retaliated when it demoted her to at-will status in response to her EEOC charge. The parties agree that retaliation claims may be analyzed under the *McDonnell Douglas* framework. *See* Opening Br. 48, 51; Resp. Br. 42-43; *Foster v. Univ. of Md.-E. Shore*, 787 F.3d 243, 248-49 (4th Cir. 2015). But, contrary to MSU's suggestion, that framework does not require separate evidence of "retaliatory animus," Resp. Br. 42-43; rather, that framework exists to allow plaintiffs to show animus in the absence of direct evidence. Because a jury could find that Dr. Hollis established a prima facie case and that MSU's purported justification is pretextual, additional evidence is unnecessary to prove retaliatory animus, so summary judgment was inappropriate. *See Foster*, 787 F.3d at 250.

Prima facie case. MSU does not dispute that Dr. Hollis satisfies the first two prima facie elements. *See* Resp. Br. 43-45; Opening Br. 48-51. It argues only that Dr. Hollis lacks evidence of the final element—a causal nexus between the protected activity and the adverse employment action—because too much time passed between her protected activity and her demotion. *See* Resp. Br. 42-45.

As our opening brief explains (at 49-50), after Dr. Hollis filed her EEOC complaint, MSU took several actions that paved the way for her demotion, demonstrating recurring retaliatory animus. And, as MSU's cited cases indicate, when the defendant's own actions account for the delay in the alleged retaliation, causation can be satisfied. In *King v. Rumsfeld*, a gap of more than two months did not undercut an inference of causation because the employer had "committed to ongoing reviews" of the employee's performance that made the end of the academic year "the natural decision point" for the employee's termination. 328 F.3d 145, 151 n.5 (4th Cir. 2003). This Court has also explained that causation can exist "where there is a reasonable explanation for the lapse of time," *Moticka v. Weck Closure Sys.*, 183 F.App'x 343, 352 (4th Cir. 2006), such as when there is "recurring retaliatory animus and conduct, retaliation at the first opportunity, and inconsistencies," *Barbour v. Garland*, 105 F.4th 579, 594, 596 (4th Cir. 2024); *see also Martin v. Mecklenburg Cnty.*, 151 F.App'x 275, 281 (4th Cir. 2005) (denying JMOL because a jury could have found retaliatory animus based on the employer's "inconsistent action in violation of well-established policy, rendered at the first opportunity after becoming aware of protected conduct").

Here, MSU acknowledges that it had committed to reviewing Dr. Hollis's appeal of her tenure denial. *See* Resp. Br. 44-45. The conclusion of the appeal was therefore the "first opportunity," *Barbour*, 105 F.4th at 596, and the "natural decision point," *Rumsfeld*, 328 F.3d at 151 n.5, for her

demotion to at-will status, which explains the time gap. As our opening brief details (at 7-8), the faculty appeals committee met in September 2017, just three days after Dr. Hollis filed her first EEO charge, to take up an appeal that had been languishing since May 2017. JA1148-49, 1463-65, 1928. The committee concluded its review roughly two weeks after she filed the charge, JA1928, and President Wilson notified Dr. Hollis of his decision denying the appeal three months later, claiming—for the first time—that her application was tardy, JA1932. That same week, MSU notified Dr. Hollis of its decision to demote her to at-will status. JA1934-35. The four-month period between her protected activity and her demotion is thus explained by MSU's recurring retaliatory animus, retaliation at the first opportunity, and inconsistent treatment of Dr. Hollis's application. *See Barbour*, 105 F.4th at 596; *supra* at 16.

Pretext. As already shown, Dr. Hollis has created a jury question as to whether the rationale MSU gave—that her 2016 promotion application was late—was false. *See* Opening Br. 51-53; *supra* at 15. MSU suggests that Dr. Hollis has not shown that retaliation was the "real reason" for the adverse action. Resp. Br. 45-46 (citing *Foster*, 787 F.3d at 252). But the case MSU relies on says that if the plaintiff can show that the adverse employment action occurred "under suspicious circumstances and that her employer lied about its reasons," the factfinder may infer that retaliatory animus was the "real reason." *Foster*, 787 F.3d at 250, 254. Dr. Hollis has done that.

MSU's other cases also go nowhere. In *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 217-18 (4th Cir. 2007), the "uncontested evidence" showed that the employer "honestly believed" that the employee had made threats against his supervisor and fired him on that basis. In contrast, Dr. Hollis has presented ample evidence that MSU did not actually believe that her contract had lapsed, making her application late. *See* Opening Br. 51-54, *supra* at 15. Meanwhile, in *Moticka*, during the nearly two years between the protected activity and the final adverse action, the employer gave the plaintiff more leave than she was entitled to by law; this "favorable treatment" before the retaliatory action undercut an inference of retaliatory motive. 183 F.App'x at 352-53.

MSU relies on *Moticka* to argue that Dr. Hollis received comparable "favorable treatment" because it extended her time to apply for contract renewal and then promoted her with tenure. Resp. Br. 46. But this alleged favorable treatment occurred after MSU's retaliatory action and was necessary only because MSU had retaliated by demoting her to at-will status. That is because, as previously discussed (at 15), Dr. Hollis has presented evidence that MSU had already renewed her contract, so she did not even need to apply again, much less an extension to do so. And MSU belatedly promoted Dr. Hollis only after an EEOC investigation found reasonable cause that it had unlawfully discriminated against her. *See* Opening Br. 10-11. So that promotion does not preclude a jury from finding that MSU retaliated.

Conclusion

This Court should reverse the district court's grant of summary judgment and remand for further proceedings on each of Dr. Hollis's claims.

Respectfully submitted,

/s/ Regina Wang
Regina Wang
Brian Wolfman
Becca Steinberg
GEORGETOWN LAW
APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave., NW, Suite 312
Washington, D.C. 20001
(202) 662-5949

Nathaniel Allen Deacon
Anshuman Siripurapu
Emma Watson
Student Counsel

Aderson B. Francois
CIVIL RIGHTS CLINIC
GEORGETOWN UNIVERSITY LAW CENTER

Counsel for Plaintiff-Appellant Leah P. Hollis

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/s/ Regina Wang
Regina Wang

Counsel for Plaintiff-Appellant
Leah P. Hollis

February 28, 2025

Certificate of Service

I certify that on February 28, 2025, I electronically filed this Reply Brief of Plaintiff-Appellant Leah P. Hollis using the CM/ECF System, which will send notice of the filing to the following registered CM/ECF user: counsel for Defendants-Appellees Courtney Watkins (cwatkins@oag.state.md.us).

/s/ Regina Wang
Regina Wang

Counsel for Plaintiff-Appellant
Leah P. Hollis