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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

RICHARD LOWERY, )  
Plaintiff, )  
v. ) Case No. 1:23-cv-00129-DAE  
LILLIAN MILLS, et al., )  
Defendants. )

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SCHEDULED ORAL DEPOSITION OF  
LILLIAN MILLS

JANUARY 29, 2024

(CERTIFICATE OF NON-APPEARANCE)

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SCHEDULED ORAL DEPOSITION OF LILLIAN  
MILLS(CERTIFICATE OF NON-APPEARANCE), was taken in the  
above-styled and numbered cause on January 29, 2024  
from 9:08 a.m. to 9:17 a.m., before Dana Shapiro, CSR,  
in and for the State of Illinois, reported by machine  
shorthand, at the law offices of JACKSON WALKER, 100  
Congress Avenue, Suite 1200, Austin, Texas.

APPEARANCES

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FOR THE PLAINTIFF:  
MR. ENDEL KOLDE  
INSTITUTE FOR FREE SPEECH  
1150 Connecticut Ave., NW  
Suite 801  
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-and-

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FOR THE DEFENDANTS:

MR. JAMES MATTHEW DOW  
JACKSON WALKER LLP  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
512-236-2230  
mdow@jw.com

ALSO PRESENT:

MR. TIM BISHOP, the videographer

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EXHIBITS

NO.	DESCRIPTION	PAGE
	NO EXHIBITS MARKED	

1 MR. KOLDE: This is Endel Kolde. I'm here -- we  
2 are here for the deposition of Lillian Mills in the  
3 case of Lowery versus Mills. It's 9:08, 9:09 a.m. on  
4 Monday, January 29, 2024. With me in the conference  
5 room is co-counsel, Mike Lovins, and opposing counsel,  
6 Matt Dow. The videographer is here although we are not  
7 running the video because the witness has not appeared.

8 Mr. Dow has reiterated that Ms. Mills will  
9 not be appearing for her deposition this morning. Just  
10 for the sake of the record, Lillian Mills's deposition  
11 was originally noted on December 4 with the deposition  
12 notice transmitted to defense counsel via email on that  
13 day, was noted for today to start at 9:00 a.m., January  
14 29, 2024 at the offices of Jackson Walker LLP in  
15 Austin, Texas. We re-noticed that deposition for the  
16 same date but with video and transmitted a second  
17 amended deposition notice for the same date and  
18 location on December 8, 2023.

19 I received an email at the beginning of  
20 last week from Joel Glover, who works with Mr. Dow,  
21 informing us that. Email, before I go on and read the  
22 contents of the email, the email is dated Monday,  
23 January 22, 2024. I received it at 8:31 Pacific Time  
24 indicating that the Mills deposition was being  
25 cancelled by UT and defense counsel.

1           Reading from the email, the third entry in  
2 a numbered list, quote, Relatedly it's clear from the  
3 past two depositions that you intend to ask all UT  
4 witnesses about these topics regardless of their  
5 personal knowledge on the subject. So we are resetting  
6 the deposition of Dean Mills until we can get a ruling  
7 from the court on our motion for protective order. She  
8 is available on February 15, 16 or 26, all of which are  
9 after our discovery hearing with Judge Howell. If the  
10 court does not rule on our motion that day, then we may  
11 need to find a later date, but we are of course willing  
12 to work with you on that, end quote.

13           I guess I should read part of the earlier  
14 part of the email or it won't make sense. The second  
15 entry of the email, quote, It doesn't look like we  
16 agreed on the scope of discovery related to President  
17 Hartzell or Robert Hartzell's application to his  
18 current UT program. I appreciate the time you took to  
19 share Plaintiff's theory with us, but in addition to a  
20 number of disagreements on Lowery's factual assertions,  
21 many of which appear in the draft amended complaint, it  
22 doesn't relate to Plaintiff's case or even proposed  
23 amended count 2 in a way that brings it within the  
24 confines of Rule 26B. So we intend to seek protective  
25 order from the court against this type of discovery,

1 end quote.

2 So we did email back indicating that we  
3 were not agreeing to cancel this deposition, that we  
4 intended to appear for the deposition at the scheduled  
5 time and place. We are here this morning prepared to  
6 go forward. I have my deposition exhibits stack next  
7 to me to my left, and Ms. Mills has not appeared for  
8 her deposition. We do acknowledge that defense counsel  
9 has filed a motion for protective order regarding  
10 discovery into alleged nepotism by Jay Hartzell  
11 benefiting his son in admission to UT, but there has  
12 not been a ruling on that motion. We would note that  
13 filing for a protective order does not relieve a party  
14 of a duty to appear, and for that proposition among  
15 other cases we would cite Barnes v. Madison 79F Appx  
16 691, 707, and Panzer v. Swiftships 318 FRD 326, 328.  
17 And it's now 9:14 a.m. I think I have said my peace.

18 Mr. Dow?

19 MR. DOW: Thanks, Del, and thanks for reading  
20 from Joel's January 22 email. I will just add that in  
21 our Zoom meet and confer on Friday, January 26, Joel  
22 and I reiterated that Dean Mills would not appear for  
23 the deposition, and that we were acknowledging that and  
24 wanting -- reaffirming that for you in case you did not  
25 want to make the trip down here, that we would, you

1 know, stand by that so that if you were to seek relief  
2 from the court we weren't -- we were going to take full  
3 responsibility for Dean Mills not appearing this  
4 morning so. But that's all I wanted to add.

5 MR. KOLDE: Okay. And I think that just reminds  
6 me that one of the compromises I had offered in my  
7 email responding to Joel's January 22 email is that we  
8 proceed with the deposition today, and that I hold off  
9 answer -- asking any questions related to the nepotism  
10 allegations until the very end of the deposition so  
11 that we could get her testimony on all of the other  
12 issues that we are interested in asking her about. And  
13 then if defense was maintaining its position that  
14 inquiry in the nepotism allegations was inappropriate,  
15 they could object at that time and we could break off  
16 the remainder of the deposition having gotten most of  
17 the testimony. And I never really got a response to  
18 that offer of compromise, but you did indicate during  
19 the conference on Friday that she would not be  
20 appearing here for her deposition today. Anything  
21 else?

22 MR. DOW: No. Other than -- and we stand by  
23 rescheduling her after the February 13 hearing with the  
24 dates outlined by Joel in his email or, you know, if  
25 whatever works for you and your client along with

1 Professor Carvalho so.

2 MR. KOLDE: So we appreciate that. Our concern  
3 nevertheless is that the deposition could end up  
4 getting rescheduled again. The way I understood Joel's  
5 email, unless you are amending it, is that the offer  
6 was contingent on Judge Howell ruling at the hearing on  
7 the 13. If he didn't, then potentially we would be  
8 looking for rescheduling the deposition for a third  
9 time and, you know, we don't want to be doing that.

10 MR. DOW: No, of course not. I would just say in  
11 light of Judge Howell's ruling on Friday, January 26 in  
12 the telephone hearing, we are going to make -- we will  
13 attend Professor Carvalho's deposition between February  
14 14 or 23 as well as making Dean Mills available as  
15 well.

16 MR. KOLDE: During that time period?

17 MR. DOW: Absolutely.

18 MR. KOLDE: Even if Judge Howell doesn't rule?

19 MR. DOW: Correct. Yes.

20 MR. KOLDE: Anything further at this point?

21 MR. DOW: No.

22 MR. KOLDE: Okay. I think we can go off the  
23 record.

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REPORTER'S CERTIFICATE

STATE OF TEXAS

COUNTY OF TRAVIS

I, DANA SHAPIRO, CSR, Certified Shorthand Reporter for the State of Illinois, do hereby certify that the said attorney did make the above and foregoing statement as shown; that I did, in shorthand, report said proceedings, and that the above and foregoing typewritten pages contain a full, true and correct computer-aided transcription of my shorthand notes taken on said occasion.

WITNESS MY HAND this the 30th day of January, 2024.

*Dana Shapiro*

DANA SHAPIRO, Illinois CSR 84-3597  
CSR Expiration: 5/31/25  
Illinois Certified Shorthand Reporter  
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Corporate Center One, Suite 400  
Austin, Texas 78735  
888-893-3767

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