UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DIANE J. SCHROER,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Civil Action No. 05-1090 (JR)
	)	
JAMES BILLINGTON,	)	
Librarian of Congress,	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

On August 6, 2007, Defendant in the above matter moved to dismiss Plaintiff's Amended Complaint. R. 41. On August 31, 2007, Plaintiff filed an Opposition to Defendant's Motion to Dismiss Plaintiff's Amended Complaint. R. 42. However, Plaintiff's Opposition fails to raise any arguments undermining Defendant's Motion to Dismiss Plaintiff's Amended Complaint, or any arguments that give this Court reason to revisit and reverse its prior March 31, 2006, Memorandum Order and Opinion ("Order").[1]

At the time of Plaintiff's application for employment with Defendant, Plaintiff was a male, and was perceived by Defendant to be a male. Amended Complaint at ¶¶ 13, 29. To that extent, in its Order, this Court held that a plaintiff, like Schroer, might successfully state a Price

[1]Indeed, a significant portion of Plaintiff's opposition memorandum is inexplicably devoted to refuting the notion that Title VII encompasses a heightened pleading standard. Pl.'s Op. at 5-8. However, Defendant, in his Motion to Dismiss, did not argue that Title VII encompasses such a standard. Instead, Defendant argued that, even construing the facts as pled in Plaintiff's Amended Complaint as true, Plaintiff fails to state a claim under Title VII, and thus, her Complaint should be dismissed as a matter of law.

Waterhouse[2]-type claim if discrimination resulted because he was "seeking acceptance as a male with feminine traits." Slip. op. 15-16. Plaintiff has made no such allegation. Here, Plaintiff is not seeking acceptance as a man with feminine traits. Rather, Plaintiff continues to allege that when she informed Defendant that "consistent with medical treatment for gender dysphoria . . . [she would be] presenting herself as a female, Defendant rescinded its offer of employment." Amended Complaint at ¶ 54. Thus, Plaintiff has not alleged that she is an "effeminate male" or that her non-selection by the Defendant was on account of her non-adherence to stereotypical notions of how a man should act or present himself.

Rather, Plaintiff, although "classified" as a male at the time of her birth and believed to be a male at the time of her interview (Amended Complaint ¶¶13, 29), instead continues to assert that her "gender designation assigned to her at birth does not conform with her gender identity" (Amended Complaint ¶ 14), that she intends to adopt a female persona (Amended Complaint ¶ 41), and that Defendant's actions after Plaintiff's disclosure of her treatment for gender dysphoria constitute sex-stereotyping. However, as noted by this Court in its earlier findings, Plaintiff's theory of sex stereotyping (and the attendant statements and facts upon which she relies) simply do not constitute sex-stereotyping given that her Amended Complaint alleges that her "non-selection was the direct result of her disclosure of her gender dysphoria and of her intention to begin presenting herself as a woman, or her display of photographs of herself in feminine attire, or both." Slip. op. 16. Plaintiff, presenting herself as and perceived to be a male during her interview, "is not seeking acceptance as a man with feminine traits. She seeks to express her female identity, not as an effeminate male, but as a woman." Id.

[2]490 U.S. 228 (1989).

Accordingly, for the foregoing reasons, the reasons contained in Defendant's Motion to Dismiss Plaintiff's Amended Complaint and Defendant's Second Motion to Dismiss, the Court should dismiss Plaintiff's Amended Complaint because Plaintiff has failed to establish that she is entitled to relief as a matter of law.

Date: September 21, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing ***Defendant's Reply to Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss Plaintiff's Amended Complaint*** was made by electronic and first class mail on the 21st day of September, 2007 to:

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