McGowan Declaration – Exhibit O

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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DIANE J. SCHROER, :

Plaintiff, :

v. : No. 05-CV-01090 (JR)

JAMES H. BILLINGTON, :

Defendant. :

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Washington, D.C.

Friday, March 14, 2008

BEFORE

HONORABLE JAMES ROBERTSON

U.S. DISTRICT JUDGE

Telephonic status conference in the above-entitled matter, pursuant to notice, taken at the offices of WilmerHale, LLP, 1825 Pennsylvania Avenue, N.W., Washington, D.C. at 10:01 a.m., Friday, March 14, 2008, and the proceedings being taken down by Stenotype by DENNIS A. DINKEL, FAPR, CRR, and transcribed under his direction.

APPEARANCES:

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On behalf of the Defendant:
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APPEARANCES:

On behalf of the Defendant (cont.):
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PROCEEDINGS

MS. McGOWAN: Your Honor, this is Ms. McGowan for the plaintiffs.

Before we begin, I mentioned to your clerk and your secretary that we are taking a break from a deposition and have a court reporter who is here with us. So if the Court did not object, we were going to ask the court reporter to transcribe the conference.

THE COURT: Is it a trusted court reporter?

MS. McGOWAN: We have Mr. Dinkel here with us, whom we think you would recognize. He is a trusted court reporter, indeed.

THE COURT: He is indeed. Fine. Go ahead.

Hi, Dennis.

MS. McGOWAN: So, Your Honor, thank you for taking time to talk with us. We have, as you know, from our e-mail, two issues that we have been trying to explore in discovery with defendant related to justifications that defendant has put forward with respect to the hiring decision in this case.

One relating to concerns about plaintiff's ability to satisfy the security clearance process in a timely manner, and the other regarding issues about plaintiff's need to take leave to deal with issues relating to her gender transition.

So we have sought discovery in this case about how these issues have arisen with respect to other applicants, and how they've been addressed. And those requests thus far have been the source of disputes between the parties.

THE COURT: Okay. I got it.

MS. RUSSELL: Your Honor, this is Beverly Russell, attorney for the library; Julia Douds and Evelio Rubiella are also here from the library.

With regard to the leave issue, there has been no testimonial evidence presented that Ms. Schroer, if hired, could not have taken advantage of the leave -- the leave benefits provided to all employees at the library.

What essentially the plaintiff is asking is to take a 30(b)(6) deposition that would be the tenth deposition in this case.

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It would require the library -- given the notice -- to produce three deponents to respond to the issues raised in the deposition notice.

However, just to reiterate, there has been no issue as to whether or not Ms. Schroer could take leave if hired to -- with medical or other type issues. And just to reiterate, there is no claim under the Family and Medical Leave Act, there is no ADA claim. And indeed the library doesn't think that it's relevant, or more specifically, likely to lead to the discovery of admissible evidence. The library has agreed to produce its leave policy, both its sick leave policy and its annual leave policy.

THE COURT: Well, as I understand where the plaintiffs are coming from, they have some suspicion --

MS. McGOWAN: Your Honor, are you there? I think we lost you.

THE LAW CLERK: We may have lost him. Let me see if I can get him back.

(Pause.)

THE COURT: I'm here. You have me on a

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cell phone, but it should be -- the reception ought to be perfect here. I don't understand why it dropped the call. I was in the middle of asking a question. The question I was trying to put to the plaintiff is, where does this idea come from?

You, the plaintiffs, suspect somehow there is a sub rosa reason behind the denial of employment to Ms. Schroer that has something to do with concern about leave, about medical leave. Where does it come from?

MS. McGOWAN: Your Honor, in both the response to an interrogatory that we received from defendant back in February, as well as from our deposition with the selection official back in January of 2007, there were indications made that there was a concern about distraction on the part of the plaintiff, including a concern that she would need to take leave to address issues related to her gender identity issues.

So to the extent that this issue has been specifically put on the table by defendant, we have attempted to explore it, and explore how similar

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concerns relating to other applicants and employees have been addressed.

Because in this case, the concern, among other concerns, manifested in the plaintiff no longer being recommended for the position.

MS. RUSSELL: Your Honor, again, this is Beverly Russell.

Even though there was testimony that Ms. Schroer might have been distracted from the position, there was certainly no testimony that she could not have taken advantage of the leave benefits provided by the library. And as I mentioned before, the library has certainly agreed to produce the leave policy.

But given that we do not believe it is likely to lead to the discovery of admissible evidence, particularly given that we are at the tenth deposition, we would object to the 30(b)(6) deposition.

Now, what the library is amenable to doing is stipulating that the plaintiff could indeed have taken advantage --

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THE COURT: Yes. But that's not the point.

I think the plaintiff's point is that, yes, she could take medical leave, but we would not like it, and she would be distracted and that's one of the reasons we didn't give her the job.

I gather the plaintiffs are trying to figure out whether that was ever -- frankly, I think that would be, all by itself, an improper reason. But if -- I think plaintiffs are trying to figure out whether that reason was ever applied to anybody else.

Do I have that right?

MS. McGOWAN: You are right, Your Honor. Actually, during a prior discovery conference with the Court, we actually posed an interrogatory in a discovery request related specifically to questions about whether or not this concern had ever occurred with respect to another applicant for employment.

And based on a representation at that time that that was not, in fact, a justification being relied on by defendant, the objection was sustained, and that matter was not pursued.