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United States Court of Appeals
Tenth Circuit

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Elisabeth A. Shumaker
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PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RAJESH SINGH, Ph.D.,

Plaintiff - Appellee/Cross-Appellant,

v.

DAVID P. CORDLE, Ph.D.,

Defendant - Appellant/Cross-Appellee,

and

MICHAEL D. SHONROCK, Ph.D.; GWEN ALEXANDER, Ph.D.; ANDREW J.M. SMITH, Ph.D.; EMPORIA STATE UNIVERSITY,

Defendants - Cross-Appellees.

No. 17-3230

RAJESH SINGH, Ph.D.,

Plaintiff - Appellant,

v.

MICHAEL D. SHONROCK, Ph.D.; DAVID P. CORDLE, Ph.D.; GWEN ALEXANDER, Ph.D.; ANDREW J.M. SMITH, Ph.D.; EMPORIA STATE UNIVERSITY,

Defendants - Appellees.

No. 17-3244

Appeals from the United States District Court
for the District of Kansas
(D.C. No. 2:15-CV-09369-JWL)

David R. Cooper, Fisher, Patterson, Sayler & Smith, L.L.P., Topeka, Kansas for Defendants/Appellant/Cross-Appellees.

Donald N. Peterson, II (Sean M. McGivern, on the briefs), Graybill & Hazlewood LLC, Wichita, Kansas for Plaintiff/Appellee/Cross-Appellant.

Before **LUCERO**, **HARTZ**, and **CARSON**, Circuit Judges.

HARTZ, Circuit Judge.

Beginning in August 2009, Plaintiff Rajesh Singh worked as an untenured professor in the School of Library and Information Management (SLIM) at Emporia State University (ESU). He was informed in February 2014 that his annual contract would not be renewed. He sued ESU and various administrators in their individual capacities, asserting several retaliation and discrimination claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.; the Kansas Act Against Discrimination (KAAD), K.S.A. § 44-1001 et seq.; and the Civil Rights Act of 1871, 42 U.S.C. § 1983. The United States District Court for the District of Kansas granted summary judgment for Defendants on every claim except one: a First Amendment retaliation claim under § 1983 against Provost David Cordle.

Provost Cordle appealed from the denial of summary judgment on the ground that he was entitled to qualified immunity. The district court then certified as final under Fed.

R. Civ. P. 54(b) its order granting summary judgment on all other claims, and Plaintiff filed a cross-appeal. The cross-appeal challenges the district court's grant of summary judgment on (1) Plaintiff's claims that ESU and the individual Defendants discriminated against him by not renewing his contract, and (2) his claims that ESU and the individual Defendants retaliated against him for filing discrimination complaints with ESU's human resources department and the Kansas Human Rights Commission (KHRC). The claims against ESU are brought under Title VII and the KAAD, and the claims against the individual Defendants are brought under § 1983.

Exercising jurisdiction under 28 U.S.C. § 1291, we reverse the district court's denial of summary judgment for Provost Cordle and we affirm the district court's grants of summary judgment on the remaining claims. Cordle is entitled to qualified immunity because he could have reasonably believed that the speech for which he allegedly punished Plaintiff was not on a matter of public concern, which is one of the prerequisites for employee speech to be protected by the First Amendment. As for the discrimination claims, the district court properly granted summary judgment because Plaintiff did not establish a genuine issue of fact that ESU's given reason for his nonrenewal—that he was noncollegial—was pretextual. Although Plaintiff contends that these discrimination claims survive under the cat's-paw theory of liability, he does not provide adequate evidence that the allegedly biased supervisor—his school's dean—proximately caused the ultimate nonrenewal decision. Finally, we affirm the grant of summary judgment on Plaintiff's retaliation claims because he failed to present adequate evidence that the ESU

employees who allegedly retaliated against him knew that he had filed formal discrimination complaints.

I. BACKGROUND

A. Factual Background

1. Relevant Policies and Procedures

Plaintiff was appointed to the position of assistant professor at SLIM in 2009. Under the ESU policy manual, such an appointment begins a probationary period of six years, which involves "a period of annual contract renewal preceding the granting of tenure." Aplt. App., Vol. II at 242. In accordance with this policy manual, SLIM has established a review process for tenure-track faculty. The SLIM Faculty Promotion Committee (FPC), composed of all SLIM's full-time tenured faculty, conducts annual performance reviews to evaluate each tenure-track faculty member's teaching, research, and service to the school. Based on the annual review, the FPC votes for or against reappointing the faculty member. The FPC's recommendation is sent to the school's dean, who reviews it and sends her own recommendation to the provost of ESU. The provost in turn reviews the file and sends a recommendation to ESU's president, who makes the final decision. The faculty member being reviewed is informed of the recommendation at each stage of this process.

In addition to this review established by SLIM, the ESU policy manual permits faculty members to submit a grievance on any perceived impropriety in the review process that led to their nonrenewal. A grievant can obtain the assistance of an ombudsperson—a faculty member trained to help the grievant settle the dispute with

respondents without having to file a formal petition. If the grievant files a formal petition, the parties to the dispute select five persons to serve on the grievance committee from a 20-person pool of unclassified academic and administrative personnel known as the Grievance Committee Panel. Each party is allowed to strike panel members for cause and to strike up to two members without cause. The parties submit to the committee their evidence and lists of witnesses, and may request documentary evidence from the opposing party. After reviewing this evidence, the grievance committee may hold a hearing on the issues that remain unresolved. The committee then submits a report and its recommendations to the university president, who makes the final decision about how to resolve the grievance.

If ESU decides not to reappoint a faculty member during the six-year probationary period preceding the grant or denial of tenure, it must follow certain procedures. For instance, before not reappointing a faculty member with two or more years of service, the university must provide notice to the faculty member more than 12 months before the final reappointment expires.

2. Plaintiff's Early Years at ESU

Difficulties in the relationship between Plaintiff and his supervisor, SLIM Dean Gwen Alexander, appear to have arisen within his first year of employment. In June 2010, Plaintiff complained to Dean Alexander about other incoming faculty members receiving higher salaries than he did. He also complained about a colleague, Dr. Andrew Smith, receiving credit toward tenure for a prior appointment in a non-tenure-track position. Despite these complaints, Alexander gave Plaintiff a positive evaluation in

December 2010, lauding his teaching and research. Yet Plaintiff complained to Alexander and the provost that his evaluation was not positive enough because it failed to reflect the extent of his contributions to SLIM and it unfairly implied that he was not collegial. The following month, Plaintiff filed a grievance about Alexander's management of SLIM, but he soon withdrew it.

The FPC's annual reviews in 2011 and 2012 concluded (and the dean agreed) that Plaintiff's teaching and research were impressive and that his probationary appointment should be renewed. But each of the FPC's reviews described his service as merely adequate and noted his lack of collegiality.

Plaintiff, who was born and educated in India, contends that the assertions that he was noncollegial were unfair—the result of anti-Asian bias. This accusation of bias finds some support in the testimony of former SLIM faculty members, at least in regard to Dean Alexander. According to former faculty member Christopher Hinson, Alexander held employees of color to a different standard than white employees, and she spoke to Plaintiff in a "harsh" and "demeaning" way. Aplt. App., Vol. VIII at 1395. Hinson also testified that Alexander opposed introducing two new academic programs that she thought would attract mostly Chinese students, and that Alexander said that Plaintiff struggled to learn to drive a car because Indians have difficulty judging space and distance. Lynne Chase, another former member of the SLIM faculty, testified that Alexander treated nonwhite faculty unfairly and openly lamented that so many Asians were applying for faculty positions at SLIM. Chase also said that Alexander yelled at Plaintiff in faculty meetings, noting one occasion when Plaintiff had asked why proper

procedure had not been followed for his second-year evaluation and another occasion when Alexander called him a misogynist for addressing a female faculty member by her first name. And Cameron Tuai, a former SLIM faculty member of Asian descent, testified that Alexander stated that SLIM should not rely on GRE scores in admissions because Asian students "dominate" the analytical section, and that Alexander remarked that ESU's writing center was unhelpful to students because "all they do []is hire Asian people." Aplt. App., VIII at 1362. Also, Dr. Smith and Dr. Mirah Dow (another white SLIM faculty member) allegedly stated at a faculty retreat that the department did not need to worry about diversity because Kansas was a "white state." *Id.* at 1396. Alexander herself testified that it appeared to her that Plaintiff "felt that the white administration was elitist and not respectful of him," *id.* at 1426, and that she believed Plaintiff was ageist, misogynistic, and racist against white people.

3. The 2013 Reviews by the FPC and Dean Alexander

In November 2013 the FPC (Dr. Smith, Dr. Dow, and Dr. Ann O'Neill) again conducted Plaintiff's annual review, but this time it recommended that Dean Alexander not renew his appointment. It described deficiencies in Plaintiff's teaching, research, and service, and reported yet again that Plaintiff behaved disrespectfully and uncollegially toward his colleagues.

Plaintiff directs us to evidence that calls into question the legitimacy of the FPC's review process. Mr. Hinson testified that Dean Alexander told him that she was going to "get rid of" Plaintiff because he was noncollegial. Aplt. App., Vol. VIII at 1403. And there is email evidence that Dr. Smith—a member of the FPC—communicated with

Alexander about how to craft the FPC's letter recommending that the dean not renew Plaintiff's appointment.

Soon after the FPC recommended his nonrenewal, Plaintiff submitted a line-by-line rebuttal to his alleged shortcomings. But the FPC stood by its recommendation, and in January 2014 Dean Alexander concurred and recommended that Provost Cordle not reappoint Plaintiff.

4. Provost Cordle's Review

While the nonrenewal recommendation was before Provost Cordle, Plaintiff brought an informal grievance against SLIM for the recommendation of nonrenewal and for various other problems dating back to his 2010 salary dispute with Dean Alexander. He obtained the assistance of an ombudsman—Professor Michael Morales of the Physical Sciences Department—with the goal of resolving the dispute without triggering the formal grievance process.

Plaintiff gave the ombudsman a lengthy binder challenging Alexander's nonrenewal recommendation, which the ombudsman delivered to Provost Cordle. The binder consisted of a 32-page presentation and 28 attachments of more than 100 pages. It included information about Plaintiff's early salary dispute with Alexander, allegations of interference with his academic freedom, allegations of preferential treatment of Dr. Smith, and letters of support from colleagues. It also included a section titled "Unfairness, Favoritism and Discrimination," which alleged that SLIM had a biased culture and a high turnover rate among faculty of color. Provost Cordle reviewed this

binder, as well as the recommendations by the FPC and Alexander, when considering Plaintiff's reappointment.

In February 2014 Provost Cordle sent Plaintiff a letter stating that he would follow the recommendations not to renew his appointment. Cordle explained that although he did not agree with the FPC and Dean Alexander that Plaintiff's teaching and research were grounds for nonrenewal, Plaintiff's failure to work constructively with his colleagues was sufficient ground:

> The primary factor in my decision is your failure to work as a positive member of your school's academic team. Dean Alexander and the FPC report that you denigrate the school and your fellow faculty members, that you display a negative attitude toward your colleagues, and that you are unwilling to accept guidance and direction. Sadly, the materials that you submitted to me in support of your reappointment tend to substantiate these impressions. In these materials, you focus inordinately on belittling your colleagues' accomplishments and demonstrate a tendency to reject even the most constructive criticism.

Aplt. App., Vol. VII at 1178. In keeping with the university policy requiring at least 12 months' advance notice of nonreappointment, Cordle informed Plaintiff that his appointment as a professor would end at the close of the 2014–15 academic year.

For Plaintiff's terminal appointment, Dean Alexander initially assigned him to teach three fall-semester courses. Promptly thereafter, Plaintiff submitted formal discrimination complaints to ESU's human resources department and to the KHRC. Two months later, before the semester began, Alexander stripped Plaintiff of his teaching assignments—purportedly because he spoke poorly of SLIM to students. In addition, Alexander and Cordle decided, after consultation with the ESU general counsel and President Shonrock, to change the locks on Plaintiff's office door. Plaintiff alleges that

they terminated his teaching duties and changed his locks because of his formal discrimination complaints.

5. Grievance Committee's Review

In August 2014 Plaintiff filed a formal grievance petition challenging his nonrenewal. The grievance asserted that Dean Alexander and the members of the FPC were biased against him because of his national origin and race, and had unfairly targeted him because he had raised the issue of pay inequity in 2010. It further asserted that Provost Cordle had no reasonable basis to follow the recommendations of those biased decisionmakers. Plaintiff submitted over 250 pages of documents to substantiate his allegations and to challenge Cordle's findings that he had failed to work as a positive member of SLIM.

After filing his grievance, Plaintiff took part in selecting the grievance-committee members from the Grievance Committee Panel. Dr. Scott Waters served as the chair of the committee. After receiving the parties' initial submissions, the committee held its first meeting in early October and requested additional information from Plaintiff. He submitted the information a few days later. The committee also shared with Plaintiff the documentation submitted by the respondents. The committee ultimately reviewed over 1,000 pages of documents from the parties.

In November 2014 the committee issued an initial determination, affirming the decision not to reappoint Plaintiff and declining to hold an evidentiary hearing. In the following weeks, Plaintiff submitted two responses to this decision. After considering these responses, the committee issued its final decision, in which it affirmed Plaintiff's

nonrenewal. The committee explained that it had unanimously concluded that the evidence did not show that the nonrenewal was the product of discrimination, favoritism, interference with academic freedom, or failure to evaluate him based on standard criteria.

Although the committee affirmed the decision not to reappoint Plaintiff, it also sent a private memorandum to Provost Cordle and ESU President Michael Shonrock alerting them to problems uncovered by the grievance process. This memorandum explained that SLIM suffered from leadership failures and pervasive micromanagement, and that at least one former member of the SLIM administrative staff had openly espoused prejudiced beliefs.

President Shonrock reviewed the grievance committee's recommendation and a rebuttal letter from Plaintiff, after which he affirmed the grievance committee's recommendation to uphold Plaintiff's nonrenewal.

B. Procedural History

Plaintiff sued ESU, as well as Dean Alexander, Dr. Smith, Provost Cordle, and President Shonrock in their individual capacities. He alleged that ESU discriminated and retaliated against him in violation of Title VII and the KAAD. He alleged that the individual Defendants discriminated against him in violation of the Equal Protection Clause and 42 U.S.C. § 1981, retaliated against him for protected speech in violation of § 1981 and the First Amendment, and violated his due-process rights. The district court treated these claims against individual Defendants as claims brought under § 1983, which Plaintiff does not challenge on appeal.

The district court granted summary judgment for Defendants on all but one claim: the claim that Provost Cordle, in his individual capacity, violated the First Amendment by retaliating against Plaintiff for submitting the binder that alleged discrimination by SLIM. Provost Cordle appeals that ruling and Plaintiff cross-appeals the grants of summary judgment.

II. DISCUSSION

We first consider Provost Cordle's appeal of the denial of qualified immunity. We then turn to Plaintiff's appeal regarding two sets of claims for which Defendants were granted summary judgment: (1) the claims for discriminatorily terminating Plaintiff's employment (brought against ESU under Title VII and the KAAD, and against the individual Defendants under § 1983); and (2) the claims for retaliating against Plaintiff for filing official discrimination complaints (also brought against ESU under Title VII and the KAAD, and against the individual Defendants under § 1983).

A. Provost Cordle's Appeal

Provost Cordle argues that he is entitled to qualified immunity because he could have reasonably decided that the binder submitted to him by Plaintiff was not protected speech. We agree and reverse the denial of qualified immunity.

1. Qualified Immunity

"The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal quotation marks omitted). "Qualified

immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions." *Lane v. Franks*, 573 U.S. 228, 243 (2014) (internal quotation marks omitted). The protection extends beyond mistakes of law. It "applies regardless of whether the government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal quotation marks omitted). A mistake of fact must, of course, be a reasonable one. *See Deutsch v. Jordan*, 618 F.3d 1093, 1099 (10th Cir. 2010).

"When a defendant raises the defense of qualified immunity, the plaintiff bears the burden to demonstrate that the defendant violated his constitutional rights and that the right was clearly established." *Id.* at 1027. The law was "clearly established" only if it "was sufficiently clear that every reasonable official would understand that what he [was] doing [was] unlawful." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) (internal quotation marks omitted). To make such a showing in our circuit, the plaintiff "must point to a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains." *Callahan v. Unified Gov't of Wyandotte Cty.*, 806 F.3d 1022, 1027 (10th Cir. 2015) (internal quotation marks omitted).

A district-court order denying summary judgment is ordinarily not appealable under 28 U.S.C. § 1291, which grants circuit courts jurisdiction over "all final decisions" of the district courts. *See Henderson v. Glanz*, 813 F.3d 938, 947 (10th Cir. 2015). But "[u]nder the collateral order doctrine, . . . a circuit court may review certain orders as

appealable final decisions within the meaning of 28 U.S.C. § 1291 even though the district court has not entered a final judgment." *Id.* Among such appealable orders is an order denying qualified immunity "to the extent it involves abstract issues of law." *Id.* (internal quotation marks omitted). Thus, even before entry of final judgment we may review a denial of qualified immunity with respect to "(1) whether the facts that the district court ruled a reasonable jury could find would suffice to show a legal violation, or (2) whether that law was clearly established at the time of the alleged violation." *Id.* at 948 (internal quotation marks omitted). We cannot, however, review the district court's determination that "the pretrial record sets forth a genuine issue of fact for trial." *Id.* (internal quotation marks omitted).

2. First Amendment Retaliation

"[P]ublic employees do not surrender all their First Amendment rights by reason of their employment." *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2005). On the other hand, a public employer has a legitimate interest "'in promoting the efficiency of the public services it performs through its employees.'" *Id.* (quoting *Pickering v. Board of Ed. Of Twhp. High Sch. Dist. 205, Will Cty.*, 391 U.S. 563, 568 (1968)). To evaluate whether the public employee's constitutionally protected interest in free speech was violated, courts use a five-step test, commonly known as the *Garcetti/Pickering* test, which considers:

(1) whether the speech was made pursuant to an employee's official duties;

(2) whether the speech was on a matter of public concern;

> (3) whether the government's interests, as employer, in promoting the efficiency of the public service are sufficient to outweigh the plaintiff's free speech interests;
>
> (4) whether the protected speech was a motivating factor in the adverse employment action; and
>
> (5) whether the defendant would have reached the same employment decision in the absence of the protected conduct.

Helget v. City of Hays, Kansas, 844 F.3d 1216, 1221 (10th Cir. 2017) (internal quotation marks omitted). The first three steps of the *Garcetti*/*Pickering* test, which determine whether the speech was constitutionally protected, are ordinarily matters of law for a court to decide, and the final two steps are ordinarily questions of fact. *See Helget*, 844 F.3d at 1222.

3. Application to this Appeal

Provost Cordle argued in his motion for summary judgment that he was entitled to qualified immunity on both the first and second steps of the *Garcetti*/*Pickering* test. The district court rejected the motion, concluding that, as a matter of clearly established law, Plaintiff's binder (1) was not submitted as part of his official job duties, and (2) addressed matters of public concern. We review de novo this denial of qualified immunity. *See Medina v. Cram*, 252 F.3d 1124, 1128 (10th Cir. 2001).

In our view, Provost Cordle was entitled to qualified immunity at the second step of *Garcetti*/*Pickering*. Under the facts that he could reasonably believe, the law was not clearly established that Plaintiff's binder constituted speech on a matter of public concern.

"Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." *Connick v. Myers*, 461 U.S. 138, 147 (1983). Because Plaintiff's binder asserted that SLIM was a discriminatory workplace, at least some of it satisfied the content requirement. *See id.* at 146 ("[S]tatements concerning . . . racially discriminatory policies involved a matter of public concern."); *see also Patrick v. Miller*, 953 F.2d 1240, 1247 (10th Cir. 1992) (In light of content, form, and context, the plaintiff's "statements in opposition to alleged discriminatory employment practices constituted speech on a matter of public concern."); *Brammer-Hoelter v. Twin Peaks Charter Academy*, 492 F.3d 1192, 1206 (10th Cir. 2007) (*Brammer-Hoelter I*) ("Speech concerning potential illegal conduct by government officials is inherently a matter of public concern."). But we must also consider the *context* of the speech, *see Connick*, 461 U.S. at 147–48, which encompasses "the motive of the speaker and whether the speech is calculated to disclose misconduct or merely deals with personal disputes and grievances unrelated to the public's interest." *Brammer-Hoelter I*, 492 F.3d at 1205 (internal quotation marks omitted). The district court determined—and, as discussed above, we are bound to accept its determination—that there was sufficient evidence that Plaintiff was motivated to submit his binder at least in part by concern about department-wide discrimination. It "reject[ed] Cordle's suggestion that [P]laintiff raised concerns about discrimination for the sole purpose of retaining his job." Aplt. App., Vol. XI at 2282. It is not enough, however, that the public interest was part of the employee's motivation. In several cases we have described the

relevant legal question as whether the employee's *primary* purpose was to raise a matter of public concern.

In *McEvoy v. Shoemaker* a police officer claimed that he was denied a promotion in retaliation for his letter to the city council complaining of "mismanagement of command level personnel" within the police department. 882 F.2d 463, 465 (10th Cir. 1989) (internal quotation marks omitted). We held that the defendants were entitled to qualified immunity at summary judgment. *See id.* We said that the plaintiff's speech did not satisfy the public-concern requirement because "his *principal purpose* in writing [the letter] was not to disclose malfeasance on the part of government officials . . . , but instead to air his frustration at having failed to receive a promotion." *Id*. at 466 (emphasis added). We adopted the view that if "we find that the employee's personal interest *qua* employee predominates over any interest he might have as a member of the general public, we are not to intercede." *Id.* (internal quotation marks omitted).

We followed this approach in *Gardetto v. Mason*, 100 F.3d 803, 808 (10th Cir. 1996), in which a college counselor claimed that she had been suspended and demoted in retaliation for six instances of speech. When assessing on appeal whether each instance was on a matter of public concern, we emphasized that "the focus is on the motive of the speaker." *Gardetto*, 100 F.3d at 814 (citing *McEvoy*, 882 F.2d at 466). For example, in holding that the plaintiff's criticism of a college workforce-reduction policy was on a matter of public concern, we said that even though she "could have been motivated partially by her desire to keep her job or her staff," the evidence showed that she was "primarily motivated" by concern about the lack of objectivity in the proposed

procedures. *Id.* On the other hand, a separate instance of speech was *not* on a matter of public concern because the plaintiff "was primarily motivated by her personal interest." *Id.*

Likewise, in *Lighton v. University of Utah*, 209 F.3d 1213, 1220–21 (10th Cir. 2000), we affirmed a summary judgment against a professor who alleged that he was punished for speaking out about his colleague's unauthorized use of lab equipment. We held that the professor's speech was not on an issue of public concern because his "principal aim" was not to disclose government misconduct but to harm or influence his colleague. *Id.* at 1225.

Most recently, in *Brammer-Hoelter II* we explained that Tenth Circuit precedents indicate that "[i]f an employee's principal purpose was to air a personal dispute, . . . his speech was not entitled to protection even if it touched on a matter of general concern." *Brammer-Hoelter v. Twin Peaks Charter Academy*, 602 F.3d 1175, 1188 (10th Cir. 2010). We therefore held that a reasonable school administrator could have believed that he could punish teachers for speech if most of the speech at issue related to personal disputes. *See id.*

Thus, Provost Cordle is entitled to qualified immunity if a reasonable administrator could have believed that Plaintiff was motivated primarily by personal grievance. This belief may have been wrong, but so long as the error was reasonable, he is immune. *See Pearson*, 555 U.S. at 231; *Deutsch*, 618 F.3d 1099; *Nielander v. Board of County Commissioners*, 582 F.3d 1155, 1166–69 (10th Cir. 2009) (in First Amendment retaliation case, officer was entitled to qualified immunity because reasonable officer

could have viewed Plaintiff's statement as a true threat.). As the district court explained, Plaintiff obtained help from an ombudsman and submitted the binder for the purpose of challenging the recommendations of Dean Alexander and the FPC that he not be reappointed. The opening sentence of the binder states that Plaintiff is filing a complaint against members of the FPC "because of their unjust recommendation for my termination." Aplt. App., Vol. IX at 1560. And the great bulk of the materials in the binder—such as reference letters and evaluations—are included to rebut the FPC's reasons for recommending his nonrenewal. Even the section of the binder about discrimination advanced Plaintiff's primary mission of convincing Cordle to reappoint him by discrediting the motives of his detractors.

In short, (1) Cordle reasonably could have believed that Plaintiff's primary motive in submitting his binder was a personal grievance and (2) in light of our precedents it was not contrary to clearly established law to punish Plaintiff for such speech, even though the binder also addressed an issue of public concern. We conclude that Cordle is entitled to qualified immunity.[1]

B. Plaintiff's Cross-Appeal

1. Discrimination

[1] Because Provost Cordle is entitled to qualified immunity at the second step of the *Garcetti*/*Pickering* test, it is unnecessary to analyze the first step. We think it worth noting, however, that we are skeptical of Provost Cordle's argument that Plaintiff submitted this binder as part of his job duties. Making this binder does not appear to be the sort of work that Plaintiff was "paid to do." *Brammer-Hoelter I,* 492 F.3d at 1203 ("speech is made pursuant to official duties if it is generally consistent with the type of activities the employee was paid to do" (brackets and internal quotation marks omitted)).

Plaintiff argues that the district court erred in granting summary judgment on his claims that ESU violated Title VII and the KAAD by choosing to terminate his employment on the basis of race, color, and national origin. We are not persuaded.[2]

We review the district court's summary-judgment order de novo, applying the same standard that the district court is to apply. *See Ward v. Jewell*, 772 F3d 1199, 1202 (10th Cir. 2014). Viewing the evidence in the light most favorable to Plaintiff, we must determine whether a genuine issue of material fact exists. *See id.*

To prevail on a Title VII discrimination claim, the plaintiff bears the ultimate burden of proving intentional discrimination by the employer. *See Adamson v. Multi Cmty. Diversified Servs., Inc.*, 514 F.3d 1136, 1145 (10th Cir. 2008) (legal standard for Title VII claim). When, as here, the plaintiff presents only circumstantial evidence of discrimination, we analyze the claim under the *McDonnell Douglas* burden-shifting framework. *See Daniels v. United Parcel Serv., Inc.*, 701 F.3d 620, 627 (10th Cir. 2012). Under this framework, the plaintiff has the initial burden of establishing a prima facie case of discrimination. *See DePaula v. Easter Seals El Mirador*, 859 F.3d 957, 969–70 (10th Cir. 2017). The specific test for a prima facie case may vary with the context. In the canonical case of an employee who was discharged, we have said that the employee had to show that "(1) he belongs to a protected class; (2) he was qualified for his job; (3)

[2] Because we affirm the grant of summary judgment on the KAAD discrimination and retaliation claims based on the merits, we need not resolve whether Plaintiff exhausted his administrative remedies before bringing these claims. *Cf. Fort Bend County, Texas v. Davis*, 139 S. Ct. 1843, 1851 (2019) (Title VII's provisions "requir[ing] complainants to submit information to the EEOC and to wait a specified period before commencing a civil action" are not jurisdictional.).

despite his qualifications, he was discharged; and (4) the job was not eliminated after his discharge." *Kendrick v. Penske Transp. Servs., Inc.*, 220 F.3d 1220, 1229 (10th Cir. 2000). In general, "[t]he critical prima facie inquiry . . . is whether the plaintiff has demonstrated that the adverse employment action [such as a pay reduction] occurred under circumstances which give rise to an inference of unlawful discrimination." *Id.* at 1227 (internal quotation marks omitted). If the plaintiff makes this showing, the burden shifts to the employer to assert "a legitimate nondiscriminatory reason for its actions." *Daniels*, 701 F.3d at 627. If the employer does so, "the burden shifts back to the plaintiff to introduce evidence that the stated nondiscriminatory reason is merely a pretext." *Id.* This burden-shifting framework likewise applies to the KAAD discrimination claim, *see Aramburu v. Boeing Co*., 112 F.3d 1398, 1403 n.3 (10th Cir. 1997); *Woods v. Midwest Conveyor Co., Inc.*, 648 P.2d 234, 239 (Kan. 1982), *superseded by statute on other grounds as stated in Kansas Human Rights Comm'n v. Dale*, 968 P.2d 692, 696 (Kan. Ct. App. 1998), and the parties do not dispute that we apply the same analysis to the Title VII and KAAD claims.

Defendants do not challenge the district court's determination that Plaintiff presented a prima facie case. And Plaintiff does not challenge the district court's determination that Defendants presented a nondiscriminatory reason for nonrenewal—that Plaintiff was not collegial. Resolution of the dispute therefore turns on the third step of the *McDonnell Douglas* framework—whether Defendants' stated reason for nonrenewal was genuine or the reason was actually discrimination. The district court said that there was no evidence that Cordle harbored any discriminatory animus toward

Plaintiff, and Plaintiff has not argued to the contrary. Plaintiff contends, however, that the bias of Dean Alexander was the cause of his nonrenewal. We turn to that issue.

Plaintiff relies on the "cat's-paw" theory of liability, which allows a plaintiff to establish pretext even without evidence that the "actual decisionmaker" possessed an unlawful motive. *Thomas v. Berry Plastics Corp.*, 803 F.3d 510, 514 (10th Cir. 2015). An employer is liable for discrimination under this theory if a subordinate to the decisionmaker "performs an act motivated by [discriminatory] animus that is *intended* by the [subordinate] to cause an adverse employment action, and . . . that act is a proximate cause of the ultimate employment action." *Staub v. Proctor*, 562 U.S. 411, 422 (2011) (describing the standard for the cat's-paw theory of liability in the context of the Uniformed Services Employment and Reemployment Rights Act). Thus, to survive summary judgment when asserting the cat's-paw theory of liability, a plaintiff must show that there is a genuine issue of material fact that (1) the subordinate took action motivated by discriminatory animus; (2) the subordinate intended the action to cause an adverse employment action, and (3) the subordinate's actions proximately caused the intended adverse employment action. *See id*.

Plaintiff says that Dean Alexander was biased and that her bias impacted the final decision.[3] The district court concluded, and ESU does not dispute, that a reasonable jury

[3] As the district court explained, Plaintiff did not suffer an adverse employment action until either Provost Cordle's nonrenewal decision or President Shonrock's ratification of the grievance committee's recommendation. *See Macon v. United Parcel Serv., Inc.*, 743 F.3d 708, 715 (10th Cir. 2014) ("[I]f the supervisor's ability to make employment-related decisions is contingent on the independent affirmation of a higher-level manager or review committee, we focus on the motive of final decisionmaker."). Plaintiff does not

could find that Dean Alexander was motivated by discriminatory animus in recommending that Plaintiff's contract not be renewed. But, as we proceed to explain, Plaintiff has not provided adequate evidence of causation.

The subordinate's biased behavior must be a "proximate cause" of the adverse decision. *Staub*, 562 U.S. at 422 (emphasis added); *Lobato v. New Mexico Environment Dept.*, 733 F.3d 1283, 1294–96 (10th Cir. 2013) (applying *Staub* proximate-cause standard to cat's-paw theory for Title VII claim). If a final decisionmaker fires an employee based on "uncritical reliance" on facts provided by a biased subordinate, the subordinate's bias is the proximate cause of the employment action. *Lobato*, 733 F.3d at 1294 (internal quotation marks and brackets omitted); *see Staub*, 562 U.S. at 421. One way an employer can "break the causal chain" between the subordinate's biased behavior and the adverse employment action is for another person or committee higher up in the decision-making process to independently investigate the grounds for dismissal. *Thomas*, 803 F.3d at 516 (internal quotation marks omitted). As the Supreme Court has explained, "[I]f the employer's investigation results in an adverse action for reasons unrelated to the [biased] supervisor's original biased action, . . . then the employer will not be liable." *Staub*, 562 U.S. at 421. The causal chain can even be broken by an independent review that takes place after the adverse action. *See Thomas*, 803 F.3d at 517 (a "post-

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argue that Dean Alexander was the final decisionmaker behind the adverse employment action, and both parties treat Cordle as the decisionmaker. We need not decide whether it was Cordle or President Shonrock who was the formal decisionmaker. What matters is whether any of the post-Alexander layers of review cut off the causal force of her alleged bias. *See Thomas*, 803 F.3d at 517 (layers of review both before and after the adverse employment action can cut off the causal force of the biased subordinate's actions).

termination review process . . . designed to identify and unwind termination decisions that violated company practices and policies" could cut off the causal nexus between the biased employee and the adverse action). But simply *conducting* an independent investigation does not automatically immunize an employer from liability under the cat's-paw theory. *See Staub*, 562 U.S. at 421. A subordinate supervisor's biased input may still be a proximate cause of the adverse action "if the independent investigation takes it into account without determining that the adverse action was, apart from the supervisor's recommendation, entirely justified." *Id*.

Therefore, Plaintiff had to show that a reasonable jury could find a causal chain between Dean Alexander's allegedly biased input and the decision not to reappoint Plaintiff. In other words, he had to show that a reasonable jury could find that both Provost Cordle *and* the grievance committee relied on the allegedly biased recommendations from the FPC and Alexander instead of independently determining that nonreappointment was justified.

To show Cordle's reliance on Dean Alexander, Plaintiff points to Cordle's letter informing Plaintiff of his nonrenewal. The letter explained that Plaintiff's "failure to work as a positive member of [SLIM's] academic team" was the primary reason for nonrenewal, and that this conclusion was based on the reports by Alexander and the FPC, and was supported by Plaintiff's own comments in his binder. Aplt. App., VII at 1178. Plaintiff argues that "because even [Provost] Cordle admitted that he relied upon [Dean] Alexander's opinions, even if just in part, it is for a jury to decide whether [Dean]

Alexander's opinions and recommendation were a proximate cause of ESU's ultimate decision." Reply Br. on Cross-Appeal at 4.

But showing that Cordle took Alexander's recommendation into account does not necessarily mean that Alexander was a *proximate cause* of the adverse action. As noted above, Plaintiff must show that a reasonable jury could conclude that both Cordle and the grievance committee took Alexander's recommendation into account "without determining that the adverse action was, apart from the . . . recommendation, entirely justified." *Staub*, 562 U.S. at 421. Yet Cordle expressly stated that his decision was not based on the alleged inadequacies in Plaintiff's teaching and research reported by the FPC and Dean Alexander. So he clearly was not following recommendations that he believed to be unsupported.

More importantly, the grievance committee conclusively broke the causal chain between Alexander's alleged animus and Plaintiff's nonrenewal. Plaintiff helped select the five members of the grievance committee, and those committee members reviewed over 1,000 pages of evidence submitted by Plaintiff and the respondents before unanimously concluding that Plaintiff's nonrenewal was justified. Plaintiff fails in his efforts to show that Alexander's bias was a proximate cause of the grievance committee's decision.

First, Plaintiff asserts that Dr. Waters, the committee chair, believed that Plaintiff was biased against white people—a belief that allegedly proves the influence of Alexander (who alleged that bias) on the committee's decision-making. But that assertion distorts the evidence. Waters was asked during his deposition whether

Plaintiff's alleged bias, "*if true*," could have affected Plaintiff's collegiality, and Waters agreed that it could have. Aplt. App., Vol. VIII at 1450 (emphasis added). Such testimony is common sense, not evidence that Waters's judgment was infected by reliance on Alexander's purported bias.

Next, Plaintiff argues that Waters engaged in an improper *ex parte* communication with Alexander during the grievance process. As evidence of this communication, Plaintiff points to an email that Alexander sent to Provost Cordle.[4] After stating, "This is what I asked for from [Waters] and here it is," Alexander shares her thoughts on Plaintiff's grievance and the committee's process. Aplt. App., Vol. IX at 1541. She then writes, "I'm pasting [Waters]'s reply to my email here," below which she includes text that reads as if written by Waters. The text consists of answers to five questions about the grievance process, mostly about the collection of evidence.[5] According to Plaintiff,

[4] Attached to the email are Plaintiff's amended grievance and list of witnesses. The attachments appear to have been sent from Waters to Alexander: At the bottom of Alexander's email is a forwarded email from Waters, which simply states, "Gwen [Alexander], hello. Please find attached the documentary evidence [Plaintiff] has given to the Grievance Committee." Aplt. App., Vol. IX at 1541. Plaintiff does not contend that sharing this evidence with Alexander was inappropriate, perhaps because he was similarly provided with the evidence submitted by the respondents (as is presumably normal procedure).

[5] The portion allegedly pasted is as follows:

> I have read through your email, and noted the questions you would like answered. I will attempt to address them.
> 1. David Cordle not being addressed in my email to you Dr. Dow and Dr. Smith: The committee did not feel it needed additional, specific information from Provost Cordle at this point.

those answers constituted an inappropriate *ex parte* communication from Waters to Alexander, proving that the grievance committee's process was biased. Waters denied having sent such an email. But even if he did, it is hard to see how it would show bias, or even excessive deference to Alexander. The answers relate to the committee process, including the burden on the respondents. Plaintiff does not argue that the contents of this communication suggest any bias or impropriety. At most, the email reveals only a procedural error in not copying Plaintiff.

Plaintiff also relies on the grievance committee's letter to President Shonrock and Provost Cordle about the troubling climate within SLIM, which Plaintiff contends is evidence that the grievance committee's review was flawed. But if the letter

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> 2. Regarding who is to "speak for the respondent," I am seeking clarification on this matter, and will provide an answer for you when I receive clarification.
>
> 3. The committees [*sic*] understanding of the steps we are to take is 1) receive evidence from both parties, 2) examine evidence, 3) determine what issues can be excluded from our discussion, and 4) frame the remaining unresolved issues. The committee is requesting any evidence that will assist in the above outlined steps.
>
> 4. Concerning the number of examples of [Plaintiff's] absence of collegiality, and records of annual evaluations, I cannot give a certain number. The committee seeks clear documentation so that we may make a fair ruling. It would be your decision regarding the amount of material you feel addresses the allegations.
>
> 5. Concerning the accusations made by [Plaintiff], yes, at this point the committee is investigating these allegations, due to the fact they are included in his grievance letter. If you believe you have evidence to refute his allegations, the committee should receive this evidence.
>
> I will include in a separate email [Plaintiff's] formal grievance letter, and the evidence he has submitted.

Aplt. App., Vol. IX at 1541.

demonstrates anything, it is that the grievance committee took seriously the allegations of poor leadership and bias within SLIM, which suggests that the committee questioned Alexander's performance, rather than showing reliance on her.

In sum, we are unpersuaded by Plaintiff's arguments challenging the grievance committee's decision under the cat's-paw theory.[6]

Finally, Plaintiff argues that we should apply concepts of corporate liability to Title VII claims, allowing the jury to find that ESU committed a Title VII violation even without proof that any particular decisionmaker acted with discriminatory intent. It is unclear whether Plaintiff is proposing a new theory for proving pretext or if he is arguing that we need not apply the *McDonnell Douglas* framework at all. Regardless, Plaintiff did not make this argument below, so at most we review the argument only for plain error. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1127–28 (10th Cir. 2011) (Gorsuch, J.). To obtain relief under that standard, the party must show "(1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the

[6] In his reply brief, Plaintiff argues that he made an adequate proximate-cause showing based on evidence that Dean Alexander and the FPC engaged in selective reporting—that is, they reported him for conduct for which they did not report other faculty members, so only he could be disciplined for such conduct by higher-ups. We need not address this theory of causation, however, because Plaintiff failed to make it in his opening brief. *See Silverton Snowmobile Club v. U.S. Forest Service,* 433 F.3d 772, 783 (10th Cir. 2006) ("[T]he failure to raise an issue in an opening brief waives that issue." (brackets and internal quotation marks omitted)).

We also note that the appendix does not include the documents relied on by the grievance committee in reaching its decision. This omission in itself would counsel against reversing on the cat's-paw theory.

fairness, integrity, or public reputation of judicial proceedings." *Id.* at 1128. But Plaintiff has not demonstrated an error "that is plain, meaning clear or obvious under current law." *Therrien v. Target Corp.*, 617 F.3d 1242, 1253 (10th Cir. 2010). He has not pointed to any precedents clearly showing that we can ignore the *McDonnell Douglas* framework or apply general principles of corporate liability in this context. On the contrary, our precedents hold that the *McDonnell Douglas* framework applies to Title VII claims that are based on circumstantial evidence, *see, e.g., Daniels*, 701 F.3d at 627, and that the pretext inquiry of *McDonnell Douglas* is not about general corporate knowledge but rather about the intent of the decisionmaker, *see Simmons v. Sykes Enterprises, Inc.*, 647 F.3d 943, 948 (10th Cir. 2011), or, in the case of cat's-paw liability, the intent of the biased subordinate and his or her effect on the decisionmaker, *see Thomas*, 803 F.3d at 514–15. Further, there is another reason Plaintiff cannot prevail on this theory: he fails even to argue for plain-error review. *See Richison*, 634 F.3d at 1131 ("[T]he failure to argue for plain error and its application on appeal . . . surely marks the end of the road for an argument for reversal not first presented to the district court.").

Because Plaintiff has not established a genuine issue of material fact as to whether the nondiscriminatory reasons offered by ESU for Plaintiff's nonrenewal were pretextual, we affirm the district court's grant of summary judgment on the Title VII and KAAD discrimination claims against ESU. Likewise, we affirm the grant of summary judgment for the individual Defendants on Plaintiff's Equal Protection claim under § 1983, which is also based on the cat's-paw theory of liability and which Plaintiff concedes should be analyzed in the same way as the Title VII and KAAD claims. *See Bird v. West Valley*

City, 832 F.3d 1188, 1208–1209 (10th Cir. 2016) (applying *McDonnell Douglas* framework in the same way to Title VII and § 1983 claims based on the same facts).

2. Retaliation for Formal Complaints

Plaintiff's last claim for consideration on his cross-appeal is that he suffered retaliation for submitting discrimination complaints to ESU's HR department and to the KHRC. The alleged retaliation was his removal from teaching assignments and his being locked out of his office. He claims that ESU is liable for retaliation under Title VII and the KAAD, and the individual Defendants are liable for retaliation under § 1983 for violating the First Amendment. Again, we review de novo the district court's grant of summary judgment on these claims, viewing the evidence in the light most favorable to Plaintiff. *See Dewitt v. Sw. Bell Tel. Co*., 845 F.3d 1299, 1306 (10th Cir. 2017).

a. Factual Background

On April 1, 2014, Dean Alexander assigned Plaintiff to teach three courses in the fall 2014 semester (the first semester of his terminal appointment). The next day, Plaintiff submitted a formal discrimination complaint to Judy Anderson, executive director of ESU's Human Resources and Affirmative Action department. The complaint alleged that Dean Alexander, Provost Cordle, and the FPC members had discriminated against him on the basis of race, color, and national origin. A few days later, Plaintiff also submitted a formal discrimination complaint to the KHRC. On June 5, Plaintiff received a letter from Alexander stating that Plaintiff would continue to receive full pay and benefits throughout his terminal appointment but that his teaching assignments had been removed and he would no longer be provided an office or equipment. The letter did

not explain why Alexander removed his teaching assignments, but Alexander explained in her deposition two years later that she had done so because Plaintiff had spoken negatively about SLIM to students (whom she could not identify). ESU's general counsel stated in his deposition that about the time Plaintiff's teaching duties and office privileges were removed, Alexander and Provost Cordle decided to change the locks on Plaintiff's office door. The general counsel testified that Alexander consulted him about this decision and that Cordle spoke about the decision with President Shonrock.

b. Title VII and KAAD Claims

As with Title VII discrimination claims, we apply the *McDonnell Douglas* burden-shifting framework to Title VII and KAAD retaliation claims that are based on indirect evidence. *See Argo v. Blue Cross & Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1202 (10th Cir. 2006) (Title VII claim); *Woods*, 648 P.2d at 239 (KAAD claim). Neither party disputes that this framework should be applied identically to the Title VII and KAAD retaliation claims. To establish a prima facie case, Plaintiff must show that (1) he engaged in protected opposition to discrimination; (2) ESU took action against him which a reasonable person would have found materially adverse; and (3) a causal connection existed between the protected activity and the materially adverse action. *See Argo*, 452 F.3d at 1202.

The district court ruled that Plaintiff's prima facie case came up short in two ways. First, he had not shown that ESU had taken a materially adverse action. Second, he had not shown a causal connection between his filing of the formal complaints and the allegedly adverse action, because there was no evidence that the decisionmakers knew of

the filings. We need not decide whether the removal of Plaintiff's teaching duties and changing of his office locks constituted a materially adverse action, because we agree with the district court on the causation element.

To establish the requisite causal connection, Plaintiff must show that the decisionmakers took action against him out of a desire to retaliate for his formal discrimination complaints. *See Hinds v. Sprint/United Management Co.*, 523 F.3d 1187, 1203 (10th Cir. 2008). "As a prerequisite to this showing, [Plaintiff] must first come forward with evidence from which a reasonable factfinder could conclude that those who decided to [take adverse action against] him had knowledge of his protected activity." *Id.* Plaintiff must therefore point to evidence that those who acted against him knew of his formal complaints.

In Plaintiff's opening brief, however, he does not identify any evidence that Cordle or Alexander knew of his formal discrimination complaints. And we can readily dispose of three possible alternative arguments for causation that might be discerned in his briefs. First, he argues that a jury could infer causation from evidence of other alleged misbehavior, such as Alexander's bias against Asians, her inappropriate involvement in the FPC process, her pretextual explanation for the actions, and Cordle's willingness to accept the FPC's recommendations. But evidence of Alexander's alleged prior mistreatment of Plaintiff is not evidence that she was aware of Plaintiff's formal complaints. Rather, it is evidence that, even without knowing of Plaintiff's formal complaints, she was inclined to remove Plaintiff's teaching assignments for the slightest reason (such as Plaintiff's allegedly badmouthing SLIM to students). In any event, he did

not preserve this argument in district court and he does not argue plain error on appeal. *See Richison*, 634 F.3d at 1131.

Second, Plaintiff's final brief argues for the first time (either on appeal or in district court) that the general counsel must have known of Plaintiff's formal complaints and shared this knowledge with Alexander, Cordle, and President Shonrock before they decided to change Plaintiff's office locks and strip him of his teaching assignments. Plaintiff forfeited the argument by failing to make it below. *See FDIC v. Noel*, 177 F.3d 911, 915 (10th Cir. 1999) ("[W]hen a litigant fails to raise an issue below in a timely fashion and the court below does not address the merits of the issue, the litigant has not preserved the issue for appellate review."). And in any event he waived it by failing to make it in his opening brief. *See Medina v. Catholic Health Initiatives*, 877 F.3d 1213, 1227 n.6 (10th Cir. 2017) ("[I]ssues raised by an appellant for the first time on appeal in a reply brief are generally deemed waived." (internal quotation marks omitted)).

Finally, Defendant alludes in a one-sentence footnote to another possible argument: namely, that the temporal proximity of his filing of the complaints and the removal of his teaching duties (approximately two months) would allow the jury to infer a causal connection. This is not adequate argument to preserve an issue for review. *See Therrien*, 617 F.3d at 1252–53 (issue waived when only mention is in footnote in opening brief and footnote contained no argument). But in any event the argument fails. To be sure, we have recognized that a plaintiff may show a causal connection by presenting evidence that the "temporal proximity" between the protected conduct and the materially adverse action "justif[ies] an inference of retaliatory motive." *Metzler v. Federal Home*

Loan Bank of Topeka, 464 F.3d 1164, 1171 (10th Cir. 2006) (internal quotation marks omitted). But a plaintiff who seeks to show causation in this manner still must present evidence that the decisionmakers *knew* of the protected conduct. *See Metzler*, 464 F.3d at 1171–72 (evidence that supervisor *knew* of plaintiff's protected activity at most six weeks before termination allows for an inference of causation); *Strothers v. City of Laurel*, 895 F.3d 317, 336 (4th Cir. 2018) (employer's knowledge of protected conduct is prerequisite for prima facie showing of causation, even when there is temporal proximity).

c. First Amendment Claim

The lack of evidence that the individual Defendants knew of Plaintiff's formal discrimination complaints allows us to dispose of the First Amendment retaliation claim that arises from the same facts as the Title VII and KAAD claims. Like the *McDonnell Douglas* framework, the fourth step of the *Garcetti*/*Pickering* test for First Amendment retaliation claims requires the plaintiff to show a causal connection between the protected speech and an adverse action. *See Couch v. Bd. of Trustees of Mem'l Hosp. of Carbon Cty.*, 587 F.3d 1223, 1236 (10th Cir. 2009). Because Plaintiff failed to present adequate evidence that the individual Defendants knew of his formal complaints, no reasonable jury could infer a causal connection between the protected speech and the allegedly adverse action. We therefore affirm the grant of summary judgment on this claim.

II. CONCLUSION

We **REVERSE** the district court's denial of summary judgment to Provost Cordle on the First Amendment retaliation claim. We **AFFIRM t**he district court's grant of summary judgment for Defendants on the remaining claims.