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October 2, 2019

**VIA ELECTRONIC FILING**

Honorable David J. Smith
Clerk, Eleventh Circuit Court of Appeals
56 Forsyth Street, NW
Atlanta, Georgia 30303

**Re:** ***Tracy v. Florida Atlantic University***
**Case No. 18-10173-V: Appellees' Rule 28(j) Response to Appellant's Supplemental Authorities**

Dear Mr. Smith:

Although Appellant has attempted to make this case about First Amendment rights, it remains that he was terminated for insubordination after he refused to acknowledge his obligations under the Collective Bargaining Agreement (CBA) and accept his teaching assignment; refused to comply with simple directives from his supervisors to do so; and refused to fully and accurately report his numerous outside activities. The CBA's content-neutral reporting requirement was consented to by Appellant as both an employee and as union president; yet, Appellant refused even to check the electronic box that all other professors checked to simply acknowledge that he had an obligation to comply. (DE246-2,pp.80,154; DE246-

12,p.1; DE484,p.30) Moreover, Appellant's reference to the Faculty Senate meeting is of no consequence, as the district court carefully explained. (DE484,pp.17-21)

None of the supplemental cases support the dangerous proposition that when an employee under a CBA is disciplined, the employee can simply bypass the contractually-agreed remedy by alleging that the contract provision is constitutionally vague. (DE484,pp.25-26)

Appellant's supplemental cases:

- *Walter v. Queens College* (district court allowed §1983 vagueness challenge to sexual harassment policy – the subject of federal discrimination law – where Plaintiff *complied with CBA and went through agreed-upon grievance procedures*).
- *Dambrot v. Central Michigan University* (case reported by Appellant as affirming summary judgment for terminated coach, but just the opposite: summary judgment affirmed *against* terminated coach after coach used a racial slur; appellate court did affirm a decision in favor of group of *students* (separate Plaintiffs in the case against the University) who challenged the

public university's non-contractual discriminatory harassment policy *which dictated what students could or could not say*).

- *National Abortion Federation v. Metropolitan Atlanta Rapid Transit Authority* (district court found that public transit authority's rule directly regulating speech by preventing advertising that "supports or opposes any position in regard to a matter of public controversy…" from being displayed in the transit authority's stations or facilities, applied to an association of abortion providers, was content-based, and susceptible to a §1983 First Amendment free-speech claim; rule was content-based on its face and *did not involve contract between plaintiff and defendant with alternative or preliminary remedies*).

Respectfully submitted,

*/s/Jack J. Aiello*

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## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFIY that this letter complies with the word limit of Fed. R. App. P. 28(j) because the body of the letter contains 350 words.

*/s/ Jack J. Aiello*
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 2, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, and the foregoing document is being served on all counsel of record identified on the attached service list via transmission of Notices of Electronic Filing generated by CM/ECF.

*/s/ Jack J. Aiello*
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***Tracy v. Florida Atlantic University Board of Trustees***
**Case No. 18-10173-V**

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