

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

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AMY K. DRAPER,

Plaintiff,

vs.

Case No. \_\_\_\_\_

UNIVERSITY OF TENNESSEE,  
PHIL DANE, & DANELLE FABIANICH,

Defendants.

**JURY DEMANDED**

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**COMPLAINT**

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Comes now Plaintiff Amy K. Draper and brings this action against her former employer, University of Tennessee, and Phil Dane, individually, and Danelle Fabianich, individually. As described below, Defendants' actions against Plaintiff are in violation of Plaintiff's constitutional rights and the Tennessee Human Rights Act, as codified at Tenn. Code Ann. §§ 4-21-101 et seq. Defendants actions also constitute retaliation in violation of Title IX of the Education Amendments of 1972, as codified at 20 U.S.C. § 1681 et seq. Further, upon receiving a right to sue letter from the EEOC Plaintiff will amend her complaint to file a claim against Defendant University of Tennessee for violations of Title VII of the Civil Rights Act of 1964.

**PARTIES**

1. Plaintiff Amy K. Draper is an adult female resident of the State of Texas and former Head Volleyball Coach at University of Tennessee at Martin.

2. Defendant University of Tennessee at Martin is a state institution of higher education located in Martin, Tennessee with its principal office at Administration Building, Martin, Tennessee 38238.

3. Defendant Phil Dane is a male citizen of the State of Tennessee and is the Athletics Director for the University of Tennessee at Martin.

4. Defendant Danelle Fabianich is a female citizen of the State of Tennessee and is the Assistant Athletics Director for Administration/SWA at the University of Tennessee at Martin.

### **JURISDICTION**

5. The Court has jurisdiction over Plaintiff's constitutional claims brought under 42 U.S.C. § 1983 and Plaintiff's Title IX retaliation claim pursuant to 28 U.S.C. §§ 1331 and 1343(4). In addition, Plaintiff has filed a timely charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). The EEOC is still in the process of conducting its investigation. Plaintiff will amend her complaint to add certain Title VII violations once a right to sue notice has been issued and received. Plaintiff has also filed a timely charge of discrimination with the United States Department of Education, Office of Civil Rights.

6. Plaintiff requests that the Court exercise its pendent jurisdiction under 28 U.S.C. § 1367 and accept Plaintiff's state law claims arising out of the Defendants' violations of the Tennessee Human Rights Act and the claims arising out of Defendants' violations of the common law of the State of Tennessee.

### **STATEMENT OF FACTS**

7. Amy Draper (“Draper”) received a call in mid-March, 2005, from Defendant Phil Dane (“Dane”), the Athletic Director at University of Tennessee-Martin (“UTM”), who asked if Draper would be interested in interviewing for the position of Head Volleyball Coach at UTM. Draper, a former standout volleyball player at Mississippi State University, had just finished her third season as Head Volleyball Coach at the University of West Georgia. In her time at West Georgia, Draper turned around a program that before her arrival had won just twenty-five (25) games in three years. In her final season as Head Coach, Draper led her team to a 24-9 record, and the team advanced to the Gulf South Conference tournament for the first time since 1998. For her leadership, Draper was named the Gulf South Conference’s East Division Coach of the Year, the first such honor for a coach at West Georgia in 17 years.

8. Around this period of time, upon information and belief, UTM was undergoing the NCAA’s recertification process during which the NCAA evaluates whether colleges and universities are in compliance with its policies and procedures, including those embodied in Title IX. UTM’s athletic department was also undergoing a self-assessment, in which it is believed that UTM found several deficiencies in the area of gender equity.

9. In response to the call from Dane, Draper met with Dane at a Cracker Barrel in Nashville, Tennessee. Dane had stated in his call that he was “not comfortable” meeting with females in private.

10. In the meeting at the Cracker Barrel, Dane told Draper that the girls in the program needed “structure” and “discipline” and that they “were a bit wild and needed a strong coach to come in.”

11. In late March, Draper went to UTM for an official interview on which she was offered the job. Draper accepted but asked that she be allowed to sign a contract first with UTM before she would resign her position at West Georgia. Draper was sent a contract via email from Danelle Fabianich (“Fabianich”), UTM’s Assistant Athletic Director, which she signed. Draper then resigned her position at West Georgia. Draper was employed on a 12-month recurring and renewable contract. On April 1, 2005, after a brief trip back to Georgia, Draper returned to UTM to begin coaching. Draper’s husband and two children came to UTM six weeks later, after they finished out the school year and sold their house.

12. On April 1, 2005, upon arriving at UTM, Fabianich asked Draper to keep Darrin McClure on as a student assistant because it would “look good for the upcoming NCAA certification” to have two assistants working with volleyball. Fabianich told Draper that McClure was paid with the manager line account and that they would let her use fund raising money to keep him on staff.

13. In addition to McClure, Draper hired her former assistant from West Georgia, Angela Hubbard, to work as a graduate assistant coach.

14. In her first season as Head Coach, the Women’s Volleyball team had a record of 5 wins and 29 losses. The previous volleyball coach, who Draper replaced, had allowed a less structured atmosphere. Draper spent much of the season implementing a program with more structure, discipline, and a focus on academics. After the season, Dane told Draper in response to her saying she was disappointed with a losing record, “Don’t worry about it. Winning is not the most important thing.”

15. During the spring 2006 season, the team achieved a record of 8-2. Draper was pleased with the improvement made by the team but began to realize that Fabianich was taking steps to undermine her authority. Fabianich was speaking with players on her team and their families about issues such as playing time without discussing such issues with Draper.

16. In the summer of 2006, Draper learned through the Men's Head Basketball Coach, Bret Campbell, that Dane had received an e-mail about Draper. When Draper asked Dane about the e-mail, he said that he did not address the complaints unless there were several of them or he found the information to be valid. Dane never showed Draper the email nor discussed its contents with her. Dane did say that Draper should "hash out" the problems she was having with Fabianich.

17. In the fall 2006 season, Draper led the team to an 18-13 record, the best record for Women's Volleyball at UTM in four seasons. Despite achieving the program's first winning season in four years, Draper received no praise and almost no support, while Dane consistently praised and supported the male coaches and the men's programs.

18. Draper faced other actions that are examples of further discrimination. For instance, Draper was forced to claim annual leave while away from UTM, even though male coaches were not.

19. Male coaches were notified of any observed team conflict and provided the opportunity to respond and to resolve such conflict, while Draper was denied this opportunity. While employed by UTM, Draper requested information about any player complaints or concerns so that she, like her other colleagues, could have an opportunity to learn of, and correct, the behavior. Neither Fabianich nor Dane ever provided Draper

with any specific examples of player complaints. Neither Fabianich nor Dane ever provided Draper with any opportunity to correct any behavior that was brought to the attention of UTM. However, Fabianich interacted with Draper's players and communicated with some players and their parents. This behavior interfered with Draper's ability to perform her job and prevented some of her players from accepting Draper's authority. Such interference was not experienced by any of the male coaches at UTM.

20. Draper was also denied any opportunity to improve perceived or alleged deficiencies in her job performance. She was denied progressive discipline. Male coaches were given opportunities to improve deficiencies and were granted progressive discipline. For example, the Assistant Women's Basketball Coach, a male, has consistently had player issues. In 2007, The Assistant Women's Basketball Coach grabbed a player's jersey and was required to attend an Anger Management program. Then, in 2008, this same coach was called into Dane's office for excessive use of profanity and provided the opportunity to correct his behavior. A second example, the Head Women's Soccer Coach, a male, was also called into Dane's office in 2007 for allegedly calling his female athletes "pussies." Again, Dane provided this male coach an opportunity to learn about player allegations as well as an opportunity to correct his behavior. Thus, male coaches were also provided with far greater job security than what Draper was given.

21. The Women's Volleyball team labored under consistently unequal conditions. Men's programs have far larger budgets for supplies, equipment, pre-game meals, and post-game meals. Until recently, the Women's Volleyball team did not have air-

conditioning or heating in their locker room. The Women's Volleyball coaches' office is far inferior to the facilities of Men's Program's offices, which have central heat and air are in the central Athletics Office, while the Women's Volleyball offices were originally a closet and have air circulation only through a window unit. Because of these conditions, Draper requested that the Women's Volleyball coaches' offices be moved to the Women's Basketball office where there was an available office, but this request was denied and the office was given to a male coach.

22. Further, the Women's Volleyball team neither practices nor plays in a facility equal to that of men's programs. Women's Volleyball is prohibited from playing or practicing on the Pat Summit Court in the main arena and is relegated to sharing space with UTM's physical education classes and intramural sports.

23. Additionally, male coaches coaching female sports do not face the same requirements that female coaches face in acquiring employment at UTM. Male coaches who coach female programs are not required or expected to have played the sport they coach competitively. The current Volleyball Coach, the Assistant Women's Basketball Coach, the Head Softball Coach, all males, lack competitive playing experience at the college level in the sport they coach. In stark contrast, there is not a single coach -- from Head Coach to student assistant -- coaching any male sport that has not played competitively in college the sport they are coaching. Further, UTM requires that all the female coaches have college experience in the sport they are coaching. The exceptions being made for male coaches are only made for male coaches and only made for female sports. These examples demonstrate qualitatively distinct treatment for the men's and women's programs which violated both Title VII and Title IX.

24. Because of the actions of Fabianich and the treatment Draper and her team received from Dane and UTM, Draper felt as though she and her team might be being treated differently than the male coaches and the men's programs. In an e-mail on November 15, 2006 to Fabianich, on which Dane was copied, Draper stated that "I sense that you are targeting me for unequal treatment here at the athletic department. I sense this could be due to the fact that I am a strong and capable woman. I believe that gender may be playing a role not only in the investigation into my meal expenditure errors but also in other forms of treatment I receive." Draper also stated that she believed the volleyball program was being treated differently than the male programs.

25. In response to her complaints, Plaintiff was subjected to overt and subtle retaliation, a hostile work environment, and continued discrimination.

26. After receiving the November 15, 2006 email, a meeting was scheduled for the following day, November 16, 2006, purportedly for the purpose of discussing "Amy's allegation of discrimination against Danelle and other issues." Prior to this meeting, Draper e-mailed and requested that she be allowed to bring her graduate assistant coach or to tape record the meeting. Dane refused and said he would not attend a meeting under either of those conditions.

27. On November 16, 2006, Draper met with Dane and Fabianich. During the meeting, Draper was not permitted to address her concerns. Dane and Fabianich criticized Draper, threatened to take away some of the team's scholarships, and Dane told her that if she continued her allegations of gender discrimination that he would "bring the curtain down" on her. Draper understood this last comment to be a threat of termination.

28. Dane's reaction to the Draper's charge of discrimination is not an isolated incident. Upon information and belief, Dane has been accused of sexual discrimination previously and took steps in retaliation against that accuser on that occasion also.

29. In the spring 2007 season, the volleyball team finished with an 11-2 record. During the spring, Draper was told that if an initiative passed to raise the student activities fees, the Women's Volleyball team would be given a full-time assistant coach. Prior to this time, Draper and the Women's Volleyball team only received coaching support from a graduate or student assistant coach. After Draper and the Volleyball team worked to get the initiative passed, Dane and Fabianich revoked the promised full-time assistant coach for Women's Volleyball. Draper believes that Dane's retracted promise of a full time assistant coach was an act of retaliation for speaking out against gender discrimination under both Title VII and Title IX. The failure to provide a full time assistant coach also constitutes discrimination in the terms and conditions of employment because male head coaches were provided full time assistants. Additionally, men's athletic programs were provided full time assistants while Women's Volleyball was not.

30. In the spring or summer of 2007, Draper also sought to use fundraising money to give her graduate assistant, Ada Bazin, a female, a small raise in pay. Unlike when Draper arrived at UTM and was told by Fabianich to use fundraising money to pay for McClure, a male, Fabianich now told Draper that such use of funds was prohibited.

31. After learning of Dane and Fabianich's revocation of their promise of a full-time assistant coach in the summer of 2007, Draper sent a message to Fabianich, on which Dane was copied, explaining that she believed that the revocation of the coach was discriminatory action based on Draper's and the team's gender.

32. In responding to Draper's message, Dane stated that "I am stunned that you would write two e-mails to your supervisors in the tone these were written, and I am offended that you have accused Danelle or me of discrimination."

33. Also in the summer of 2007, Draper was accused of violating NCAA rules for attending an open gym. Draper explained to Dane that she was merely in the gym with the athletes for liability reasons. Draper asked why she was being singled out for reprimand when the Men's Basketball program had one-on-one coaching sessions with players in violation of NCAA rules. Dane responded that Draper should not try to drag down another program in order to divert attention from her.

34. After this complaint, Dane held a meeting with the Men's Basketball Coach Bret Campbell. After this meeting, Campbell went off campus with David Draper ("David Draper"), Draper's husband and the Assistant Men's Basketball Coach, and asked him why Amy Draper "would want to fuck" her career.

35. The Drapers then went to Campbell's house because Draper wanted to apologize for how the events had turned, but to tell Campbell that she would no longer be treated unfairly. At Campbell's house, Campbell took the Drapers into the pool house. Campbell then belittled and berated Draper in front of her husband, telling her that "no athletic director would hire" her and that she was "an athletic director's worst nightmare." Campbell continued to yell at Draper for 30 minutes. Campbell then turned to David Draper and said, "I don't know what the dynamics are in your marriage but if this were my wife. . . ."

36. In August 2007, Dane met with Draper and told her not to expect him to be "chummy chummy" with her this year with "this lawsuit thing hanging over my head."

After this meeting, Dane did not communicate directly with Draper except to have Draper change the scheduling of two Women's Volleyball games to accommodate the Men's Football schedule. Dane's failure to communicate with Draper was another example among others of retaliation against Draper for her complaint of gender bias and discrimination.

37. Towards the latter part of the 2007 fall season, Darrin McClure observed the last four to six home games of the Women's Volleyball season. McClure was also seen by other coaches in the UTM Athletics Office during this same period.

38. With approximately six weeks left in the season, Fabianich informed community members and the significant others of two members of the Women's Volleyball team that Draper would be fired at the end of the season.

39. At 9:00 a.m. the Monday morning after the last game of the fall 2007 season, Draper was telephoned by Dane and told that she had to report to his office at 11:00 a.m. She was advised that she should either resign or would be terminated by 2:00 p.m. Dane told Draper that was prohibited from talking about the decision with anyone on campus. The reason given for this termination was the poor performance of the Women's Volleyball team and team conflict. She was required to tell her team that evening that she was leaving and clean out her office that night. Minutes after Draper's meeting with the team, Dane named McClure as interim head coach and introduced him to the team.

40. Although Draper was placed on administrative leave, Dane either requested or permitted Draper's email account to be immediately suspended, her office vacated and keys turned in the next day, and her biography taken off the UTM website. These extraordinary steps are all acts of retaliation. Draper's husband, who was an Assistant

Basketball Coach, resigned in March and his biography and picture remained on the UTM website as of the filing of this lawsuit.

41. Only days after being placed on administrative leave, Dane then demanded that Draper return the University car that was assigned her, even though the car was assigned to her as part of her terms of employment in her contract.

42. Draper, through her attorneys, informed UTM that the removal of her biography from the UTM website, as well as her lack of access to her University email, was causing injury to her reputation and was preventing her from securing alternative employment. UTM was also informed that Draper was entitled to her University vehicle and access to her office during her administrative leave. These requests for reinstatement of her biography and University email and return of access to her office and her University vehicle were consistently ignored. Because other coaches who were terminated or resigned were not treated in this manner, these actions constitute further discrimination and/or retaliation in violation of Title VII and Title IX.

43. Between November 2007 and January 2008, UTM's attorney informed Draper that she would receive a pre-termination hearing consistent with University procedures before additional adverse action was taken. This information was conveyed by University attorney, Michael D. Fitzgerald ("Fitzgerald"), through telephone and email communications.

44. On or around January 16, 2008, Draper informed UTM through Fitzgerald that Dane and McClure were violating NCAA rules and Title IX by canceling one of Draper's former player's scholarships mid-season. Within hours of reporting this violation, the player's scholarship was reinstated, the player was confronted and chastised by Dane for

being “loyal” to Draper, and Dane authored a letter of termination of Draper’s employment.

45. On January 18, 2008, Dane wrote in a letter to Draper that she was terminated for her team’s unsatisfactory performance and for her “failure to adopt a coaching philosophy that is consistent with my philosophy and that of our athletics mission statement, which states that we will pursue our goals ‘while stressing the physical, social, and emotional well being of student-athletes.’” Draper’s termination came without a pre-termination hearing in violation of her federal and state due process rights. Draper had a right to a pre-termination hearing because such a hearing is required by UT policies and procedures and because her recurring and renewable contract gave her the expectation of continued employment,

46. The actions of Dane and Fabianich against Draper, in addition to being discriminatory and retaliatory, were taken in furtherance of their own personal interests.

47. During her time as Head Volleyball Coach at UTM, Draper received two written performance reviews both signed by Fabianich. On or about October 1, 2005, Draper received a Probationary Period Performance Review in which she scored “Consistently,” the highest evaluation possible for this review, in 9 of the 10 categories. Fabianich also reviewed Draper on February 16, 2006, and found that Plaintiff either “fully” met or “exceeded” the standard required for each of the elements reviewed. Draper was never given another performance review after the February 2006 review.

48. During her time at UTM, Draper received numerous messages from players, parents, and university officials thanking her for her efforts and performance as Head Coach of Women’s Volleyball. In addition to being successful athletes, Draper’s players

also performed well academically, maintaining one of the highest combined grade point of any varsity athletic team on campus. This academic success was recognized on a national level as Draper's team won American Volleyball Coaches Association Award in 2005 and in 2006.

49. Draper was allegedly terminated for her team's poor performance, despite the fact that male coaches have consistently led their teams to losing seasons and were not terminated. For example, in 2006, the Men's Basketball team finished last in the conference despite the team having six seniors and has had only two winning seasons in the past nine years. Despite this record, Coach Bret Campbell, a male, is still employed at UTM as Head Men's Basketball Coach.

50. The Men's Baseball program has compiled an even worse record. Over the past nine seasons, it has not had one winning season and finished with a 2008 season record of 10 wins and 41 losses. Despite having never finished a season with a winning record, Coach Victor Cates, a male, has been retained by UTM as Head Baseball Coach for ten years.

51. Draper was replaced by Darrin McClure, her former student assistant, a far less qualified male who has never coached as a full-time assistant or head coach at the university or college level. McClure has also never coached a team to a winning record at any competitive level. No formal search for Draper's replacement was ever conducted. No announcement indicating a vacancy in this position has ever been posted or advertised, despite McClure's title of *Interim* Head Coach.

#### **CAUSES OF ACTION**

52. Plaintiff incorporates paragraphs 1 through 51 above as though specifically set forth herein, and alleges that:

53. Defendants' actions constitute a violation of Plaintiff's equal protection rights guaranteed under the U.S. Constitution through 42 U.S.C. § 1983;

54. Defendants' actions constitute a violation of Plaintiff's due process rights guaranteed under the U.S. Constitution through 42 U.S.C. § 1983;

55. Defendants' actions constitute retaliation in violation of Title IX of the Education Amendments of 1972;

56. Defendants' actions constitute discrimination on the basis of gender in violation of the Tennessee Human Rights Act;

57. Defendants' actions constitute unlawful retaliation and retaliatory harassment in violation of the Tennessee Human Rights Act. Defendants Fabianich and Dane may be held individually liable for retaliation under the THRA;

58. Defendants Fabianich's and Dane's actions constitute intentional infliction of emotional distress and outrageous conduct in violation of Tennessee state common law;

59. Defendants Fabianich's and Dane's actions constitute intentional interference with employment in violation of Tennessee state common law;

60. As a direct and proximate result of Defendants' unlawful, discriminatory conduct toward Plaintiff, Plaintiff has lost wages and benefits and has sustained other pecuniary loss. Plaintiff, as a result of Defendants' actions, has suffered catastrophic damage to her professional career and professional reputation, as well as to her personal reputation. Defendants' discriminatory practices and insults have been demeaning to

Plaintiff and have caused her to suffer deep pain, humiliation, and embarrassment, as well as significant emotional distress;

61. The unlawful actions of the Defendants complained of above were intentional, malicious, and taken in reckless disregard to the statutory rights of Plaintiff.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that the following relief be granted following a jury verdict in her favor:

1. Back pay, lost benefits, and other pecuniary losses proximately caused by Defendants' unlawful conduct;
2. Front pay and the value of future lost benefits since reinstatement is not feasible;
3. Compensatory damages against Defendants in an amount to be determined by the jury;
4. Punitive damages against Defendants in an amount to be determined by the jury;
5. All costs, disbursements, pre-judgment interest, post-judgment interest, expert witness fees and reasonable attorneys' fees allowed under actions brought pursuant to 42 U.S.C. § 1983, 20 U.S.C. § 1691 *et seq.*, and T.C.A. §§ 4-21-101 *et seq.*; and,
6. Such further relief as is deemed just and proper.

Respectfully submitted,

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