

Regardless, Dr. Condon cannot establish any causal connection between the revocation of his Emeritus status, and the fact of his oppositional conduct alone. The Supreme Court has held that Title VII retaliation claims “must be proved according to traditional principles of but-for causation,” which require “proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer.” *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2533, 186 L. Ed. 2d 503 (2013). A protected activity still will be not regarded as the cause of an event “if the particular event would have occurred without it.” *Nassar*, 133 S.Ct. at 2525 (internal citations omitted).

Dr. Condon cannot make such showing. Dr. Condon had engaged in internal complaints and other oppositional behavior related to the organization’s diversity initiatives for many years. *See* Exs. 2 and 5. He was not retaliated against for this conduct, and instead enjoyed an esteemed career and retirement with Emeritus status. Had he chosen to continue to direct his opinions using internal (or *appropriate* external) channels, his Emeritus appointment would not have been revoked. Unfortunately, though, Dr. Condon elected to escalate his conduct by engaging in misuse of email systems and inappropriate false allegations to improper third parties. Stated differently, but for Dr. Condon’s choice to publish disparaging allegations to third parties using the organization’s email distribution list, his Emeritus status would not have been revoked.

Finally, and for the same reasons discussed above, Dr. Condon cannot rebut AUI’s legitimate non-discriminatory reasons for revoking his Emeritus status.¹ Even if he could establish a *prima facie* case of retaliation, which he cannot do, the burden of proof shifts to the Responding Party to proffer a legitimate non-discriminatory reason for its decision. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). If this burden is met, the presumption of discrimination created by the *prima facie* case disappears, and the charging party is left with the ultimate burden of proving discrimination. Dr. Condon cannot rebut that he sent false and disparaging accusations to third party partners of the organization using its own proprietary distribution list, and that such conduct alone was the cause of the organization’s revocation of his Emeritus appointment.² Nor can he meet his ultimate burden to prove purposeful retaliation by AUI under Title VII, when his more appropriately-directed opposition activities had been previously accommodated without retaliation for many years. Thus, Dr. Condon’s claim is without merit.

IV. Conclusion

The Charge fails to support any claim under Title VII. Therefore, Dr. Condon’s Charge should be dismissed without further investigation.

¹ AUI also does not concede that Dr. Condon could demonstrate any quantifiable damages caused by revocation of his Emeritus appointment, for which appointees receive no compensation and no guaranteed access to any resources.

² In his September 19, 2022 email to Anthony Beasley, Dr. Condon stated: “I thought the scistaff.nrao.edu mail was confined to the NRAO scientific staff, and not distributed to the general community outside the NRAO. Is that not true?” indicating that even Dr. Condon seemed to recognize that sharing his communication externally would be inappropriate. *See* Ex. 5. Even if Dr. Condon had not intended to send his false and disparaging communication to third parties outside NRAO, he did in fact do so, causing a risk of reputational damage to AUI/NRAO among its peers in the scientific community.