

JUN 16 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRIETTA BROWNING,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA;  
UNITED STATES DEPARTMENT OF  
TREASURY; UNITED STATES  
INTERNAL REVENUE SERVICE;  
TIMOTHY F. GEITHNER,\*\* Secretary of  
the Department of the Treasury,

Defendants - Appellees.

No. 07-35557

D.C. No. CV-05-01471-BR

AMENDED MEMORANDUM \*

Appeal from the United States District Court  
for the District of Oregon  
Anna J. Brown, District Judge, Presiding

Argued and Submitted March 3, 2009  
Portland, Oregon

Before: GRABER, FISHER and M. SMITH, Circuit Judges.

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\*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\*Timothy F. Geithner is substituted for his predecessor, Henry M. Paulson, Jr., as Secretary of the Treasury, pursuant to Fed. R. App. P. 43(c)(2).

Henrietta Browning appeals the district court’s rulings limiting the evidence she was allowed to present in her racial discrimination claim against the government.<sup>1</sup> We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court appropriately exercised its considerable discretion in excluding testimony that the court reasonably found could have allocated trial time inefficiently. *See Tennison v. Circus Circus Enters., Inc.*, 244 F.3d 684, 688, 690 (9th Cir. 2001). Furthermore, Browning has not shown that the alleged error “more probably than not” tainted the jury’s verdict, because much of the testimony that Browning contends was inappropriately excluded was actually presented at trial. *Id.* at 688.

**AFFIRMED.**

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<sup>1</sup> Browning also appeals the district court’s refusal to give a permissive jury instruction regarding pretext, which we address in a concurrently filed published opinion.