



**INSTITUTE FOR
FREE SPEECH**

August 9, 2023

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Rule 28(j) Letter in *Bruce Gilley v. Tova Stabin, et al.*,
Nos. 23-35097, 23-35130
Set for oral argument on September 13, 2023 at 09:00 A.M. in SE
7th Floor, Courtroom 2, in Seattle.

Dear Ms. Dwyer:

On August 3, 2023, the Ninth Circuit issued an unpublished decision that is persuasive authority in favor of Bruce Gilley's position in this cross-appeal.

In *Flores v. Bennett*, No. 22-16762, 2023 U.S. App. LEXIS 20043, at *1-2 (9th Cir. Aug. 3, 2023), this Court affirmed a preliminary injunction that enjoined a college's flyer policy that prohibited inappropriate or offensive language or themes because it was facially overbroad and unconstitutionally vague.

The Court found that the inappropriate-or-offensive provision did not inform a person of ordinary intelligence what was prohibited and invited arbitrary and discriminatory enforcement. *Id.* at *6-7. The Court also held that the inappropriate-or-offensive provision did not "have a core of readily identifiable, constitutionally proscribable speech." *Id.* at *3-4.

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Moreover, the Court noted that the college had not met its burden of showing mootness, because the college had refused to disavow the old policy and could easily re-insert the policy absent an injunction. *Id.* at *3.

Bruce Gilley’s appeal raises similar issues, including a pre-enforcement challenge to the University of Oregon’s social-media blocking policy that allows censorship of “offensive” or “inappropriate” content. *See, e.g.*, 9th Cir. Dkt. #12 at 56–62.

The University of Oregon also alleges mootness in its cross-appeal; and asserts that its policy is legal and reserves the right to block “offensive” or “inappropriate” content. *See, e.g.*, 9th Cir. Dkt. #32 at 68–73.

Flores supports Gilley’s assertion that that the district court erred in denying his motion for a preliminary injunction and finding that he lacked standing to bring a pre-enforcement challenge.

Finally, Gilley wishes to make the Court aware that, as of July 23, 2023, the social-media platform Twitter has re-branded itself as “X.” *See* <https://twitter.com/elonmusk/status/1683171310388535296?s=20> (last visited Aug. 8, 2023). The platform functionalities at issue in this case, however, remain the same.

Sincerely,



Endel Kolde
Counsel for Bruce Gilley
Plaintiff-Appellant/Cross-Appellee

In compliance with Circuit Rule 28–6, the body of this letter contains 298 words, as counted by Microsoft Word.