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Communication Manager of the University of Oregon's  
Division of Equity and Inclusion*

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

BRUCE GILLEY,

Plaintiff,

v.

TOVA STABIN, in her individual capacity;  
and COMMUNICATION MANAGER OF  
THE UNIVERSITY OF OREGON'S  
DIVISION OF EQUITY AND INCLUSION,  
in his or her official capacity,

Defendants.

Case No.: 3:22-cv-01181-HZ

USCA No. 23-35097

**NOTICE OF CROSS-APPEAL**

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Notice is hereby given that defendants tova stabin and the Communication Manager of the University of Oregon's Division of Equity and Inclusion (collectively, "Defendants") hereby cross-appeal to the United States Court of Appeals for the Ninth Circuit from the opinion and order, ECF No. 57, entered in this action on January 26, 2023, by the Honorable Marco J. Hernandez, in and for the United States District Court for the District of Oregon.

This action was filed on August 11, 2022. The opinion and order entered on January 26, 2023, ECF No. 57, decided two motions: plaintiff Bruce Gilley’s (“Plaintiff”) motion for preliminary injunction, ECF No. 2, and Defendants’ motion to dismiss for lack of subject matter jurisdiction, ECF No. 23. Plaintiff has appealed from the denial of his motion for preliminary injunction pursuant to 28 U.S.C. § 1292(a). Defendants now cross-appeal on the basis of pendent appellate jurisdiction, as the issue of whether Plaintiff is entitled to a preliminary injunction is “inextricably intertwined” with the threshold issue of whether the federal courts have subject-matter jurisdiction over Plaintiff’s claims in the first instance. *Clinton v. Jones*, 520 U.S. 681, 707 n.41 (1997) (quotation omitted); *see also Jackson v. Humphrey*, 776 F.3d 1232, 1239 (11th Cir. 2015) (sustaining cross-appeal based on doctrine of pendent appellate jurisdiction).<sup>1</sup>

DATED: February 16, 2023

Respectfully submitted,

STOEL RIVES LLP

*/s/ Misha Isaak*

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<sup>1</sup> Furthermore, regardless of the doctrine of pendent appellate jurisdiction, the appellate court always has jurisdiction to consider subject-matter jurisdiction. *Detabali v. St. Luke’s Hosp.*, 482 F.3d 1199, 1202 (9th Cir. 2007); *see also Yang v. Shalala*, 22 F.3d 213, 215 n.4 (1994) (“A party may question the existence of subject matter jurisdiction at any time during the proceedings.”).

**CERTIFICATE OF SERVICE**

I hereby certify that on February 16, 2023, I directed the Notice of Cross-Appeal to be electronically filed with the Clerk of the Court for the United States District Court, District of Oregon by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I further certify that on February 16, 2023, I directed the Notice of Appeal to be served upon Endel Kolde and Stephanie Brown of the Institute for Free Speech, by mailing a copy, via certified mail, in an envelope addressed to:

Endel Kolde  
Stephanie Brown  
Institute for Free Speech  
1150 Connecticut Ave., NW, Suite 801  
Washington, DC 20026

DATED: February 16, 2023.

STOEL RIVES LLP

*/s/ Misha Isaak*

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