

Nos. 23-35097 & 23-35130

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

BRUCE GILLEY,
Plaintiff-Appellant/Cross-Appellee,

v.

TOVA STABIN, ET AL.,
Defendants-Appellees/Cross-Appellants.

On Appeal from the United States District Court
for the District of Oregon
Hon. Marco A. Hernandez
Case No. 3:22-cv-01181-HZ

**DEFENDANTS-APPELLEES/CROSS-APPELLANTS' UNOPPOSED
FIRST MOTION FOR EXTENSION OF TIME TO FILE PETITION
FOR REHEARING AND REHEARING *EN BANC***

D. Angus Lee (SB # 213139)
ANGUS LEE LAW FIRM, PLLC
9105 NE Highway 99, Suite 200
Vancouver, WA 98665-8974
Telephone: (360) 635-6464

Endel Kolde (SB # 25155)
Stephanie Brown
INSTITUTE FOR FREE SPEECH
1150 Connecticut Ave., NW, Suite 801
Washington, DC 20026
Telephone: (202) 301-3300

Attorneys for Bruce Gilley

Misha Isaak (SB # 086430)
Jeremy A. Carp (SB # 173164)
STOEL RIVES LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Telephone: (503) 224-3380

*Attorneys for tova stabin and
Communication Manager of the
University of Oregon's Division of
Equity and Inclusion*

Defendants-Appellees/Cross-Appellants tova stabin and the Communication Manager of the Division of Equity and Inclusion at the University of Oregon (collectively, “Defendants”) move pursuant to Ninth Circuit Rule 31-2.2(b) for an extension of 30 days to file their petition for rehearing and rehearing *en banc*. Defendants have not sought any prior extensions of time. Plaintiff-Appellant/Cross-Appellee Bruce Gilley (“Gilley”) does not oppose this Motion.

PROCEDURAL HISTORY

Gilley filed his notice of appeal on February 3, 2023. (Declaration of Misha Isaak in Support of Defendants-Appellees/Cross-Appellants’ Unopposed First Motion for Extension of Time to File Petition for Rehearing and Rehearing *En Banc* (“Isaak Decl.”) ¶ 2.) The case was argued and submitted to the Court on September 13, 2023. (*Id.*) On March 8, 2024, the Court issued its decision and entered judgment. (*Id.*) The current deadline for Defendants to file their petition for panel rehearing and rehearing *en banc* is March 22, 2024. (*Id.* ¶ 3); *see also* Fed. R. App. P. 35(c), 40(a)(1).

DISCUSSION

Defendants move for an extension of 30 days to file their petition for panel rehearing and rehearing *en banc*. Undersigned counsel, Misha Issak, has been working diligently to assess the Court’s decision and determine whether to seek panel rehearing and rehearing *en banc* but requires additional time due to (1) a

staffing change on this case, (2) a March 20, 2024, briefing deadline in the Oregon Court of Appeals, and (3) the need to assess and incorporate relevant published decisions issued by the U.S. Supreme Court after and just before the Court's decision in this case.

First, one of the principal lawyers representing Defendants in this matter, Jeremy Carp, accepted a position as in-house counsel and announced his departure from the firm last week. (Isaak Decl. ¶ 7.) Mr. Carp did most of the original drafting of the briefs in this case, both at the district court and before this Court. (*Id.*) His unanticipated professional transition has caused obvious disruption in the work on this case. (*Id.*)

Second, lead counsel for Defendants, Mr. Isaak, has been unavailable to prepare Defendants' petition for rehearing and rehearing *en banc* because of a significant brief due in the Oregon Court of Appeals on March 20. (*Id.* ¶¶ 4–5.) Mr. Isaak is lead counsel in that case and responsible for briefing as well. (*Id.* ¶ 5.) The case is *People for the Ethical Treatment of Animals, Inc. v. Oregon Health & Science University*, No. A180181 (Or. Ct. App.). (*Id.*)

Third, over the past three weeks, the U.S. Supreme Court has issued two published decisions addressing mootness and the voluntary cessation doctrine. The first case, *FBI v. Fikre*, No. 22-1178, 2024 WL 1160994 (Mar. 19, 2024), was issued this week—after the panel decision in this case—and clarifies the voluntary

cessation standard and the relevant inquiry under that standard. The second case, *Speech First, Inc. v. Sands*, 144 S. Ct. 675 (2024), was issued on March 4 and illustrates the Supreme Court’s application of the voluntary cessation doctrine to a factually analogous First Amendment case involving the justiciability of a request for prospective relief against a public university.

Together, these cases directly implicate the main issues and points of disagreement between the majority and dissent in the present case. Because these decisions were issued in quick succession just before and after the panel decision in this case—with *Fikre* issued just three days before Defendants’ deadline for filing a petition for rehearing—counsel for Defendants requires additional time consider the implications of these cases and draft a petition reflecting the same.

Finally, given the overall schedule for this case and the fact that district court proceedings were stayed at Gilley’s request, a 30-day extension of time will not materially change the overall case schedule.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant their requested 30-day extension—up to and including April 22, 2024—to file their petition for panel rehearing and rehearing *en banc*.

DATED: March 22, 2024.

Respectfully submitted,

/s/ Misha Isaak

Misha Isaak (SB # 086430)

Jeremy A. Carp (SB # 173164)

STOEL RIVES LLP

760 S.W. 9th Avenue, Suite 3000

Portland, OR 97205

(T) (503) 224-3380

Attorneys for Defendants-

Appellees/Cross-Appellants

tova stabin and Communication

Manager of the University of Oregon's

Division of Equity and Inclusion

CERTIFICATE OF COMPLIANCE

This Motion's type styles, typeface, and format comply with Fed. R. App. P. 27(d)(1), 32(a)(5), and 32(a)(6). I certify that this Motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) and contains 654 words.

DATED: March 22, 2024.

Respectfully submitted,

/s/ Misha Isaak

Misha Isaak (SB # 086430)
Jeremy A. Carp (SB # 173164)
STOEL RIVES LLP
760 S.W. 9th Avenue, Suite 3000
Portland, OR 97205
(T) (503) 224-3380

*Attorneys for Defendants-
Appellees/Cross-Appellants
tova stabin and Communication
Manager of the University of Oregon's
Division of Equity and Inclusion*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing System. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

DATED: March 22, 2024.

Respectfully submitted,

/s/ Misha Isaak

Misha Isaak (SB # 086430)

Jeremy A. Carp (SB # 173164)

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760 S.W. 9th Avenue, Suite 3000

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Nos. 23-35097 & 23-35130

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FOR THE NINTH CIRCUIT**

BRUCE GILLEY,

Plaintiff-Appellant/Cross-Appellee,

v.

TOVA STABIN, in her individual capacity,
and the COMMUNICATION MANAGER of the University of Oregon's Division
of Equity and Inclusion, in his or her official capacity,

Defendants-Appellees/Cross-Appellants.

On Appeal from the United States District Court
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**DECLARATION OF MISHA ISAAK IN SUPPORT OF DEFENDANTS-
APPELLEES/CROSS-APPELLANTS' UNOPPOSED FIRST MOTION
FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING
AND REHEARING *EN BANC***

I, Misha Isaak, do hereby declare and say as follows:

1. I am an attorney licensed to practice law in the State of Oregon and the lead attorney representing Defendants-Appellees/Cross-Appellants tova stabin and the Communications Manager of the Division of Equity and Inclusion at the University of Oregon (collectively, “Defendants”) in the above-captioned case. I make this declaration based on my own personal knowledge.

2. On February 3, 2023, Plaintiff-Appellant/Cross-Appellee Bruce Gilley (“Gilley”) filed his notice of appeal for appeal No. 23-35097 (the “Appeal”). On September 13, 2023, the Appeal was argued and submitted to the Court for consideration. On March 8, 2024, the Court issued its decision and entered judgment.

3. Defendants’ petition for rehearing and rehearing *en banc* is currently due on March 22, 2024. Defendants are requesting a 30-day extension of time, and it is their first request for an extension.

4. I am the attorney with primary brief drafting responsibilities as it relates to Defendants’ petition for rehearing and rehearing *en banc*. I have exercised diligence but require an extension for three reasons.

5. First, I represent Oregon Health Science University in the case *People for the Ethical Treatment of Animals, Inc. v. Oregon Health & Science University*, No. A180181 (Or. Ct. App.), currently pending in the Oregon Court of Appeals. I

am lead counsel in that case and responsible for briefing. I had a significant brief due in that case on March 20, 2024. I have been unavailable to prepare Defendants' petition for rehearing and rehearing *en banc* because of that pre-existing deadline in the Oregon Court of Appeals.

6. Second, the U.S. Supreme Court recently issued two decisions involving the voluntary cessation doctrine. The first decision, *Speech First, Inc. v. Sands*, 144 S. Ct. 675 (2024), was issued on March 4. The second decision, *FBI v. Fikre*, No. 22-1178, 2024 WL 1160994 (Mar. 19, 2024), was issued on March 19. Because these decisions were issued in quick succession just before and after the panel decision in this case, I require additional time consider the implications of these cases and draft a petition reflecting the same.

7. Third, my associate, Jeremy Carp, accepted a position as in-house counsel and announced his departure from the firm last week. Mr. Carp did most of the original drafting of the briefs in this case, both at the district court and before this Court. His unanticipated professional transition has caused obvious disruption in the work on this case.

8. I conferred via email with counsel for Gilley on March 21, 2024. He stated that Gilley does not oppose Defendants' request for an extension.

9. Defendants' petition for rehearing and rehearing *en banc* will be filed within the time requested.

10. The court reporter is not in default with regard to any designated transcripts.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: March 22, 2024.

/s/ Misha Isaak

Misha Isaak (SB #086430)

Stoel Rives LLP

760 SW Ninth Avenue, Suite 3000

Portland, OR 97205

(503) 224-3380

misha.isaak@stoel.com

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing document on March 22, 2024, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

DATED: March 22, 2024

STOEL RIVES LLP

/s/ Misha Isaak

Misha Isaak (SB #086430)