

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

DOCKETING STATEMENT

Appeal Number	23-8065
Case Name	Jaylyn Westenbroek, <i>et al.</i> v. Kappa Kappa Gamma Fraternity, an Ohio non-profit corporation, as Nominal Defendant and as a Direct Defendant, <i>et al.</i>
Parties Filing Notice of Appeal	JAYLYN WESTENBROEK; HANNAH HOLTMEIER; ALLISON COGHAN; GRACE CHOATE; MADELINE RAMAR; MEGAN KOSAR, on behalf of themselves and derivatively on behalf of KAPPA KAPPA GAMMA FRATERNITY
Appellees	KAPPA KAPPA GAMMA FRATERNITY, an Ohio non-profit corporation, as Nominal Defendant and as a Direct Defendant; MARY PAT ROONEY, President of the Fraternity Council of KAPPA KAPPA GAMMA FRATERNITY, in her official capacity; KAPPA KAPPA GAMMA BUILDING CO., a Wyoming non-profit corporation; ARTEMIS LANGFORD ¹
List all prior or related appeals in this court with appropriate citation(s).	None.

¹ Although the Court docket lists Artemis Langford as an Appellee, Appellants' Notice of Appeal specifically states that they are not pursuing any claims against this party. *See* Notice of Appeal, Doc. 1 at WYD 10.

I. JURISDICTION OVER APPEAL OR PETITION FOR REVIEW

A. APPEAL FROM DISTRICT COURT

1. Date final judgment or order to be reviewed was **entered** on the district court docket: August 25, 2023.
2. Date notice of appeal was **filed**: September 25, 2023.
3. State the time limit for filing the notice of appeal (cite the specific provision of Fed. R. App. P. 4 or other statutory authority): 30 days. Fed. R. App. P. 4(a)(1)(A).
 - a. Was the United States or an officer or an agency of the United States a party below? No.
 - b. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing the notice of appeal: No.
4. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).
 - a. Give the filing date of any motion that tolls the time to appeal pursuant to Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A): None.
 - b. Has an order been entered by the district court disposing of any such motion, and, if so, when? N/A.
5. Is the order or judgment final (i.e., does it dispose of **all** claims by and against **all** parties)? *See* 28 U.S.C. § 1291. Yes.

(If your answer to Question 5 is no, please answer the following questions in this section.)

- a. If not, did the district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done? N/A.
- b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? N/A.
- c. If none of the above applies, what is the **specific** legal authority for determining that the judgment or order is

appealable? N/A.

6. Cross Appeals.

- a. If this is a cross appeal, what relief do you seek beyond preserving the judgment below? *See United Fire & Cas. Co. v. Boulder Plaza Residential, LLC*, 633 F.3d 951, 958 (10th Cir. 2011) (addressing jurisdictional validity of conditional cross appeals). N/A.
- b. If you do not seek relief beyond an alternative basis for affirmance, what is the jurisdictional basis for your appeal? *See Breakthrough Mgt. Group, Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1196-98 and n.18 (10th Cir. 2010) (discussing protective or conditional cross appeals). N/A.

II. GIVE A BRIEF DESCRIPTION OF THE NATURE OF THE UNDERLYING CASE AND RESULT BELOW.

Plaintiffs are members of the Gamma Omicron Chapter of Kappa Kappa Gamma Fraternity (Kappa), an organization that, according to its bylaws, limits its membership to “women.” (Although Kappa is named a “fraternity” because of the title taken at its founding in 1870, it is now more commonly known as a sorority.) Defendants—including the president of the sorority’s governing council and the sorority itself—interfered with the membership voting process such that the Chapter was forced to admit as a member a biologically male student, Artemis Langford. After admitted, Langford engaged in a series of disturbing behaviors in the Chapter’s residential house, including taking pictures of other members without their

consent, watching other members change their clothes, and questioning other members about intimate issues related to their anatomy and sex.

Plaintiffs subsequently filed this suit, both as a derivative action on behalf of the sorority, and as a direct action on behalf of themselves. They sought a declaratory judgment that Langford is not eligible for admission to Kappa under the sorority's governing documents, that defendants have violated the housing contract plaintiffs signed with the Kappa Kappa Gamma Building Company, and that defendants have violated their obligations to the organization by purporting to admit Langford to the sorority. They have also sought monetary damages to compensate for Defendants' wrongful acts and the injuries inflicted on Plaintiffs.

The district court dismissed the case. It held that: (1) the court lacked subject matter jurisdiction over the Building Company; (2) Plaintiffs failed to state a claim for breach of contract or tortious interference of contract, because the sorority had a First Amendment right to admit biologically male members under its existing bylaws; and (3) Plaintiffs failed to state a direct claim against Defendant Rooney under Ohio law.

III. IDENTIFY TO THE BEST OF YOUR ABILITY AT THIS STAGE OF THE PROCEEDINGS, THE ISSUES TO BE RAISED IN THIS APPEAL. You must attempt to identify the issues even if you were not counsel below. See 10th Cir. R. 3.4(B).

Whether the district court erred in dismissing Plaintiffs' claims against President Rooney and Kappa Kappa Gamma Fraternity.

IV. ATTORNEY FILING DOCKETING STATEMENT:

Gene C. Schaerr
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com

Respectfully submitted,

s/ Gene C. Schaerr

Gene C. Schaerr
Schaerr | Jaffe LLP
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Appellants