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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

BRUCE GILLEY,

*Plaintiff,*

v.

TOVA STABIN, Communications  
Manager, University of Oregon  
Division of Equity and Inclusion, in  
her official and individual capacities,

*Defendant.*

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

PLAINTIFF'S RESPONSE TO  
MOTION TO CHANGE DIVISIONAL  
VENUE

## MEMORANDUM OF LAW

### INTRODUCTION

When the University of Oregon's (UO's) Division of Equity and Inclusion's ("the Division") Communication Manager availed herself of Twitter to promote her employer's views and suppress those of critics, she also opened herself up to being sued in a place that was slightly more convenient for the target of her discrimination than it is for her.

Divisional venue is proper in the Portland Division because (1) Plaintiff Bruce Gilley felt and continues to feel the discriminatory effects of Stabin's Twitter blocking in Multnomah County; (2) Gilley resides in Multnomah County; and (3) a plaintiff's choice of a proper venue creates a presumption in favor of that venue that can only be overcome by strong evidence.

Defendants and her employer also vastly overstate their inconvenience arguments because (1) this is not a complex case; (2) discovery will be minimal; (3) they chose legal counsel who are based in Portland; and (4) the UO has had a long-standing and continuous presence in Portland since 1884.

### FACTS

For the purposes of this motion, most of the relevant facts are contained in the Plaintiff's Complaint (ECF No. 1). In summary, Bruce Gilley alleges that the Defendant engaged in illegal viewpoint discrimination when she blocked him from an official Twitter account for expressing a view with which she and her employer

disagreed. *Id.* ¶¶ 62-68. It is uncontested that Bruce Gilley experienced the effects of this illegal blocking in Multnomah County, where he works and resides. *Id.* at ¶ 3. Gilley also experiences self-censorship in Multnomah County because he remains concerned that he could be blocked again for expressing a viewpoint critical of Defendant's DEI ideology. *Id.* ¶ 68.

It is unknown where Defendant was when she originally blocked Gilley, although she did normally work and reside in Lane County. *Id.* ¶ 5. Witness Douglas Park does allege that "at all relevant times" Defendant performed her job duties in Lane County, although he does not specifically admit that she blocked Gilley there. ECF No. 17 at 3 (¶ 3).<sup>1</sup>

Specific relevant facts are discussed in further detail below.

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<sup>1</sup> Witness Park claim to base his declaration on personal knowledge, but it is not clear how he would know where Tova Stabin was when she blocked Bruce Gilley unless he was personally involved in the blocking decision. If his declaration is based on what Ms. Stabin told him, then that would be inadmissible hearsay. Fed. R. Evid. 801. If Defendant wishes to assert that Ms. Stabin was in Lane County when she blocked Gilley, then Defendant should provide specific and admissible evidence proving that.

## ARGUMENT

I. THIS CASE BELONGS IN THE PORTLAND DIVISION BECAUSE THAT IS WHERE BRUCE GILLEY RESIDES, IS EXPERIENCING THE BLOCKING EFFECTS, AND HAS CHOSEN TO FILE HIS CASE

A. Legal standard for venue determinations

Pursuant to 28 U.S.C. § 1391(b)(2) a civil action may be brought in “a judicial district in which a substantial part of the events or omission giving rise to the claim occurred[.]” Local Rule 3-2(b) adopts this same language for determining divisional venue. It is undisputed that venue for this action lies in the District of Oregon, although Defendant wishes to change divisional venue to Eugene because that is where UO would like to be sued and is used to being sued, per Douglas Park.

In adjudicating a Rule 12(b)(3) motion challenging venue, the court draws all reasonable inferences in favor of the non-moving party and resolves all factual conflicts in favor of the non-moving party. *Nw. Env'tl. Def. Ctr. v. United States Army Corps of Eng'rs*, No. 10-1129-AC, 2011 U.S. Dist. LEXIS 43034, at \*6-7 (D. Or. Apr. 20, 2011).

B. Venue is proper where Gilley is experiencing the effects of Defendant's censorship

The parties' venue dispute is anchored in the meaning of the phrase “in which a substantial part of the events or omission giving rise to the claim occurred.” But that analysis is not complicated here. Courts have long held that venue is proper where a plaintiff experiences the negative effects of a defendant's alleged wrongful conduct. *Bates v. C & S Adjusters, Inc.*, 980 F.2d 865, 868 (2d Cir. 1992) (receipt of a

collection notice is a substantial part of the events giving rise to a claim under the Fair Debt Collection Practices Act); *City of L.A. v. Cty. of Kern*, No. 06-5094 GAF (VBKx), 2006 U.S. Dist. LEXIS 81417, at \*14-15 (C.D. Cal. Oct. 24, 2006) (“Since damages as a result of alleged constitutional violations will be suffered in the Central District... this case is analogous to tort-type actions where venue has been held to be proper where the injuries occurred”); *Radical Prods. v. Sundays Distrib.*, 821 F. Supp. 648, 650 (W.D. Wash. 1992) (venue proper in district where trade dress confusion was likely to occur even if defendant did not sell its products there).

Similarly, in evaluating the appropriateness of divisional venue, this Court has long focused on where the effects of wrongful conduct were to be experienced or carried out, even if the decision was made elsewhere. *Nw. Envtl. Def. Ctr.*, 2011 U.S. Dist. LEXIS 43034, at \*11-15 (collecting cases). Thus, an inter-divisional transfer was appropriate where “all of the harms that allegedly arose from the Portland meetings would be suffered in the national forests in Lake and Klamath counties.” *Id.* at \*12-13 (citations omitted). So too where an “agency's decision, which was made in Portland, concerned a highway interchange to be built in the Medford division.” *Id.* at 14 (citation omitted). Similarly, an inter-divisional transfer was appropriate where none of the locations where the plaintiff alleged harms occurred were in the Portland Division, and a plurality were in the Eugene Division. *Gross v. Progressive Cas. Ins. Co.*, No. 1 :17-cv-00828-CL, 2017 U.S. Dist. LEXIS 215316, at \*23-24 (D. Or. Dec. 5, 2017).

These case all support Gilley's position that venue is proper in the Portland Division, because the case is already located in the venue where Gilley felt the effects of Defendant's blocking and is continuing to feel its effects in the form of self-censorship. ECF No. 1 ¶¶ 3, 68. Perhaps the decision to block Gilley was made in Lane County (that is certainly plausible), but he was impacted by the decision in Multnomah County and that impact is ongoing.

C. Where venue is otherwise proper, Gilley's choice of venue is given significant weight

As a default rule, the plaintiff's choice of forum is given significant weight and will not be disturbed unless the other factors weigh substantially in favor of transfer. 17 Moore's Federal Practice - Civil § 111.13 (2022). Gilley's choice of forum is accorded added weight because he also resides in Multnomah County. *Id.*; ECF No. 1 ¶ 4.

D. Gilley can avail himself of proper venue without choosing the only possible venue among multiple options

Venue can be proper in more than one forum, and a plaintiff is "not obligated to file an action in the most convenient forum, only in a proper forum." 17 Moore's Federal Practice - Civil § 110.01 (2022). Similarly, a plaintiff need not select the venue where the *most* events occurred, so long as he selects a venue where a substantial part of the events occurred. *Nw. Env'tl. Def. Ctr.*, 2011 U.S. Dist. LEXIS 43034, at \*18-19. Thus, it may well be that venue could be proper in either the Eugene Division or the Portland Division, but Gilley need only show that venue is

proper in the division he elected to file into. That he has done by alleging that the harms from Defendant's conduct reached into the Portland Division.

E. Defendant's arguments based on state law and tradition are not an appropriate factor in venue analysis

Federal venue statutes govern where civil actions may be brought in district courts, and proper venue is determined without regard to state law procedural rules. *See* 17 Moore's Federal Practice - Civil § 110.01 (2022). Thus, Defendant's citation to state law or decisions is inapplicable, especially in a federal question case.

Similarly unavailing are Defendant's Burkean appeals to tradition. It is irrelevant that UO has a tradition of being sued in the Eugene Division or prefers to be sued there. Indeed, it smacks of forum shopping. UO has no right to the comfort of its preferred forum. Gilley has chosen to exercise his right to sue UO's official in a division where venue is proper and that is all that is required.

II. DEFENDANT HAS NOT MET HER BURDEN OF SHOWING THAT CONVENIENCE FACTORS STRONGLY FAVOR AN INTRA-DISTRICT TRANSFER TO THE EUGENE DIVISION

A. Proper venue creates a presumption against convenience-based transfers

Defendant has also asked this Court to grant a discretionary convenience-based transfer. But when a plaintiff resides in one venue and a defendant resides in another, someone will be inconvenienced by choosing one venue over the other. Where both forums are proper, a plaintiff's choice will tip the balance unless

convenience factors “weigh strongly in favor of transfer.” 17 Moore's Federal Practice - Civil § 111.13 (2022). Absent a strong showing in favor of transfer, there is a presumption in favor of plaintiff's choice of forum. *Nw. Envtl. Def. Ctr.*, 2011 U.S. Dist. LEXIS 43034, at \*19-20 (citing *Piper Aircraft v. Reyno*, 454 U.S. 235, 255 (1981) and *Decker Coal v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986)).

Factors the Court may consider include access to witnesses and evidence, convenience of the parties, and a local interest in having controversies decided “at home.” *Nw. Envtl. Def. Ctr.*, 2011 U.S. Dist. LEXIS 43034, at \*19-20.

The party seeking transfer bears the burden of overcoming the presumption against transfer. *Commodity Futures Trading Com. v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979); 17 Moore's Federal Practice - Civil § 111.13 (2022). While Defendant can make some plausible convenience-based arguments, those do not strongly outweigh the presumption in favor of Gilley's choice of a proper forum.

#### B. UO has been present in Portland since 1884

First, this is not a local controversy, but one involving the flagship state university, which draws students from across Oregon and beyond. UO likely draws a large plurality of its students from the greater Portland area, and it is likely that a significant part of the tax base used to support UO's operations is also located in the Portland Division. Similarly, no one disputes that @UOEquity's social media activities are viewed and viewable by Twitter users state-wide, including by its students, faculty, and alumni in the Portland area.

In fact, UO has been continuously present in Portland since 1884 and currently maintains the UO Portland campus not far from the Mark O. Hatfield U.S. Courthouse. UNIV. OF OREGON, *UO Portland Diversity Action Plan*, <https://bit.ly/3AqXVED> (last visited Aug. 25, 2022) (“The UO has had a presence in Portland since the first law class was offered in 1884.”); *Id.*, *About UO Portland*, <https://pdx.uoregon.edu/about> (last visited Aug. 25, 2022) (“The University of Oregon has long been part of the fabric of Portland.”); *Id.*, *Portland Campus*, <https://pdx.uoregon.edu/portland-campus> (last visited Aug. 25, 2022) (describing urban campus, referencing Old Town address). Indeed, like administrators at the Eugene campus, the administrators of the UO Portland express fealty to the IDEA framework developed by the Division of Equity and Inclusion. *UO Portland Diversity Action Plan, supra*. Thus, the issues presented in this case are not merely a matter of local, parochial concern to a few people in Eugene. The ideology of DEI and its effects of excluding dissenting viewpoints are systemic and far reaching. It is undisputed that the effects of Defendant’s communications and censorship reach into the Portland Division.

C. This case should not be discovery intensive  
 Defendant on the one hand resists early discovery and seeks to file a motion to moot the case before a hearing on merits, but then turns around and alleges that

UO personnel will be unduly inconvenienced by having to appear for so-far nonexistent depositions in the Portland Division.<sup>2</sup>

But the central, operative facts of this case do not seem to be in dispute. UO's speaking agent, Douglas Park, admits that Tova Stabin worked as the Division's Communication Manager, and that the Division maintained an official Twitter account. ECF No. 17 at 2 (¶¶ 3-4). UO has partly admitted, through conduct, that Defendant's blocking of Bruce Gilley was unlawful, because UO scrambled to unblock him in response to this lawsuit. ECF Nos. 19 at 2 (¶ 4), 19-2 at 1.

Indeed, there is no known dispute about the central facts of this case: that Gilley Tweeted a colorblind viewpoint, for which Defendant blocked him, while giving the communication manager unfettered discretion to make blocking decisions. ECF No. 1 at 8-15. It is so clear that such conduct is illegal under precedent both within and without the Ninth Circuit and that Defendant is interposing all manner of delaying tactics to avoid this Court addressing this matter on the merits.

To be sure, there are some facts that should be clarified through targeted discovery, including: whether Tova Stabin has actually retired or is burning accrued leave until her actual termination date, whether someone is fulfilling her duties on an interim basis, whether Stabin acted in concert with other Division employees

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<sup>2</sup> The boundaries of the Portland Division extend to within 100 miles of Eugene city limits, which would also allow non-parties to be served for discovery in compliance with Rule 45(c)(1)(A); *see Fed. R. Evid. 201(b)(1)-(2)*.

when blocking Gilley, and who granted Stabin unfettered discretion and for what purpose. But those facts should be ascertainable in a day or two of depositions, if that.

Moreover, this is not a case that will require intensive documentary or ESI discovery or the on-site inspection of records stored in a Eugene warehouse. Perhaps a few emails or ephemeral communications must be collected and produced, but there is no plausible reason why that work cannot be completed in Eugene and produced to defense counsel and plaintiff's counsel wherever they are located via a SharePoint folder or FTP site.

Similarly, absent some evidence of bad faith spoliation, there should be no need for a forensic examination of electronic devices. Screenshots of the relevant Tweets are easily authenticated and fully admissible. THE SEDONA CONFERENCE, *Commentary on ESI Evidence & Admissibility, Second Edition*, 22 Sedona Conf. J. 83, 112-13 (2021) (“As long as a witness with personal knowledge can testify as to the process used to generate the secondary document or image and assert that it accurately reflects the content of the text messages, courts have tended to find that authenticity was sufficiently established[.]”).

Discovery in this case should be limited and straightforward, unless Defendant chooses to provoke discovery disputes in order to distract from the evidence on the merits. That will, of course, raise the costs of this litigation; the largest component of litigation expenses being the value of lawyer time.

D. A judgment rendered by any district court in Oregon is enforceable state-wide

There is no reason why an injunction or judgment issued by this Court would not be enforceable in Eugene or Portland or any of the other locations where the UO operates. “[W]hen both forums are federal district courts, this factor has little relevance because it is unlikely that there would be any significant difference in the difficulty of enforcing a judgment rendered by one federal forum or the other.” 17 Moore's Federal Practice - Civil § 111.13 (2022). Gilley is not asking this Court to supervise UO operations on a day-to-day basis, only to prevent it from violating the First Amendment by censoring dissenters.

E. UO chose to obtain high-priced counsel based in Portland  
Defendant's argument that it “would be burdensome and expensive for the University personnel involved in this case to travel from Lane County to Portland” is contradicted by the fact that UO retained two Portland-based partners from Perkins Coie, one the Pacific Northwest's largest law firms. ECF Nos. 14, 15 (listing firm address as: Perkins Coie LLP, 1120 NW Couch Street, Tenth Floor, Portland, OR 97209); *see also* PERKINS COIE, *Firm Overview*, <https://www.perkinscoie.com/en/about-us/firm/firm-overview/overview.html> (last visited Aug. 26, 2022) (“Perkins Coie is a leading international law firm that is known for providing high-value, strategic solutions and extraordinary client service on matters vital to our clients' success. With more than 1,200 lawyers in offices across the United States and Asia...”). In fact, UO has hired not one, but two big

law-firm partners to work on this case, and who knows how many associates are staffing this matter behind the scenes.

These lawyers are likely billing for their time. While defense counsel have not disclosed their billing rates, for a rough approximation, in another large, coastal city, rates for lawyers with equivalent experience back in 2018 (before the recent hyper-inflation) ranged from a low of \$375 per hour to a high of \$700 per hour. *See* COMM. LEGAL SERV. OF PHIL., *Attorneys Fees*, <https://clsphila.org/about-community-legal-services/attorney-fees/> (last visited Aug. 26, 2022). Thus, it is likely that it is far more expensive for the public fisc to send the Perkins Coie legal team to Eugene, than it is for UO's salaried state employees to travel to Portland.<sup>3</sup> Defendant's claims about wanting to save money would be more credible if UO had chosen to retain litigation counsel based in Eugene, not Portland.

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<sup>3</sup> It is also likely that outside counsel will bill for travel, hotel, and meal costs in Eugene.

## CONCLUSION

This Court should deny Defendant's motion for inter-divisional transfer because venue is proper in the Portland Division and Defendant has not strongly overcome the presumption in favor of Gilley's choice of a proper forum.

Respectfully submitted,

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