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UNITED STATES DISTRICT COURT  
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

**DEFENDANT'S MOTION TO  
CHANGE DIVISIONAL VENUE**

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**LOCAL RULE 7-1 CERTIFICATION**

Counsel for defendant tova stabin (“stabin” or “Defendant”),<sup>1</sup> Misha Isaak, conferred in good faith about this motion with counsel for Plaintiff Bruce Gilley (“Gilley” or “Plaintiff”), Del Kolde, on August 24, 2022. Counsel for Plaintiff indicated that the motion is opposed.

**MOTION**

Pursuant to Local Rule 3-2 and 28 U.S.C. §§ 1391, 1404, and 1406, Defendant moves the Court to transfer divisional venue from the Portland Division, encompassing Multnomah County, to the Eugene Division, encompassing Lane County. This Motion is supported by the below Memorandum of Law and the Declaration of Douglas Park in Support of Defendant’s Motion to Change Divisional Venue (“Park Decl.”).

**MEMORANDUM OF LAW**

**I. INTRODUCTION**

Plaintiff filed a Complaint for Injunctive and Declaratory relief in the Portland Division of the U.S. District of Oregon. However, the Complaint concerns actions that University of Oregon employees took in Lane County, Oregon. Under Local Rule 3-2, divisional venue therefore is proper only in the Eugene Division, where “a substantial part of the events or omissions giving rise to the claim occurred.” LR 3-2(b). Moreover, even if venue were proper in the Portland Division, most witnesses, relevant documents, and other evidence are located in the Eugene Division. Under 28 U.S.C. § 1404, transfer to the Eugene Division is warranted for “the convenience of parties and witnesses” and “in the interest of justice.” 28 U.S.C. § 1404(a). Accordingly, Defendant respectfully asks the Court to transfer this case to the Eugene Division.

**II. FACTUAL BACKGROUND**

Plaintiff alleges that Defendant resides and works in Lane County, Oregon. (Compl. ¶ 5.) There, she is employed as the Communications Manager for the University of Oregon’s Division of Equity and Inclusion (“Division”), housed in the Office of the Vice President of Equity and

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<sup>1</sup> Defendant tova stabin spells her name using all lower-case letters.

Inclusion. (*Id.*) The University of Oregon’s main campus and the Division are located in the City of Eugene, Lane County, Oregon. (Park Decl. ¶ 2.) As Communications Manager of the Division, Defendant works on the Division’s digital communications, external communications, and social media. (Compl. ¶ 20, Ex. 1.) During all relevant times, Defendant performed her job duties in Lane County and also lived in Lane County. (Park Decl. ¶ 3.)

The relevant allegations of the Complaint are as follows:

On June 14, 2022, Plaintiff used Twitter to “re-tweet” and comment on a post that Defendant made on the Division’s Twitter account. (Compl. ¶¶ 23–29, 44, 46, 55.) Plaintiff does not allege where he was when he used Twitter on June 14, 2022, but he alleges that he “uses Twitter mostly in his private capacity and uses it primarily in Multnomah County.” (Compl. ¶ 4.) Plaintiff alleges that he “resides and mostly works in Multnomah County.” (Compl. ¶ 4.)

Shortly after Plaintiff’s re-tweet and comment, Defendant, acting in her official role as the Division’s Communications Manager, blocked Plaintiff from the Division’s Twitter account. (Compl. ¶ 58.) Plaintiff then filed public records requests with the University of Oregon for information about Twitter users blocked from the Division’s Twitter account. (Compl. ¶¶ 64–65.) The University of Oregon’s Public Records Office, which is located on the University’s main campus in Lane County, received and processed those requests. (Park Decl. ¶ 5.)

Plaintiff filed suit against Defendant in the Portland Division of the District of Oregon, encompassing Multnomah County. He asserts a facial and as-applied challenge to Defendant’s alleged “pattern and practice of blocking Twitter users” who express viewpoints with which Defendant disagrees. (Compl. ¶ 77.) Plaintiff requests that the Court order Defendant to unblock him on the Division’s Twitter account and enjoin Defendant from discriminating based on viewpoint when blocking users from the Division’s Twitter account. (Compl., Prayer ¶ A.) He further requests nominal damages, attorney’s fees, and a declaration that Defendant violated the First Amendment. (Compl., Prayer ¶¶ B–D.) All requested remedies would need to be

performed by University of Oregon personnel who live and work in Lane County. (Park Decl. ¶ 6.)

Other than Plaintiff, all witnesses to the alleged actions in Plaintiff’s Complaint reside and work in Lane County. (Park Decl. ¶ 7.) All relevant documents and evidence in Defendant’s custody or control are at the University of Oregon’s main campus in Lane County. (*Id.*) If this case had been brought in Oregon state court, state law would require Plaintiff to litigate the case in Lane County. *See* Or. Rev. Stat. (“ORS”) 4.060 (requiring suits against “any department, official, officer, commissioner, commission or board of the state” to “be brought in the county wherein the cause of suit, or some part thereof, arose”); *Smith v. University of Oregon*, Case No. 21CV10708 (Cir. Ct. Order Oct. 1, 2021) (transferring case from Multnomah County to Lane County based on ORS 14.060).

### III. LEGAL STANDARDS

Divisional venue is evaluated under three related authorities: the Federal Rules of Civil Procedure, the Local Rules of the District of Oregon, and statutes governing federal judicial procedure, 28 U.S.C. §§ 1391, 1404, and 1406. *Nw. Envtl. Def. Ctr. v. U.S. Army Corps of Eng’rs*, Civ. No. 10–1129–AC, 2011 WL 1527598, at \*2 (D. Or. Apr. 20, 2011). Under Federal Rule of Civil Procedure 12(b)(3), although the plaintiff makes the initial choice of where to file suit, the defendant is entitled to challenge that choice. *Id.*

Local Rule 3-2 divides the District of Oregon into four distinct divisions in an effort to “distribute the judicial work, and to align counties for juror management purposes.” LR 3-2(a). The divisions—Portland, Eugene, Medford, and Pendleton—encompass every county in Oregon. The Portland Division encompasses Multnomah County, and the Eugene Division encompasses Lane County. LR 3-2(a)(1), (a)(3).

Local Rule 3-2 states that “the division in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated,” is the division where venue lies. LR 3-2(b). This “substantial part” language mirrors the analogous portion of the federal venue statute, 28 U.S.C. § 1391(b)(2).

Courts in the District of Oregon have held that Local Rule 3-2 “is a mandatory requirement under which a case must be transferred if it was brought in the wrong division.” *Nw. Env’t Def. Ctr.*, 2011 WL 1527598, at \*4 (internal quotation marks omitted).

Even if a case is filed in the correct venue, a court still may transfer divisional venue “[f]or the convenience of parties and witnesses, in the interest of justice,” to a “division where [the case] might have been brought.” 28 U.S.C. § 1404(a). To determine whether to transfer divisional venue under 28 U.S.C. § 1404, courts consider “private factors, such as ease of access to witnesses and sources of proof, and convenience to the parties.” *Nw. Env’t Def. Ctr.*, 2011 WL 1527598, at \*7. Courts also consider “public factors, such as familiarity of the forum with applicable law, and local interest in having localized controversies decided at home.” *Id.* (internal quotation marks omitted). Courts have discretion “to evaluate convenience transfers on an individualized, case-by-case basis.” *Id.* at \*3 (internal quotation marks omitted).

#### **IV. ARGUMENT**

Whether under Local Rule 3-2 or 28 U.S.C. § 1404, divisional venue should be changed to the Eugene Division.

##### **A. A Substantial Part of the Events or Omissions Giving Rise to the Claims Occurred in Lane County**

The location of a substantial part of the events giving rise to Plaintiff’s claims renders the Eugene Division the proper divisional venue for this action under Local Rule 3-2. Defendant worked in Lane County and made all relevant decisions in Lane County. (Park Decl. ¶ 3.) If Plaintiff prevails on his claims, the requested remedies will need to be performed in Lane County. (Park Decl. ¶ 6.) The University of Oregon will need to implement any policy changes at its main campus in Lane County, and the Division will continue to administer its Twitter account in Lane County. (Park Decl. ¶¶ 4, 6.) All relevant decisionmakers, including the Vice President of Equity and Inclusion, reside and work in Lane County. (Park Decl. ¶ 3.)

In analogous cases, courts in the District of Oregon have granted motions to change divisional venue. As one court summarized, cases involving agency decisions, similar to

decisions by Defendant here, typically are transferred “to the division where the decision would be implemented.” *Nw. Env’t Def. Ctr.*, 2011 WL 1527598, at \*5; *see also Siskiyou Reg’l Educ. Project v. U.S. Forest Serv.*, No. CV-05-1429, 2005 WL 2675114, at \*2 (D. Or. Oct. 20, 2005) (transferring venue to the division where the Forest Service’s decision on a timber sale would be carried out). Here, the requested actions would be implemented in Lane County, in the Eugene Division.

Moreover, as far as Defendant and the University of Oregon are aware, in the past fifteen years (and probably in the entire history of the University of Oregon), every federal case against the University of Oregon and its employees except one was litigated in the Eugene Division. (Park Decl. ¶ 8.) That one exception, *Cleavenger v. University of Oregon*, No. CV 13-1908-DOC, 2015 WL 3439162 (D. Or. May 28, 2015), involved a law clerk for one of the Eugene Division’s judges, leading all federal judges in the Eugene Division to recuse themselves. (*Id.*) This track record shows that absent extraordinary circumstances, the Eugene Division is the proper venue for claims against the University of Oregon and its employees. No such extraordinary circumstances exist here. The Eugene Division is the proper venue for Plaintiff’s claims, and transfer is mandatory.

**B. Litigation in the Eugene Division Would Best Serve the Convenience of the Parties and Witnesses and the Interest of Justice**

Even if divisional venue in the Eugene Division were not mandatory under Local Rule 3-2, divisional venue should be changed to the Eugene Division under 28 U.S.C. § 1404. Looking at private factors, with the exception of Plaintiff, all the witnesses associated with this case are located in Lane County, in the Eugene Division. (Park Decl. ¶ 7.) Much of the evidence—including the Division’s policies and procedures, Defendant’s job description, and computers and cellphones with forensic evidence of Twitter posts—also are in Lane County. (*Id.*) These private factors weigh in favor of transfer to the Eugene Division. *See Nw. Env’t Def. Ctr.*, 2011 WL 1527598, at \*8 (considering the location of witnesses and evidence).

Looking at public factors, the Eugene Division has an interest in resolving the parties' dispute. The University of Oregon's main campus is located in Lane County. (Park Decl. ¶ 2.) The University of Oregon is one of Lane County's largest employers. (Park Decl. ¶ 10.) The main campus sprawls over 300 acres in the City of Eugene and is the center of many of Eugene's community activities. (*Id.*) A decision that affects the Division's equity and inclusion efforts would be felt most acutely in Eugene on the University of Oregon's main campus. The local community deserves to have that decision made at home. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 260 (1981) (recognizing the importance of having local controversies decided in the home forum). Also, another public factor to be considered is the waste of public resources that would occur if witnesses were required to travel to Portland for hearings, depositions, and trial. The University of Oregon is a public entity that funds litigation expenses with public dollars. Travel to Portland requires more time away from work and reimbursement for travel, meals, and in some cases hotels. Like the private factors, these public factors weigh in favor of transfer to the Eugene Division. Defendant thus requests that, even if the Court concludes that transfer is not mandatory, the Court exercise its discretion to transfer divisional venue to the Eugene Division.

## V. CONCLUSION

For all these reasons, Defendant respectfully requests that the Court grant Defendant's motion to change divisional venue. This action should be tried in the Eugene Division.

DATED: August 24, 2022.

**PERKINS COIE LLP**

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