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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 NOTICE OF
SUPPLEMENTAL MATERIAL IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

Since Plaintiff Bruce Gilley filed his motion for preliminary injunction (ECF No. 2) on August 11, 2022, Defendant University of Oregon ("UO") disclosed new information that affects the contours of Gilley's motion to enjoin the unfettered censorial discretion UO grants the Division's Communication Manager.

Despite telling Bruce Gilley on July 5, 2022, that it lacked written criteria for blocking Twitter posts and that the “staff member that administers the VPEI Twitter and social media has the autonomy to manage the accounts and uses professional judgment when deciding to block users” (ECF No. 5 at 12), UO recently informed Plaintiff that it does, indeed, maintain content-blocking guidelines. ECF Nos. 25 at 2, 25-4 at 1.

On September 2, 2022, UO for the first time disclosed that: “The social media guidelines published by UO’s communications unit are here: <https://communications.uoregon.edu/social-media-guidelines>. The statement we provided to Prof. Gilley on July 5 was inaccurate. The university’s actual stance on blocking social media commentators is set forth in the link above.” ECF No. 25-4 at 1; *see also* ECF 24-1.

In light of this newly disclosed information contradicting Defendant’s prior statements about its customs and practices, Bruce Gilley is constrained to note that he will argue that a preliminary injunction is also necessary because:

1. Defendant’s conflicting accounts about the existence of written blocking criteria indicate that those guidelines’ application is selective and inconsistent;
2. Defendant’s blocking of Gilley’s re-tweet indicates that UO maintains insufficient training and accountability on its social media guidelines’ application;

3. Defendant's selective invocation of UO's guidelines does not change the interactive portion of the @UOEquity account from a designated to a limited public forum;
4. UO's newly professed social media guidelines are too vague to pass constitutional muster, especially as to the terms "hateful or racist comments or otherwise uses offensive or inappropriate language" (ECF No. 24-1 at 2);
5. UO's social media guidelines enshrine and allow viewpoint discriminatory blocking decisions because the terms "hateful or racist comments or otherwise uses offensive or inappropriate language" allow account administrators, and especially DEI adherents, to block users for expressing a colorblind viewpoint or any other viewpoint that is critical of DEI (*Id.*);
6. UO's social media guidelines allow account administrators to "ban" users for "egregious" or "repeated" posts, which is a disproportionate remedy and lacks narrow tailoring (*Id.*);
7. UO's social media guidelines and threat to ban repeat violators invite self-censorship; and
8. UO is a state actor and cannot escape First Amendment requirements by incorporating Twitter's terms of service (*see id.* at 3) or colluding with private parties to block or otherwise take down Tweets that express colorblind viewpoints or views that are critical of DEI.

Plaintiff is submitting this information now so as to put Defendant and the Court on notice; and to avoid raising these arguments for the first time in a response or reply brief.

Respectfully submitted,

Dated: September 3, 2022

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