

Professor Gilley Wins Appeal in Social Media Case

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Maxine Bernstein writes in [Oregon Live](#).

The 9th U.S. Circuit Court of Appeals has resurrected Portland State University professor [Bruce Gilley's push](#) for a preliminary injunction against the University of Oregon after he says he was unconstitutionally blocked from seeing or commenting on tweets from the @OUEquity Twitter account.

In a 2-1 vote, a three-judge panel of the 9th Circuit on Friday threw out [an Oregon federal judge's denial of Gilley's motion](#) for a preliminary injunction and sent the matter back to U.S. District Court.

Even if the University of Oregon no longer blocks Gilley's Twitter account, the school hasn't met its heavy burden to show that the conduct cannot reasonably be expected to reoccur, the [panel ruled](#).

Gilley sued the University of Oregon and a former university employee after he was bumped from the school's Division of Equity and Inclusion's Twitter account following a comment he made on June 14, 2022.

Tova Stabin, who worked as a UO communications manager, blocked Gilley's Twitter account after he retweeted and added a comment to an @UOEquity tweet that included a "racism interrupter" tool designed to help people respond to remarks they consider racist or offensive.

The @UOEquity tweet suggested people say: "It sounded like you just said _____. Is that really what you meant?"

Gilley, in his retweet, filled in the blank: "My entry:...you just said 'all men are created equal.'"

He has publicly [criticized state efforts for inclusive educational curriculum](#) as "identity politics" and has been highly critical of university diversity, equity and inclusion initiatives.

Internal emails revealed that UO's general counsel requested that Gilley be unblocked immediately unless he engaged in speech "not protected by the United States and Oregon Constitutions," according to court records. The UO's communication department also sent an email to staff reinforcing that "viewpoint discrimination" isn't permitted when managing social media accounts.

In February 2023, U.S. District Judge Marco A. Hernandez said the political science professor raised legitimate claims that the 60-day blocking on Twitter had violated his free speech rights. At the same time, Hernandez denied Gilley's request for a preliminary injunction against the University of Oregon, saying Gilley didn't show that he would face future harm from what was a temporary restriction.

In Friday's appellate opinion, the majority said the court can't be sure the University of Oregon wouldn't take similar action in the future, citing the "lack of formality and relative novelty" of the university's social media policy, how easily it can be reversed and the "lack of procedural safeguards to protect from arbitrary action."

"In arguing before us that there was a policy, but that Stabin violated it, the University shows that it lacks sufficient policies to prevent such departures from policy by a rogue employee," the majority wrote. "These facts readily demonstrate irreparable harm."

Judges Daniel P. Collins and Ryan D. Nelson joined in the majority ruling.

Judge William A. Fletcher dissented, writing that he agreed with Hernandez that Gilley's allegations are moot and Stabin's blocking of Gilley based on his views was "an anomaly."

Fletcher pointed out that the University of Oregon immediately unblocked Gilley and rejected Stabin's actions as "inconsistent with its prohibition on viewpoint discrimination," after learning of his lawsuit. Of 2,558 retweets and replies directed at the @UOEquity account in the past decade, only three users have been blocked from the account. One of those three was Gilley, Fletcher wrote.

Stabin retired on the same day that the university learned of the lawsuit and unblocked Gilley, his dissent said. The university's social media guidelines are written and have existed since at least 2019, Fletcher wrote. The university, he added, also reiterated to staff that under the guidelines, "(w)e don't delete comments or block users because they are critical or because we disagree with the sentiment or viewpoint."

Attorney Angus Lee, who represented Gilley, called the appellate panel's majority ruling "a triumph not just for Professor Gilley, but for all who cherish the fundamental right to free expression. It sends a clear message that public institutions cannot disregard the First Amendment in digital spaces."

The University of Oregon is reviewing the court decision and evaluating next steps, said Angela Seydel, a spokesperson for

the university. "There has been no court decision on the merits of the allegations," she said.

Del Kolde, a senior attorney with the Washington, D.C.-based nonprofit Institute for Free Speech, praised the decision. "The University of Oregon cannot avoid accountability for its unlawful blocking guidelines by simply unblocking Professor Gilley and claiming it won't happen again," Kolde said in a statement.