



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

April 21, 2006

DAVID H. ANGELI
Direct (503) 294-9633
dhangeli@stoel.com

BY HAND DELIVERY

Honorable Christopher J. Marshall
Circuit Court Judge
Multnomah County Circuit Court
1021 SW 4th Avenue
Portland, OR 97204

**Re: *Pendleton School District, et al. v. State of Oregon, et al.*
(Multnomah County Circuit Court Case No. 0603-02980)**

Dear Judge Marshall:

I represent the plaintiffs in the above-captioned matter. Defendants' Motion for Change of Venue is scheduled for hearing before you on May 19, 2006, at 9:30 a.m.

I have enclosed chambers copies of (1) Plaintiffs' Memorandum in Opposition to Defendants' Motion to Change Venue, (2) a spiral bound copy of the out-of-state cases cited in Plaintiffs' Memorandum, and (3) Plaintiffs' First Amended Complaint, which was filed yesterday.

Thank you very much for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "David H. Angeli", is written over a horizontal line.

David H. Angeli

Enclosure

cc: Katherine G. Georges

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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH**

**PENDLETON SCHOOL DISTRICT 16R;
EUGENE SCHOOL DISTRICT 4J;
CROW-APPLEGATE-LORANE
SCHOOL DISTRICT 66; COOS BAY
SCHOOL DISTRICT 9; CORVALLIS
SCHOOL DISTRICT 509J; JOSEPHINE
COUNTY UNIT/THREE RIVERS
SCHOOL DISTRICT; ASTORIA
SCHOOL DISTRICT 1C; CRESWELL
SCHOOL DISTRICT; LINCOLN
COUNTY SCHOOL DISTRICT;
SIUSLAW SCHOOL DISTRICT 97J;
CENTENNIAL SCHOOL DISTRICT;
AMITY SCHOOL DISTRICT 4J;
REYNOLDS SCHOOL DISTRICT #7;
COQUILLE SCHOOL DISTRICT #8;
PARKROSE SCHOOL DISTRICT #3;
PINE EAGLE SCHOOL DISTRICT #61;
JEFFERSON SCHOOL DISTRICT;
MCKENZIE SCHOOL DISTRICT;
ALEXANDRA KIESLING and TIMOTHY
KIESLING, minors, by Amy Cuddy, their
guardian ad litem; GRACE PEYERWOLD,
a minor, by David and Maria Peyerwold, her
guardians ad litem; MARSHALL
TAUNTON and HARRISON TAUNTON,
minors, by Tim and Wendy Taunton, their
guardians ad litem; and BENJAMIN
SHERMAN and CLAIRE SHERMAN,
minors, by Larry Sherman and Diane Nichol,
their guardian ad litem,**

Plaintiffs,

v.

**STATE of OREGON; PETER
COURTNEY, in his capacity as Senate
President of the Legislative Assembly of
Oregon; KATE BROWN, in her capacity as
Senate Majority Leader; TED FERRIOLI, in
his capacity as Republican Leader of the
Senate; KAREN MINNIS, in her capacity as**

No. 0603-02980

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO CHANGE VENUE**

1 Speaker of the House of Representatives;
2 **WAYNE SCOTT**, in his capacity as Majority
3 Leader of the House of Representatives;
4 **JEFF MERKLEY**, in his capacity as
5 Democratic Leader of the House of
6 Representatives.

7 Defendants.

8 I. INTRODUCTION

9 This lawsuit arises out of the Oregon legislature’s failure to provide a constitutionally
10 adequate education to students across the state. Each of the plaintiff districts and
11 individuals—including three Multnomah County school districts and three individual
12 students from Multnomah County—have suffered as a result of that failure.¹ Across the
13 state, teachers and administrators have been laid off, important programs have been cut,
14 classrooms have become more crowded, and school days have been slashed from the
15 calendar. (*See* Complaint ¶ 62 (alleging harm to “school districts and children across the
16 state, including the plaintiff districts and individuals”).)

17 In light of the statewide nature of the injuries resulting from the legislature’s actions,
18 Defendants’ myopic focus on Marion County as the exclusive venue for this case is
19 misplaced. The plain language of ORS 14.060, which provides that venue properly lies in
20 “the county wherein the cause of suit, *or some part thereof*, arose” (emphasis added), is fatal
21 to Defendants’ argument.² The italicized portion of ORS 14.060 quoted here clearly
22 contemplates that venue may properly lie in multiple locations when, as here, the various
23 “parts” of a particular cause of action occur in multiple locales.

24 ¹ The original Complaint was filed on behalf of six school districts and five individual
25 plaintiffs, including Grace Peyerwold, a student in Portland School District 1J. The First
26 Amended Complaint added two individual plaintiffs (both of whom are students in Portland
School District 1J) and ten new districts, including three Multnomah County districts:
Centennial, Reynolds, and Parkrose.

² The parties agree that ORS 14.060 governs the choice of venue in this case. (*See*
Defendants’ Motion to Change Venue (“Motion”) at 3.)

1 Defendants effectively ignore the “or some part thereof” language of ORS 14.060,
2 arguing instead that Marion County is “the county where the cause of suit arose.” (Motion at
3 3, 4, 5.) Defendants’ reasoning—that Marion County is the exclusive venue because the
4 legislature, which includes representatives from every county in the state, was physically
5 located in Salem when it passed the statewide 2005-07 budget—would render the “or some
6 part thereof” language superfluous. Their argument ignores blackletter law providing that for
7 a “cause” to arise, there must be *both* (1) an action by the defendant(s) *and* (2) some tangible
8 harm suffered by the plaintiff(s) as a result of defendants’ action. Venue is proper under
9 ORS 14.060 in any county in which *either* of those elements was satisfied. Multnomah
10 County, which has suffered severely as a result of the legislature’s actions, satisfies that test.
11 For that reason, the Court should deny Defendants’ Motion.

12 II. ARGUMENT

13 Defendants assume, without case support, and contrary to the plain language of
14 ORS 14.060, that the “county wherein the cause of suit, or some part thereof, arose”
15 language refers solely to the county wherein the wrongful *act* occurred. The Oregon
16 legislature certainly could have provided exclusive venue in Marion County for causes that
17 challenge legislative action. Congress chose a similar course when it enacted the venue
18 provision of the Federal Tort Claims Act (the “FTCA”), which provides that tort claims
19 against the United States must be brought in the judicial district where the plaintiff resides, or
20 “wherein the *act or omission* complained of occurred.” 28 USC § 1402(b) (emphasis added).
21 Under the federal law, the place of injury is irrelevant to the venue question.

22 Defendants improperly ask the Court to apply that standard in this case. However,
23 the plain language of Oregon’s venue statute differs materially from the FTCA. Oregon law
24 does not limit venue to the county in which the “act or omission” took place, but rather
25 provides that venue is proper in any county in which “some part” of a cause of action arose.
26 ORS 14.060. A justiciable cause of action cannot arise absent *both* (1) a wrongful act or

1 omission and (2) ““some *injury or other impact* upon a legally recognized interest beyond an
2 abstract interest in the correct application or validity of a law.”” *MacPherson v. DAS*, 340 Or
3 117, 123-24, 130 P3d 308 (2006) (emphasis added) (quoting *League of Oregon Cities v.*
4 *State of Oregon*, 334 Or 645, 658, 56 P3d 892 (2002)); *see also State v. Norris*, 188 Or App
5 318, 327, 72 P3d 103 (2003) (party seeking declaratory judgment that legislature acted
6 unconstitutionally must have interest beyond establishing mere unlawfulness of legislative
7 enactment).

8 Plaintiffs have not found an Oregon case addressing the precise issue raised here:
9 whether, in a case in which allegedly illegal acts occur in one county but injury is sustained
10 elsewhere, a county in which the injury occurs is a “county wherein the cause of suit, or
11 some part thereof, arose.”³ However, courts in other states have relied on identical venue
12 provisions to sustain venue in the county in which the injury occurred. For example, in
13 *Stoneham v. Rushen*, 137 Cal App 3d 729, 188 Cal Rptr 130 (1982), a prison inmate in Marin
14 County, California filed a petition for a writ of mandate and declaratory relief, seeking to halt
15 implementation of an inmate classification system approved by the director of the

16 _____
17 ³ That question is not answered by *Nibler v. Department of Transportation*, 338 Or 19,
18 105 P3d 360 (2005), the case on which Defendants primarily rely. In *Nibler*, a tort case, both
19 the accident and the injury took place in Washington County, the county to which the state
20 successfully sought to transfer venue under ORS 14.060. *Nibler* provides no guidance for the
21 Court in the present situation, where Plaintiffs suffered injury in a county other than the
22 county in which the allegedly offensive acts took place. It is worth noting, however, that
23 lawsuits against the state—including lawsuits challenging legislative and administrative
24 action—are regularly litigated in Multnomah County. *See, e.g., Perrin v. Kitzhaber*, 191 Or
25 App 439, 83 P3d 368 (2004) (contesting legislature’s redrawing of congressional districts,
26 filed in Multnomah County); *Freedom Socialist Party v. Bradbury*, 182 Or App 217, 48 P3d
199 (2002) (challenging constitutionality of state statute prohibiting use of “socialist” in
political party name, filed in Multnomah County); *Southern Wasco County Ambulance v.*
State of Oregon, 156 Or App 543, 968 P2d 848 (1998) (seeking declaratory judgment that
legislative classifications regarding self-service gasoline were unconstitutional, filed in
Washington County); *Miller Brands, Inc. v. OLCC*, 90 Or App 266, 752 P2d 320 (1988)
(seeking declaratory judgment and to enjoin Liquor Control Commission from allowing tax
credits pursuant to unconstitutional statute, filed in Multnomah County); *see also State ex rel*
Eckles v. Livermore, 72 Or App 650, 696 P2d 1153 (1985) (challenging special legislation
that created SAIF Corporation, filed in Lane County).

1 Department of Corrections and Rehabilitation in Sacramento. In interpreting the statutory
2 language providing for venue in “the county in which the cause, or some part thereof, arose,”
3 Cal Civ Proc Code § 393, the court focused on the locus of the injury and rejected the
4 director’s contention that venue lay exclusively in Sacramento:

5 “It is where the shaft strikes [a citizen], not where it is drawn,
6 that counts * * * * Surely a cause of action does not arise in
7 the county in which a state officer happens to affix his name to
8 an order which is to become operative in another county.”

9 188 Cal Rptr at 133 (citation omitted; alterations in original). This rule has been consistently
10 followed in California, *see, e.g., Tharp v. Superior Court*, 32 Cal 3d 496, 502, 186 Cal Rptr
11 335 (1982) (“the county in which Tharp’s cause of action arose was the county in which it
12 carried on its business and would be hurt by the official action”), and in other jurisdictions
13 with identical statutory language, *see, e.g., Fischer v. State Bd of Elections*, 847 SW2d 718,
14 720-21 (Ky 1993) (“the logical construction of the venue statute is to allow a party to
15 challenge the constitutionality of a statute in the venue in which he has alleged to have been
16 injured”); *State ex rel. Cary v. Cochran*, 292 NW 239, 243 (Neb 1940) (holding, in case
17 alleging that state officers failed to properly enforce irrigation laws, that “[w]ithout the
18 subsequent damage, no cause of action could exist. It seems clear therefore, that the ‘cause
19 or some part thereof’ arose in [the county where the damage occurred].”). In this case, when
20 injury was sustained in Multnomah County, a part of the cause of action arose in Multnomah
21 County, and venue is proper here.

22 Defendants urge rejection of this conclusion by ignoring the statutory language
23 establishing proper venue in *any* county where “*some* part” of the cause of action arose.
24 ORS 14.060 (emphasis added). But it is well settled that a court’s “job in interpreting [a]
25 statute is to attempt to read its provisions in a way that gives effect to all provisions.”
26 *Service Employees Int’l Union Local 503 v. DAS*, 202 Or App 469, 475, 123 P3d 300 (2005)
(citation omitted); *see also Vsetecka v. Safeway Stores, Inc.*, 337 Or 502, 510, 98 P3d 1116

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900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480

1 (2004). The “or some part thereof” language would be rendered meaningless if the state and
2 its officials could be sued only in the place where their official action occurred, as
3 Defendants urge.


4 **III. CONCLUSION**

5 For the foregoing reasons, venue in Multnomah County is proper under ORS 14.060,
6 and the Court should deny Defendants’ Motion.

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DATED: April 21, 2006.

STOEL RIVES LLP



David H. Angeli, OSB No. 02024
dhangeli@stoel.com
Robert D. Van Brocklin, OSB No. 87130
rdvanbrocklin@stoel.com
James N. Westwood, OSB No. 74339
jnwestwood@stoel.com
Robin B. Skarstad, OSB No. 04471
rbskarstad@stoel.com

900 SW Fifth Avenue, Suite 2600
Portland, OR 97204
Telephone: (503) 224-3380
Fax: (503) 220-2480

Trial Attorney: David H. Angeli
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing **PLAINTIFFS' MEMORANDUM IN**
3 **OPPOSITION TO DEFENDANTS' MOTION TO CHANGE VENUE** on the following
4 named person(s) on the date indicated below, by:

5 mailing with postage prepaid

6 hand delivery

7 facsimile transmission

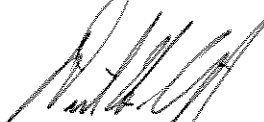
8 overnight delivery

9 to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said
10 person(s) at their last-known address(es).

11 Katherine G. Georges
12 Oregon Department of Justice
13 Trial Division
14 Special Litigation Unit
15 1162 Court Street NE
16 Salem, OR 97301

17 DATED: April 21, 2006.

18 **STOEL RIVES LLP**

19 

20 David H. Angeli, OSB No. 02024
21 *dhangeli@stoel.com*

22 Of Attorneys for Plaintiff
23
24
25
26

STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480