
U.S. Court of Appeals for the Fifth Circuit Takes a Narrow Approach to Personal Jurisdiction Over Out-of-State Website

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Now more than ever, courts are being asked to decide when website operators are subject to personal jurisdiction and can, therefore, be sued—a potentially vexing problem because websites can be accessed from almost anywhere on the globe. The problem is particularly acute in cases where the causes of action arise out of speech posted on the Internet. A single tweet can be broadcast worldwide with the click of a button and potentially subject the speaker to liability anywhere in the world. Courts have generally rejected the notion that jurisdiction in such cases lies anywhere in the world and have attempted to devise a test for jurisdiction that will fairly apply current due process jurisprudence.

The Supreme Court of the United States provided the basic framework for tackling these questions in its seminal decision in *Walden v. Fiore*. While not an Internet speech case, *Walden* emphasized that specific jurisdiction (i.e., jurisdiction over a particular dispute) must arise out of contacts that the “defendant *himself* creates with the forum.” 571 U.S. 277, 284 (2014) (emphasis in original). How exactly that test applies to cases arising out of speech on the Internet has proven to be complicated, and the lower federal courts have been divided about when a website publisher can be subject to jurisdiction in a particular forum.

On December 23, 2021, in *Johnson v. TheHuffingtonPost.com, Inc.*, a divided panel of the U.S. Court of Appeals for the Fifth Circuit found that Charles Johnson, a Texas citizen, had failed to establish jurisdiction over the HuffingtonPost, a news- and commentary-oriented website (“HuffPost”), in a libel suit filed in the Southern District of Texas for publishing on its website an allegedly defamatory story portraying the plaintiff as a white nationalist and Holocaust denier. The court rejected plaintiff’s claim that HuffPost could be subject to jurisdiction in Texas because its website is regularly accessed in Texas. In doing so, the court adopted a stringent test for jurisdiction that requires the plaintiff to establish specific ties between the story and the forum. If other courts follow the Fifth Circuit’s approach, the locations in which website operators will be subject to suit will be dramatically circumscribed.

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