

FIFTH CIRCUIT UPDATE

33rd Annual Conference on
State and Federal Appeals

June 9, 2023

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THE FIFTH CIRCUIT AT THE SUPREME COURT

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The Fifth Circuit at SCOTUS

- *Helix Energy Solutions Group*
- *Hippocratic Medicine*
(emergency docket)
- Forthcoming:
 - *Brackeen*
 - *US v. Texas*

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PERSONAL JURISDICTION

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Johnson v. TheHuffingtonPost.com, Inc.,
21 F.4th 314 (5th Cir. 2021)

*"Charles Johnson says the Huffington Post ... libeled him by calling him a white nationalist and a Holocaust denier. He sued HuffPost in Texas. HuffPost is not a citizen of Texas and has no ties to the state. But **its website markets ads, merchandise, and ad-free experiences to all comers.***

HUFFPOST

We must decide whether those features of HuffPost's site grant Texas specific personal jurisdiction over HuffPost as to Johnson's libel claim. They do not, so we affirm the dismissal and deny jurisdictional discovery."

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Johnson v. TheHuffingtonPost.com, Inc.,
21 F.4th 314 (5th Cir. 2021) (Haynes, J., dissenting)

*"[T]he Supreme Court [has] articulated two different rules that turned on the nature of the defendant in a libel case. If the defendant alleging lack of personal jurisdiction is a publication (like Hustler Magazine in Keeton), then personal jurisdiction is appropriate when that publication is in 'substantial circulation' and that circulation is not 'random, isolated, or fortuitous.' If the defendant alleging a lack of personal jurisdiction is the author or the individual approving publication (like the employees in Calder), then personal jurisdiction is appropriate when the **effect of the defendant's conduct is felt in the forum state.**"*

HUFFPOST

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