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GETTING PERSONAL WITH OUR NEIGHBORS—A SURVEY OF SOUTHERN STATES' EXERCISE OF GENERAL JURISDICTION AND A PROPOSAL FOR EXTENDING GEORGIA'S LONG-ARM STATUTE

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INTRODUCTION

This note analyzes the exercise of personal jurisdiction over nonresident defendants by Georgia and neighboring Southern jurisdictions, focusing on their use of their long-arm statutes and service of process requirements (whether embodied in statute or court rule).¹ The specific focus is whether the covered jurisdictions permit their courts to exercise so-called general jurisdiction—in other words, personal jurisdiction over a nonresident defendant in an action not arising from the defendant's contacts with the forum state.²

This Note starts by presenting an abbreviated history of the United States Supreme Court's major decisions relating to state courts' exercise of personal jurisdiction over nonresident defendants, with particular attention to the three cases in which the United States Supreme Court has discussed general jurisdiction.³ This Note then examines the long-arm laws and, where relevant, service of process

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1. See *infra* section II.

2. For a discussion of general jurisdiction, see ROBERT C. CASAD & WILLIAM M. RICHMAN, JURISDICTION IN CIVIL ACTIONS 139–44 (3d ed. 1998). For criticism of the concept of general jurisdiction, see generally Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610 (1988).

3. See *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984); *Burnham v. Superior Court of Cal.*, 495 U.S. 604 (1990). For discussion of these cases, see *infra* text accompanying notes 30–40.

rules in Georgia and other Southern states to understand contemporary practices.⁴ The jurisdictions are categorized on the basis of whether they permit their courts to exercise general jurisdiction and, if so, under what circumstances.⁵ For each jurisdiction, the relevant statutes, regulations, and case law are evaluated to determine how the exercise of jurisdiction is authorized.⁶ It concludes by proposing a revision to the Georgia long-arm statute, which would bring Georgia into line with the majority of states studied, by permitting Georgia courts to exercise personal jurisdiction to the limits imposed by the Due Process Clause of the 14th Amendment to the United States Constitution, including general jurisdiction.⁷

A. Background

The United States Supreme Court has over the years announced a variety of justifications for limiting the exercise of personal jurisdiction by a state over a nonresident defendant.⁸ While this note does not remotely purport to describe or evaluate what the constitutional limits on the exercise of personal jurisdiction are, some understanding of United States Supreme Court precedent on this topic is useful in evaluating modern practices by the states. The evolution (or revolution) in the twentieth century away from the ‘power’ theory embodied in *Pennoyer v. Neff* towards an evaluation of whether the exercise of personal jurisdiction in a particular case would “offend ‘traditional notions of fair play and substantial justice’” permitted states to adopt a variety of approaches towards the exercise of personal jurisdiction.⁹ Those approaches are the main topic of this Note. Specifically, the United States Supreme Court has

4. See *infra* section II.

5. See *infra* section II.

6. See *infra* section II.

7. See *infra* Section III.

8. CASAD & RICHMAN, *supra* note 2, at 67–178.

9. *Pennoyer v. Neff*, 95 U.S. 714 (1878); *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citing *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)), discussed *infra* in the text accompanying notes 20–29.

affirmed and reaffirmed the existence of what it has described as general jurisdiction, namely a state's exercise of personal jurisdiction over a nonresident defendant in a cause of action not arising from that defendant's contacts with the forum state.¹⁰

In the beginning, there was *Pennoyer*, and it was good. Decided in 1878, *Pennoyer v. Neff* “for nearly a century served as the basic statement of the limits on state court jurisdiction imposed by the 14th Amendment due process clause.”¹¹ In striking down an Oregon state court judgment against a nonresident who did not appear in court, was not present in Oregon, and did not live in Oregon on the basis that the Oregon state court could not validly exercise personal jurisdiction over the nonresident, *Pennoyer* established that “due process essentially limits the personal jurisdiction of state courts to the three traditional bases of consent, presence, and domicile.”¹² The “territorial power theory” that *Pennoyer* embraced “treated the States as nearly independent sovereigns,” and was focused almost entirely on the physical presence of the defendant or his property.¹³ The result of the focus on territorial power was that “a state has absolute power over defendants or property found within its territorial boundaries, regardless of the nature of the dispute.”¹⁴ As a necessary corollary, a state had very little power over nonresidents who did not own property within its boundaries, and that limitation eventually “caused [the power theory from *Pennoyer*] to fall out of step with the realities of twentieth century life,” particularly over corporate defendants.¹⁵

Some states used statutes requiring corporations doing business in their state “to appoint agents for service of process . . . and designat[e] a state official to receive such service if the corporation failed to appoint an agent” to create a fictive form of corporate consent to jurisdiction.¹⁶ Another theory used was that a nonresident

10. See *infra* notes 30–41 and accompanying text.

11. CASAD & RICHMAN, *supra* note 2, at 68.

12. *Id.* at 68, 70.

13. *Id.* at 71–72.

14. Twitchell, *supra* note 2, at 619.

15. CASAD & RICHMAN, *supra* note 2, at 80.

16. *Id.* at 77; Twitchell, *supra* note 2, at 620.

corporation was “‘present’ wherever it was doing business and could be sued in the courts of that state just as a nonresident individual found there could be.”¹⁷ These theories were used by some states to justify jurisdiction over corporate defendants not just in actions arising from the corporation’s specific activities within the forum state, but also in other causes of action.¹⁸ As one commentator has noted, “the legacy of these rules is a strand of general jurisdiction theory that recognizes relatively unlimited jurisdiction over corporate and individual defendants having certain commercial ties with the forum.”¹⁹

B. *International Shoe Co. v. Washington*

In 1945, the United States Supreme Court’s decision in *International Shoe Co. v. Washington* began a “doctrinal revolution . . . best viewed as a shift in the conceptual basis of state-court jurisdiction from power towards fundamental fairness.”²⁰ In abandoning the requirement of the defendant’s presence within the forum state, the Court established that due process would only require that a defendant not present in the forum state “have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”²¹ The Court held that the demands of due process “may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there.”²²

In rejecting a “mechanical or quantitative” approach towards determining what contacts would suffice to justify the exercise of

17. CASAD & RICHMAN, *supra* note 2, at 78.

18. *Id.* at 77; Twitchell, *supra* note 2, at 621.

19. Twitchell, *supra* note 2, at 622.

20. CASAD & RICHMAN, *supra* note 2, at 81.

21. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citing *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

22. *Id.* at 317.

jurisdiction, the Court emphasized that courts must evaluate the “quality and nature of the [defendant’s] activity in relation to the fair and orderly administration of the laws.”²³ The Court noted that when a corporation conducted activities within a state, it was enjoying the “benefits and protection of the laws of that state,” and that the “exercise of that privilege may give rise to obligations.”²⁴ The Court went on to explain that in cases where “those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.”²⁵

The immediately preceding quotation suggests that a state can presumptively exercise jurisdiction over a nonresident defendant for causes of action arising from that defendant’s contacts with the forum state (what would later be deemed specific jurisdiction). The Court also noted that “there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities”—in other words, general jurisdiction.²⁶

While *International Shoe* left a number of questions unresolved—which numerous cases during the subsequent sixty years have tried to address—this Note does not attempt to catalog or analyze them, because that ground has been well-plowed previously.²⁷ The specific question relevant for the survey undertaken in Section II is whether a state court may, consistent with due process, exercise general jurisdiction—that is, personal jurisdiction over a nonpresent

23. *Id.* at 319.

24. *Id.*

25. *Id.*

26. *Id.* at 318. The commonly attributed source of the specific/general jurisdiction distinction is Arthur von Mehren & Donald Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121 (1966); see also Casad & Richman, *supra* note 2, at 139–44; see generally Twitchell, *supra* note 2.

27. See, e.g., Joanna B. Bossin, Note, *What Constitutes Minimum Contacts in Cyberspace After Compuserve, Inc. v. Patterson: Are New Rules Necessary for a New Regime?*, 13 GA. ST. U. L. REV. 521, 524–26 (1997); CASAD & RICHMAN, *supra* note 2; Twitchell, *supra* note 2; von Mehren & Trautman, *supra* note 26.

defendant, on claims unrelated to the defendant's forum contacts.²⁸ The United States Supreme Court, in three decisions following *International Shoe*, consistently held the answer is yes, albeit only in limited circumstances.²⁹ Again, this Note does not evaluate those cases, but rather describes them in summary fashion so as to illuminate the survey of current state practices described in Section II.

C. *The United States Supreme Court & General Jurisdiction*

1. *Perkins v. Benguet Consolidated Mining Co.*

In 1952, the United States Supreme Court held that Ohio could validly exercise personal jurisdiction "to enforce a cause of action not arising out of the [defendant's] activities in the state of the forum."³⁰ The defendant in this case was a Philippine company whose president and principal stockholder, after being forced to leave the Philippines during World War II, moved to Ohio, opened an office there, and generally "carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company."³¹ The cause of action did not arise in Ohio, nor did it "relate to the corporation's activities there."³² The Court's holding, permitting "proceeding in personam to enforce a cause of action not arising out of the corporation's activities in the state of the forum," explicitly built on the language from *International Shoe* regarding "continuous corporate operations within a state" that were "so substantial and of such a nature" that they could justify suit against a defendant on causes of action unrelated to the defendant's forum contacts.³³

28. See *infra* section II; CASAD & RICHMAN, *supra* note 2, at 140.

29. See *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952), *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984); *Burnham v. Superior Court of Cal.*, 495 U.S. 604 (1990).

30. *Perkins*, 342 U.S. at 446.

31. *Id.* at 447-48.

32. *Id.* at 438.

33. *Id.* at 446 (citing *Int'l Shoe v. Washington*, 326 U.S. 310, 318 (1945)).

2. Helicopteros Nacionales de Colombia, S.A. v. Hall

In 1984, the United States Supreme Court addressed the question of whether a Colombian corporation could be sued in Texas over a helicopter crash in Peru.³⁴ The plaintiffs asserted that the corporation's purchases of helicopters in Texas, the training of its pilots in Texas, and a solitary negotiation in Texas were sufficient contacts to permit Texas courts to exercise jurisdiction, even though the plaintiffs conceded that the suit did not arise out of and was not related to those contacts.³⁵ The Court ultimately held that those contacts were not "the kind of continuous and systematic general business contacts . . . found [] in *Perkins*," and that accordingly Texas could not exercise jurisdiction over the defendant.³⁶ The Court also reaffirmed the rule from *Perkins* that upon a showing of continuous and systematic contacts with a forum state, a defendant would be subject to suit there "[e]ven when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State."³⁷ In a footnote, the Court expressly applied the 'general jurisdiction' label for an exercise of "personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum."³⁸

3. Burnham v. Superior Court of California, County of Marin

The final United States Supreme Court case arguably involving the exercise of general jurisdiction, *Burnham v. Superior Court of California*, was decided in 1990 when the Court "unanimously upheld the constitutionality of jurisdiction over a nonresident who had been served with process while visiting the state."³⁹ While there was no majority opinion—two groups of four Justices each

34. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 409–10 (1984).

35. *Id.* at 411, 415.

36. *Id.* at 416, 418–19.

37. *Id.* at 414.

38. *Id.* at 414 n.9.

39. *CASAD & RICHMAN*, *supra* note 2, at 122–23 (discussing *Burnham v. Sup. Court of Cal.*, 495 U.S. 604 (1990)).

“emphatically rejected the other’s rationale” while Justice Stevens “declin[ed] to agree with either side” in his separate opinion—there was nonetheless a “clear holding.”⁴⁰ The Court unanimously agreed that absent unusual circumstances, physical presence alone would suffice to permit the exercise of general jurisdiction over a defendant.⁴¹

Although state courts are quick to repeat the mantra that their jurisdiction extends to the limits of constitutional due process, many State long arm statutes do not appear to provide for the exercise of general jurisdiction.⁴² This is partly the result of the chronology of extra territorial jurisdiction.⁴³ After the Supreme Court’s decision in *International Shoe*, many state legislatures passed long arm statutes which they believed reached to the limits of due process.⁴⁴ However, these statutes were passed before the Supreme Court fully developed its personal jurisdiction jurisprudence.⁴⁵ Thus, “codifying what the courts had already decided tended to freeze in place the approved categories and did not allow the courts to continue to define the limits as their contours became clear in modern-scenario cases that arose after *International Shoe*.”⁴⁶ The following section examines several of Georgia’s sister southern states (and Florida) to determine whether they have taken advantage of the opportunity to exercise general jurisdiction, and if so, under what circumstances and with what basis.

40. CASAD & RICHMAN, *supra* note 2, at 123, 127.

41. *Id.* at 127.

42. Jeffrey A. Van Detta & Shiv K. Kapoor, *Extraterritorial Personal Jurisdiction for the Twenty-First Century: A Case Study Reconceptualizing the Typical Long-Arm Statute to Codify and Refine International Shoe After Its First Sixty Years*, 3 SETON HALL CIRCUIT REV. 339, 345–46 (2007).

43. *Id.* at 345–46.

44. *Id.*

45. *Id.* at 346.

46. *Id.*

I. STATE SURVEY

A. Alabama

Alabama is a full general jurisdiction state because its service of process rules authorize service with only minimum contacts:

[O]utside of this state upon a person or entity in any action in this state when the person or entity has such contacts with this state that the prosecution of the action against the person or entity in this state is not inconsistent with the constitution of this state or the Constitution of the United States.⁴⁷

The rule then goes on to provide that in an action against a “person or entity [] sued in the capacity of guardian of a ward, or executor, administrator, or other personal representative of an estate, for the acts or omissions of a decedent or ward” service will be permitted either if the person or entity being sued has sufficient contacts or the decedent or ward did.⁴⁸ This rule was amended in 2004 to remove the so-called “laundry list” of contacts sufficient to justify out-of-state service of process in light of consistent interpretation of the “catchall” clause as going to the extent of federal due process.⁴⁹

The Alabama Supreme Court has interpreted this rule to extend “the personal jurisdiction of Alabama courts to the limit of due process under the United States and Alabama Constitutions.”⁵⁰ The

47. ALA. R. CIV. P. 4.2(b).

48. *Id.*

49. See Committee Comments to Amendment to Rule 4.2 Effective August 1, 2004. The so-called “laundry list” used to be former Rule 4.2(a)(2)(A)–(H). The former “catch-all” clause was contained in former Rule 4.2(a)(2)(I), as discussed in *Elliott v. Van Kleef*, 830 So. 2d 726, 729 (Ala. 2002). For an example of a case interpreting the prior catch-all clause as extending to the limits of due process, see *id.* at 730; see also *Martin v. Robbins*, 628 So. 2d 614, 617 (Ala. 1993). The order amending Rule 4.2, Alabama Rules of Civil Procedure, effective August 1, 2004, is published in the volume of the *Alabama Reporter* that contains Alabama cases from 867 So. 2d. For an illuminating and well-reasoned discussion of the prior Alabama rule, as well as advocacy of adoption of such a rule in Georgia by a preeminent figure in the study of Georgia jurisprudence, see E.R. Lanier, *Long Arm, Short Reach: The Dilemma of Georgia's Long Arm Statute*, *The Verdict*, Dec./Jan. 1990, at 22.

50. *J. C. Duke & Assocs. Gen. Contractors v. West*, 991 So. 2d 194, 197 (Ala. 2008).

practical effect is to extend Alabama courts' jurisdiction out to the limits of federal due process: the Alabama Supreme Court has clarified that "[w]hen applying Rule 4.2(b), this Court has interpreted the due process guaranteed under the Alabama Constitution as coextensive with that guaranteed under the United States Constitution."⁵¹ The Alabama Supreme Court has explicitly adopted—and recently reaffirmed—the theory of general personal jurisdiction arising from general contacts, which "consist of the defendant's contacts with the forum state that are unrelated to the cause of action and that are both 'continuous and systematic.'"⁵²

B. Arkansas

Arkansas is a full general jurisdiction state, explicitly provided by statute.⁵³ The relevant code section provides that Arkansas courts "shall have personal jurisdiction of all persons, and all causes of action or claims for relief, to the maximum extent permitted by the due process of law clause of the Fourteenth Amendment of the United States Constitution."⁵⁴ Arkansas courts have accordingly looked to "Fourteenth Amendment due-process jurisprudence when deciding an issue of personal jurisdiction."⁵⁵

The Supreme Court of Arkansas first explicitly discussed the emergence of general jurisdiction in Arkansas when construing a 1995 amendment to the Arkansas long-arm statute in *Davis v. St. Johns Health Sys.* in 2002.⁵⁶ In *Davis*, the Supreme Court of Arkansas noted that the legislature's deletion of "the requirement that the cause of action arise out of the nonresident defendant's specific

51. *Id.*

52. *Id.* at 197–98 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.9, 415 (1984)).

53. ARK. CODE ANN. § 16-4-101(B).

54. *Id.*

55. *Payne v. France*, 282 S.W.3d 760, 765 (Ark. 2008); *Davis v. St. Johns Health Sys.*, 71 S.W.3d 55, 58 (Ark. 2002) (explaining that "when deciding an issue of personal jurisdiction," Arkansas courts should "look[] only to Fourteenth Amendment due process jurisprudence" following the 1995 revisions to the Arkansas long-arm statute, 1995 Ark. Acts 486, codified as ARK. CODE ANN. § 16-4-101(B)).

56. *Davis*, 71 S.W.3d at 57–59. The amendment was 1995 Ark. Acts 486, codified as ARK. CODE ANN. § 16-4-101(B).

contacts with the state . . . allowed [Arkansas] to exercise general jurisdiction up to the limits of the due process clause.”⁵⁷ The Supreme Court of Arkansas has repeatedly reaffirmed its commitment to general jurisdiction, describing it as arising in “situations in which a nonresident defendant’s contacts with a forum state may be so substantial and continuous as to justify jurisdiction over that defendant, even though the cause of action is ‘entirely distinct from those activities.’”⁵⁸ Arkansas requires that the defendant’s contacts with Arkansas be “continuous, systematic, and substantial” in order for their courts to exercise general jurisdiction.⁵⁹

C. Florida

The State of Florida⁶⁰ provides its courts with full general jurisdiction, in a statute that contains both specific jurisdiction elements and a positive statement conferring general jurisdiction.⁶¹ Section 48.193(1) of the Florida statute is the specific jurisdiction portion, containing eight specific scenarios which suffice to provide Florida courts with specific jurisdiction over a claim.⁶² Section 48.193(2) confers general jurisdiction upon Florida courts over a “defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise . . . whether or not the claim arises from that activity.”⁶³

57. *Davis*, 71 S.W.3d. at 59 (explaining that “[b]y Act 486, the General Assembly authorized Arkansas courts to exercise jurisdiction to the fullest extent due process will allow,” and that “[t]he effect of this change was to convert Arkansas into a general-jurisdiction state for purposes of personal jurisdiction”).

58. *Id.* at 58.

59. *Payne*, 282 S.W.3d at 766 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.9, 415 (1984)); *Davis*, 71 S.W.3d at 58–59.

60. The authors decided, for the sake of geographic consistency and thoroughness, to include the state of Florida despite serious doubts about whether it is in fact a Southern state. *See, e.g.*, THE BBQ SONG, available at http://www.youtube.com/watch?v=6ubTQfr_tyY.

61. FLA. STAT. ANN. § 48.193; *see also* *Haueter-Herranz v. Romero*, 975 So. 2d 511, 516 (Fla. Dist. Ct. App. 2008) (finding general jurisdiction existed over defendants and explaining “the long-arm statute provides for two categories of personal jurisdiction: general jurisdiction under section 48.193(2) and specific jurisdiction under section 48.193(1)(b)” — the tortious act “within this state” prong).

62. FLA. STAT. ANN. § 48.193(1)(a)–(h).

63. FLA. STAT. ANN. § 48.193(2).

Florida courts have interpreted the “substantial and not isolated activity” language as meaning “continuous and systematic general business contact” with Florida.⁶⁴ This interpretation has been imposed to bring the Florida long-arm statute’s conferral of general jurisdiction into compliance with federal due process requirements, as “enunciated by the [United States] Supreme Court in *Helicopteros*.”⁶⁵ This interpretation has made the statutory requirement coterminous with the due-process required showing of minimum contacts between the defendant and Florida.⁶⁶

D. Georgia

Georgia is a specific jurisdiction only state. Georgia’s long-arm statute, O.C.G.A. § 9-10-91, only confers specific jurisdiction: it only provides for the exercise of personal jurisdiction over causes of action “*arising from* any of the acts, omissions, ownership, use or possession enumerated.”⁶⁷ While Georgia courts frequently say that they interpret the Georgia long-arm statute as extending as far as due process will permit,⁶⁸ Georgia courts have in fact—with one recent anomaly—consistently interpreted the statute as not extending as far as due process would allow by permitting general jurisdiction as well as specific jurisdiction, but instead have required the cause of action to arise from the defendant’s contacts with Georgia.⁶⁹ This approach

64. See, e.g., *Gadea v. Star Cruises, Ltd.*, 949 So. 2d 1143, 1145 (Fla. Dist. Ct. App. 2007); *Nw. Aircraft Capital Corp. v. Stewart*, 842 So. 2d 190, 195 (Fla. Dist. Ct. App. 2003).

65. *Woods v. Nova Cos. Belize Ltd.*, 739 So. 2d 617, 620 (Fla. Dist. Ct. App. 1999) (explaining “[t]his ‘continuous and systematic’ contacts standard was the standard enunciated by the Supreme Court in *Helicopteros* as sufficient to fulfill the due process requirements of minimum contacts when asserting general jurisdiction”).

66. See *id.* (“Because section 48.193(2) requires this high threshold, if the defendant’s activities meet the requirements of section 48.193(2), minimum contacts [are] also satisfied.”).

67. O.C.G.A. § 9-10-91 (emphasis added).

68. See, e.g., *SES Indus., Inc. v. Intertrade Packaging Mach. Corp.*, 512 S.E.2d 316, 318 (Ga. Ct. App. 1999) (explaining that Georgia courts “have consistently held that our Long-Arm Statute confers jurisdiction over nonresidents to the maximum extent permitted by due process”).

69. See, e.g., *Innovative Clinical & Consulting Servs., LLC v. First Nat’l Bank of Ames*, 620 S.E.2d 352, 354–55 (Ga. 2005) (discussing how the “plain and unambiguous language” in subsection (3) of the Georgia long-arm statute and Georgia courts’ consistent “literal construction” of it have precluded Georgia courts “from exercising personal jurisdiction over the nonresident to the fullest extent permitted by constitutional due process”); *Gust v. Flint*, 356 S.E.2d 513, 514 (1987); *Aero Toy Store, LLC v.*

differs from other Southern states whose long-arm statutes contain limiting language—such as “arising under” or “arising from.”⁷⁰ In those states, appellate courts have simply ignored the limiting language and purported to exercise general jurisdiction under a statute that does not appear to support it.⁷¹ The (virtual) unanimity of Georgia courts on this topic, oddly, has not constrained federal courts interpreting Georgia’s long-arm statute: they have routinely construed it as providing general jurisdiction, usually without discussing Georgia precedent to the contrary.⁷²

The Georgia Court of Appeals case of *Mitsubishi Motors Corp. v. Coleman* recently broke sharply from the prior undiminished line by permitting the exercise of general jurisdiction based upon the defendant’s “continuous and systematic business contact” with Georgia.⁷³ The Court of Appeals in *Coleman* cited *Innovative Clinical & Consulting Services v. First Nat’l Bank of Ames* for the idea that prong one of the Georgia long arm statute⁷⁴ was to be read as conferring all forms of personal jurisdiction permitted by

Grieves, 631 S.E.2d 734, 739 (Ga. Ct. App. 2006) (noting a requirement that the suit must arise out of defendant’s contacts with Georgia and that accordingly Georgia’s long-arm statute did not authorize the exercise of general jurisdiction); Pratt & Whitney Canada, Inc. v. Sanders, 460 S.E.2d 94, 96, 97 (Ga. Ct. App. 1995) (explaining that “the exercise of personal jurisdiction over [a nonresident] requires that the cause of action arise out of its activities within [Georgia]”); Shellenberger v. Tanner, 227 S.E.2d 266, 273 (Ga. Ct. App. 1976) (discussing the prior version of Georgia’s long-arm statute that also contained the “arise from” requirement).

70. See discussion *infra* Sections II.J *Tennessee*; II.K *Texas*.

71. See discussion *infra* Sections II.J *Tennessee*; II.K *Texas*.

72. See, e.g., *Nippon Credit Bank, Ltd. v. Matthews*, 291 F.3d 738, 745–49 (11th Cir. 2002) (using the Georgia long-arm statute to exercise general jurisdiction over a Florida defendant in Georgia); *Francosteel Corp. v. M/V Charm*, 19 F.3d 624, 627 (11th Cir. 1994) (claiming “Georgia’s long arm statute confers *in personam* jurisdiction to the maximum extent allowed by the due process clause of the federal Constitution”); *Innovative Clinical & Consulting Servs.*, 620 S.E.2d at 354 n.2 (discussing federal courts’ continued “erroneous” interpretation of the Georgia long-arm statute as extending as far as federal due process will permit). But see *Baynes v. George E. Mason Funeral Home, Inc.*, No. 1:07-CV-2805-JOF, 2008 WL 5191808, at *3 (N.D. Ga. Dec. 10, 2008) (discussing *Innovative Clinical & Consulting Services* and *Aero Toy Store* in holding that the Georgia long arm statute required that the cause of action arise from or be connected to the defendant’s contact with Georgia).

73. *Mitsubishi Motors Corp. v. Coleman*, 658 S.E.2d 843, 846–47 (Ga. Ct. App. 2008), *cert. denied*, Ga. Supreme Court (2008). The petition for certiorari was docketed March 25, 2008, and was docket number S08C1164. The Supreme Court of Georgia denied the petition on June 30, 2008 and denied a motion for reconsideration on July 25, 2008. Georgia Supreme Court, http://www.gasupreme.us/docket_search/results_one_record.php?docr_case_num=S08C1164 (last visited October, 2009).

74. O.C.G.A. § 9-10-91(1).

procedural due process.⁷⁵ The opinion then dismissed the defendant's argument that the case did not "arise out of" their contacts with Georgia on the logic that general jurisdiction permits personal jurisdiction even through unrelated contacts, was consistent with due process, and was justified because of the defendant's "continuous and systematic business contact" with Georgia.⁷⁶

Notably, the *Colemon* court only analyzed due process requirements for the exercise of personal jurisdiction, and did not address the conflict between the preamble language in the Georgia long-arm statute—"a cause of action *arising from*"⁷⁷—in its finding that general jurisdiction was available to Georgia courts. Nor did it attempt to reconcile this new holding with the previous line of cases rejecting general jurisdiction in Georgia.⁷⁸ The defendants filed a petition for certiorari with the Supreme Court of Georgia, but the Supreme Court of Georgia denied the petition and a subsequent motion for reconsideration.⁷⁹

In the 2005 case relied upon by the *Colemon* court, *Innovative Clinical & Consulting Services*, the Supreme Court of Georgia overturned several prior cases that had artificially constrained the reach of prong one of Georgia's long-arm statute—the transacting business prong—and explicitly construed it to reach as far as permitted by due process.⁸⁰ That opinion, however, also reaffirmed the Court's interpretation of prong three of the long-arm statute (a tortious injury in Georgia, caused by act or omission outside Georgia) as not extending as far as due process permits, and rejected the notion that Georgia courts could ignore the "plain and unambiguous

75. *Mitsubishi Motors Corp.*, 658 S.E.2d at 845 (discussing O.C.G.A. § 9-10-91(1) and *Innovative Clinical & Consulting Servs.*).

76. *Id.* at 846–47.

77. O.C.G.A. § 9-10-91 (emphasis added).

78. *Mitsubishi Motors Corp.*, 658 S.E.2d at 846–47; see *supra* note 69.

79. See source cited *supra* note 73.

80. *Innovative Clinical & Consulting Servs. v. First Nat'l Bank of Ames*, 620 S.E.2d 352, 355 (Ga. App. 2005) (construing O.C.G.A. § 9-10-91(1)); see also *Aero Toy Store, LLC v. Grieves*, 631 S.E.2d 734, 738–39 (Ga. App. 2006) (discussing the holding of *Innovative Clinical & Consulting Servs.*).

language” of the statute and “interpret O.C.G.A. § 9-10-91 to provide what the Legislature chose to omit.”⁸¹

While the Supreme Court in *Innovative Clinical & Consulting Services* did emphasize that prong one should be read as “reaching [] ‘to the maximum extent permitted by procedural due process,’” it did not address the interaction with the statutory language that arguably keeps Georgia a specific jurisdiction state notwithstanding the new interpretation of prong one—in other words, the “arising from” language in the preamble to O.C.G.A. § 9-10-91.⁸² As further evidence that *Innovative Clinical & Consulting Services* did not abandon the “arising from” limitation, the Georgia Supreme Court lamented the Georgia General Assembly’s continued refusal “to provide the maximum protection for Georgia residents damaged by the out-of-state acts or omissions committed by nonresident tortfeasors”; the Court also reaffirmed that separation of powers would make it “inappropriate” for the judiciary to “reject the plain language of a statute.”⁸³ Accordingly, the implication the *Colemon* court apparently read into *Innovative Clinical & Consulting Services*—that is, the judicial abandonment of the requirement that the cause of action arise from the contact serving as the basis for jurisdiction appears unjustified. Further, the record in *Innovative Clinical & Consulting Services* contained no evidence of any contacts by the defendant bank with Georgia aside from those with the plaintiff, much less “continuous and systematic” contacts sufficient to justify general jurisdiction, meaning *Innovative Clinical & Consulting Services* cannot be read as anything other than a specific jurisdiction case.⁸⁴

81. *Innovative Clinical & Consulting Servs.*, 620 S.E.2d at 355.

82. *Id.* (citing *Coe & Payne Co. v. Wood-Mosaic Corp.*, 195 S.E.2d 399, 401 (Ga. App. 1973)); accord discussion of *Pratt & Whitney Canada, Inc. v. Sanders*, 460 S.E.2d 94 (Ga. App. 1995) in *Aero Toy Store*, 631 S.E.2d at 739.

83. *Innovative Clinical & Consulting Servs.*, 620 S.E.2d at 355.

84. *Id.* at 356 (briefly discussing defendant’s contacts with Georgia and directing readers to the Court of Appeals opinion for further explanation of those contacts: *First Nat’l Bank of Ames v. Innovative Clinical & Consulting Servs., LLC*, 598 S.E.2d 530, 532 (Ga. Ct. App. 2004), overruled by *Innovative Clinical & Consulting Servs., LLC*, 620 S.E.2d at 356 (Ga. 2005)).

E. Kentucky

Kentucky appears to be a general jurisdiction state, despite having a long-arm statute that textually only confers specific jurisdiction.⁸⁵ The statute uses the “arising from” language, goes on to enumerate several actions, and then states “[w]hen jurisdiction over a person is based solely upon this section, only a claim arising from acts enumerated in this section may be asserted against him.”⁸⁶ Kentucky courts, however, “have interpreted this statute to authorize *in personam* jurisdiction to reach the outer limits of the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution.”⁸⁷ Kentucky courts have interpreted the “transacting any business” prong to permit litigation over injuries sustained outside Kentucky, the language in KY. REV. STAT. ANN. § 454.210(2)(b) notwithstanding.⁸⁸

The Supreme Court of Kentucky in fact expressly rejected an argument that the statutory language limited Kentucky courts to hearing only claims arising from contact with Kentucky:

In practice, the precise language of the statute and the application of its terms are much less important than the simple fact that the statute exists. Courts have determined that “the long-arm statute within this jurisdiction allows Kentucky courts to reach to the full constitutional limits of due process in entertaining jurisdiction over non-resident defendants.”⁸⁹

In practice then, notwithstanding the statutory language suggesting Kentucky is a specific jurisdiction only state, Kentucky courts assert

85. KY. REV. STAT. ANN. § 454.210.

86. *Id.* § 454.210(2)(a)–(b).

87. *See, e.g., Cummings v. Pitman*, 239 S.W.3d 77, 84 (Ky. 2007); *Mohler v. Dorado Wings, Inc.*, 675 S.W.2d 404, 405 (Ky. Ct. App. 1984).

88. *See Elder v. Perry County Hosp.*, Nos. 2005-CA-000591-MR, 2005-CA-001843-MR, 2007 WL 2685007 at *4, 5 (Ky. Ct. App. 2007); *see also Mohler*, 675 S.W.2d at 407.

89. *Wilson v. Case*, 85 S.W.3d 589, 592 (Ky. 2002) (citing *Mohler*, 675 S.W.2d at 405).

that they exercise general jurisdiction out to the limits permitted by the United States Constitution.⁹⁰

Confusion, however, arises from the test Kentucky courts purport to use in evaluating a defendant's contacts with Kentucky. As the Supreme Court of Kentucky recently explained, it applies a "three-prong jurisdictional test to evaluate a defendant's contacts with [Kentucky] for purposes of long-arm jurisdiction . . . and jurisdiction will lie only where all three are satisfied."⁹¹ This test is routinely cited verbatim by Kentucky courts analyzing long-arm jurisdiction.⁹² The first and third prongs present no particular analytical challenge: they respectively require a) that the defendant have "purposefully availed himself of the privilege of acting within the forum state or causing a consequence in the forum state," and b) that the defendant "have a substantial enough connection to [Kentucky] to make exercise of jurisdiction . . . reasonable."⁹³ The second prong, however, "considers whether the cause of action arises from the defendant's activities in the forum," which would appear to limit Kentucky to only exercising specific jurisdiction.⁹⁴ However, as discussed above, at least one Kentucky court has recited that test, and then gone on to suggest that if the defendant regularly conducted or solicited business in Kentucky, then general jurisdiction would be available.⁹⁵ In reviewing the available appellate decisions, Kentucky appellate courts do not appear to have upheld an exercise of general jurisdiction, but nor have they expressly rejected it either, and instead have made varying and confusing statements about the topic.⁹⁶ Ultimately, Kentucky's long-arm approach appears unclear; it is hoped that future cases or action by the Kentucky General Assembly will clarify it.

90. *Cummings*, 239 S.W.3d at 84; *accord* *Powers v. Park*, 192 S.W.3d 439, 443 (Ky. Ct. App. 2006) (discussing requirements for exercise of general jurisdiction in Kentucky courts).

91. *Cummings*, 239 S.W.3d at 85.

92. *Id.*; *accord* *Wilson*, 85 S.W.3d at 593; *Powers*, 192 S.W.3d at 442; *Mohler*, 675 S.W.2d at 405--06.

93. *Cummings*, 239 S.W.3d at 85.

94. *Id.*

95. *Powers*, 192 S.W.3d at 443.

96. *See supra* text accompanying notes 91--95.

F. Louisiana

Louisiana's long arm statute expressly allows general jurisdiction.⁹⁷ The original Louisiana long arm statute only provided for jurisdiction "*as to a cause of action arising from*" certain enumerated acts.⁹⁸ However, in 1987 the Louisiana legislature amended the long arm statute by adding a catch-all provision, which provides, "[i]n addition to the provisions of Subsection A, a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and of the Constitution of the United States."⁹⁹ The Louisiana Supreme Court, following the language of the amendment to the statute, has upheld the assertion of general personal jurisdiction to the limits of constitutional due process.¹⁰⁰ When analyzing personal jurisdiction, the Louisiana courts now only analyze the constitutional due process requirements, forgoing any determination under the state's long arm statute.¹⁰¹

G. Mississippi

Mississippi's courts may also exercise general jurisdiction.¹⁰² The language of Mississippi's long arm statute has changed over the years, affecting the extraterritorial power of their courts. The predecessor to Mississippi's current long arm statute only allowed the courts to exercise personal jurisdiction over nonresidents if the cause of action arose from the nonresident's contacts with the state.¹⁰³ There was also another statute that was supplemental to the long arm and which

97. *Bridges v. Autozone Props., Inc.*, 900 So. 2d 784, 801 (La. 2005) (discussing LA. REV. STAT. ANN. § 13:3201 and holding that "the limits of Louisiana's long-arm statute [were] coextensive with the limits of constitutional Due Process").

98. *Petroleum Helicopters, Inc. v. Avco Corp.*, 513 So. 2d 1188, 1190 (La. 1987) (emphasis added).

99. LA. REV. STAT. ANN. § 13:3201(B).

100. *de Reyes v. Marine*, 586 So. 2d 103, 105 (La. 1991); *Petroleum Helicopters, Inc.*, 513 So. 2d at 1192.

101. *Eng'g Dynamics, Inc. v. Mass. Inst. of Tech.*, 917 So. 2d 1168, 1173 (La. Ct. App. 2005).

102. *Estate of Jones v. Phillips ex rel. Phillips*, 992 So. 2d 1131, 1141 (Miss. 2008).

103. *S. Pac. Transp. Co. v. Fox*, 609 So. 2d 357, 359-60 (Miss. 1992) (discussing the prior version of MISS. CODE ANN. § 13-3-57).

subjected foreign corporations to personal jurisdiction if the corporation was doing business in Mississippi, regardless of “whether or not the cause of action” was related to the business activity.¹⁰⁴ The statute allowing general jurisdiction over corporations was repealed in 1988 leaving the long arm statute, which was limited to specific jurisdiction, as the only authorization to assert extraterritorial power.¹⁰⁵ Then, in 1991, when enacting the current version of their long arm statute, the Mississippi legislature repealed the nexus requirement contained in the prior version of the long arm statute.¹⁰⁶ Thus, general jurisdiction is appropriate under the current long arm statute.¹⁰⁷ However, the Mississippi courts still employ a two-step analysis when determining if personal jurisdiction exists.¹⁰⁸ First, the courts will determine if the elements of the long arm statute are met and then “whether the statute’s application to that defendant offends the Due Process Clause.”¹⁰⁹

H. North Carolina

The North Carolina courts have interpreted North Carolina’s long arm statute as conferring jurisdiction to the extent allowed by due process.¹¹⁰ As relating to general jurisdiction, the pertinent part of North Carolina’s long arm statute authorizes personal jurisdiction over anyone served, in any allowed action, if the party “[i]s engaged in substantial activity within this State.”¹¹¹ North Carolina courts interpret this provision as giving them “the full jurisdictional powers

104. MISS. CODE ANN. § 79-1-27 (repealed 1988); *accord* Gross v. Chevrolet County, Inc., 655 So. 2d 873, 878–79 (1995).

105. Gross, 655 So. 2d at 878.

106. *Id.*; S. Pac. Transp. Co., 609 So. 2d at 360, n.5 (discussing the 1991 amendment of MISS. CODE ANN. § 13-3-57).

107. See *Estate of Jones*, 992 So. 2d at 1139; Am. Cable Corp v. Trilogy Commc’ns., Inc., 754 So. 2d 545, 550 (Miss. Ct. App. 2000).

108. *Estate of Jones*, 992 So. 2d at 1137.

109. *Id.*

110. Skinner v. Preferred Credit, 638 S.E.2d 203, 208 (N.C. 2006).

111. N.C. GEN. STAT. ANN. § 1-75.4(1)(d).

permissible under federal due process”¹¹² and have asserted general personal jurisdiction based on this section of their long arm statute.¹¹³ The question of whether personal jurisdiction exists in North Carolina over a defendant who “is engaged in substantial activity within” North Carolina thus becomes a single “question of whether the defendant has the minimum contacts with North Carolina necessary to meet the requirements of due process.”¹¹⁴

I. South Carolina

South Carolina courts look to two sections of the South Carolina code when exercising extraterritorial jurisdiction. The South Carolina code contains a traditional long arm statute that includes an enumerated list of activities that support jurisdiction, S.C. CODE ANN. § 36-2-803.¹¹⁵ After the enumerated list, the statute limits South Carolina courts operating under this section to the exercise of specific jurisdiction.¹¹⁶

In addition to the traditional enumerated list, S.C. CODE ANN. § 36-2-802, entitled “Personal Jurisdiction Based Upon Enduring Relationship,” supports jurisdiction over a “person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action.”¹¹⁷ This particular section supports the exercise of jurisdiction based on the pre-*International Shoe* concepts of presence and “doing business.”¹¹⁸ However, the South Carolina Supreme Court concluded this provision allows for the exercise of general jurisdiction in

112. *Skinner*, 638 S.E.2d at 208; Cambridge Homes of N.C. Ltd. P’ship v. Hyundai Constr., Inc., 670 S.E.2d 290, 295 (N.C. Ct. App. 2008).

113. *Bruggeman v. Meditrust Acquisition Co.*, 532 S.E.2d 215, 218 (N.C. Ct. App. 2000).

114. *Id.*

115. S.C. CODE ANN. § 36-2-803(A).

116. S.C. CODE ANN. § 36-2-803(B) (“When jurisdiction over a person is based solely upon this section, only a cause of action *arising from* acts enumerated in this section may be asserted against him.”) (emphasis added).

117. S.C. CODE ANN. § 36-2-802.

118. Twitchell, *supra* note 2 at 621–22.

*Coggeshall v. Reproductive Endocrine Associates of Charlotte.*¹¹⁹

Thus, this conclusion mixes the modern concept of general jurisdiction with the more traditional notions of presence in the forum state embodied in S.C. Code Ann. § 36-2-802. Although general jurisdiction does not fit cleanly into this statute, this approach avoids the flawed analysis of many state appellate courts—simply ignoring clear statutory provisions that limit the exercise of jurisdiction to claims “arising under” certain activities.

J. Tennessee

Tennessee courts have concluded general jurisdiction is available to litigants in Tennessee. The Tennessee code contains two sections which address extraterritorial jurisdiction, TENN. CODE ANN. § 20-2-214 and TENN. CODE ANN. § 20-2-223. Section 20-2-214 introduces a typical enumerated list of activities with the specific jurisdiction language, “arising from.”¹²⁰ This section also includes an umbrella provision that supports jurisdiction on “[a]ny basis not inconsistent with the constitution of this state or of the United States.”¹²¹ Section 20-2-223 also contains an enumerated list of activities similar, but not identical to, Section 20-2-214.¹²² Notably, *both sections* contain the language of specific jurisdiction, “arising from.”¹²³ Although these provisions span two sections of the code, the sections bleed together in Tennessee courts.¹²⁴

On its face, the Tennessee long arm statute contains internal inconsistencies. Because general jurisdiction is consistent with the Constitution, the umbrella provision appears to broaden the reach of

119. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 655 S.E. 2d 476, 478 (S.C. 2007) (“General jurisdiction is the State’s right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant’s contacts with the forum; general jurisdiction is determined under S.C. Code Ann. § 36-2-802.”) (internal citations omitted).

120. TENN. CODE ANN. § 20-2-214(a)(1)–(6).

121. *Id.* § 20-2-214(a)(6).

122. TENN. CODE ANN. § 20-2-223.

123. TENN. CODE ANN. §§ 20-2-214, 20-2-223.

124. *Gregurek v. Swope Motors, Inc.*, 138 S.W.3d 882, 884 (Tenn. Ct. App. 2003) (“The trial court found jurisdiction over Swope Motors based on Tennessee’s long-arm statute, Tenn. Code Ann. §§ 20-2-214, 20-2-223.”).

the Tennessee long arm statute to include the exercise of general jurisdiction.¹²⁵ Yet, the Tennessee legislature did not address the limitation that the cause of action “arise from” a specific list of actions. The Tennessee legislature simply added the umbrella provision to the list of activities that support jurisdiction in response to efforts in Rhode Island and California to expand their long arm statutes to the limits of the Fourteenth Amendment.¹²⁶ Thus, the full reach of the Tennessee long arm statute is unclear.

In *Gegurek v. Swope Motors, Inc.*, the Tennessee Court of Appeals reviewed the nature of specific and general jurisdiction¹²⁷ and concluded the defendant’s contacts with Tennessee did not rise to the level of “continuous and systematic.”¹²⁸ In coming to this conclusion, the Tennessee Court of Appeals held out the possibility of general jurisdiction, which would be permitted under the umbrella provision, but declined to exercise it.¹²⁹ Like the Tennessee legislature, the *Gegurek* court declined to deal with the “arising from” limitation contained in the statute.

K. Texas

Although general jurisdiction exists in Texas, the long arm statute seems fully entrenched in the traditional concept of presence as the basis for power over a defendant.¹³⁰ The Texas statute operates with an expansive definition for “doing business” in the State of Texas:

In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident: (1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;

125. TENN. CODE ANN. § 20-2-214(a)(6).

126. Robert Banks, Jr., *The Future of General Jurisdiction in Tennessee*, 27 U. MEM. L. REV. 559, 581 (1997).

127. *Gegurek*, 138 S.W.3d at 884–85.

128. *Id.* at 885.

129. *Id.* at 884–85.

130. TEX. CIV. PRAC. & REMEDIES CODE ANN. § 17.041–.045

(2) commits a tort in whole or in part in this state; or (3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.¹³¹

The statute then takes this expansive definition for “doing business,” and appoints the secretary of state as an agent for service of process for “a nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a designated agent for service of process, in any proceeding that arises out of the business done in this state and to which the nonresident is a party.”¹³² The Texas statute provides an expansive definition of “doing business”; however, it lacks any provision which actually confers jurisdiction over any person or entity “doing business” in the state. The presence of the secretary of state in the state serves as the basis for jurisdiction over nonresident defendants.¹³³ While the Texas long arm operates in an unusual fashion, it contains the familiar specific jurisdiction requirement that the proceeding “*arise out of* the business done in this state.”¹³⁴

The Texas Supreme Court has seized on the non-exclusive nature of what qualifies as “doing business” to expand Texas long arm jurisdiction to the full limits of the Fourteenth Amendment.¹³⁵ Noting the Supreme Court’s endorsement of general jurisdiction, the Texas Supreme Court presumed the availability of general jurisdiction without addressing the “arising out of” language contained in § 17.044(b). After reviewing the basic concept of general jurisdiction, the Texas Supreme Court endorsed the view of Professors Twitchell

131. *Id.* § 17.042.

132. *Id.* § 17.044(b).

133. *Id.*

134. *Id.* (emphasis added).

135. *PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 166 (Tex. 2007) (“[The Texas long-arm] statute permits Texas courts to exercise jurisdiction over a nonresident defendant that ‘does business’ in Texas, and the statute identifies some activities that constitute ‘doing business.’ The list, however, is not exclusive. We have held that section 17.042’s language extends Texas courts’ personal jurisdiction ‘as far as the federal constitutional requirements of due process will permit.’”) (internal citations omitted).

and Rhodes that “true” general jurisdiction is “dispute-blind.”¹³⁶ Additionally, the Texas Supreme Court focused on the “continuous and systematic” language of *Helicopteros*.¹³⁷ The Texas Supreme Court then examined the contacts of a Louisiana hospital with the state of Texas: two trips to Texas by employees of the hospital for business meetings, numerous payments to hospital vendors over the previous eight years, and three contracts involving Texas entities.¹³⁸ The court concluded that these contacts did not rise to the level of “continuous and systematic” and declined to exercise general jurisdiction.¹³⁹

L. Virginia

Notwithstanding the state long arm statute, general jurisdiction exists in Virginia. The Virginia long arm statute allows for personal jurisdiction over a person as to causes of action arising from an enumerated list of activities.¹⁴⁰ When jurisdiction is based on the Virginia long arm statute, Virginia courts are limited only to causes of action “arising from acts enumerated in this section.”¹⁴¹ The Virginia Supreme Court, however, has found that the doctrine of general jurisdiction simply falls outside the confines of the state long arm statute.¹⁴² Under the Virginia Supreme Court’s interpretation, “the long-arm statute does not address the doctrine of general jurisdiction arising out of significant presence of a party in Virginia.”¹⁴³ The Virginia Supreme Court thus reaches outside the confines of the Virginia long arm statute to seize the concept of general jurisdiction, rather than try to fit it into a specific jurisdiction statute. Because state courts have historically relied upon the state

136. *Id.* at 168–69 (quoting *Twitchel*, *supra* note 2, at 613 (internal citation omitted)).

137. *PHC-Minden*, 235 S.W.3d at 166–68, (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984)).

138. *PHC-Minden*, 235 S.W.3d at 170–71.

139. *Id.* at 171.

140. VA. CODE ANN. § 8.01-328.1(A).

141. *Id.* § 8.01-328.1(C).

142. *Witt v. Reynolds Metals Co.*, 397 S.E.2d 873, 875 (Va. 1990).

143. *Id.*

long arm statute as a basis for exercising extraterritorial jurisdiction, this analysis represents somewhat of a shift in personal jurisdiction jurisprudence. This analysis, however, recognizes that a long arm statute with an enumerated list and an arising under limitation, properly read, does not comport with the exercise of general jurisdiction.

CONCLUSION

A. Survey Results

All of the eleven Southern states other than Georgia examined in this survey permit their courts to exercise general jurisdiction, although there is diversity in how they reach that result. In six of the jurisdictions, the applicable statute or regulation explicitly provides that the courts may exercise personal jurisdiction to the limits permitted by federal due process requirements.¹⁴⁴ Georgia's other five Southern neighbors have achieved general jurisdiction through an expansive reading of their long-arm provisions by their state courts.¹⁴⁵

B. Recommendations for Georgia

As discussed above, Georgia is currently a specific jurisdiction-only state.¹⁴⁶ Georgia is alone among its Southern neighbors in choosing to continue to artificially limit the jurisdictional reach of its courts. Ironically, a Georgia plaintiff is more likely to be able to sue a nonresident defendant in a federal court in Georgia than in a Georgia state court—subject matter jurisdiction questions aside.¹⁴⁷ This odd situation exists because federal courts in Georgia exercise general jurisdiction to the limits of federal due process—notwithstanding the

144. The six jurisdictions with an explicit statutory or procedural grant of general jurisdiction are Alabama, Arkansas, Florida, Louisiana, Mississippi, and Tennessee.

145. These five states are Kentucky, North Carolina, South Carolina, Texas, and Virginia.

146. See text accompanying notes 67–84.

147. See *supra* note 72 and accompanying text.

language of the Georgia long-arm statute and consistent interpretation of it by Georgia courts as only providing specific jurisdiction—while the Georgia General Assembly has chosen not to permit a Georgia resident (or other plaintiffs) to sue a nonresident defendant on a cause not arising from the defendant's contacts with Georgia.¹⁴⁸ As discussed above, however, the Georgia Court of Appeals' recent decision in *Colemon* has created uncertainty about whether Georgia courts will continue to adhere to the statutory language and insist that the cause of action arise from the defendant's contacts with Georgia.¹⁴⁹

The Georgia General Assembly should remedy this situation by permitting Georgia courts to exercise personal jurisdiction to the limits imposed by the 14th Amendment. The cleanest way to do this would be to repeal the current long-arm statute and replace it with something like Arkansas's statute.¹⁵⁰ Such a statute would simply state that Georgia's courts "shall have personal jurisdiction of all persons, and all causes of action or claims for relief, to the maximum extent permitted by the due process of law clause of the Fourteenth Amendment of the United States Constitution."¹⁵¹

Failing that, Georgia should alternatively add a residuary clause to the current long-arm statute—possibly making other revisions to the current prongs concurrently—resembling the one Louisiana added, which reads "[i]n addition to the provisions of Subsection A, a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and of the Constitution of the United States."¹⁵² Two Southern states have used this approach, i.e., adding a catch-all clause to an enumerated list-type long-arm statute, although one that did it a while ago has recently jettisoned the enumerated list, presumably as redundant and

148. See *supra* text accompanying notes 67–84.

149. See *supra* notes 73–84 and accompanying text.

150. See ARK. CODE ANN. §16-4-101(B).

151. *Id.*

152. LA. REV. STAT. ANN. § 13:3201(B).

potentially confusing.¹⁵³ If Georgia decided to go this route, it would also need to either amend or simply delete the preamble language in O.G.C.A. § 9-10-91 requiring that the cause of action “aris[e] from” the defendant’s contacts with Georgia.¹⁵⁴

However the General Assembly chooses to proceed, it would thereby “provide the maximum protection for Georgia residents damaged by the out-of-state acts or omissions committed by nonresident tortfeasors” constitutionally possible, something no Georgian should fear.¹⁵⁵ Action by the General Assembly would also resolve the ambiguity created by the recent *Colemon* decision and ensure that basic choices about policy and the jurisdiction of Georgia courts are made by the legislative branch rather than the judiciary.¹⁵⁶

153. The Southern jurisdictions that have a residuary clause in addition to an enumerated list are Louisiana and Tennessee. Alabama had an enumerated list and a catch-all clause but now only uses the catch-all clause.

154. O.C.G.A. § 9-10-91; *accord supra* notes 67, 69 and accompanying text.

155. *Innovative Clinical & Consulting Servs., LLC v. First Nat’l Bank of Ames*, 620 S.E. 2d 352, 355 (Ga. 2005) (lamenting the General Assembly’s continued failure to provide such protection and relief for Georgia residents).

156. *See supra* notes 73–81 and accompanying text.

