

No. 20-5850

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

**TARA AND CHRIS BLESSING, et al.,
Plaintiffs-Appellants,**

v.

**SUJANA S. CHANDRASEKHAR, MD, FACS,
Defendant-Appellee.**

**On Appeal From The United States District Court
For the Eastern District of Kentucky, Northern Division
Case No. 2:20-cv-00016**

BRIEF OF APPELLEE SUJANA S. CHANDRASEKHAR, MD, FACS

Stephen A. Weigand (0083573)
Jason W. Palmer (0088336)
FARUKI PLL
201 East Fifth Street, Suite 1420
Cincinnati, Ohio 45202
Telephone: (513) 632-0306

Attorneys for Defendant-Appellee
Sujana S. Chandrasekhar, MD, FACS

CORPORATE DISCLOSURE STATEMENT

1. Is said party a subsidiary or affiliate of a publicly owned corporation? **No.**
2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? **No.**

TABLE OF CONTENTS

Corporate Disclosure Statement i

Table of Contents ii

Table of Authorities iii

I. Statement of Issues 1

II. Statement of the Case 1

 A. Facts Alleged in Appellants' Complaint 2

 B. The District Court Dismissed Appellants' Complaint for
 Lack of Personal Jurisdiction 4

III. Summary of the Argument 6

IV. Argument 9

 A. The District Court Lacked Personal Jurisdiction Over Dr.
 Chandrasekhar Pursuant to KRS 454.210(2)(a)(3) 9

 1. KRS 454.210(2)(a)(3) Requires a Defendant's
 Actions to Occur Within Kentucky's Borders 9

 2. Appellants' Negligence Per Se Exception to the
 Kentucky Long-Arm Statute Should Be Rejected 13

 B. The District Court Lacked Personal Jurisdiction Over Dr.
 Chandrasekhar Under the Due Process Clause 17

V. Conclusion 22

Certificate of Compliance 24

TABLE OF AUTHORITIES

CASES

Bell v. Kokosing Indus., No. 19-53-DLB-CJS, 2020 U.S. Dist. LEXIS 129400 (E.D. Ky. Jul. 22, 2020).....11

Bridewell v. Cincinnati Reds, 155 F.3d 828 (6th Cir. 1998).....15

Bulso v. O'Shea, 730 F. App'x 347 (6th Cir. 2018).....18

Burger King v. Rudzewicz, 471 U.S. 462 (1985).....18

Cadle Co. v. Schlichtmann, 123 F. App'x 675 (6th Cir. 2005).....9, 20, 21

Caesars Riverboat Casino, LLC v. Beach, 336 S.W.3d 51 (Ky. 2011).....6, 9, 11, 14, 15, 16

Calphalon Corp. v. Rowlette, 228 F.3d 718 (6th Cir. 2000)8, 18, 21

Commercial Money Ctr., Inc. v. Ill. Union Ins. Co., 508 F.3d 327 (6th Cir. 2007)3, 11

Commonwealth v. Clemente, No. 2006-CA-002092-ME, 2007 Ky. App. Unpub. LEXIS 481 (Ky. Ct. App. Jun. 22, 2007)15

CompuServe, Inc. v. Patterson, 89 F.3d 1257 (6th Cir. 1996)18

Evans v. Brown, No. 19-5603, 2019 U.S. App. LEXIS 36366 (6th Cir. Dec. 6, 2019).....12

H.E.B., LLC v. Jackson Walker, L.L.P., 587 S.W.3d 333 (Ky. Ct. App. 2019)6

Light v. City of Louisville, 248 S.W.3d 559 (Ky. 2008).....14

Mohamad v. Palestinian Auth., 566 U.S. 449 (2012).....15

Pierce v. Serafin, 787 S.W.2d 705 (Ky. Ct. App. 1990).....7, 8, 11, 12

Reynolds v. Int'l Amateur Athletic Fed'n, 23 F.3d 1110 (6th Cir. 1994)18

Rice v. Karsch, 154 F. App'x 454 (6th Cir. 2005).....9, 20

Sandmann v. WP Co. LLC, 401 F. Supp. 3d 781 (E.D. Ky. 2019).....3

Shrader v. Biddinger, 633 F.3d 1235 (10th Cir. 2011).....22

Sunrise Coop, Inc. v. USDA, 891 F.3d 652 (6th Cir. 2018).....15

United States v. Banyan, 933 F.3d 548 (6th Cir. 2019).....7, 15

V-Soft Consulting Grp., Inc. v. LogicCorp, No. 3:16-cv-425, 2017
U.S. Dist. LEXIS 49011 (W.D. Ky. Mar. 31, 2017).....12

Vangheluwe v. Got News, LLC, 365 F. Supp. 3d 850 (E.D. Mich.
2019)3

Walden v. Fiore, 571 U.S. 277 (2014)..... 5, 6, 8, 17, 18, 19, 20, 21, 22

XMission, L.C. v. Fluent LLC, 955 F.3d 833 (10th Cir. 2020)18, 21

Young v. New Haven Advocate, 315 F.3d 256 (4th Cir. 2002).....22

STATUTES

KRS 454.210(2)(a)(3)..... 1, 4, 6, 7, 8, 9, 10, 11, 13, 15, 23

KRS 454.210(2)(a)(4)7, 15

KRS 454.210(2)(a)(9)16

KRS 446.070.....11, 12, 16

I. STATEMENT OF ISSUES

Appellee does not agree with Appellants' Statement of the Issues.

Appellee believes the issues are properly articulated as follows:

1. Whether a defendant commits "an act . . . in this Commonwealth," as expressed in KRS 454.210(2)(a)(3), by posting a tweet in New Jersey about events in Washington, D.C., involving Kentucky residents.

Suggested Answer: NO.

2. Whether a non-resident of Kentucky purposefully avails herself of the laws of Kentucky and establishes minimum contacts with Kentucky by posting a tweet in New Jersey about events in Washington, D.C., involving Kentucky residents.

Suggested Answer: NO.

II. STATEMENT OF THE CASE

Appellants' case is based on a single "tweet"—a post on the website twitter.com—that contained an image of Plaintiffs in public, in Washington, D.C, taken from a picture widely disseminated in the media. Appellee Sujana S. Chandrasekhar, MD, FACS ("Dr. Chandrasekhar") exercised her First Amendment right to discuss what Appellants themselves call "a question of wide public interest." Brief of Appellants ("Appellants' Brief"), Statement in Support of Oral

Argument, p. ix. She deleted the tweet the same day she posted it (Decl. of Dr. Chandrasekhar, RE 12-4, PageID # 72), after being subject to targeted harassment. E.g., Plaintiffs' Opposition to Motion to Dismiss, RE 18, Ex. 1, PageID # 109 (tweet doxing Dr. Chandrasekhar). Appellants' litigation continues that campaign.

A. Facts Alleged in Appellants' Complaint

Appellants' Complaint begins by referencing the "now infamous incident at the Lincoln Memorial . . . on January 18, 2019." Complaint, RE 1, PageID # 3, ¶ 1. Appellants acknowledge that they were all present on the National Mall at the Lincoln Memorial during that "infamous" incident. Id. at ¶ 2. Appellants further alleged that, after the Lincoln Memorial incident, "[i]mages of the [Appellants] . . . were disseminated world-wide, including through media broadcasts and publications, social media interchanges, and other internet communications [.]" Id. at PageID # 4, ¶ 6.

Appellants then allege that, on January 20, 2019, Dr. Chandrasekhar tweeted "[a] now infamous" picture of some students, including Appellants. Id. at ¶ 11.¹ Appellants do not allege that Dr. Chandrasekhar created the picture (as she

¹ Appellants include the conclusory allegation that Dr. Chandrasekhar "call[ed] for the harassment, doxing, menacing, and intrusion upon the privacy of the Appellants." Complaint, RE 1, PageID # 4, ¶ 11. The tweet speaks for itself, and it does not name Appellants, contains no identifying information, and contains no explicit instructions to harass, dox, menace, or otherwise intrude on the Appellants' (footnote cont'd...)

did not create it), but Appellants admit that the poster contains images of Appellants at the Lincoln Memorial. Id.²

In summary, and ignoring unsupported assertions and inferences, Appellants' Complaint alleges the following:

1. Appellants were involved in an incident at the Lincoln Memorial on January 18, 2019.
2. Video of the Lincoln Memorial incident was widely shared in national media.
3. On January 20, 2019, Dr. Chandrasekhar posted one tweet that contained images of Appellants.³

On appeal, Appellants assert additional facts that were not expressly alleged in their Complaint. Appellants state that they "are Covington Catholic High minor students" (Appellants' Brief, p. 2 (emphasis added)), even though

(...cont'd)

privacy. Appellants' characterizations, which are not allegations of fact, do not need to be accepted by this Court. "The Court need not . . . 'accept the plaintiff's legal conclusions or unwarranted factual inferences as true.'" Sandmann v. WP Co. LLC, 401 F. Supp. 3d 781, 787 (E.D. Ky. 2019) (quoting Commercial Money Ctr., Inc. v. Ill. Union Ins. Co., 508 F.3d 327, 336 (6th Cir. 2007)).

² "Doxing . . . is the practice of disclosing a person's identifying information (e.g. their home address) on the Internet[.]" Vangheluwe v. Got News, LLC, 365 F. Supp. 3d 850, 852 (E.D. Mich. 2019) (emphasis added). Therefore, Dr. Chandrasekhar did not "dox" Appellants. Appellants have brought no specific cause of action for "doxing," and it is not clear why the concept is discussed in the Complaint.

³ Again, Dr. Chandrasekhar deleted the tweet the same day that she posted it.

several of them have reached the age of majority. Complaint, RE 1, PageID ## 1-

2. Appellants also state that they read Dr. Chandrasekhar's tweet "in their Kentucky homes" (Appellants' Brief, p. 8); Appellants' Complaint does not allege that they read Dr. Chandrasekhar's tweet at all, much less where they read it.

B. The District Court Dismissed Appellants' Complaint for Lack of Personal Jurisdiction

Appellants filed a Complaint against Dr. Chandrasekhar alleging a number of claims: (1) Civil Harassment, under KRS 525.070; (2) Civil Harassing Communications, under KRS 525.080; (3) Civil Threatening, under KRS 508.080; (4) Civil Menacing, under KRS 508.050; (5) Invasion of Privacy; and (6) Aiding and Abetting. Complaint, RE 1, PageID ## 6-10, ¶¶ 22-51. Dr. Chandrasekhar moved to dismiss Appellants' Complaint for lack of personal jurisdiction, improper venue, and failure to state a claim on which relief can be granted.⁴ The District Court granted the motion to dismiss, finding that it lacked personal jurisdiction under both the Kentucky Long-Arm Statute and the Due Process Clause of the United States Constitution.

Appellants sought jurisdiction under Kentucky's Long-Arm Statute pursuant to only KRS 454.210(2)(a)(3). The District Court recognized that

⁴ Dr. Chandrasekhar argued, among other things, that Plaintiffs' allegations did not state a violation of any of the cited criminal statutes.

"Kentucky courts routinely find that a defendant must be present in the Commonwealth when he starts an action that causes a tort in order for section 454.210(2)(a)(3) to apply." Memorandum Opinion and Order, RE 20, PageID # 130 (internal quotation omitted). The District Court held that personal jurisdiction was not established because Dr. Chandrasekhar was not present in Kentucky when she posted the tweet in question. Id. at PageID # 132.

The District Court also considered Appellants' "theory" that a tort based on a criminal statute is not subject to the same personal jurisdiction analysis as other torts. Memorandum Opinion and Order, RE 20, PageID # 133. The District Court recognized that "this theory finds no support in Kentucky law." Id.

The District Court also concluded that personal jurisdiction would violate Dr. Chandrasekhar's due process rights. The District Court relied on the Supreme Court's decision in Walden v. Fiore, 571 U.S. 277 (2014) in determining that Dr. Chandrasekhar lacked the minimum contacts with Kentucky to give rise to jurisdiction. Memorandum Opinion and Order, RE 20, PageID # 137. The District Court wrote that "[Dr. Chandrasekhar]'s tweet did not target Kentucky, and [she] did not avail herself of any benefit in or through Kentucky." Id. at PageID # 138. The District Court concluded its analysis by observing that "it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State." Id. at

PageID # 139 (quoting H.E.B., LLC v. Jackson Walker, L.L.P., 587 S.W.3d 333, 342 (Ky. Ct. App. 2019) (quoting Walden, 571 U.S. 277, 291 (2014))).

Having dismissed the claims for lack of personal jurisdiction, the District Court did not consider Dr. Chandrasekhar's arguments on the merits of Appellants' claims, except to observe that it "doubts" that Dr. Chandrasekhar's "tweet from New Jersey was a legally cognizable 'threat[.]'" Memorandum Opinion and Order, RE 20, PageID # 133. Appellants timely appealed.

III. SUMMARY OF THE ARGUMENT

The District Court properly dismissed Appellants' Complaint for lack of personal jurisdiction. Dr. Chandrasekhar is a New Jersey resident, who posted a tweet about events that took place in Washington, D.C. She took no actions in or directed to Kentucky related to Appellants' claims. The District Court lacked jurisdiction over Dr. Chandrasekhar under both the Kentucky Long-Arm Statute and the Due Process Clause of the United States Constitution.

First, the District Court lacked jurisdiction over Dr. Chandrasekhar under the Kentucky Long-Arm Statute – specifically, under KRS 454.210(2)(a)(3) – because Dr. Chandrasekhar took no action in Kentucky. Kentucky law is well-settled that KRS 454.210(2)(a)(3) requires the defendant to have acted within the Commonwealth of Kentucky. Caesars Riverboat Casino, LLC v. Beach, 336

S.W.3d 51, 57-58 (Ky. 2011). Kentucky law is further well-settled that a communication from outside Kentucky is not considered an action in Kentucky, even when that communication is directed toward a Kentucky resident. Pierce v. Serafin, 787 S.W.2d 705, 706-07 (Ky. Ct. App. 1990). Allegedly tortious acts occurring outside Kentucky can form the basis of jurisdiction under KRS 454.210(2)(a)(4), which is not at issue here as it allows jurisdiction only when the defendant "regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in [Kentucky]."

Appellants argue that out-of-state actions are deemed to have occurred in Kentucky for the purposes of the Long-Arm Statute when the Complaint alleges that those actions violate Kentucky criminal statute. This argument has no support in Kentucky or federal caselaw.

Appellants' attempt to construct a new rule based on the legislative history of the Kentucky Penal Code is incorrect. Legislative history – much less legislative history of an unrelated statute – cannot alter a statute's unambiguous language. United States v. Banyan, 933 F.3d 548, 553 (6th Cir. 2019) ("[R]eference to legislative history is inappropriate when the text of the statute is unambiguous.") (internal quotation and citation omitted). The relevant portion of

the Long-Arm Statute, KRS 454.210(2)(a)(3), unambiguously requires the defendant to have acted in Kentucky. With KRS 454.210(2)(a)(3), the Kentucky legislature made a decision to limit the circumstances when out-of-state conduct can give rise to jurisdiction in Kentucky, and courts must respect those limits. Pierce, 787 S.W.2d at 707.

Second, the District Court correctly concluded that it lacked personal jurisdiction over Dr. Chandrasekhar under the Due Process Clause. The Due Process Clause requires that a defendant's contacts create "continuous and substantial" consequences in the forum state. Calphalon Corp. v. Rowlette, 228 F.3d 718, 723 (6th Cir. 2000). "[T]he relationship must arise out of contacts that the defendant [herself] creates with the forum State." Walden v. Fiore, 571 U.S. 277, 284 (2014). Here, Dr. Chandrasekhar took no action in or toward Kentucky, and her tweet gave rise to no contact with that forum.

Appellants argue that Dr. Chandrasekhar "purposely directed her communications" (Appellants' Brief, p. 1) into Kentucky. However, Dr. Chandrasekhar did nothing more than post a public tweet about a topic of public interest. The fact that Appellants might have read the tweet in Kentucky is not a connection created by Dr. Chandrasekhar. As the Supreme Court said in Walden, "[t]he proper question is not where the plaintiff experienced a particular injury or

effect but whether the defendant's conduct connects [her] to the forum in a meaningful way." 571 U.S. at 290 (emphasis added). A person who posts on the internet is not subject to personal jurisdiction everywhere the post might be read, or even in a state where the subject of the post resides. Cadle Co. v. Schlichtmann, 123 F. App'x 675, 679 (6th Cir. 2005); Rice v. Karsch, 154 F. App'x 454 (6th Cir. 2005).

Therefore, Dr. Chandrasekhar's out-of-state conduct did not create a sufficient connection with Kentucky that she may be brought into court there. The District Court properly concluded that it lacked personal jurisdiction over Dr. Chandrasekhar under the Due Process Clause.

IV. ARGUMENT

A. The District Court Lacked Personal Jurisdiction Over Dr. Chandrasekhar Pursuant to KRS 454.210(2)(a)(3)

1. KRS 454.210(2)(a)(3) Requires a Defendant's Actions to Occur Within Kentucky's Borders

To establish personal jurisdiction in Kentucky over a non-resident, a plaintiff must first establish statutory long-arm jurisdiction. Caesars Riverboat Casino, LLC v. Beach, 336 S.W.3d 51, 56 (Ky. 2011) ("[N]on-resident defendants whose activities fall outside the criteria of KRS 454.210 may not be subjected to long-arm jurisdiction."). "The reach of Kentucky's long-arm jurisdiction is a policy choice of the General Assembly, limited by federal and state constitutional

considerations." Id. at 57. The Kentucky Supreme Court has held that KRS 454.210(2)(a)(3) requires an act or omission "in this Commonwealth," and it held that acts or omissions occurring outside Kentucky do not fall within this provision. Id. at 57-58. "It is fundamental that in determining the meaning of a statute, we must defer to the language of the statute and are not at liberty to add or subtract from the legislative enactment or interpret it at variance from the language used." Id. at 56.

The District Court properly concluded that it lacked personal jurisdiction over Dr. Chandrasekhar under the Kentucky Long-Arm Statute, KRS 454.210(2)(a)(3). Appellants' assignment of error on that question is wrong on the law and starts from a flawed assumption. Appellants assert that the District Court had "personal jurisdiction over Dr. Chandrasekhar's [allegedly] criminal tortious acts." Appellants' Brief, p. 12. Appellants here seem to have confused jurisdiction over a person (personal jurisdiction) with jurisdiction over a particular cause of action (subject matter jurisdiction). Id. at p. 13 ("In Kentucky where a legal right exists, a legal remedy exists."). Taken literally, Appellants' argument would negate completely the requirement for a plaintiff to establish personal jurisdiction in addition to identifying a cognizable claim.

Appellants argue here that Kentucky has personal jurisdiction over "harassment, menacing, and threatening crimes" because such conduct is "an act" under the Kentucky Long-Arm Statute.⁵ *Id.* It is not enough for Appellants to identify "an act." Under KRS 454.210(2)(a)(3), Appellants must identify "an act" that was taken "in this Commonwealth [of Kentucky]." Caesars Riverboat Casino, 336 S.W.3d at 57-58. Appellants must establish personal jurisdiction under KRS 454.210(2)(a)(3) by pointing to Dr. Chandrasekhar's "act[s] or omission[s] in [Kentucky]." Pierce v. Serafin, 787 S.W.2d 705, 706-07 (Ky. Ct. App. 1990). They have identified none.

The question before the Court is whether Dr. Chandrasekhar's out-of-state tweet is deemed an act or omission taking place in Kentucky under the Kentucky Long-Arm Statute. Appellants refer to this issue as a "matter of first impression in Kentucky"⁶ (Appellants' Brief, p. 13), but they are wrong. In Pierce,

⁵ Whether Dr. Chandrasekhar's tweet constituted a crime of any kind is an unsupported conclusion, and one which the District Court "doubts." The Court owes Appellants no benefit of the doubt as to their conclusion. Commercial Money Ctr., Inc. v. Ill. Union Ins. Co., 508 F.3d 327, 336 (6th Cir. 2007). Plaintiffs cannot, therefore, carve out an exception to the Long-Arm Statute based on their (spurious) allegations that Dr. Chandrasekhar committed a crime under Kentucky law.

⁶ The Eastern District of Kentucky has applied KRS 454.210(2)(a)(3) to tort actions under the negligence per se statute, KRS 446.070, that supports most of Appellants' claims. Bell v. Kokosing Indus., No. 19-53-DLB-CJS, 2020 U.S. Dist. LEXIS 129400, at *25, *74 (E.D. Ky. Jul. 22, 2020) ("[U]nder § 454.210(2)(a)(3),
(footnote cont'd...)

the court considered whether a Kentucky court had personal jurisdiction over a defendant who sent written communications from out of state into Kentucky. Id. at 705. The claims in Pierce were "framed as an invasion of privacy," just as are some of Appellants' claims here. Id. at 706. The court held that mailing the letter from North Carolina caused only "a consequence" in Kentucky, but was not an action in Kentucky. Id. As the court recognized, "Kentucky has elected to assume personal jurisdiction over a nonresident tort-feasor whose activities outside the state result in injury in this state only if that tort-feasor regularly does or solicits business within the state or has other substantial connection to the Commonwealth." Id. at 707. This Court has relied on Pierce for exactly this proposition. Evans v. Brown, No. 19-5603, 2019 U.S. App. LEXIS 36366, at *10 (6th Cir. Dec. 6, 2019).

Here, Dr. Chandrasekhar posted a single tweet from New Jersey, about events that occurred in Washington, D.C. There is no argument that she took

(...cont'd)

the act or omission causing tortious injury must occur in Kentucky."). The Western District of Kentucky has done the same. V-Soft Consulting Grp., Inc. v. LogicCorp, No. 3:16-cv-425, 2017 U.S. Dist. LEXIS 49011, at *17-18 (W.D. Ky. Mar. 31, 2017) (finding no personal jurisdiction over claim under KRS 446.070 because plaintiff "ha[d] not alleged that [defendant] performed any act or omission in Kentucky"). Appellants have identified no caselaw – and research similarly revealed none – holding that negligence per se actions are unbounded by the limits of the Kentucky Long-Arm Statute.

no action within Kentucky. Appellants' arguments to the contrary are thinly veiled attempts to reframe alleged consequences as actions – characterizing Appellants' reading of the tweet as an action taken by Dr. Chandrasekhar – that have already been rejected by Kentucky courts and by this Circuit. Appellants have not established personal jurisdiction under the Kentucky Long-Arm Statute, and the District Court properly dismissed their Complaint.

2. Appellants' Negligence Per Se Exception to the Kentucky Long-Arm Statute Should Be Rejected

In attempting to distinguish their appeal from well-settled Kentucky law, Appellants have argued that torts based on Kentucky criminal statutes are not subject to the same application of KRS 454.210(2)(a)(3) as other civil torts. Appellants support this contention by, among other things, arguing that the legislative history of the Kentucky Penal Code indicates that the Kentucky legislature, in enacting the Long-Arm Statute, intended personal jurisdiction in civil matters to be coextensive with personal jurisdiction in criminal matters. Appellants' Brief, pp. 15- 20. They have cited no authority expanding the interpretation of the Long-Arm Statute for torts based on alleged violations of criminal law.⁷

⁷ Appellants cite some out-of-state and federal criminal cases (Appellants' Brief, p. 17), none of which concern long-arm jurisdiction or personal jurisdiction in civil
(footnote cont'd...)

To avoid any doubt, nothing in Dr. Chandrasekhar's tweet would constitute a "threat" or other criminal conduct, and Appellants are entitled to no presumption that their legal conclusion on that point is correct. The merits of Appellants' claims are not before this Court. Instead, the question is only whether Appellants have alleged sufficient facts to bring Dr. Chandrasekhar's conduct within the Kentucky Long-Arm Statute. They have not.

Moreover, it is not appropriate to look at outside sources – such as the history of criminal law in Kentucky – when interpreting the unambiguous language of the Kentucky Long-Arm Statute. "A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." Caesars Riverboat, 336 S.W.3d at 58 (internal quotation and citation omitted). The Kentucky Supreme Court does not permit outside sources to construe or interpret a statute that is "clear and unambiguous and express[es] the legislative intent[.]" Light v. City of Louisville, 248 S.W.3d 559, 562 (Ky. 2008) (internal citation and quotation marks omitted). Similarly, the Supreme Court and this Court will not consider legislative history – much less legislative history of an entirely different statute – to alter the meaning

(...cont'd)

cases. As Appellants admit elsewhere, "[t]erritorial jurisdiction for criminal acts is not coextensive with personal jurisdiction in a civil case." Appellants' Brief, p. 20.

of a "statute's unambiguous language." Mohamad v. Palestinian Auth., 566 U.S. 449, 458 (2012) (internal quotation and citation omitted). See also United States v. Banyan, 933 F.3d 548 at 553; Sunrise Coop, Inc. v. USDA, 891 F.3d 652, 658 (6th Cir. 2018) ("[A]s we have explained, [w]hen a statute is unambiguous, resort to legislative history and policy considerations is improper.") (internal citation and quotation marks omitted); Bridewell v. Cincinnati Reds, 155 F.3d 828, 830 (6th Cir. 1998) ("[W]e could not look to the legislative history to contravene the clear and unambiguous language of the statute.").

The Kentucky Long-Arm Statute is not ambiguous. The Kentucky Supreme Court said that the statute "sets forth nine *specific* provisions defining the kinds of activity that will allow a Kentucky court to exercise personal jurisdiction over a nonresident defendant." Caesars Riverboat, 336 S.W.3d at 56 (emphasis added). See also, Commonwealth v. Clemente, No. 2006-CA-002092-ME, 2007 Ky. App. Unpub. LEXIS 481, at *6 (Ky. Ct. App. Jun. 22, 2007) ("Kentucky's general long-arm statute . . . *clearly describes* specific situations in which courts may exercise personal jurisdiction over nonresidents.") (emphasis added). By its unambiguous terms, KRS 454.210(2)(a)(3) does not reach conduct that occurs wholly in New Jersey.

Out-of-state conduct is covered by KRS 454.210(2)(a)(4), which allows jurisdiction only when the defendant "regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or services rendered in [Kentucky]." Appellants' "theory" of jurisdiction would wipe out the latter provision, and Appellants' attempts to draw a line fail.⁸

Moreover, the legislative history does not support Appellants' argument. As Appellants contend, the General Assembly "presumptively was aware of KRS 446.070 in 1968 when it enacted Kentucky's long-arm statute." Appellants' Brief, p. 10. Yet, the General Assembly did not carve out any exceptions to its "specific provisions" for KRS 446.070. Caesars Riverboat, 336 S.W.3d at 56. The General Assembly certainly knew how to carve out particular kinds of claims – for example, the General Assembly expressly established jurisdiction over "[m]aking a telephone solicitation . . . or a charitable solicitation . . . into the Commonwealth." KRS 454.210(2)(a)(9). The General Assembly did not carve out claims based on negligence per se.

⁸ Appellants' best attempt at a limiting principle would be that Kentucky courts have seemingly unlimited jurisdiction when the civil tort involves a "crime," while the terms of the Long-Arm Statute would still apply to "common law torts." Appellants' Brief, p. 20. This rule would result in cases where, as here, plaintiffs attempt to establish jurisdiction simply by invoking criminal statutes, despite the fact that their allegations do not establish violations of those statutes.

Appellants' reliance on the history of criminal law in Kentucky is wholly inappropriate for applying the unambiguous language in Kentucky's Long-Arm Statute. Without identifying any ambiguity, they improperly point to external sources to change the plain meaning of the statute. Those efforts should be rejected, and the decision of the District Court should be affirmed.

B. The District Court Lacked Personal Jurisdiction Over Dr. Chandrasekhar Under the Due Process Clause

The District Court properly concluded that it lacked personal jurisdiction over Dr. Chandrasekhar under the Due Process Clause, following the Supreme Court's decision in Walden v. Fiore, 571 U.S. 277 (2014). As with long-arm jurisdiction, Appellants attempt to supplement their clear deficiencies under personal jurisdiction jurisprudence by reference to Kentucky criminal law. As explained above, the history of Kentucky criminal law is not relevant to the interpretation of the unambiguous Kentucky Long-Arm Statute, and it is even more irrelevant to the Due Process Clause of the United States Constitution.

To establish that personal jurisdiction is permissible under the Due Process Clause, Plaintiffs must satisfy three criteria:

First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused

by the defendant must have a substantial enough connection with the forum to make the exercise of jurisdiction over the defendant reasonable.

CompuServe, Inc. v. Patterson, 89 F.3d 1257, 1263 (6th Cir. 1996) (quoting Reynolds v. Int'l Amateur Athletic Fed'n, 23 F.3d 1110, 1116 (6th Cir. 1994)).

The defendant's contacts with the state must create "continuous and substantial" consequences there. Calphalon Corp. v. Rowlette, 228 F.3d 718, 723 (6th Cir. 2000). "[T]he relationship must arise out of contacts that the defendant [herself] creates with the forum State." Walden v. Fiore, 571 U.S. 277, 284 (2014) (internal quotation marks omitted). The defendant's contacts with the forum must be more than "random, fortuitous, or attenuated[.]" Bulso v. O'Shea, 730 F. App'x 347, 350 (6th Cir. 2018) (internal quotation marks and citation omitted). See also Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985). The defendant must have targeted the forum, and not simply the plaintiff. Reynolds v. Int'l Amateur Athletic Fed'n, 23 F.3d 1110, 1120 (6th Cir. 1994). Postings on the internet are not a sufficiently meaningful contact with every forum where the post can be accessed. XMission, L.C. v. Fluent LLC, 955 F.3d 833, 844 (10th Cir. 2020) ("Internet activities such as . . . posting[s] are peculiarly non-territorial because the internet operates in every state regardless of where the user is physically located[.]") (internal quotation and citation omitted).

In recent years, the United States Supreme Court has clarified that the contacts with the forum must be created by *the defendant's* own conduct, and the fact that the plaintiff is located or residing there is not sufficient. Walden, 571 U.S. at 290. As the Supreme Court held, "[t]he proper question is not where the plaintiff experienced a particular injury or effect but whether *the defendant's* conduct connects [her] to the forum in a meaningful way." Id. (emphasis added). In Walden, a court in Nevada lacked personal jurisdiction over a Georgia resident who drafted an allegedly false affidavit about a Nevada resident, knowing that the plaintiff was a Nevada resident who would be injured in Nevada. Id. at 289.

The analysis and outcome here are directed entirely by Walden. Appellants' arguments, therefore, that they are "residents of" Kentucky (Appellants' Brief, p. 22) does not help them here. As they admit, Dr. Chandrasekhar "never entered Kentucky." Id. Under Walden, the fact that Appellants experienced their alleged harm in Kentucky is not part of the analysis. 571 U.S. at 289 ("Petitioner's actions in Georgia did not create sufficient contacts with Nevada simply because he allegedly directed his conduct at plaintiffs whom he knew had Nevada connections.").

Appellants refer to the tweet as a "communicative act" in Kentucky. Appellants' Brief, p. 21. Dr. Chandrasekhar did not send the tweet directly to any

of Appellants, she did not name any of Appellants in the tweet, and she did not "tag" any of Appellants in her tweet. Nevertheless, Appellants argue that the "location of Dr. Chandrasekhar's communicative acts" was Kentucky because some or all of Appellants would have read her tweet there.⁹ Appellants' Brief, pp. 21-22. This argument, however, would completely eviscerate the personal jurisdiction doctrine when online posts are at issue – any plaintiff could allege that any defendant acted in any state where the plaintiff happened to read the post.

Even before Walden, this Court held that a person who posts information online about a citizen of a state is not automatically subject to personal jurisdiction in that state. Cadle Co. v. Schlichtmann, 123 F. App'x 675, 679 (6th Cir. 2005). This Court held that a website that targeted an Ohio company did not establish personal jurisdiction in Ohio because "while the 'content' of the publication was about an Ohio resident, it did not concern that resident's Ohio activities." Id. In another case, the Court rejected that jurisdiction in Tennessee could be found based on an email sent directly to a "generic email address" to an individual located in that state. Rice v. Karsch, 154 F. App'x 454, 462 (6th Cir. 2005) ("If such reasoning were adopted by this Court, [defendant] would be subject to personal jurisdiction in any location where said email address could be

⁹ Appellants' Complaint never actually alleges that any of Appellants read Dr. Chandrasekhar's tweet before it was deleted.

accessed."). Here, Dr. Chandrasekhar's twitter post concerned activity in Washington, D.C., and had no connection to Kentucky. Appellants' residence is exactly the kind of "fortuitous" and "attenuated" contact that this Court has repeatedly rejected as a basis for jurisdiction. E.g., Calphalon, 228 F.3d at 722.

Appellants argue that they can manufacture jurisdiction in Kentucky by reading the twitter post in Kentucky (even though they make no allegations about where they read the post). This argument was rejected in Walden:

Respondents [] lacked access to their funds in Nevada not because anything independently occurred there, but because Nevada is where respondents chose to be at a time when they desired to use the funds seized by petitioner. Respondents would have experienced this same lack of access in California, Mississippi, or wherever else they might have traveled[.]

571 U.S. at 290. Appellants' pointing to "the reality of modern communication" (Appellants' Brief, p. 22) is thus counter to Walden, as a person does not have control over where another person reads a social media post. This "reality" does not give rise to universal jurisdiction, subjecting a citizen to process wherever that reader happens to be. Cadle, 123 F. App'x at 679 ("The law does not require that people avoid using the internet altogether in order to avoid availing themselves of the laws of every state."); Karsch, 154 F. App'x at 462; XMission, 955 F.3d at 845 ("[M]erely posting information on the internet does not, in itself, subject the poster to personal jurisdiction wherever that information may be accessed.") (internal

quotation omitted); Shrader v. Biddinger, 633 F.3d 1235, 1241 (10th Cir. 2011) ("[P]osting allegedly defamatory comments or information on an internet site does not, without more, subject the poster to personal jurisdiction wherever the posting could be read (and the subject of the posting may reside)."); Young v. New Haven Advocate, 315 F.3d 256, 263 (4th Cir. 2002) ("[A] person's act of placing information on the internet is not sufficient by itself to subject[] that person to personal jurisdiction in each State in which the information is accessed.") (internal quotation marks and citation omitted).

From her home state of New Jersey, Dr. Chandrasekhar commented on a matter of public interest that took place in Washington, D.C. She did not visit or contact Kentucky in connection with her tweet. Appellants' attempt to use the assumption that they *would have* read the tweet in Kentucky – an assumption not expressly stated in the Complaint – does not transform Dr. Chandrasekhar's actions into the kind of meaningful, sustained contacts that would connect her to a Kentucky forum for jurisdictional purposes. Walden, 571 U.S. at 290. The District Court properly determined that it lacked personal jurisdiction over Dr. Chandrasekhar, and this Court should affirm that decision.

V. CONCLUSION

The District Court correctly dismissed Appellants' Complaint for lack of personal jurisdiction. Appellants failed to establish personal jurisdiction under

KRS 454.210(2)(a)(3), and they failed to demonstrate that personal jurisdiction would comport with the Due Process Clause of the United States Constitution. Therefore, the District Court's order dismissing the Complaint should be affirmed.

Respectfully submitted,

/s/ Stephen A. Weigand
Stephen A. Weigand (0083573)
Jason A. Palmer (0088336)
FARUKI PLL
201 East Fifth Street, Suite 1420
Cincinnati, Ohio 45202
Telephone: (513) 632-0306
Telecopier: (513) 632-0319
Email: sweigand@ficlaw.com
jpalmer@ficlaw.com

Counsel for Defendant-Appellee
Sujana S. Chandrasekhar, MD, FACS

CERTIFICATE OF COMPLIANCE

1. This document complies with the Type-Volume limitation of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 4,980 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally space typeface using Microsoft Word in Times New Roman 14-point font

/s/ Stephen A. Weigand

Stephen A. Weigand

Attorney for Appellee Dr. Sujana
Chandrasekhar, MD, FACS

CERTIFICATE OF SERVICE

I certify that on the 13th day of October, 2020, I electronically filed the foregoing Brief of Appellee Sujana S. Chandrasekhar, MD, FACS, using the CM/ECF system, which will send notification of such filing to CM/ECF participants:

Kent W. Seifried, Esq.
Douglas B. Schloemer, Esq.
James R. Poston, Jr. Esq.
POSTON, SEIFRIED, AND SCHLOEMER
2039 Dixie Highway
Ft. Mitchell, Kentucky 41011
kent@pss-law.net
doug@pss-law.net
james@pss-law.net

Counsel for Plaintiffs-Appellants

/s/ Stephen A. Weigand
Stephen A. Weigand