

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

Case No. 20-5850

TARA BLESSING; CHRIS BLESSING, Parent and Natural Guardian of minor son Next Friend Charles B. Blessing; MICHAEL GRAY; LORI GRAY, Parent and Natural Guardian of minor son Next Friend Liam Gray; KEVIN PALEY; NADINE PALEY, Parent and Natural Guardian of minor son Next Friend Samuel Paley; SAUNDRA SMITH; MICHAEL SMITH, Parent and Natural Guardian of their minor son Next Friend Charlie Smith; ANTHONY GARDNER; SHANNON GARDNER, Parent and Natural Guardian of minor son Next Friend Evan Anthony Gardner; WYATT SCHWARTZ; WILLIAM FRIES; ERIC CURK; AUSTIN FOUST; ANDREW GIBSON; BRADLEY KATHMAN; PATRICK KENNEDY

Plaintiffs-Appellants

v.

SUJANA S. CHANDRASEKHAR, MD, FACS

Defendant-Appellee

Appeal from the United States District Court
For the Eastern District of Kentucky
Case No. 2:20-cv-00016

BRIEF OF APPELLANTS

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DISCLOSURE OF CORPORATE AFFILIATIONS

Pursuant to Fed. App. R. 26.1 and 6 Cir. R. 26.1, Plaintiffs-Appellants make the following disclosure:

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.**

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Plaintiffs-Appellants respectfully request oral argument because this appeal involves: a first impression question of Kentucky law; a substantial Constitutional question; and, a question of wide public interest.

I. STATEMENT OF JURISDICTION

1. The District Court had subject matter jurisdiction in this matter under 28 U.S.C. §1332.
2. On June 25, 2020, the District Court granted Defendant-Appellee Dr. Chandrasekhar's Motion to Dismiss (Memorandum Opinion and Order, RE 20, Page ID #125-139), and Judgment was entered in her favor. (RE 21, Page ID #40).
3. On July 21, 2020, Plaintiffs-Appellants filed a timely Notice of Appeal. (RE 22, Page ID #141-142).
4. This appeal is from the District Court's final order that disposes of all parties' claims. This Court has jurisdiction pursuant to 28 U.S.C. §1291.

II. STATEMENT OF THE ISSUES

1. Whether, when the Kentucky General Assembly enacted Kentucky's long-arm statute in 1968, it intended that a non-resident's commission of tortious criminal conduct in the Commonwealth was the type of conduct – i.e., “causing tortious injury by an act . . . in this Commonwealth” – enumerated in KRS §454.210(2)(a)(3).
2. Whether a non-resident's commission of an intentional, tortious crime in Kentucky is conduct initiated by the defendant and purposely directed at and

targeted to the Kentucky forum and its citizens that creates sufficient minimum contacts with Kentucky for the district court in a civil action to exercise personal jurisdiction over the defendant consistent with Constitutional due process.

III. STATEMENT OF THE CASE

Appellants are Covington Catholic High minor students who were present at the Lincoln Memorial on January 18, 2019 during the internationally-publicized incident between CCH students and Mr. Nathan Phillips. This incident is also before this Court in Case No. 20-5852 in a similar action earlier brought in the district court by these students against Ms. Kathy Griffin. In both cases, the district court granted the respective defendant's motion to dismiss for lack of personal jurisdiction. In addressing the present students' case against Appellee-Defendant Dr. Sujana S. Chandrasekhar, the district court "seeing no need to reinvent the wheel" drew upon its *Griffin* Opinion to resolve Dr. Chandrasekhar's Motion. (Memorandum Opinion, RE 20, Page ID #129).

For similar reasons of expediency, the students will draw upon their Brief in Case No. 20-5852 to demonstrate the errors in the district court's conclusions in the present appeal that:

1. "neither the Kentucky legislature nor Kentucky courts would have permitted" a non-resident's

commission of criminal tortious conduct in Kentucky to be the type of conduct intended by the Kentucky General Assembly to be included in Kentucky's long-arm statute as conduct "causing tortious injury by an act . . . in this Commonwealth" as enumerated in KRS §454.210(2)(a)(3); and,

2. a non-resident's commission of such intentional, tortious crimes is not conduct initiated by the Defendant and purposely directed at and targeted to the Kentucky forum and its citizens that creates Constitutionally sufficient due process "minimum contacts" with Kentucky. (Memorandum Opinion, RE 20, Page ID #139).

Dr. Chandrasekhar is among the many news organizations, public figures, public officials, and social media users who reacted on-line to the students' presence at the Lincoln Memorial. Unfortunately, Dr. Chandrasekhar's conduct crossed the Constitutional line from permissive and protected "speech-as-comment" to criminal "speech-as-conduct."

The day after the Lincoln Memorial incident was widely publicized on June 19, 2019, in the heat of a vile, hateful, obnoxious narrative exploding on the internet, Dr. Chandrasekhar tweeted a collection of head-shot pictures of the faces of 45 CCH students. (Complaint, RE 1, Page ID #4-5 and #11). Specifically, each student's face was prominently displayed and each was assigned a number from 1 to 45. In her accompanying comments, Dr. Chandrasekhar exclaimed: "These are scary faces, indeed" that deserved "Covington Shame." (*Id.* at Page ID

#11). Remarkably, she noted that the students are “children;” nonetheless, she then called upon her followers and others to criminally harass them. (Id.).

Specifically, and significantly, the students’ portraits were designed like a classic, Old-West “Wanted Poster:” a head-shot portrait of each student. The accompanying text mimicked and paid homage to the “Wanted Poster” cry-to-arms of old, portraying in bold and all caps:

DO YOU KNOW THEM? THE WORLD WOULD
LIKE TO KNOW TOO.

To aid her abettors, Dr. Chandrasekhar helpfully added the Covington Catholic High School logo and name – “COVINGTON CATHOLIC” – along with the hashtag “#Covington Shame” so that the students could be readily found, identified, and exposed in their Covington, Kentucky homes, school, and community. (Complaint, RE 1, Page ID #11).

Dr. Chandrasekhar’s publicizing, promoting, popularizing, and circulating the harassing Wanted Poster went viral and was instantly retweeted and communicated throughout the Commonwealth of Kentucky and the world. (Complaint, RE 1, Page ID #5) Her conduct necessarily and foreseeably anticipated the doxing of the students and the continuous, recurring posting of the Wanted Poster. (Id., Page ID #5). For example, within hours her comments and Wanted Poster were criticized for what they were: “doxing children [and] bullying children.” (Opposing Memorandum, RE 18, Page ID #109). Dr. Chandrasekhar

acknowledges that she subsequently deleted her tweet. (Motion to Dismiss, RE 12-1, Page ID #46). However, once posted on the Internet in cyberspace, her deleted tweet, both her text and the Wanted Poster, continued to foreseeably circulate threatening the students by urging others to dox and threaten these minors. (Complaint, RE 1, Page ID #5). As one of Dr. Chandrasekhar's responders confirmed, "the Internet is forever." (Opposing Memorandum, RE 18, Page ID #109).

This is how Dr. Chandrasekhar conducted her doxing and harassing campaign against the minor students. (Complaint, RE 1, Page ID #4). Doxing is the practice of using the Internet to gather and publically disseminate private and personal information about persons for the express purpose of harassing, humiliating, and retaliating against them. (Id. at Page ID #4). Such doxing/harassing conduct, like Dr. Chandrasekhar's conduct, constitutes crimes in Kentucky, including Harassment (KRS 525.070); Harassing Communications (KRS 525.080); Threatening (KRS 525.080); and, Menacing (KRS 525.050). (Id. at Page ID #6-9).

Dr. Chandrasekhar's course of conduct was designed and intended to harass, threaten, and menace the CCH students by engendering in them the fear of violence by others, and the disruption in their lives that such fear created from the possibility that threatened violence would occur. (Complaint, RE 1, Page ID #4).

Moreover, Dr. Chandrasekhar's conduct was purposely directed to and targeted at the minor CCH students in their Kentucky homes, their school, and their community. (Id. at Page ID #5-6).

KRS 446.070 provided the students a private right of action against Dr. Chandrasekhar for her criminal conduct committed in the Commonwealth. (Complaint, RE 1, Page ID #6). Her criminal tortious conduct "caused tortious injury by [an] act . . . in this Commonwealth," as enumerated and encompassed by Kentucky's long-arm statute, KRS 454.210(2)(a)(3). (Id. at Page ID #6).

On March 17, 2020, Dr. Chandrasekhar filed her Motion to Dismiss the students' Complaint for *inter alia* lack of personal jurisdiction. (Motion to Dismiss, RE 12). After the students filed their Response (Memorandum in Opposition, RE 18), and Dr. Chandrasekhar filed her Reply (Reply, RE 19), the district court on June 25, 2020 granted her Motion and dismissed the students' case for lack of personal jurisdiction. (Memorandum Opinion, RE 20; Judgment RE 21).

In its Memorandum Opinion, the district court applied Kentucky's two-step jurisdictional analysis: whether the students' cause of action arose from conduct enumerated in Kentucky's long-arm statute, specifically subpart (2)(a)(3); and, if so, whether exercising jurisdiction over Dr. Chandrasekhar and her conduct would

comport with Constitutional due process. The district court answered both inquiries in the negative.

Regarding the “act in this Commonwealth” component of subpart (2)(a)(3) the district court stated 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,” quoting *Crum v. Estate of Mayberry*, 2014 WL 7012122 at *5 (E.D. Ky. 2014). (Memorandum Opinion, RE 20, Page ID #130). Describing a “distinction between tortious *actions* and tortious *consequences*,” the district court held that the tortious action “must occur within the Commonwealth to satisfy KRS 454.210(2)(a)(3),” citing *Pierce v. Serafin*, 767 S.W.2d 705, 706 (Ky. App. 1990). (Id. at Page ID #131). Finally, the district court held that subpart (2)(a)(4) of the long-arm statute “would be completely obviated if plaintiffs’ theory were accepted,” quoting *Barker v. Collins*, 2013 WL 3790904 at *4 (W.D. Ky. 2013). (Id. at Page ID #131-132).

The Plaintiff/students’ “theory” was that, unlike common law communicative torts (e.g., defamation), a non-resident’s criminal communicative conduct in the nature of a true threat, when rendered tortious by KRS 446.070, was necessarily and purposely intended by the Kentucky General Assembly to constitute the non-resident’s “act . . . in this Commonwealth.” When the General Assembly enacted the long-arm statute in 1968, a Kentucky crime Constitutionally

required an act by the non-resident occurring in Kentucky. This *actus reas* requirement encompassed a non-resident's interstate communicative misconduct such as sending threatening letters or making obscene telephone calls. In Kentucky as elsewhere a non-resident's "true threat" was an act that occurred when and where received by the intended victims; in Dr. Chandrasekhar's case, by the students in their Kentucky homes.

Rejecting this "theory," the district court stated that "the criminal 'true threat' cases cited by plaintiffs having no bearing on the question of personal jurisdiction." (Memorandum Opinion, RE 20, at Page ID #134). It held that it "cannot by judicial decision achieve a result at neither the Kentucky legislature or the Kentucky courts have permitted. (Id.).

On June 25, 2020, the district court dismissed the students' Complaint (Judgment, RE 21, Page ID #140). Thereafter, on July 23, 2020 the students filed their Notice of Appeal. (RE 22, Page ID #141-142).

IV. SUMMARY OF ARGUMENT

1. **Act in Kentucky** – This appeal, along with *Griffin* Case No 20-5852, presents the Court with a matter of first impression statutory construction. Kentucky's long-arm statute extends personal jurisdiction to a person who acts "causing tortious injury by an act or omission in this Commonwealth." At issue is

whether an out-of-state defendant's commission of Kentucky harassment, menacing, and threatening crimes against Kentucky citizens is the type of conduct that the Kentucky General Assembly intended to be included within its long-arm provision.

Because Kentucky's Supreme Court has not spoken on the issue, in this diversity case the Federal Court must predict what Kentucky's Supreme Court would do if confronted with the same question by looking at all the available data. Most prominently, this includes authoritative signals from Kentucky's legislature and its judiciary, including the general rules of construction promulgated and applied by Kentucky's legislature and judiciary. Additionally, the Federal Court looks to Federal decisions regarding similar Federal law, and to other state court decisions.

These guides to the Court's determination demonstrate that in 1968, when Kentucky's General Assembly promulgated its long-arm statute with the subject "acts . . . in this Commonwealth" provision, it intended to include tortious criminal conduct committed against Kentucky citizens by out-of-state defendants.

Kentucky law assumes the General Assembly is aware of the existence of criminal laws and statutes when it enacts later legislation. All statutes are to be liberally construed to promote the objects and the intent of the legislature, which is found by construing the text according to its common legal usage and meaning.

Furthermore, where a legal right exists, a legal remedy exists. Remedial statutes, like Kentucky's long-arm statute, extend existing rights and are to be broadly construed.

The General Assembly's 1968 enactment of Kentucky's long-arm statute was informed by two long-established Kentucky legal principles. First, committing a Kentucky crime required an act by the Defendant occurring in the Commonwealth. This *actus reas* requirement encompassed conduct by out-of-state actors who violated Kentucky's criminal statutes, including communicating harmful messages to Kentucky citizens by threatening letters and obscene telephone calls.

Second, since 1900, KRS 446.070 provided Kentucky citizens with a private right of action for violations of Kentucky criminal statutes where the plaintiffs belonged to its protected class. The General Assembly presumptively was aware of KRS 446.070 in 1968 when it enacted Kentucky's long-arm statute. Accordingly, this latter legislation is to be harmonized with 446.070.

Dr. Chandrasekhar committed Kentucky crimes when she communicated her fear-engendering tweets into the Commonwealth and to the Kentucky students. Although not physically present in Kentucky at the time, Dr. Chandrasekhar's conduct was the type of criminal act in Kentucky for which KRS 446.070 provided the students with a civil cause of action against her. When it enacted the long-arm

statute, the General Assembly understood this was Kentucky law. Liberally construed to promote its purpose to extend the rights and remedies of Kentucky citizens, and applying the established legal usage and understanding of what constituted a criminal “act . . . in this Commonwealth,” this long-arm provision encompassed Dr. Chandrasekhar’s out-of-state criminally tortious communicative conduct. Contrary to the district court, this is the result the Kentucky legislature and judiciary would intend.

2. Due Process – As refined by *Walden vs. Fiore*, the Supreme Court’s due process minimum contact “effects test” applies to Dr. Chandrasekhar’s criminal tortious harassing, threatening, and menacing threats. She committed intentional crimes, which enhanced her contacts with Kentucky for civil personal jurisdictional purposes. Her crimes were communicative crimes, intended to engender fear of violence, and the disruption that such fear engenders, in the students. When Dr. Chandrasekhar purposely directed her communications into the forum, these constitute the “heart” of the students’ cause of action, and her communications alone constituted purposeful availment of Kentucky. By purposely directing intentional tortious communications into the Kentucky forum, and targeting Kentucky citizens, Dr. Chandrasekhar initiated her contact with Kentucky and connected herself with the Commonwealth in a Constitutionally meaningful way.

Dr. Chandrasekhar's criminally tortious acts in Kentucky were not random, fortuitous, or attenuated, nor were the CCH students mere bystanders to her conduct. They were and remain the intended targets of her purposely directed, criminal tortious acts. Thus, the district court erred when it held it could not exercise personal jurisdiction over Dr. Chandrasekhar consistent with Constitutional due process.

V. STANDARD OF REVIEW

A district court's dismissal of a complaint for lack of personal jurisdiction pursuant to FRCP 12(b)(2) is reviewed *de novo*. *Gerber v. Riordan*, 649 F.3d 514, 517 (6th Cir. 2011).

VI. ARGUMENT

A. KRS 454.210(2)(a)(3) Provided The District Court Personal Jurisdiction Over Dr. Chandrasekhar's Criminal Tortious Acts In Kentucky.

Sitting in diversity, the district court can exercise personal jurisdiction over Dr. Chandrasekhar if a Kentucky court could do so. Kentucky's long-arm jurisdictional analysis: (1) determines whether the cause of action is the type of conduct enumerated in KRS 454.210; and (2) if so, assesses whether exercising jurisdiction is consistent with due process. *Caesars Riverboat Casino, LLC v. Beach*, 336 S.W. 3d 51, 57 (Ky. 2011).

Subpart (2)(a)(3) of Kentucky's long-arm statute extends personal jurisdiction to the person who acts "causing tortious injury by an act or omission in this Commonwealth." Dr. Chandrasekhar's out-of-state commission of Kentucky harassment, menacing, and threatening crimes against the students is the type of conduct that in 1968 the Kentucky General Assembly intended to include as such "an act" within this provision.

Because this legal question is a matter of first impression in Kentucky, this Court must predict how Kentucky's Supreme Court "would rule by looking to all the available data," including "authoritative signals from the state's legislature or judiciary." *State Auto v. Hargis*, 785 F.3d 189, 195 (6th Cir. 2015). The Court also applies "the general rules of statutory construction as embraced by the judiciary" and legislature. *United States v. Simpson*, 520 F.3d 531, 536 (6th Cir. 2008). Additionally, the Court looks to relevant Federal and State court decisions. *Hargis, supra; In re Amazon*, 852 F.3d 601 (6th Cir. 2017).

Kentucky's statutory rules of construction provide that all Kentucky statutes "shall be liberally construed with a view to promote their objects and carry out the intent of the legislature," and words or phrases that "have acquired a peculiar or appropriate meaning in the law, shall be construed according to such meaning." KRS 446.080(1), (4). See, *Commonwealth v. Plowman*, 86 S.W.3d 47 (Ky. 2002). In Kentucky where a legal right exists, a legal remedy exists. *Dorsey & Co. v.*

Phillips & Co., 8 Ky. L. Rptr. 405, 406 (1886), Ky. Consti. §14. See also, *Marbury v. Madison*, 5 U.S. 137, 163 (1803). Moreover, a remedial statute like Kentucky's long-arm statute "implies an intention . . . to extend existing rights," *Ky. Ins. Guar. Ass'n. v. Jeffers*, 13 S.W.3d 606, 610 (Ky. 2000), and is "to be broadly construed to effectuate [its] remedial prupose." *Sevier v. Commonwealth*, 434 S.W.3d 443, 469 (Ky. 2014).

When construing statutes, Kentucky also "assumes that the General Assembly was aware of the existence of [a prior] statute when it enacted" a later statute, and intends that the two statutes "be harmonized." *State Farm Mut. Ins. Co. v. Reeder*, 763 S.W.2d 116, 118 (Ky. 1989). The specific prior statute in *Reeder* was KRS 446.070 – the statute at issue in this appeal – that "creates a private right of action for violation of any statute as long as the plaintiff belongs to the class intended to be protected by the statute." Id.

In 1968, Kentucky adhered to the long established "'*actus reas*' and '*mens reas*' requirements for criminal liability," *Commonwealth v. Mitchell*, 516 S.W.3d 803, 809 (Ky. 2017), which "required a union of act and intention for criminality." *Staples v. Commonwealth*, 454 S.W.3d 803, 812 (Ky. 2014). Under common law territoriality principles Kentucky could only prosecute a crime if "the unlawful act charged occurred in Kentucky," *Flaughter v. Commonwealth*, 279 S.W.2d 775, 776 (Ky. 1955); otherwise, "it would violate both Section 11 of the Kentucky

Constitution and the Sixth Amendment to the United States Constitution.” *Hayes v. Commonwealth*, 698 S.W.2d 827, 830 (Ky. 1985). *See, United States v. Wood*, 364 F.3d 704, 709-710 (6th Cir. 2004).

Under the territoriality principle, it was well established that the perpetrator did not need to be present in the jurisdiction for his act to occur in the state. Where “one puts in force an agency for the commission of the crime, he in legal contemplation accompanies the same to the place where it becomes effective.” 1 Wharton Criminal Law §14 (15th ed. 2020). Kentucky adopted this principle in 1889:

. . . it is well settled that, where one puts into operation the force or power that causes the injury, he is responsible where the wrong is perpetrated, although he may not be actually present. If either of the appellants had stood on the Virginia shore, and shot the deceased on the Kentucky side, the offense would have been against the laws of Kentucky.

Hatfield v. Commonwealth, 11 Ky.L.Rptr. 468, 12 S.W. 309 (1889). Thereafter, the General Assembly enacted criminal statutes that prosecuted perpetrators of interstate communication crimes, including sending threatening letters (KRS 435.250) in 1942 and making obscene telephone calls (KRS 436.107) in 1966. Because the victims received these messages in Kentucky, these criminal acts occurred in Kentucky “where the wrong is perpetrated.” *Hatfield, supra*.

Here is what the General Assembly knew when it enacted KRS 454.210:

- Constitutionally, Kentucky only had jurisdiction to prosecute crimes when the act occurred in Kentucky;
- Kentucky could prosecute interstate communication crimes – telephone calls, letters – because the criminal act occurred in the Commonwealth when received by the victim;
- The victims could bring civil causes of actions against the perpetrators for their criminal tortious conduct, such as threatening telephone calls or letters KRS 446.070;
- As remedial legislation, Kentucky’s long-arm statute was intended to extend the existing rights of Kentucky citizens, including against such out-of-state perpetrators; and,
- Kentucky’s long-arm statute, like KRS 446.070 before it, and like every “civil, penal, and criminal statute” in Kentucky is to be liberally construed to promote its objects. KRS 446.080.

These “authoritative signals from the state’s legislature or judiciary,” *Hargis*, 785 F.3d at 195, demonstrate that the Kentucky Supreme Court would construe “an act . . . in this Commonwealth” as encompassing Ms. Griffin’s out-of-state criminal tortious communications directed at the Commonwealth and targeted to its student citizens. In 1968, such threatening communications were precisely and necessarily understood as such “acts” for which victims could civilly sue the

perpetrators. Indeed, the United States and Kentucky Constitutions required that the victim's receipt of the threat was the foundational "act" occurring in the State.

Other Federal and State authorities hold that criminal communicative acts occur where received. Under the Supreme Court's "true threat" analysis a speaker has no First Amendment protection because prohibiting

true threats "protect(s) individuals from the fear of violence" and "from the disruption that fear engenders," in addition to protecting people "from the possibility that the threatened violence will occur."

Virginia v. Black, 538 US 343, 360 (2003). Such "true threats" are acts which occur when and where "those who hear or read the threat reasonably consider that an actual threat has been made." *United States v. Wheeler*, 776 F.3d 736, 743 (10th Cir. 2015). See also, *United States v. Alkhabaz*, 104 F.3d 1492, 1496 (6th Cir. 1997) (*actus reus* occurs when the communication is received and the recipient's well-being is disrupted.) State authorities are consistent. *State v. Meyers*, 825 P.2d 1062, 1064-65 (Hi. 1992) (a threat "constitutes conduct in the jurisdiction in which [it] is received."); *State v. Woolverton*, 159 P.3d 985, 993 (Ks. 2007) (a threatening communication "must be perceived and comprehended."); and, *Sykes v. State*, 578 N.W.2d 807, 811 (Minn. App. 1998) (threatening letters and telephone calls must be "communicated to the intended victim.").

True threats also include, as in Dr. Chandrasekhar's case, a defendant's encouragement to others to harm victims. "Exhorting groups of followers to

[harm] specific individuals can produce fear in a recipient no less than more traditional forms of threats.” *Wheeler, supra* at 746. This is particularly the case in the digital world where the unique and intrinsic character of the Internet enhances the truly threatening nature of exhortation communications.

Such threats have the ability to reach a vast audience – far more than the traditional speaker or author published in a single venue. The threats may often come cloaked in anonymity, allowing authors to make menacing statements they would never consider making to an individual in person. And, given the prevalence and diversity of Internet fora and discussion boards, such exhortations may often find a receptive audience of like-minded individuals – perhaps audiences more willing to do the bidding of one urging violent action.

Wheeler, supra at p. 745, n. 4.

Kentucky adopted the Kentucky Penal Code in 1975 and abolished common law offenses. KRS 500.020(1). Nonetheless, the Code retains “the foundational provision” that a crime must include an act and an intention, *Mitchell, supra* at 805, citing KRS 501.030, and the territorial principle that a crime occurs in Kentucky where “the conduct or the result which is an element of the offense occurs within this state.” KRS 500.060. The Code includes the “true threat” harassment, threatening, and menacing communications provisions at issue in this case, which expand from threatening letters and telephone calls to all electronic forms of communication including the internet. See e.g., KRS 525.080. Although the nature and scope of communication has changed, the fundamental principle

remains: out-of-state threats to Kentucky residents are jurisdictional acts in Kentucky.

The criminal statutory origins of Kentucky “true threat” torts distinguishes these torts from common law communication torts involving out-of-state acts with only harmful consequences in Kentucky, such as mailing an invasion of privacy letter, *Pierce, supra*, or telephoning and emailing fraudulent representations or solicitations. *Management Registry, Inc. v. Consulting Partners, Inc.*, Civil Action no. 3:19-CV-00340 (W.D. Ky. 9/18/2019), *Perkins v. Bennett*, 2013 WL 6002761 (W.D. Ky. 2013), and *Barker, supra*. These torts do not Constitutionally require that, to be actionable, the tortious act occurred in Kentucky; rather, consequences are enough. However, “true threat” crimes that are actionable torts comprising both acts and intended harmful consequences in Kentucky. That is what the General Assembly understood and intended when it enacted Kentucky’s long-arm statute to expand the rights and remedies of Kentucky citizens against out-of-state perpetrators.

Because criminally sourced torts arising from KRS 446.070 necessarily include predicate acts committed in Kentucky, recognizing that the General Assembly intended to encompass these within KRS 454.210(2)(a)(3) does not obviate subpart (2)(a)(4). This subpart bars tortious consequence only claims, not criminal tortious conduct. Similarly, such recognition does not throw Kentucky

courthouse doors open to every set of facts which might give rise to tortious injury in Kentucky. The courthouse may remain closed to those who act remotely to commit common law torts against Kentucky residents, *Crum, supra*; however, when non-residents commit crimes against its residents, Kentucky intends to exercise personal jurisdiction over such “acts in this Commonwealth.”

B. The District Court Could Exercise Personal Jurisdiction Over Dr. Chandrasekhar.

Territorial jurisdiction for criminal acts is not coextensive with personal jurisdiction in a civil case. Prosecutions only require the defendant’s physical presence in the jurisdiction, irrespective how it was obtained, absent shocking and outrageous behavior. 2 LaFave, *Criminal Procedure* §3.1(j) at 56 (4th Ed. 2015). Civil actions require that the defendant “purposely availed himself of the privilege of acting in the forum state” by establishing a “substantial connection with the forum state” sufficient to satisfy due process “minimum contacts” with the forum so as to be fairly brought to its courts. *Power Investment, LLC v. SL EC LLC*, 927 F.3d 914, 917 (6th Cir. 2019), citing *Walden v. Fiore*, 571 US 277 (2014), and *Burger King Corp. v. Rudzewicz*, 471 US 462 (1985).

While recognizing this due process distinction, the criminal nature of Kentucky’s true threat torts directly informs a Kentucky court’s personal jurisdiction over the plaintiffs/students’ civil claims against Dr. Chandrasekhar.

As noted, her predicate criminal acts Constitutionally and necessarily occurred in Kentucky.

“[T]he locus delecti [of the crime charged] must be determined from the nature of the crime alleged and the location of the act or acts constituting it.” *United States v. Cabrales*, 524 U.S. at 6-7. In determining the “locus delecti” of a crime, the Supreme Court directs us to “initially identify the conduct constituting the offense (the nature of the crime) and then discern the location of the commission of the criminal acts.” *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279.

Wood, *supra*, 364 F.3d at 710. By committing her criminal tortious conduct in Kentucky, Dr. Chandrasekhar is the person whose “unilateral activity” initiated the contact with the State, and whose “effects were purposely directed towards residents of Kentucky.” *Power Investment*, *supra*, 927 F.3d at 919, quoting *Walden*, 571 US at 286, and *Burger King*, 471 US at 476. Because the students’ “cause of action arises directly from [Dr. Chandrasekhar’s] communications into Kentucky, it is reasonable to hold [her] to account in the State.” *Power Investment* at 919.

In addition to the location of Dr. Chandrasekhar’s communicative acts, the communicative nature of her criminal tortious behavior is determinative. It is the “quality of the contacts, not the quantity, that determines whether they constitute purposeful availment.” *Neal v. Janssen*, 270 F.3d 328, 332 (6th Cir. 2001). Here, Dr. Chandrasekhar’s criminally tortious communications were intentional; the

content of these communications was the core of her tortious activity; and, these communications necessarily had to be received in Kentucky.

Under the Supreme Court's "effects test" originating in *Calder v. Jones*, 465 U.S. 783 (1984) and *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), and modified by *Walden, supra*, "the existence of intentional tortious conduct nonetheless 'enhances' a party's other contacts with the forum state for the purposes" of personal jurisdiction. *Air Products and Control, Inc. v. Safetech Int'l, Inc.*, 503 F.3d 544, 552-553 (6th Cir. 2007). Moreover, "when the actual content of the communications into the forum gives rise to an intentional tort action, that alone may constitute purposeful availment." *Neal, supra* at 332. And, although Dr. Chandrasekhar "never entered Kentucky," the reality of modern communication is that her electronic communications into the Commonwealth were criminally tortious acts that she initiated and which were "purposely directed toward residents of" Kentucky. *Power Investment, supra* at 919, quoting *Burger King*.

Dr. Chandrasekhar's criminally tortious acts in Kentucky were not merely "random, fortuitous, or attenuated." *Burger King*, 471 U.S. at 475; *Walden*, 571 U.S. at 277. She did not accidentally send innocent and harmless information to the students. Rather, she posted a stunningly effective, indelible visual – a Wanted Poster – of the students' separately numbered pictures, knowing this would forever

circulate in cyberspace. After advocating a method and format to ease the students' identification, Dr. Chandrasekhar called for her targets to be doxed, electronically harassed, by revealing their personal and private information. Dr. Chandrasekhar's communications were criminally tortious behavior targeted at the students for the purpose of engendering fear and disruption in them and their lives. Accordingly, Kentucky "has an especial interest in exercising judicial jurisdiction over those [like Dr. Chandrasekhar] who commit torts within its territory." *Keeton*, 465 U.S. at 776.

VII. CONCLUSION

The Court should reverse the District Court's Judgment under Civil Rule 12(b)(2) and remand the case for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This document complies with the page limitations in FRAP 32(a)(7) because the brief has 23 pages.

2. This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 14, 2020, an electronic copy of the Brief of Appellants was filed with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. The undersigned also certifies that the following participants who are registered users will be served via the CM/ECF system.

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ADDENDUM**DESIGNATION OF LOWER COURT DOCUMENTS**

Pursuant to 6 Cir. R. 30(g), Appellants, hereby designate as relevant to this appeal those portions of the following District Court documents by record entry number and brief description:

Record Entry	Description	Page ID #
1	Complaint	1-11
12	Defendant Dr. Chandrasekhar's Motion to Dismiss for Lack of Jurisdiction	42-66
12-1 to 12-3	Defendant Dr. Chandrasekhar's Exhibits to Her Motion	67-73
18	Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss	86-109
19	Defendant Dr. Chandrasekhar's Reply Brief	110-126
20	Memorandum Opinion & Order	127-139
21	Judgment	140
22	Plaintiffs' Notice of Appeal	141-142