IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-272

INTERNET SOLUTIONS CORPORATION,

APPELLANT,

v.

TABATHA MARSHALL,

APPELLEE.

ON QUESTION CERTIFIED BY THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

CORRECTED BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF APPELLEE TABATHA MARSHALL

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IDENTITY AND INTEREST OF AMICUS CURIAE

Public Citizen is a national public-interest organization based in Washington, D.C., with more than 3000 members in Florida. Since its founding in 1971, Public Citizen has advocated for protections for citizens who speak out against abuses by governments and corporations. Along with its efforts to encourage public participation, Public Citizen has brought and defended many cases involving the First Amendment rights of citizens who participate in public debates.

For the past decade, Public Citizen has observed an increasing number of companies using litigation to prevent ordinary citizens from using the Internet to express their opinions about those companies' products and services. Frequently, companies sue or threaten to sue without a substantial legal basis, hoping to silence their critics through the threat of ruinous litigation. Public Citizen lawyers have represented Internet speakers who have been sued for publicly criticizing companies online and have successfully argued motions to dismiss based on lack of personal jurisdiction or the First Amendment rights of the speaker. *See generally* http://www.citizen.org/litigation/briefs/IntFreeSpch/.

SUMMARY OF ARGUMENT

This Court should interpret Florida's long-arm statute in a manner consistent with traditional notions of fairness. At a minimum, fairness requires that

defendants have warning that their activities may require them to defend themselves in a distant forum. Interpreting the statute to ensure that defendants have this notice effectuates the legislature's intent and allows courts to avoid the constitutional question of whether jurisdiction is consistent with the minimum standards of fairness required by due process.

As nearly every court to have considered the question has held, a website owner who refers to a company on a website that is equally accessible in all states cannot reasonably expect to face jurisdiction in every state where that website can be viewed. Accordingly, in determining whether jurisdiction is proper, courts look to whether a website specifically targets forum residents and whether the site is commercially interactive. Because the defendant, Tabatha Marshall, posted the allegedly defamatory statements on a noncommercial, minimally interactive website that did not specifically target Florida residents, she should not be subjected to jurisdiction in Florida. "To hold otherwise would subject millions of internet users to suit in the state of any company whose trademarked name they happen to mention on a website." *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F. Supp. 2d 1154, 1166 (W.D. Wis. 2004).

Forcing website operators like Marshall to defend themselves in Florida would seriously undercut the Internet's potential as a forum for consumers to exchange their views and experiences about products and services. In Public

Citizen's experience, companies often bring suits such as this one not because they believe they have a legitimate claim, but in the hope that the website owner will remove a challenged website or post to avoid the possibility of costly litigation. Although not all such claims are frivolous, companies and their lawyers are aware of how intimidating it is for an unrepresented Internet speaker to face the prospect of liability in another state. Here, the plaintiff's defamation claim seems to be based on an expression of Marshall's opinion that is protected by the First Amendment, and on the statements of visitors to her site for which she is immune from liability under the Communications Decency Act, 47 U.S.C. § 230.

Without limits on the scope of state jurisdiction over websites, companies can abuse the courts to suppress discussion and criticism of their products, and sites like Marshall's will not long survive. For this reason, the Court should hold that jurisdiction over Marshall's site falls outside the bounds of the long-arm statute.

ARGUMENT

I. Questions of Fundamental Fairness Should Inform this Court's Interpretation of the Florida Long-Arm Statute.

"In determining whether long-arm jurisdiction is appropriate in a given case, two inquiries must be made. First, it must be determined that the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of the statute; and if it does, the next inquiry is whether sufficient 'minimum contacts' are

demonstrated to satisfy due process requirements." *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). The Eleventh Circuit's certified question asks this Court only to decide the first question—whether the long-arm statute covers the conduct at issue here. Nevertheless, the Court should take account of questions of fundamental fairness in considering whether the legislature intended to create jurisdiction under the circumstances of this case.

Due process provides a minimum standard of fairness below which state long-arm statutes cannot go. Although long-arm statutes cannot provide less fairness than due process requires, they are free to set standards that are higher than the due process minimum. *See Traylor v. State*, 596 So. 2d 957, 961 (Fla. 1992) ("[I]in our federal system of jurisprudence, the United States Constitution establishes the minimum level of due process protections for all people, but state constitutions and laws may provide additional due process protections."); *see also DeSantis v. Hafner Creations, Inc.*, 949 F. Supp. 419, 422 (E.D. Va. 1996) ("Virginia's long-arm statute provides a ceiling of procedural protections above the federal floor of due process."). Unlike the long-arm statutes of many jurisdictions, which courts have interpreted as simply tracking the due process standard, Florida's long-arm statute provides distinct and independent limits on personal jurisdiction. *See Milligan Elec. Co. v. Hudson Const. Co.*, 886 F. Supp. 845, 848 (N.D. Fla. 1995). The independent protection offered by the long-arm statute is

strictly construed in favor of non-resident defendants. *Blumberg v. Steve Weiss & Co.*, 922 So. 2d 361, 363 (Fla. 3d DCA 2006); *see also Oriental Imps. & Exps., Inc. v. Maduro & Curiel's Bank, N.V.*, 701 F.2d 889, 891 (11th Cir. 1983) ("The Florida long-arm statute is strictly construed.").

When, as here, a statute is ambiguous, the legislature is assumed to have adopted a meaning that is consistent with the standards of fundamental fairness inherent in due process. *See Larimore v. State*, 2 So. 3d 101, 107 (Fla. 2008) (holding that statutory interpretation should be "conducted with due regard to 'the basic tenets of fairness and due process'"). Due process requires at a minimum that defendants have "fair warning" that a particular activity may require them to defend themselves in the jurisdiction, *Burger King v. Rudzewicz*, 471 U.S. 462, 472 (1985), and thus "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Moreover, Article 1, section 9 of the Florida Constitution imposes a separate due process requirement, which this Court has held in some cases to require more than the minimum level of fairness required by federal due process standards. Art. I, §9, Fla. Const.; *see Traylor*, 596 So. 2d at 961; *M.E.K. v. R.L.K.*, 921 So. 2d 787, 790 (Fla. 5th DCA 2006).

In drafting the long-arm statute, the legislature can be assumed to have been operating with the guidance of the "traditional notions of fair play and substantial justice" that underlie due process. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation omitted). Therefore, this Court should interpret the long-arm statute in a manner consistent with these standards. *See Venetian Salami*, 554 So. 2d at 503 n.2.

The doctrine of constitutional avoidance also requires reading the long-arm statute in a manner consistent with fundamental fairness. As this Court has held, "courts have a duty to construe a statute in such a way as to avoid conflict with the Constitution." *Fla. Bar v. Sibley*, 995 So. 2d 346, 350 (Fla. 2008). Because the legislature cannot be assumed to have silently adopted a statute that creates a difficult constitutional question, this Court should, if possible, construe the long-arm statute in a way that avoids even a potential conflict with due process protections. *See State v. Mozo*, 655 So. 2d 1115, 1117 (Fla. 1995) ("[W]e adhere to the settled principle of constitutional law that courts should endeavor to implement the legislative intent of statutes and avoid constitutional issues."); *Cashatt v. State*, 873 So. 2d 430, 436 (Fla. 1st DCA 2004) ("[A] statute is to be construed where fairly possible so as to avoid substantial constitutional questions.").

Relying on the concepts of fairness inherent in the long-arm statute, and without reaching the separate question of due process, the Florida Second District

Court of Appeal, in a unanimous en banc decision, recently held that the long-arm statute did not support jurisdiction against an out-of-state resident for illegally recording a telephone call to a Florida resident from another state. *Kountze v. Kountze*, 996 So. 2d 246, 252 (Fla. 2d DCA 2008) (en banc). The court stated that extending the long-arm statute to cover these facts would mean that the statute "would permit practically any regulated act committed anywhere in the world affecting a person in Florida to subject the actor to the jurisdiction of the courts of Florida even if that person had no other contacts with the state." *Id.* The court refused to believe that "the legislature intended such an expansive interpretation." *Id.* Similarly, the Second Circuit has used fairness as a guide in interpreting New York's long-arm statute. *See Best Van Lines, Inc. v. Walker,* 490 F.3d 239, 252 & n.13 (2d Cir. 2007).[1]

By interpreting the long-arm statute to include the "traditional concept that jurisdiction could only be created if the communications were directed at Florida residents," as the Eleventh Circuit suggested in its opinion certifying the question

[1] *See also Bensusan Rest. Corp. v. King*, 126 F.3d 25, 29 (2d Cir. 1997) (holding that alleged defamation appearing on a Missouri website did not occur "within the state" of New York under New York's long-arm statute); *Bible & Gospel Trust v. Wyman*, 354 F. Supp. 2d 1025 (D. Minn. 2005) (holding that the act of maintaining a website from outside Minnesota that allegedly defamed a Minnesota organization was not an act occurring in Minnesota under the state's long-arm statute); *Alternate Energy Corp. v. Redstone*, 328 F. Supp. 2d 1379, 1383 (S.D. Fla. 2004) ("[S]elling subscriptions to an internet site to an unknown, relatively small number of Florida residents . . . does not constitute the commission of a tortious act in Florida" under the long-arm statute).

in this case, *Internet Solutions Corp. v. Marshall*, 557 F.3d 1293, 1296 (11th Cir. 2009), this Court can ensure that courts apply the statute in a way that is reasonable and fair without resorting to the minimum standards of fairness required by due process.

II. Fundamental Fairness Requires that Marshall Not Be Subjected to Jurisdiction in Florida.

Because Marshall's statements "appeared on a general website and did not specifically target Florida residents," *id.*, it would be fundamentally unfair to subject her to jurisdiction in Florida. For this reason, the Court should hold that jurisdiction over Marshall's site falls outside the bounds of the long-arm statute.

Courts have almost universally recognized that simply referring to a company on a website that is equally accessible in all states cannot subject a party to jurisdiction in every state where that website can be viewed.[2] Rather, fairness requires that a website be expressly aimed at readers in the forum state before subjecting an operator to jurisdiction in that state. *See, e.g.*, *Trintec Indus.,* 395

[2] *See Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th Cir. 2006); *Trintec Indus., Inc. v. Pedre Promotional Prods., Inc.,* 395 F.3d 1275, 1281 (Fed. Cir. 2005); *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 400 (4th Cir. 2003); *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 454 (3d Cir. 2003); *Bird v. Parsons*, 289 F.3d 865, 874 (6th Cir. 2002); *Revell v. Lidov*, 317 F.3d 467, 475 (5th Cir. 2002); *GTE New Media v. Bellsouth Corp.*, 199 F.3d 1343, 1349-50 (D.C. Cir. 2000); *Soma Med. Int'l v. Standard Chartered Bank*, 196 F.3d 1292 (10th Cir. 1999); *JB Oxford Holdings, Inc. v. Net Trade, Inc.*, 76 F. Supp. 2d 1363, 1367 (S.D. Fla. 1999); *Instabook Corp. v. Instantpublisher.com*, 469 F. Supp. 2d 1120, 1125-26 (M.D. Fla. 2006).

F.3d at 1281 (holding that the court lacked jurisdiction in the District of Columbia where the defendant's website was "not directed at customers in the District of Columbia, but instead [was] available to all customers throughout the country who have access to the Internet"); *Revell*, 317 F.3d at 475 (finding no personal jurisdiction over a message-board that was "directed at the entire world" but not specifically at the forum state); *see also Lakin v. Prudential Secs., Inc.*, 348 F.3d 704, 711 (8th Cir. 2003); *Carefirst*, 334 F.3d at 400.

To determine whether a website operator has purposefully targeted forum residents, many courts look to the "sliding scale" test established in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997).[3] The *Zippo* test can be used to analyze either the reach of a state long-arm statute or the constitutional limits of due process. *See Best Van Lines,* 490 F.3d at 252 & n.13 (applying *Zippo* to New York's long-arm statute). *Zippo* requires courts to examine "the level of interactivity and commercial nature of the exchange of information" on a website to determine the appropriateness of the exercise of personal jurisdiction. *Zippo*, 952 F. Supp. at 1124. Those sites that are more interactive and commercial in nature are more likely to subject their operators to personal

[3] *See Best Van Lines,* 490 F.3d at 252 & n.13; *Toys "R" Us*, 318 F.3d at 452; *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.,* 293 F.3d 707, 713 (4th Cir. 2002); *Soma Med. Int'l*, 196 F.3d at 1297; *Mink v. AAAA Dev. LLC,* 190 F.3d 333, 336 (5th Cir. 1999); *Cybersell, Inc. v. Cybersell, Inc.,* 130 F.3d 414, 418 (9th Cir. 1997).

jurisdiction in the forum. Courts have cautioned, however, that even highly interactive and commercial websites are insufficient to give rise to personal jurisdiction if the defendant did not purposefully aim the website at the forum state. *See Instabook Corp.*, 469 F. Supp. 2d at 1125.[4]

Under the personal jurisdiction test adopted by the vast majority of courts, Marshall is not subject to jurisdiction in Florida. Courts examining similar consumer-complaint sites have rejected jurisdiction based on accessibility of a website from within a state. *See Dynetech Corp. v. Leonard Fitness, Inc.*, 523 F. Supp. 2d 1344, 1348 (M.D. Fla. 2007) (rejecting jurisdiction in Florida where a website was "as accessible from Florida as . . . from any other state or anywhere in the world where Internet access is available"); *Hy Cite Corp.*, 297 F. Supp. at 1165-66 (holding that a consumer-complaint site was of interest to a national audience and therefore "not targeted at [the citizens of the forum state] more than the citizens of any other state"); *Full Sail, Inc. v. Spevack*, No. 03-887, 2003 WL 25277185, at *4 (M.D. Fla. Oct. 21, 2003) (rejecting jurisdiction over a consumer-complaint site that allowed users to post comments about sailing schools, noting

[4] The Eleventh Circuit has not decided whether to adopt the *Zippo* test but has expressed skepticism about its applicability. *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1220 (11th Cir. 2009). In this regard, it is an outlier among the circuits. Federal district courts in the state, however, have applied the test. *See, e.g., Miller v. Berman*, 289 F. Supp. 2d 1327 (M.D. Fla. 2003); *Hartoy, Inc. v. Thompson*, No. 02-80454, 2003 WL 21468079 (S.D. Fla. Jan. 29, 2003); *J.B. Oxford Holdings, Inc., v. Net Trade, Inc.*, 76 F. Supp. 2d 1363 (S.D. Fla. 1999).

that, although one of the targeted companies was in Florida, the website was not "purposefully directed at Florida readers"). That the plaintiff corporation is based in Florida is therefore not enough to satisfy due process without evidence that the website intentionally targeted readers in the state. *See Revell*, 317 F.3d at 475; *JB Oxford Holdings*, 76 F. Supp. 2d at 1367-68. "To hold otherwise would subject millions of internet users to suit in the state of any company whose trademarked name they happen to mention on a website." *Hy Cite Corp.*, 297 F. Supp. 2d at 1166.

Although Marshall's site is somewhat "interactive" in the sense that it allows user comments, courts have held that this sort of user feedback is insufficient to subject a website operator to jurisdiction in the forum state under the *Zippo* test. *See, e.g., Carefirst*, 334 F.3d at 400-01 (holding the court lacked personal jurisdiction over a website that allowed users to exchange information); *Revell*, 317 F.3d at 476 (holding jurisdiction lacking over the operator of an electronic bulletin board). Moreover, "[w]ebsite interactivity is important only insofar as it reflects commercial activity." *Instabook Corp.*, 469 F. Supp. 2d at 1125 (internal quotation omitted). The evidence is undisputed that the interactivity of Marshall's site is completely noncommercial in nature—the site merely allows users to post feedback about products they have used and does not offer any goods or services for sale. *See Cybersell*, 130 F.3d at 419 (holding that the defendant was not subject

to jurisdiction when he had "conducted no commercial activity over the Internet in [the forum state]"). It therefore does not include the sorts of commercial interactivity on which courts following the *Zippo* test have based jurisdiction. *See, e.g., Berthold Types, Ltd. v. Eur. Mikrograf Co.*, 102 F. Supp. 2d 928, 933-34 (N.D. Ill. 2000) (holding that a company's partially interactive website did not give rise to jurisdiction in a state because sales could not be conducted over the site); *JB Oxford Holdings*, 76 F. Supp. 2d at 1367-68 (holding personal jurisdiction lacking in Florida where the defendant sold no products to consumers in the state).[5]

Unlike the other federal courts of appeals, the Eleventh Circuit in a recent decision appears to have taken a relatively broad view of the extent of personal jurisdiction over website operators. In *Licciardello v. Lovelady*, 544 F.3d 1280, 1286 (11th Cir. 2008), a musician residing in Florida sued the operator of a website residing in Tennessee, claiming that the website infringed his trademark. The court held that jurisdiction in Florida was proper based on the plaintiff's claim to have been injured in the state. *Id.* To reach this result, the court relied on the Ninth Circuit's decision in *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1321-22 (9th Cir. 1998), without acknowledging later Ninth Circuit cases or the many

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[5] To the extent the complaint is based on comments posted by visitors to Marshall's site, jurisdiction would be especially inappropriate here. Because Marshall does not control what comments users post, she cannot target those comments to readers of any particular state. *See Hy Cite Corp.*, 297 F. Supp. 2d at 1165-66 ("If defendant is not creating the text, then defendant is not purposefully directing its activities toward any particular company or state.").

decisions from other circuits holding that mere accessibility of a website in a state is insufficient to give rise to personal jurisdiction there. *See Pebble Beach Co.*, 453 F.3d at 1156-57 (distinguishing *Panavision*); *Williams v. Adver. Sex LLC*, No. 05-51, 2009 WL 723168, at *5 (N.D. W. Va. Mar. 17, 2009) (reading *Licciardello* as "plainly contrary" to the law of the Fourth Circuit). *Licciardello* is not controlling here both because the court limited its holding to the facts of that case and because this court is not bound by the Eleventh Circuit's interpretation of federal due process. *See Raymond James Fin. Servs., Inc. v. Saldukas*, 896 So. 2d 707, 710 (Fla. 2005). Nevertheless, if this Court were to hold that the long-arm statute covers the conduct at issue here, it could not rely on due process to resolve any resulting unfairness in cases brought in federal court. Under *Licciardello*, due process provides no safety net.

III. Extending Long-Arm Jurisdiction Over This Case Would Hurt Consumers by Chilling Internet Speech.

Courts have acknowledged the importance of protecting free speech on the Internet, recognizing its capacity to "dramatically change[] the nature of public discourse by allowing more and diverse people to engage in public debate." *Doe v. Cahill*, 884 A.2d 451, 455 (Del. 2005). The Internet permits anyone with a computer to "become a town crier with a voice that resonates farther than it could from any soapbox." *Reno v. ACLU*, 521 U.S. 844, 870 (1997). Consumers, in particular, benefit from the Web's potential as a tool for mass communication by

using it to compare prices and quality, warn others about their negative experiences, and hold companies publicly accountable on issues such as the environment, public health, working conditions, and human rights.

Newspapers and other mainstream media entities often have the resources and the interest to fight a defamation challenge in a foreign jurisdiction. Because individual authors of Internet posts generally do not profit from the criticism, however, they have little or no financial interest in hiring a lawyer to defend their rights. In the face of an expensive out-of-state lawsuit, travel expenses, and lost work time, consumers threatened with an out-of-state lawsuit are likely to simply give in to a company's demands that they take criticism offline. The threat of liability in another jurisdiction thus chills Internet speech by destroying the "breathing space" essential to the First Amendment. *New York Times Co. v. Sullivan*, 376 U.S. 254, 271-72 (1964). If this Court were to hold that the Florida long-arm statute covers Marshall's site, it would provide a strong incentive against criticizing corporations located in Florida, thereby harming consumers both inside and outside the state. Moreover, if other states adopted the same reading of their long-arm statutes, Florida citizens commenting on companies in those states would be at risk of being subjected to jurisdiction there.

Marshall's website assists consumers by documenting "suspicious" online job solicitations. Her site discusses companies alleged to offer low-quality job

training and diploma mills; bogus work-at-home job schemes that require up-front payments; pyramid schemes; and "bait and switch" job offers, in which applicants, instead of being offered a job, are charged unexpected fees or barraged with advertisements for unwanted goods or services. *See* Federal Trade Commission, *Help Wanted . . . Finding a Job*, http://www.ftc.gov/bcp/edu/pubs/consumer /products/pro22.shtm ("Although many of these firms may be legitimate and helpful, others may misrepresent their services, promote out-dated or fictitious job offerings, or charge high up-front fees for services that may not lead to a job."). The issues covered on Marshall's site are serious ones for consumers. In 2008, the Federal Trade Commission received more than 20,000 consumer complaints regarding offers for business opportunities, employment agencies, and work-at-home jobs. Federal Trade Commission, *FTC Releases List of Top Consumer Complaints in 2008*, http://www.ftc.gov/opa/2009/02/2008cmpts.shtm; *see also* Federal Trade Commission, *State, Federal Law Enforcers Launch Sting on Business Opportunity, Work-at-Home Scams*, *at* http://www.ftc.gov/opa/ 2002/06/bizopswe.shtm ("Business opportunity scams and work-at-home schemes are frauds that can cost consumers their life savings, and destroy their dream of owning a successful small business.").

As is typical with lawsuits filed for the purpose of suppressing speech, the plaintiff's complaint here is vague about the statements that it alleges to be false. A

review of the post attached to the complaint, however, demonstrates that Marshall is accused of nothing more than stating her opinion. *See* Compl., Exh. A. The post is titled "Something's Rotten with VeriResume." *Id.* What was "rotten" about VeriResume, in Marshall's opinion, was that the company's website condemned "resume fraud" by applicants, which she felt was unfair "when there are so many fake companies about." *Id.* The plaintiff may disagree, but the statement is one of opinion that is protected by the First Amendment. *See Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers, AFL-CIO v. Austin*, 418 U.S. 264, 268 (1974) (holding that an accusation of having "rotten principles" was an unprovable statement of opinion). No conceivable evidence could prove whether or not there is "something rotten" with a company. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40 (1974) ("However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.").

Marshall also wrote that she "*thought*" the company "*might* be a phisher" because the company lacked a privacy policy and "so can pretty much do whatever they want with applicant data." Compl., Exh. A (emphasis added). Not only is this another statement of opinion, but Marshall posted the facts on which her opinion was based—that the company did not promise to keep applicant data confidential and could therefore sell it to other companies or use it for unwanted solicitations.

The statement is not defamatory because readers can judge for themselves whether or not they agree with Marshall's interpretation of the facts. *See Rasmussen v. Collier County Publ'g Co.*, 946 So. 2d 567, 571 (Fla. 2d DCA 2006) ("Commentary or opinion based on facts that are set forth in the article or which are otherwise known or available to the reader or listener are not the stuff of libel.").[6]

To be sure, not all claims regarding Internet postings are equally meritless, but companies commonly assert abusive claims to stifle commentary and criticism even when their claims are weak or target speech that is obviously protected by the First Amendment. Recognizing the threat to speech caused by meritless lawsuits against Internet speakers, courts require a preliminary legal and evidentiary showing of a valid cause of action before allowing a plaintiff to subpoena the identity of an anonymous Internet poster. *See, e.g.*, *Indep. Newspapers, Inc. v.*

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[6] Several commenters added responses to Marshall's post. One wrote that he had applied for a position with VeriResume only to be solicited by offers for online colleges. Compl., Exh. A. Another wrote that she had quit her job in reliance on a position with VeriResume, only to have the company stop responding to her inquiries. *Id.* Two separate commenters claimed to be VeriResume employees, writing that the company offered opportunities for jobs that did not exist and used applicant data to solicit for online universities. *Id.* The complaint does not assert that any of these facts are false. In any case, Marshall is not liable for the comments of visitors to the site because, as this Court and every other court to have considered the question has held, the Communications Decency Act, 47 U.S.C. § 230, provides her with immunity for the statements of others on her site. *See Doe v. Am. Online, Inc.*, 783 So. 2d 1010 (Fla. 2001); *see also Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006).

Brodie, 966 A.2d 432 (Md. 2009); *Mobilisa, Inc. v. Doe*, 170 P.3d 712 (Ariz. Ct. App. 2007); *Cahill*, 884 A.2d 451; *Dendrite Int'l, Inc. v. John Doe No. 3*, 775 A.2d 756 (N.J. Super. Ct. App. Div. 2001).

The website at issue in *Dynetech Corp.*, 523 F. Supp. 2d 1344, provides an example of the burden lawsuits in remote jurisdictions impose on consumer websites. There, a Florida infomercial company selling controversial investment products sued an Arizona resident whose website offered consumers a forum to share their experiences, whether good or bad, with a wide range of products marketed through infomercials. The company asserted typical claims of trademark infringement, unfair competition, false advertising, and interference with a business relationship, and claimed jurisdiction in Florida based on the fact that the trademarked names of the company's products appeared in the website's product reviews. The court dismissed the case on personal-jurisdiction grounds, holding that the site's operator "could not reasonably anticipate being haled into court in this state." *Id*. Soon after prevailing in that case, however, the site owner was sued by another company in Michigan. Consumer Law & Policy Blog, *The Hazards of Running a Consumer Review Website*, http://pubcit.typepad.com/clpblog/2007/12/the-hazards-of.html?cid=98697378 (Dec. 18, 2007). At almost the same time, another company filed suit in Colorado and subpoenaed the site's owner for identifying information about everyone who had posted reviews of the company.

Id. Yet another company then threatened to sue the site's owner in Canada if criticism was not promptly removed. *See* Consumer Law & Policy Blog, *Don't Post This Cease-and-Desist Letter, Or Else*, http://pubcit.typepad.com/ clpblog/200710/ dont-publish-th.html (Oct. 5, 2007).

Although Public Citizen successfully defended the website operator pro bono in each of these cases, most people lack access to public-interest lawyers with national reach, and defending against a lawsuit or subpoena will often be impossibly expensive for a small website operator or commenter on a blog. Even with Public Citizen's assistance, the website's operator was unable to deal with the barrage of legal threats from other companies demanding that negative reviews be taken offline, almost all of which lacked legal basis and were designed only to intimidate him into submission. Eventually, the operator was forced to sell the site to a new owner, who now faces a new legal threat from a different infomercial company. Unless courts adopt sensible limits on the reach of their courts' jurisdiction, consumer-review sites cannot survive.

CONCLUSION

This Court should hold that the long-arm statute does not cover the circumstances outlined in the Eleventh Circuit's certified question.

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Respectfully submitted,

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CERTIFICATE OF FONT COMPLIANCE

I certify that this brief complies with the requirement of Fla. R. App. P. 9.210(2). This brief is typed in Times New Roman 14-point font.

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