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Internet Solutions v. Marshall: The Overreach of Florida's Long-Arm

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Over the last decade, the Florida Supreme Court has rendered the Florida Legislature's carefully crafted long-arm statute virtually useless.¹ And the illogicality of the interpretation of Florida's long-arm statute continued in the most recent installment, *Internet Solutions Corp. v. Marshall*.² This 2010 decision authorized Florida courts to take personal jurisdiction over anyone who defames a Florida resident through the Internet, regardless of whether the defamer was aware of the target's location.³ The plaintiff needs only to show that the website used for defamation was accessible in Florida and was accessed in Florida.⁴

Latent in the Florida Supreme Court's long-arm jurisprudence is one very problematic assumption: that a person who causes harm in Florida commits an act *in* Florida, regardless of where he is physically located.⁵ The Court has used this assumption to circumvent the long-arm statute's existing provision for capturing out-of-state tortfeasors who cause harm in Florida.⁶ This provision needs circumventing because it includes important checks that limit jurisdiction to those who solicit bus-

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1. See *Wendt v. Horowitz*, 822 So. 2d 1252, 1257 (Fla. 2002) (increasing the number of out-of-state defendants who fall within the long-arm statute); *Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co.*, 752 So. 2d 582, 584 (Fla. 2000) (holding that due process is more restrictive than the long-arm statute).

2. 39 So. 3d 1201 (Fla. 2010).

3. *Id.* at 1214.

4. *Id.*

5. See *Wendt*, 822 So. 2d 1252, 1260 (“[I]n order to ‘commit a tortious act’ in Florida, a defendant’s physical presence is not required.”).

6. FLA. STAT. § 48.193(f) (2010).

iness in or receive some benefit from Florida.⁷ The Court's cases have the practical effect of authorizing service over anyone who causes harm in Florida. This thrusts all of the jurisdictional heavy-lifting onto the due process clause because plaintiffs who capture defendants under the *Marshall* interpretation of Florida's long-arm statute can still have their cases thrown out because of the Constitution's limits on jurisdiction.⁸ Putting everything on due process is particularly troubling because the Supreme Court has failed to address personal jurisdiction and the Internet.⁹ Because the Florida long-arm has lost any basis in its plain meaning, the State of Florida and its citizens would be better served by rejecting the current interpretation of the state's long-arm statute and returning to something within the limits of due process.

This Note's aims are three-fold. First, it will explain the Florida Supreme Court's long-arm statute jurisprudence by clarifying the import of the *Marshall* decision and showing that the Court relied on flawed reasoning in reaching that decision. Second, this Note will expose the defects in the Florida Supreme Court's interpretation of its state's long-arm statute and the unbounded expansion of that doctrine through the *Marshall* decision. Finally, this Note will conclude by proposing three alternatives to the current long-arm jurisprudence, which has gone far afield of what a long-arm statute is meant to do.

I. THE *MARSHALL* DECISION

Tabatha Marshall operated a website called tabathammarshall.com, through which she warned people about consumer-related issues.¹⁰ She posted information on the website, and other consumers could post comments on the same page as the original post.¹¹ Ms. Marshall's legal troubles began when she posted about a website called VeriResume.¹² Internet Solutions Corporation (ISC), a Florida-based company that managed a number of websites, operated VeriResume.¹³ Ms. Marshall accused VeriResume of operating a "phishing" scam where it stole per-

7. *Id.*

8. For an extensive discussion on how Florida's long-arm statute and the due process clause of the Constitution interact to confer personal jurisdiction see *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499 (Fla. 1989).

9. See *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2792–93 (2011) (Breyer, J., concurring) ("Because the incident at issue in this case does not implicate modern concerns, . . . this is an unsuitable vehicle for making broad pronouncements that refashion basic jurisdictional rules.").

10. *Marshall*, 39 So. 3d at 1203 (Fla. 2010).

11. *Id.*

12. *Id.*

13. *Id.*

sonal information from consumers to be used for identity theft.¹⁴ Naturally, ISC took offense, particularly because the message was read and commented on by Florida consumers.¹⁵ ISC sued Ms. Marshall for defamation.¹⁶

Significantly, Ms. Marshall operated her website out of her home in Washington and had only been to Florida one time in her life.¹⁷ The Florida Supreme Court enumerated Ms. Marshall's dearth of contacts with Florida:

[S]he had been a resident of Washington since 2000, she had never been a resident of Florida, she had never owned or leased any real estate in Florida, she had no bank accounts or investments in Florida, and she had only visited Florida once—a three-day work-related trip in 2004 that was unconnected with her website. . . . [S]he was the owner and host of the website from her home in Washington, had never sold any products or services in connection with the website, had never placed any advertisements on the website, had never solicited or received any business, advertising, or donations within Florida in connection with the website, had never contracted with an Internet service provider located within Florida, had never provided a capability on the website to distinguish or target Florida individuals or companies, had never received any income or compensation in connection with the website, and had never directed any communication (telephonic or written) into Florida for business purposes in connection with the website.¹⁸

So how did Ms. Marshall end up at the Florida Supreme Court? ISC sued Ms. Marshall in the Federal District Court for the Middle District of Florida.¹⁹ ISC alleged that Ms. Marshall had entered into the State of Florida to commit a tortious act²⁰ in satisfaction of Florida's long-arm

14. *Id.* at 1204. Marshall's post was cleverly titled "Something's VeriRotten with VeriResume . . ." *Id.* at 1203. A phishing scam is defined as "a scam by which an e-mail user is duped into revealing personal or confidential information which the scammer can use illicitly." Merriam-Webster Online, <http://www.merriam-webster.com/dictionary/phishing> (last visited Jan. 22, 2012).

15. *Marshall*, 39 So. 3d at 1203–04.

16. *Id.* at 1204.

17. *Id.* at 1204 n.5.

18. *Id.*

19. *Id.* at 1204.

20. The relevant provision of the Florida long-arm statute is section 48.193(1)(b) providing:

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

...

(b) Committing a tortious act within this state.

FLA. STAT. § 48.193(1)(b) (2010).

statute.²¹ Because she had no contacts with Florida, Ms. Marshall moved to dismiss for lack of personal jurisdiction.²² The district court first recognized that personal jurisdiction requires two findings: that the defendant falls within the long-arm statute and that taking jurisdiction comports with due process.²³ The district court held that it was bound by Eleventh Circuit precedent finding that defamatory communications into Florida satisfied the long-arm statute.²⁴ But the district court held that granting personal jurisdiction violated Ms. Marshall's due process and dismissed the case.²⁵ An appeal by ISC followed.²⁶ The Eleventh Circuit, like the district court, acknowledged that the personal jurisdiction inquiry entails an analysis of the long-arm statute and a due process analysis.²⁷ But unlike the district court, the Eleventh Circuit determined that there was no settled case law on whether posting on a website was sufficient to satisfy the long-arm statute.²⁸ Lacking controlling state precedent on the long-arm statute's applicability, the Eleventh Circuit certified the question to the Florida Supreme Court.²⁹ Oddly, the Eleventh Circuit withheld any ruling on the due process question until after the state had ruled on the long-arm statute.³⁰

The Florida Supreme Court undertook to answer whether a nonresident commits a tortious act within Florida for purposes of the long-arm statute when he or she makes allegedly defamatory statements about a company with its principal place of business in Florida by posting those statements on a website, where the website posts containing the statements are accessible and accessed in Florida.³¹

The Court disclaimed any ruling on the constitutional due process inquiry.³² In characterizing the separate nature of the two inquiries nec-

21. The Florida Supreme Court may want to reconsider their jurisprudence that a non-resident "enters into" the state by way of telephonic, written, or electronic communication if those communications result in harm. This Note argues *infra* that another provision of the Florida long-arm statute better captures these tortfeasors.

22. *Marshall*, 39 So. 3d at 1204.

23. *Id.* at 1205.

24. *Id.* (citing *Horizon Aggressive Growth, L.P. v. Rothstein-Kass, P.A.*, 421 F.3d 1162 (11th Cir. 2005)).

25. *Marshall*, 39 So. 3d at 1205.

26. *Id.*

27. *Id.*

28. *Id.* at 1206.

29. *Id.*

30. *Id.* This is odd because the district court had already determined that due process was not satisfied, so there would be no jurisdiction regardless of the outcome of the certified question. *See Internet Solutions Corp. v. Marshall*, No. 6:07-cv-1740-Orl-22KRS, 2008 WL 958136, at *5 (M.D. Fla., April 8, 2008).

31. *Marshall*, 39 So. 3d at 1206.

32. *Id.* at 1207.

essary for personal jurisdiction, the Court said that the long-arm statute bestows broad jurisdiction on Florida courts, while the Constitution imposes a more restrictive requirement.³³

The Court launched into analysis of its cases interpreting the long-arm statute, and then attempted to fit a website post into the framework of those cases.³⁴ The Court determined that presence in the state is not necessary to commit a tortious act in the state.³⁵ So long as the cause of action arose out of “the nonresident defendant’s telephonic, electronic, or written communications into Florida,” then the long-arm statute was satisfied.³⁶ The next logical question, then, was whether posting defamation on a website that was accessible in Florida constituted an electronic communication into Florida.³⁷

To answer the question of whether the long-arm statute captured someone posting on an Internet site, the Court illustrated how the long-arm statute had been applied in other online contexts.³⁸ The Court analyzed a decision by the Fourth District Court of Appeal holding that disparaging comments on an Internet site fell within the long-arm because the defendants operated an “interactive web site which [sold] product to Florida residents.”³⁹ In *Renaissance Health*, the defendant allegedly libeled the plaintiff on its website.⁴⁰ Significantly, the defendant also sold books to Florida residents through the same website.⁴¹ This decision, the Court noted, hinged on the site’s interactivity with Florida residents.⁴² The Court recognized that a federal court in Florida similarly relied on whether a site was “passive” or “active” in determining satisfaction of the long-arm.⁴³ But not every court facing the Florida long-arm statute and Internet-based suits discussed the passivity or activity of the website.⁴⁴ It suffices to say the Court found that “[a] review of the relevant case law reveals that courts interpreting Florida

33. *Id.* (citing *Wendt v. Horowitz*, 822 So. 2d 1252, 1257 (Fla. 2002)). This statement sounds, and is, completely backwards. The reasons will be discussed *infra*.

34. *Marshall*, 39 So. 3d at 1207.

35. *See id.* at 1208 (citing *Wendt*, 822 So. 2d at 1260) (“After reviewing relevant case law, this Court held that a defendant’s physical presence is not necessary to commit a tortious act in Florida.”).

36. *Marshall*, 39 So. 3d at 1208.

37. *Id.*

38. *See id.* at 1210.

39. *Id.* (citing *Renaissance Health Publ’g, LLC v. Resveratrol Partners, LLC*, 982 So. 2d 739, 742 (Fla. Dist. Ct. App. 2008)).

40. *Renaissance Health*, 982 So. 2d at 741.

41. *Id.*

42. *See Marshall*, 39 So. 3d at 1210.

43. *Id.* (citing *Whitney Info. Network, Inc. v. Xcentric Ventures, LLC*, 347 F. Supp. 2d 1242 (M.D. Fla. 2004)).

44. *Marshall*, 39 So. 3d at 1212 (“Other federal district court cases have discussed the issue without an analysis of whether the website was ‘passive’ or ‘active.’”).

law in the context of the Web have applied differing approaches.”⁴⁵ Some courts required a targeting of or interaction with Florida residents⁴⁶ while other courts found that merely posting information online was enough to satisfy the long-arm statute.⁴⁷

In an attempt to unite the diverging interpretations, and to answer the certified question, the Court expounded a new rule for Internet-posting defendants: the defendant commits a tortious act in Florida when it puts defamatory material about a Florida resident on a website that is accessible in Florida and that website is, in fact, accessed in Florida.⁴⁸ The long-arm is satisfied because posting on a website is an electronic communication into Florida and an electronic communication into Florida is a tortious act within Florida.⁴⁹ The Court applied its new approach to Tabatha Marshall’s allegedly defamatory post, finding that her actions satisfied Florida’s long-arm statute.⁵⁰ And the Court again emphasized that its decision regarding the long-arm statute was independent of any ruling on the due process inquiry of personal jurisdiction.⁵¹

II. PROBLEMS WITH THE *MARSHALL* DECISION

A. *The Florida Supreme Court’s Interpretation Makes Florida an Outlier*

The Florida Supreme Court, in *Marshall*, interpreted its long-arm statute to confer jurisdiction over defendants who have so few contacts with Florida, that it is inconceivable how they could ever fall within the bounds of due process.⁵² This interpretation flies in the face of the intent of the drafters of the original long-arm statutes on which all modern enumerated-acts long-arm statutes are based.⁵³ The original purpose of a long-arm statute was to limit the number of defendants that would be subject to jurisdiction in a given state to fewer than would be allowed if

45. *Id.* at 1213.

46. See *Renaissance Health*, 982 So. 2d at 740 (finding satisfaction of the long-arm statute where website was interactive and targeted Florida residents).

47. See *Richards v. Sen.*, No. 07-14254-CIV, 2008 WL 4889623 (S.D. Fla. 2008) (finding the long-arm statute was satisfied where material posted online was accessible in Florida, regardless of intent).

48. *Marshall*, 39 So. 3d at 1214.

49. See *id.*

50. *Id.* at 1215–16.

51. *Id.* at 1216.

52. See *id.* at 1204 n.5 (listing Marshall’s dearth of contacts with Florida).

53. See Douglas D. McFarland, *Dictum Run Wild: How Long-Arm Statutes Extended to the Limits of Due Process*, 84 B.U. L. REV. 491, 508–11 (2004) (stating that the drafters of the Illinois and Wisconsin statutes, and the Uniform Act, intended that those statutes limit jurisdiction to well within the bounds of due process).

due process were the only limit.⁵⁴ But the Florida Supreme Court has turned that notion entirely on its head by finding that the due process clause is the more restrictive of the two personal jurisdiction inquiries.

In other words, the Florida Supreme Court has taken the Fourteenth Amendment's framers' vague, aspirational language and made it more restrictive than the Florida legislature's statute, which enumerates very specific instances where jurisdiction is appropriate. Such a claim is the intellectual equivalent of saying that a hypothetical statute specifically protecting speech in political arenas, speech about public figures, and speech in academic institutions protects a *broader* range of speech than the freedom of speech clause in the First Amendment. The claim in the hypothetical is ludicrous because of the obviousness that the general freedom of speech clause in the First Amendment must protect more than the enumerated statute. So too should it be obvious that "due process" captures more defendants than an enumerated-acts statute. But the Florida Supreme Court fails to grasp such plain logic, casting a fog over this area of the law in Florida. And this fog will lead to more litigation, where one could easily argue that it would be malpractice to not contest jurisdiction given the confusion of the state's highest court.

Florida's long-arm statute already stretched beyond the bounds of due process,⁵⁵ and the decision in *Marshall* extended it even further. Such an interpretation wastes courts' and litigants' time. A litigant who does not satisfy the due process inquiry will never be allowed into court, so why have a long-arm statute that reaches more people than are allowed by the due process clause?⁵⁶ Professor Allyson Haynes accurately summed up the inherent difficulty in the analysis: "[I]n many instances . . . the application of the long-arm statute is an utterly pointless exercise in fitting facts within statutory parameters before tossing that statute aside and getting to the constitutional analysis."⁵⁷ The "utter pointlessness" referenced by Professor Haynes is compounded in Florida where the long-arm is an exercise in fitting the defendant under one of the expansive Florida Supreme Court interpretations, and then throwing that out and ensuring that the defendant is not barred by due process.⁵⁸

54. *See id.*

55. *See Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co.*, 752 So. 2d 582, 584 (Fla. 2000) ("[T]he Due Process Clause . . . imposes a more restrictive requirement.").

56. Many long-arm statutes either expressly go to the limits of due process or have been interpreted to go to the limits of due process. *See* McFarland, *supra* note 53, at 525. A so-called "enumerated acts" long-arm statute interpreted to extend to the limits of due process is still somewhat superfluous, but at least it will not capture defendants whose personal jurisdiction is nonetheless barred by due process.

57. Allyson W. Haynes, *The Short Arm of the Law: Simplifying Personal Jurisdiction Over Virtually Present Defendants*, 64 U. MIAMI L. REV. 133, 163 (2009).

58. Federal courts have muddled the waters even more by considering the long-arm satisfied

That the Court's decision in *Marshall* reinforced Florida's status as a long-arm statute outlier⁵⁹ only begins to address the problems with the decision and Florida's long-arm jurisprudence. Indeed, a failure to recognize the stark differences between web posting and other electronic communications resulted in the growth of an already-too-expansive statute.

B. *Web Posting is Different From Any Other Electronic Communication Because It Does Not Require Any Targeting Whatsoever*

The Florida Supreme Court had already veered off course when the *Marshall* case came before it.⁶⁰ But in *Marshall*, the Court ushered its long-arm ineptitude into the twenty-first century. The long-arm statute, which now applies to anyone who posts a message on the Internet, captures people who certainly would not have been captured under any previous interpretation.

Take a hypothetical showing the absurdity of the Court's decision in *Marshall*. Suppose, in pre-Internet days, a Tennessee resident ate at a Tennessee Burger Prince restaurant and hated the food. To get back at Burger Prince, this Tennessee resident took out a full-page ad in his local Tennessee newspaper falsely claiming that all Burger Prince restaurants had rats in their refrigerators. Suppose that a Florida resident on vacation, unknown to the Tennessee resident, picks up a paper, but does not read it, on his way back to Florida. Then, once safely within the confines of Florida, the Florida resident opens up the newspaper and is appalled at the claims about Burger Prince. Suppose, also, that the Tennessee resident had no other contact with Florida whatsoever and did not know that Burger Prince was a Florida corporation. Could this Tennesseean be haled into a Florida court? While the gut reaction of any reasonable person should be no, the Florida Supreme Court's decision in *Marshall* seems to say yes.

According to the Court, publishing defamatory material outside of

as long as the nonresident causes an injury in Florida. No knowledge is required at all. See *Licciardello v. Lovelady*, 544 F.3d 1280, 1283 (11th Cir. 2008). In *Marshall*, the Florida Supreme Court expressly refused to rule on the validity of the federal court interpretation. *Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201, 1206 n.6 (Fla. 2010) ("We do not decide the broader issue of whether injury alone satisfies [the long-arm statute]. We do recognize that federal courts have adopted this broad construction . . . , holding that the commission of a tortious act out of state that causes injury to an in-state resident satisfies Florida's long-arm statute.").

59. See *McFarland*, *supra* note 53, at 525 (failing to list any states that have interpreted their long-arm statutes to extend beyond the limits of due process).

60. The Court first stated that the Florida long-arm cast a wider net than the due process clause in *Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co.*, 752 So. 2d 582, 584 (Fla. 2000).

Florida is not enough to satisfy the long-arm statute.⁶¹ But as soon as such material is *accessed* in Florida, then a tortious act has been committed in Florida, and it satisfies the long-arm statute.⁶² Viewing the current rule outside of its Internet-based context shows how expansive, and how far beyond the bounds of the Constitution, the Florida long-arm statute now stretches. Somebody posting defamatory material online (or in a full-page newspaper ad) unquestionably does something wrong; but should that action subject them to jurisdiction in Florida, even where he or she took no purposeful action related to Florida? While the Constitution's due process clause says no,⁶³ the Florida Supreme Court says yes.⁶⁴

Surprisingly, the Court analyzed and then dismissed a targeting approach that might have corrected the course of its long-arm jurisprudence. The Court examined *Alternate Energy Corp. v. Redstone*,⁶⁵ concluding that the district court based its holding on targeting.⁶⁶ Indeed, the district court found that the long-arm statute had not been satisfied because the disparaging remarks about the plaintiff posted on the defendant's blog did not cause more harm in Florida than anywhere else.⁶⁷ The district court compared the case to *Wendt*, where an out-of-state attorney's tort targeted his Florida client.⁶⁸ But the Florida Supreme Court rejected *Redstone's* pragmatic reasoning without explanation, instead opting for the artificial "accessible and accessed in Florida" test.

Requiring some sort of targeting makes perfect sense when deciding who has committed a tortious act in Florida. Indeed, requiring targeting ensures the presence of some scienter where the defendant either knew where his libelous communications were going or where the person he was libeling was located. Without any type of targeting requirement, states can grab virtually anyone who causes harm to any entity within that state, regardless of the tortfeasor's knowledge of his target.⁶⁹

61. See *Marshall*, 39 So. 3d at 1203 ("[P]osting defamatory material . . . alone does not constitute the commission of a tortious act within Florida for purposes of [the Florida long-arm statute].").

62. See *id.* ("[T]he material . . . must . . . be *accessed* in Florida in order to constitute the commission of the tortious act of defamation within Florida.").

63. See *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945) (requiring a finding of minimum contacts to satisfy due process).

64. See *Marshall*, 39 So. 3d at 1203.

65. 328 F. Supp. 2d 1379 (S.D. Fla. 2004).

66. See *Marshall*, 39 So. 3d at 1212–13.

67. See *Redstone*, 328 F. Supp. 2d at 1384 ("[T]here is no indication that Defendant's actions caused more harm to Plaintiff in Florida than anywhere else.").

68. See *id.* (citing *Wendt v. Horowitz*, 822 So. 2d 1252, 1260 (Fla. 2002)).

69. Federal courts have, in fact, used the expansive interpretation of the long-arm to grab anyone who causes harm in Florida. See *Licciardello v. Lovelady*, 544 F.3d 1280, 1283 (11th Cir. 2008) (holding that an out-of-state defendant need only cause harm in Florida to satisfy the long-

Targeting is what separates a person who sent a libelous letter into Florida from someone who put a libelous message in a bottle in Maine and had it float to Florida. Surely the Florida Supreme Court did not purport to assert long-arm jurisdiction over someone who put libelous messages in a bottle. Such a holding would be laughable, yet that is the state of the law in Florida.

Such a wide-ranging interpretation of the long-arm statute is particularly problematic in the age of the Internet. Communications can be instantly transmitted from any computer to anywhere in the world. Videos posted to YouTube become instant viral hits and spread around the globe.⁷⁰ Personal information that used to be private is on display for the world. And with the touch of a button libelous comments can be posted to an Internet forum available nationwide. Where communications can be distributed so widely and so quickly, some check on long-arm statutes (like targeting) seems essential, yet is totally disregarded by the Florida Supreme Court.

At least prior holdings of the Court, dealing with other forms of technology, required some effort by the tortfeasor to get his communication into Florida, even if he was outside of Florida. In *Wendt v. Horowitz*, for example, the tortfeasor was an out-of-state attorney who made communications into Florida by telephone and mail.⁷¹ But unlike posting to an online message board, sending a letter requires putting a Florida address onto an envelope. And making a call into Florida requires dialing a Florida telephone number. Based on those actions, a tortfeasor either knows or should know that any resulting harm will be in Florida.

To do away with any requirement of targeting, replacing it only with the artificial “accessible and accessed in Florida” language, renders the long-arm statute applicable to practically any Internet user. Almost anything on the Internet is “accessible in Florida.” And accessing the material in Florida is a mere formality by the time the communications have become the subject of litigation. So any purposefulness related to a particular state no longer matters. All that matters is that the tortfeasor clicked on the “post” icon and sent his tortious communication out for consumption on the Internet.

arm statute). *But see Marshall*, 39 So. 3d at 1206 n.6 (disclaiming any ruling on the validity of such an expansive interpretation).

70. *See, e.g.,* HDCYT, *Charlie Bit My Finger—Again!*, YOUTUBE (May 22, 2007), http://www.youtube.com/watch?v=_OB1gSz8sSM (showing a home video with over 400 million views).

71. *Wendt v. Horowitz*, 822 So. 2d 1252, 1255 (Fla. 2002).

III. SOLUTIONS

A. *Use Another Section of the Existing Long-Arm Statute*

A conceptual problem with the Florida Supreme Court's interpretation of the long-arm in *Marshall* is that it is difficult to accept that someone in Washington, without ever going to Florida, can commit a tortious act *in* Florida. The notion that communications into Florida constitute an act in Florida has survived from previous Florida Supreme Court cases.⁷² But using the provision that requires a tortious act *in* Florida is almost laughable when another provision of the long-arm seems to capture the exact same tortfeasors and has baked-in checks on the breadth of the statute; checks that are absent in the "tortious act in Florida" provision.

Never mentioned in the *Marshall* opinion is that an alternate provision of the long-arm statute allows courts to assert personal jurisdiction over people who "caus[e] injury to persons or property within this state arising out of an act . . . by the defendant outside this state."⁷³ This provision more precisely captures Tabatha Marshall's actions. She committed an act outside of Florida that unknowingly caused injury in Florida. But this provision of the long-arm statute also requires that the defendant either "was engaged in solicitation or service activities within this state" or had goods or products that "were used or consumed within this state in the ordinary course of commerce, trade, or use."⁷⁴ The second check acts as a way for manufacturers in products-liability cases to be captured by the long-arm and is inapplicable to Marshall. But the requirement that the defendant "engage in solicitation" could be successfully applied to Marshall. The only inferential step would be to assume that Marshall was soliciting Florida readers to her blog. Such a step is small compared with the imagination required to find that Marshall's actions actually took place in Florida. Other commentators have assumed that Internet-based defamation should indeed fall under similar provisions requiring some sort of revenue or business solicitation.⁷⁵

Furthermore, in the age of Facebook, a revenue or solicitation provision requires a refusal of jurisdiction over someone who posts something on a social networking site. Somebody who posts something on Facebook is not selling anything, is not advertising anything, and probably does not care who views his page. Such a person might commit

72. See *id.* at 1260 ("[C]ommitting a tortious act in Florida . . . can occur through the nonresident defendant's telephonic, electronic, or written communications into Florida.").

73. FLA. STAT. § 48.193(f) (2010).

74. *Id.*

75. See Haynes, *supra* note 57, at 170 ("[O]nline defamation would likely fall within the intentional tort category . . . with its broader revenue requirement.").

defamation but should not be required to travel to another jurisdiction to defend himself, and under this regime he would not be required to do so. The baked-in check of this section of the long-arm statute stands in place of a targeting requirement.

B. *Create an Internet-Specific Provision of the Long-Arm Statute*

Professor Haynes has proposed an interesting solution for navigating the web that long-arm statutes, like Florida's, have become since the explosion of Internet-based litigation.⁷⁶ Professor Haynes refers to her proposed solution as a "Short-Arm Statute."⁷⁷ Essentially, the purpose of the short-arm statute is to stop courts from attempting to fit a round Internet case into a square long-arm statute and allow states to better define what Internet-based activity gives rise to jurisdiction.⁷⁸

Haynes' proposal would allow Florida's legislature, not its judiciary, to decide when an out-of-state Internet user commits an intentional tort that gives rise to personal jurisdiction in Florida. One suggested solution is a *mens rea*, or targeting, requirement.⁷⁹ Florida could add a provision to its long-arm statute requiring an Internet tortfeasor to have known the location of his defamation target or to have known that the effect of the defamation would be felt in Florida.⁸⁰ Under a *mens rea* approach, Marshall would likely have failed because her attacks were targeted at the company, not at Florida.⁸¹ Another way to gauge the severity of intentional torts on the Internet might be the number of times a defamatory communication reaches a resident of Florida, only allowing jurisdiction after a critical mass has been reached.⁸² Under the quantity approach, Marshall would likely have failed because the plaintiff reported only three instances of Florida residents receiving the communications.⁸³ However the legislature structures it, some safeguard for Internet-based defendants is better than the vast jurisdiction conferred by the judiciary in *Marshall*.⁸⁴

76. *See id.* at 173.

77. *Id.*

78. *See id.* at 168 ("States could better define the type of targeting activity that they envision giving rise to liability.").

79. *See id.*

80. *See id.*

81. *See Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201, 1203 (Fla. 2010).

82. *See Haynes, supra* note 57, at 168.

83. *See Marshall*, 39 So. 3d at 1203.

84. Adding additional provisions to the long-arm statute would also allow the legislature to deal with other Internet-based litigation like trademark, copyright, and Internet-based commerce. As the Internet continues to grow at a rapid rate, such litigation will also likely increase. The legislature and the citizenry will be better off if Internet-based litigation is given its own separate long-arm provisions, rather than allowing the judiciary to strong-arm new technologies into existing provisions.

C. *Expand the Long-Arm to Due Process*

When a statute becomes as convoluted as Florida's long-arm statute, rejecting the entire thing must be considered. By finding the long-arm statute to be broader than due process, the Florida Supreme Court has shown that the long-arm no longer possesses any of its initial utility. The original long-arm statutes froze and codified the already-existing classes of out-of-state defendants that could be granted personal jurisdiction.⁸⁵ New technologies and new interpretations have caused the Court to run afoul of that original purpose. So perhaps Florida would be better off if it adopted, as many states already have,⁸⁶ a long-arm statute that parallels due process.

A "no-limits" long-arm statute eliminates the two-tiered approach expounded by the Florida Supreme Court in *Venetian Salami Co. v. Parthenais*.⁸⁷ No longer would courts and litigants be required to navigate the increasingly complex and irrational long-arm statute, only to deal with constitutional due process after. The inquiry would be whether asserting personal jurisdiction violates due process as the United States Supreme Court has defined it in a fleshed-out series of cases.⁸⁸ So long as jurisdiction complies with due process, then the state authorizes service on the defendant. Furthermore, a no-limits long-arm statute maximizes the amount of protection afforded to state residents.⁸⁹ No reason exists to go beyond the maximum protection, as the Court seemed to try to do with *Marshall*, and it only makes the litigation process more burdensome. In a system that values simplicity and efficiency, a long-arm statute that limits the personal jurisdiction inquiry to one question should be given a great deal of consideration.

IV. CONCLUSION

Florida's long-arm statute and the Florida Supreme Court's current interpretation are extremely convoluted. The statute requires imaginative inferential leaps to find that a tortfeasor committed a wrong within Flor-

85. See McFarland, *supra* note 53, at 511 ("All three archetypal statutes were painstakingly drafted to limit their jurisdictional reach well short of the limits of due process as already interpreted by court decisions. The statutes looked backward, not forward.")

86. *Id.* at 528. ("Twenty of the fifty states have long-arm statutes (or court rules) that by their terms reach to the limits of due process.")

87. 554 So. 2d 499 (Fla. 1989) (explaining that courts should look first to the long-arm statute and then to the due process clause to determine personal jurisdiction). Trusting jurisdiction to only due process is problematic for reasons discussed *infra*, but unlike the current approach it is intellectually honest.

88. See, e.g., *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011); *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945).

89. See McFarland, *supra* note 53, at 534.

ida. Such an interpretation captures far too many defendants within the statute. And the difficulties are compounded because the statute is outdated and unprepared to deal with new Internet-based tortfeasors.

But all hope is not lost. With relatively simple updates or changes, the Florida long-arm statute could be brought into the twenty-first century. This Note has presented three solutions to the current interpretation. The Court could begin using a more appropriate section of the existing long-arm statute to capture defendants who commit their wrongs outside of Florida. Alternatively, the legislature could update the statute with additional provisions specifically targeted at Internet-based defendants. Or the legislature could reject the enumerated-acts long-arm statute and replace it with a long-arm that authorizes service on any defendant who falls within the bounds of due process. Any one of these options would clarify personal jurisdiction in Florida and drastically reduce litigation over the long-arm statute.