



State and Local Government

by Caroline Johnson Levine

Specific Jurisdiction Constrains a State's Adjudicative Authority

A state or federal court's jurisdiction to adjudicate a claim or controversy, regarding a particular person or subject matter, is a fundamental question of law. Federal courts may achieve jurisdiction to adjudicate a legal dispute between residents of two separate states, if the district court can comply with the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. An illustration of this principle can be found in *Walden v. Fiore*,¹ where the U.S. Supreme Court recently issued a unanimous decision determining that the Fourteenth Amendment constrains state-specific jurisdiction over nonresident defendants.

Gina Fiore and Keith Gipson were professional gamblers who visited Puerto Rico to gamble at the El San Juan Casino. Both gamblers fared well and boarded a plane for Atlanta with \$97,000 in winnings. Transportation Security Administration agents at the San Juan airport conducted a search of Fiore and Gipson's luggage and discovered the large amount of money. The agents

Vegas. "Fiore explained that she and Gipson were professional gamblers. [Fiore] maintained that the cash they were carrying was their gambling 'bank' and winnings."³ Walden employed a drug-sniffing canine and believed there was sufficient evidence to seize the \$97,000 from Fiore. Walden released the gamblers and advised them "that their funds would be returned if they later proved a legitimate source for the cash."⁴

Upon arriving in Nevada, Fiore and Gipson "forwarded to Walden documents substantiating that their money was legitimately obtained."⁵ Notwithstanding the gamblers' evidence, Walden "helped draft an affidavit to show probable cause for forfeiture of the funds and forwarded that affidavit to a U.S. Attorney's Office in Georgia. ... In the end, no forfeiture complaint was filed, and the DEA returned the funds to" Fiore and Gipson.⁶

"Fiore and Gipson sued Walden in Nevada under *Bivens*, alleging that Walden violated their Fourth Amendment rights

"Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State."

—Justice Thomas, *Walden v. Fiore*, 571 U.S. ___, 134 S. Ct. 1115, 1123 (2014), quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174 (1985)

did not detain Fiore and Gipson; however, they believed that the large sum of money appeared suspicious and notified Drug Enforcement Administration agents in Atlanta.

A City of Covington police officer, Anthony Walden, was deputized by the DEA and worked at the Atlanta Hartfield-Jackson airport. "As part of a task force, [Walden] conducted investigative stops and other law enforcement functions in support of the DEA's airport drug interdiction program."² Walden contacted the gamblers as they attempted to board a connecting flight to Las

when he seized their cash in Georgia"⁷ and prepared a possibly false probable cause affidavit in order to seize the money.⁸ The U.S. District Court for the District of Nevada dismissed the lawsuit and "determined that [Walden's] search of [Fiore and Gipson] and his seizure of the cash in Georgia did not establish a basis to exercise personal jurisdiction in Nevada. The court concluded that even if [Walden] caused harm to [Fiore and Gipson] in Nevada while knowing they lived in Nevada, that fact alone did not confer jurisdiction."⁹

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The Ninth Circuit Court of Appeals reversed the district court and determined “that the delay in returning the funds to [Fiore and Gipson] caused them ‘foreseeable harm’ in Nevada and that the exercise of personal jurisdiction over [Walden] was otherwise reasonable”¹⁰ and therefore, the district court could properly exercise personal jurisdiction over Walden. Walden appealed the decision of the Ninth Circuit Court of Appeals to the Supreme Court to determine “whether a court in Nevada may exercise personal jurisdiction over a defendant on the basis that he knew his allegedly tortious conduct in Georgia would delay the return of funds to plaintiffs with connections to Nevada.”¹¹

The determination of whether a federal district court may exercise jurisdiction over a defendant begins with an analysis of compliance with the federal Due Process Clause under the Fourteenth Amendment. Further, a district court’s ability to achieve personal jurisdiction over a defendant requires the defendant to be subject to the jurisdiction of the state where the district court exists. “For a State to exercise jurisdiction consistent with due process, the defendant’s suit-related conduct must create a substantial connection with the forum State.”¹² Therefore, “a federal district court’s authority to assert personal jurisdiction in most cases is linked to service of process on a defendant ‘who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.’”¹³ Accordingly, “federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons”¹⁴

Importantly, the physical presence of a nonresident defendant is not required within the actual territory of the state; however, the defendant must have “certain minimum contacts ... such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”¹⁵ Determining whether Walden’s minimum contacts are sufficient to establish specific jurisdiction over him as a nonresident defendant in Nevada, requires the inquiry to focus on “the relationship among the defendant, the forum, and the litigation.”¹⁶ Further, “specific” jurisdiction requires a defendant’s “affiliatio[n] between the forum and the underlying controversy (i.e., an activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation).”¹⁷

A defendant’s conduct must meet two minimum requirements to establish a substantial connection with a forum state. “First, the relationship must arise out of contacts that the ‘defendant *himself* creates with the forum State.”¹⁸ Second, a minimum contacts analysis “looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.”¹⁹

Jurisdictional issues focus on a defendant’s connection to the forum, not the plaintiff’s, as “due process limits on the State’s adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties.”²⁰ Further, the Supreme Court has “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State.”²¹ The forum in which a plaintiff resides or is employed is irrelevant because “an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum state. The proper question is not where the plaintiff experienced a particular injury or effect but



whether the defendant’s conduct connects [the defendant] to the forum in a meaningful way.”²²

Based upon these specific jurisdictional principles, it is clear that Nevada could not exercise jurisdiction over Walden, as he lacked sufficient minimal contacts with Nevada. In this case, Walden’s conduct occurred outside of Nevada as he seized the plaintiff’s money and submitted a probable cause affidavit for forfeiture of the money in Georgia. Walden “never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada. In short, when viewed through the proper lens—whether the *defendant’s* actions connect him to the *forum*—[Walden] formed no jurisdictionally relevant contacts with Nevada.”²³

In *Walden v. Fiore*, the Supreme Court held that the “Due Process Clause of the Fourteenth Amendment constrains a State’s authority to bind a nonresident defendant to a judgment of its courts.”²⁴ As it relates to the District Court of Nevada’s authority over Walden, the Supreme Court found that because “the defendant had no other contacts with Nevada, and because a plaintiff’s contacts with the forum State cannot be ‘decisive in determining whether the defendant’s due process rights are violated,’ we hold that the court in Nevada may not exercise personal jurisdiction under these circumstances.”²⁵

The U.S. Supreme Court outlined in *Walden v. Fiore* the specific jurisdictional principles of whether a defendant may be subjected to the adjudicative authority of a forum state. It is clear that nonresident defendants are protected and provided with a liberty interest against foreign states by the minimum contacts inquiry. Therefore, plaintiffs who wish to effectively and efficiently pursue litigation in a state’s district court must understand that it is the defendant’s forum that vests a state with the power to properly adjudicate constitutional claims and controversies. ©

Endnotes

- ¹*Walden v. Fiore*, 571 U.S. ___, 134 S.Ct. 1115 (2014).
²*Id.* at 1119.
³*Id.*
⁴*Id.*
⁵*Fiore v. Walden*, 688 F.3d 558, 563 (Nev. 2012).
⁶*Walden* at 1120.
⁷*Fiore* at 563; *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 389, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) (holding that a violation of the Fourth Amendment by a “federal agent acting under color of his authority gives rise to a cause of action for damages consequent upon his unconstitutional conduct.”).
⁸*Walden* at 1120 (“Respondents alleged that petitioner violated their Fourth Amendment rights by (1) seizing the cash without probable cause; (2) keeping the money after concluding it did not come from drug-related activity; (3) drafting and forwarding a probable cause affidavit to support a forfeiture action while knowing the affidavit contained false statements; (4) willfully seeking forfeiture while withholding exculpatory information; and (5) withholding that exculpatory information from the United States Attorney’s Office.”).
⁹*Id.*
¹⁰*Id.*, quoting *Fiore* at 582.
¹¹*Id.* at 1119.
¹²*Id.* at 1121.

- ¹³*Id.*, quoting Federal Rule of Civil Procedure 4(k)(1)(A).
¹⁴*Id.*, quoting *Daimler AG v. Bauman*, 571 U.S. ___, ___, 134 S.Ct. 746, 753, 187 L.Ed.2d 624 (2014).
¹⁵*International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940).
¹⁶*Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977).
¹⁷*Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. ___, ___, 131 S.Ct. 2846, 2851, 180 L.Ed.2d 796 (2011); *Walden* at 1122 (“This is in contrast to ‘general’ or ‘all-purpose’ jurisdiction, which permits a court to assert jurisdiction over a defendant based on a forum connection unrelated to the underlying suit (e.g., domicile).”).
¹⁸*Walden* at 1122, quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985).
¹⁹*Id.* at 1122.
²⁰*Id.*; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-292, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).
²¹*Id.*; *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).
²²*Id.* at 1125.
²³*Id.* at 1124.
²⁴*Id.* at 1121.
²⁵*Id.* at 1119, quoting *Rush v. Savchuk*, 444 U.S. 320, 332, 100 S.Ct. 571, 62 L.Ed.2d 516 (1980).

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that individual should look and behave, rather than focusing, as some federal circuit courts have, on whether the harassment was based on sexual orientation.

However, until the Supreme Court speaks on the issue, the gender stereotyping paradox will remain. Gay and lesbian plaintiffs will face greater difficulty in pursuing sex discrimination claims based on gender stereotyping, at least in certain circuits, than will heterosexual plaintiffs, as the federal courts struggle to distinguish actionable gender stereotyping claims from nonactionable claims based solely on sexual orientation. And employers will face a greater likelihood of incurring federal liability based on claims brought by heterosexual plaintiffs than those brought by gay and lesbian plaintiffs, as counterintuitive as that might seem.

The best defense for employers against *any* such claims is prevention. Harassing conduct based on gender, including homophobic language and mistreatment based on real or perceived “unmanly” and “unwomanly” behavior, should be prohibited, and allegations of such conduct should be investigated and, where appropriate, remedied promptly. ☉

Endnotes

- ¹*EEOC v. Boh Brothers Construction Company*, 731 F.3d 444 (5th Cir. 2013).
²*Id.* at 449.
³*Id.*
⁴*Id.* at 457-59.
⁵*Id.* at 453.
⁶*Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

- ⁷*Id.* (citing *Price Waterhouse*).
⁸*Price Waterhouse*, 490 U.S. at 235.
⁹*Id.* at 251.
¹⁰*Boh Brothers*, 731 F.3d at 457.
¹¹*Vickers v. Fairfield Medical Center*, 453 F.3d 757 (6th Cir. 2006), *cert. den.*, 551 U.S. 1104 (2007).
¹²*Id.* at 759.
¹³*Id.*
¹⁴*Id.* at 763.
¹⁵*Id.* at 764.
¹⁶*Id.* at 763.
¹⁷*Dawson v. Bumble & Bumble*, 398 F.3d 211, 218 (2nd Cir. 2005).
¹⁸*Id.* at 764 (citing *Dawson*).
¹⁹*Prowel v. Wise Business Forms, Inc.*, 579 F.3d 285 (3d Cir. 2009).
²⁰*Id.* at 292.
²¹*Id.* at 292.
²²*Id.* at 291-92.
²³*Id.* at 292 (emphasis in original).
²⁴*Id.* at 287.
²⁵*Id.* at 287-88.
²⁶*Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 79 (1998).
²⁷*Id.* at 77.
²⁸*Id.*
²⁹*See, e.g., id.* at 79 (rejecting the notion that male-on-male harassment is actionable only when motivated by sexual desire).