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THIS AIN’T THE TEXAS TWO STEP FOLKS: DISHARMONY, CONFUSION, AND THE UNFAIR NATURE OF PERSONAL JURISDICTION ANALYSIS IN THE FIFTH CIRCUIT

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Law Review Editors:

I write to request consideration of my most recent article, “This Ain’t The Texas Two Step Folks: Disharmony, Confusion, and the Unfair Nature of Personal Jurisdiction Analysis in The Fifth Circuit.” This article explores the deep divide in federal and state courts over the proper application of the minimum contacts test, as well as the arguments in favor of each test. As a case study, this article will use the Fifth Circuit Court of Appeals as a model of how personal jurisdiction analysis is playing out in the federal circuit courts. It will explore how this circuit court has resolved the foreseeability issue and in particular, it will explore the additional burdens placed by that Circuit’s reading of Burger King v. Rudzewicz, which transfers the burden of proof of the fundamental fairness factors to the defendant, once the plaintiff has shown purposeful contact with the forum. Further, this article will explore the various developments of the due process test, exploring circuit courts that use burden shifting in their analysis and even some courts that do not require a court to perform a “fairness” analysis. Lastly, this article will hopefully serve as a catalyst for the Fifth Circuit to reconsider the fairness of its current jurisprudence and add to the continuing plea from courts and commentators for the Supreme Court to answer this question and to once and for all align the courts on the proper “minimum contacts test.”

Thank you for your consideration.

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