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Hilaire Henthorne Butler

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NOTES

THE GOVERNMENT CONTACTS EXCEPTION TO THE DISTRICT OF COLUMBIA LONG-ARM STATUTE: PORTRAIT OF A LEGAL MORASS

The advent of long-arm statutes based on the concept of "minimum contacts"¹ added an important dimension to the development of civil procedure. Long-arm statutes define the types of contacts with a forum state that render a nonresident defendant amenable to the forum state's assertion of personal jurisdiction. Typically, long-arm statutes enumerate such contacts as the transaction of business within the forum state, contracting to supply or solicit services within the forum state, the causing of tortious injury within the forum state, and interest in or possession of real property within the forum state.² The myriad approaches to obtaining personal jurisdiction over a nonresident become more complex and challenging when the long-arm statute involved is that of the District of Columbia.³

The unique position of the District of Columbia as the seat of our federal government gives rise to frequent and numerous activities by nonresidents such as lobbying, solicitation of federal funds, monitoring of legislation and administrative or regulatory matters, as well as appearances before federal agencies and departments. These activities have created the necessity for a "government contacts exception" to the District of Columbia's long-arm statute.⁴ This exception precludes assertion of personal jurisdiction by the District of Columbia over a nonresident if the nonresident's only contact in the District of Columbia is through Congress or a federal agency.⁵ While

1. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). In the landmark case of *International Shoe*, the Supreme Court held that a court may exercise personal jurisdiction over a nonresident defendant only when the defendant has had "minimum contacts" with the forum state such that maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Id.* at 316.

2. *See, e.g.*, D.C. CODE ANN. § 13-423(a)(1) (1981); N.Y. CIV. PRAC. L. & R. 302 (McKinney 1972 & Supp. 1986); ILL. ANN. STAT. ch. 110, § 2-209 (Smith-Hurd 1983).

3. For a discussion of the District of Columbia long-arm statute, see *infra* text accompanying notes 7, 30, 40, 57, 63, 71, 88.

4. *Coalition v. Dole*, 114 DAILY WASH. L. REP. 961, 964 (D.C. May 12, 1986).

5. *Environmental Research Int'l v. Lockwood Greene Eng'rs, Inc.*, 355 A.2d 808, 813

the courts uniformly agree that such an exception exists, they are anything but consistent as to the scope of that exception. Hence, the government contacts exception has generated a great deal of controversy as courts in the District of Columbia struggle to determine the range of its application.⁶ At the heart of the dispute is the question of whether the exception applies broadly to all contacts with federal entities, or whether the exception is narrowly confined to a nonresident's exercise of first amendment rights.⁷

This Note will discuss the origin and purpose of the government contacts exception in the District of Columbia. It then will address the judicial controversy that has developed over the scope of the exception. Next, the Note will identify those government contacts definitely established as being excepted from the purview of the District of Columbia long-arm statute, and will identify the "gray areas" relating to the government contacts exception that continue to prolong the controversy. The Note will conclude by comparing the viability of the two approaches to the government contacts exception that developed in the District of Columbia and predicting the outcome of future litigation.

I. THE GOVERNMENT CONTACTS EXCEPTION TO THE EXERCISE OF
PERSONAL JURISDICTION OVER NONRESIDENTS
"TRANSACTIONING ANY BUSINESS" IN THE DISTRICT
OF COLUMBIA: ORIGIN AND PURPOSE

A. *The District of Columbia Long-Arm Statute*

The District of Columbia long-arm statute provides, in relevant part, that "a District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's . . . transacting any business in the District of Columbia . . ." ⁸ The statute was conceived as part of the District of Columbia Court Reform and Criminal Procedure Act of 1970.⁹ Congress' purpose for the creation of the statute was to provide the District of Columbia with a long-arm statute that was identical to those then existing in the neighboring jurisdictions of Mary-

(D.C. App. 1976) (en banc). For further elaboration on this exception and its origins, see *infra* notes 7, 30, 40, 57, 63, 71 and accompanying text.

6. *Coalition*, 114 DAILY WASH. L. REP. at 965.

7. The government contacts exception originated in the context of the first amendment. See, e.g., *Neely v. Philadelphia Inquirer Co.*, 62 F.2d 873 (D.C. Cir. 1932) and *Layne v. Tribune Co.*, 71 F.2d 223 (D.C. Cir.), *cert. denied*, 293 U.S. 572 (1934). For a complete discussion of the origin of the government contacts exception in the District of Columbia and its relation to the first amendment, see *infra* notes 40, 57, 63, 71 and accompanying text.

8. D.C. CODE ANN. § 13-423(a)(1) (1981).

9. Act of July 29, 1970, Pub. L. No. 91-358, 84 Stat. 473.

land and Virginia.¹⁰ Such uniformity was considered desirable in light of the geographical proximity of the three jurisdictions and the constant traveling between these jurisdictions by residents of the Washington metropolitan area.¹¹ Examination of judicial interpretations of the Maryland and Virginia long-arm statutes is, therefore, relevant to determine the intended scope of the District of Columbia statute.

Maryland and Virginia courts have interpreted their long-arm statutes to permit the exercise of personal jurisdiction over nonresident defendants to the extent allowed by the due process clause of the United States Constitution.¹² The United States Supreme Court has explained that the due process standard requires a nonresident defendant to have sufficient "minimum contacts" with a forum state before that defendant is subject to the exercise of personal jurisdiction by its courts.¹³ The existence of sufficient "minimum contacts" with a forum is resolved on a case-by-case basis by analyzing the "quality and nature" of the activity or activities relied upon by the plaintiff as establishing a basis for jurisdiction.¹⁴

B. The Origin of the Government Contacts Exception in the District of Columbia

The government contacts exception originated from a series of cases that held that the maintenance of a correspondent in the District of Columbia by a foreign newspaper corporation did not subject that corporation to the assertion of personal jurisdiction by the District.¹⁵ The principle was identified for the first time in *Neely v. Philadelphia Inquirer Co.*¹⁶ The *Neely* court held that the collection of news material by a reporter did not constitute the "doing of business" in the District of Columbia for purposes of the long-arm statute then in effect.¹⁷ The court went on to highlight the roles of Washington as the center of both national government and news of national significance, both of which made it "desirable in the public interest" that foreign

10. *Margoles v. Johns*, 483 F.2d 1212, 1215-16 (D.C. Cir. 1973).

11. *Id.* at 1216.

12. *Environmental Research Int'l v. Lockwood Greene Eng'rs, Inc.*, 355 A.2d 808, 810-11 (D.C. App. 1976) (en banc).

13. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

14. *Id.* at 319.

15. *See, e.g., Neely v. Philadelphia Inquirer Co.*, 62 F.2d 873 (D.C. Cir. 1932); *Layne v. Tribune Co.*, 71 F.2d 223 (D.C. Cir.), *cert. denied*, 293 U.S. 572 (1934).

16. 62 F.2d 873 (D.C. Cir. 1932).

17. *Id.* at 875. *Neely* was decided when the predecessor to the current long-arm statute was in effect. At that time, the statute provided that "in actions against foreign corporations doing business in the District of Columbia all process may be served on the agent of such corporation or such person conducting its business . . ." *Id.* at 874.

newspaper corporations maintain correspondents there.¹⁸ The *Neely* court also noted that any other interpretation of the District of Columbia statute would have subjected most major newspapers in the United States and abroad to the jurisdiction of the District.¹⁹ In *Mueller Brass Co. v. Alexander Milburn Co.*,²⁰ the District of Columbia Court of Appeals expanded upon its earlier holding. The *Mueller* court held that a nonresident who maintained an office in the District of Columbia for the sole purpose of obtaining information from federal departments and agencies was not amenable to the assertion of personal jurisdiction by the District of Columbia courts.²¹ The *Mueller* court explained that the maintenance of an office in the District of Columbia for this purpose was analogous to the function of news-gathering by nonresident newspaper correspondents.²² Therefore, the court concluded that activities similar to those found in *Mueller* would not constitute "doing business" within the meaning of the District of Columbia long-arm statute.²³

II. THE SCOPE OF THE EXCEPTION: THE CREATION OF A JUDICIAL CONTROVERSY

A. *The Origin of the Controversy in the District of Columbia Court of Appeals*

The springboard for the current controversy over the interpretation and scope of the government contacts exception was *Environmental Research International v. Lockwood Greene Engineers, Inc.*²⁴ In *Environmental Re-*

18. *Id.* at 875.

19. *Id.* It is interesting to note that as early as 1934, as evidenced by *Neely*, the District of Columbia Court of Appeals was already demonstrating its aversion to turning the District of Columbia into the "national judicial forum" that the *Environmental Research* court envisioned and sought to avoid in 1976. The tone of the *Neely* opinion foreshadows the fear of turning the District of Columbia into a floodgate for litigation, a concern later expressed by the *Environmental Research* court.

20. 152 F.2d 142 (D.C. Cir. 1945).

21. *Id.* at 143-44.

22. *Id.* at 143.

23. *Id.* at 144.

24. 355 A.2d 808 (D.C. 1976) (en banc). *Environmental Research* involved a suit between a District of Columbia corporation and two foreign corporations, the basis for which was recovery of payment for services performed by the District of Columbia corporation in acting as the foreign corporation's liaison with the Environmental Protection Agency (EPA). *Id.* at 810. The District of Columbia corporation claimed that the District of Columbia courts had jurisdiction over the two nonresident defendants via its long-arm statute by virtue of their "transacting business" within the statute's definition. *Id.* The District of Columbia Court of Appeals did not find that the defendants' activities constituted doing business for purposes of the statute, and ruled that the District of Columbia did not have jurisdiction over the defendants. *Id.* at 814.

search, the District of Columbia Court of Appeals gave the exception the broadest possible interpretation by holding that it applies to all contacts with the District of Columbia made by nonresidents solely for the purpose of dealing with a federal agency or department.²⁵

The *Environmental Research* court's broad interpretation of the government contacts exception was based upon two policy considerations. First, the court emphasized the "need for unfettered access to federal departments and agencies for the entire national citizenry."²⁶ Second, the court relied upon the need to prevent the District of Columbia from becoming a "national judicial forum" where personal jurisdiction could be asserted over nonresidents "whose sole contact with the District consists of dealing with a federal instrumentality."²⁷ The court concluded that a narrower interpretation of the exception would have the effect of defeating the policy considerations inherent in the exception.²⁸

The *Environmental Research* opinion conceded that the long-arm statute's legislative history revealed a congressional intent to create a statute for the District of Columbia that would be equivalent in its scope to those of Maryland and Virginia.²⁹ However, the court emphatically rejected the notion that Congress' intention in adopting the new long-arm statute was to reverse cases such as *Neely*,³⁰ which held that the collection of news material by a reporter did not constitute the "doing of business" in the District of Columbia.³¹ Moreover, the *Environmental Research* court asserted that the rationale for the government contacts exception is not dependent upon the wording of the long-arm statute for its continued existence, but rather hinges upon the unique position of the District of Columbia as the center of national government.³²

Equally important to the *Environmental Research* court's interpretation of the government contacts exception was its finding that the exception would apply even if the activity comprising contacts with the federal government gave rise to the claim.³³ This judicial stance is significant because the

25. *Id.* at 813. Note that here, the court was specifically addressing visits made by employees of the defendants to EPA officials concerning the request for a federal grant which, in the court's view, did not amount to transacting business.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 810.

30. *Id.* at 813. The *Environmental Research* court's contention with respect to Congress' intent behind the statute is supported by the *Margoles* opinion. *Margoles v. Johns*, 483 F.2d 1212, 1222 (D.C. Cir. 1973).

31. *Neely*, 62 F.2d at 875.

32. *Environmental Research*, 355 A.2d at 813.

33. *Id.* at 813-14.

Supreme Court has held that one of the criteria for determining whether the test for minimum contacts is satisfied is to determine whether a plaintiff's cause of action arose from the activity in the forum state.³⁴ If the premise for a plaintiff's claim is related to the activity in the forum state, such a link becomes one basis for justifying the assertion of personal jurisdiction over a nonresident defendant.³⁵ Consequently, application of the majority's interpretation of the exception would lead to a direct conflict with a fundamental premise underlying *International Shoe*.³⁶ The existence of a direct conflict may provide an explanation as to why the dissent in *Environmental Research* argued against applying the exception to the facts of *Environmental Research*. The dissent maintained that unlike *Mueller* and its progeny, the claim *did* arise from the activities conducted in the District of Columbia.³⁷

In 1978, two years after the *Environmental Research* ruling, the District of Columbia Court of Appeals gave the government contacts exception a different interpretation in *Rose v. Silver*.³⁸ The *Rose* court held that a nonresident's contacts with a federal agency in the District of Columbia through an attorney were sufficient to subject the nonresident to personal jurisdiction.³⁹ Furthermore, the *Rose* court explained that if a nonresident is amenable to the exercise of personal jurisdiction and traditional due process standards are satisfied, the first amendment is the "only principled basis for exempting a foreign defendant from suit in the District"⁴⁰ Although the *Rose* court did not overrule the holding in *Environmental Research*,⁴¹ it greatly narrowed the court's previous interpretation of the government contacts exception.

34. *International Shoe*, 326 U.S. at 317, 319.

35. *Id.*

36. As noted in *supra* note 1, the fundamental premise underlying *International Shoe* is that a court may exercise personal jurisdiction over a nonresident defendant *only* when the defendant has had "minimum contacts" with the forum state such that maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *International Shoe*, 326 U.S. at 316.

37. *Environmental Research*, 355 A.2d at 813.

38. 394 A.2d 1368 (D.C. 1978), *reh'g denied*, 398 A.2d 787 (D.C. 1979). *Rose* involved a suit for recovery of fees by a nonresident attorney who performed services for a foreign corporation in his capacity as a liaison for that corporation with the Food and Drug Administration. *Id.* at 1369.

39. *Id.* at 1374.

40. *Id.* The court elaborated on this point in footnote 6 of the opinion, noting that historically, the government contacts exception arose in that context of protecting entities "against claims by third parties based on transactions unrelated to the entity's special governmental purpose in the District of Columbia." *Id.* at 1374 n.6.

41. It should be noted that the *Rose* decision was rendered by a panel of the District of Columbia Court of Appeals; hence, the holding could not and did not overrule *Environmental Research*, which was decided by a full court. *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 786 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984).

The *Rose* court relied upon the express wording of the District of Columbia long-arm statute, and held that the sole basis for invoking the exception was the first amendment right "to petition the government for a redress of grievances" without fear of subjecting oneself to a lawsuit, provided the contacts in the District of Columbia were limited to the exercise of that constitutional right.⁴² In reaching this conclusion, the court observed that the government contacts exception had served the purpose of providing a limitation on the "doing business" provision of the *former* long-arm statute.⁴³ According to the court, the reason that the exception does not have the same effect on the current statute is that the "doing business" concept under the old statute required a more "systematic and continuous course of conduct" than the present "transacting any business" standard.⁴⁴ The court stated that such a change in the long-arm statute's language extended personal jurisdiction to anyone who could be reached if due process standards were satisfied.⁴⁵ Although not denying the existence of the exception altogether, the *Rose* court argued that the context of its application was now severely limited to the assertion of first amendment rights.⁴⁶ Therefore, the holdings in *Environmental Research* and *Rose* result in a conflict between a broadly conceived exception, which can be applied to all government contacts, versus an exception narrowly confined to a first amendment context.

The Court of Appeals for the District of Columbia encountered the above-noted conflict in *Naartex Consulting Corp. v. Watt*.⁴⁷ In *Naartex*, the non-resident's contacts with the District of Columbia consisted of lobbying efforts and the maintenance of an office for monitoring legislative and regulatory matters. The District of Columbia Circuit held that all of the activities implicated the first amendment right to petition the government and, therefore, also triggered the government contacts exception.⁴⁸ Because the dispute arose in a first amendment context, the *Naartex* court did not have to reconcile the conflicting opinions of *Rose* and *Environmental Research*. *Naartex* merely acknowledged that the contacts in *Naartex* qualified for the exception regardless of the test used because they involved first amendment exercises in petitioning the government.⁴⁹ However, the *Naar-*

42. *Rose*, 394 A.2d at 1374.

43. *Id.*

44. *Id.* at 1373.

45. *Id.*

46. *Id.* at 1374.

47. 722 F.2d 779 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984).

48. *Id.* at 787.

49. *Id.* It is also worth noting that the *Naartex* court dismissed the plaintiff's argument that proprietary interests were not covered under the government contacts exception. The plaintiffs contended that the defendant's lobbying activities, which consisted of an attempt to

tex court indicated that if it had been obliged to address the scope of the government contacts exception, the *Environmental Research* court's broad application of the exception would have controlled the outcome.⁵⁰

B. Federal Court Cases—A Clear Preference for a Broadly Interpreted Exception

Many federal court cases, in their application of the government contacts principle, have reflected a broad interpretation of the government contacts exception that is more consistent with the District of Columbia Court of Appeals' holding in *Environmental Research*. For example, in *Investment Co. Institute v. United States*,⁵¹ the United States District Court for the District of Columbia held that filings and other dealings with a federal agency or department by a foreign corporation do not subject the corporation to the assertion of personal jurisdiction.⁵² Moreover, the court noted that district courts have not restricted the exception to a narrow first amendment context, but rather have "simply discounted" those business activities that involve the giving or receipt of information to or from the government.⁵³ As in *Naartex*, the *Investment Co.* court observed that even if the stricter requirements of *Rose* were applied to these facts, first amendment protection would extend to activities undertaken for protection of proprietary interests as well as the exercise of the right of petition "for less mercenary reasons."⁵⁴

In *National Coal Association v. Clark*,⁵⁵ the United States District Court for the District of Columbia also drew on the broader interpretation afforded the government contacts exception by the *Naartex* and *Environmental Research* courts. *National Coal* reiterated the two policy considerations identified by *Environmental Research*,⁵⁶ and held that the government contacts

favorably influence government action on an oil and gas lease, were not truly lobbying activities at all, but an effort to protect the defendant's business interests. The court maintained that a company's defense "of their rights before a governmental body is not less a 'petition' simply because they sought to protect their proprietary interests." *Id.*

50. *Id.* at 786. The reason for this preference was that while *Environmental Research* was decided by a full court, *Rose* represented only a panel opinion. Since such a panel cannot issue a holding that "conflicts materially with a prior decision of the full court," *Environmental Research* would still be controlling authority on personal jurisdiction issues. *Id.*

51. 550 F. Supp. 1213 (D.D.C. 1982).

52. *Id.* at 1217. The court maintained that the government contacts involved here, which consisted of filings with the Securities and Exchange Commission, were "prerequisites" to the defendant's participation in the securities industry, and could only be accomplished in the District of Columbia. *Id.*

53. *Id.* at 1216-17.

54. *Id.* at 1217. See *supra* note 49.

55. 603 F. Supp. 668 (D.D.C. 1984).

56. *Environmental Research*, 355 A.2d at 813.

exception "exempts from consideration as business transactions upon which 'long-arm' jurisdiction may be based contacts of a non-resident defendant in this District which are made solely with the federal government."⁵⁷

In *Coalition v. Dole*,⁵⁸ the District of Columbia Circuit again afforded a broad interpretation to the government contacts exception. *Coalition* involved two types of government contacts: 1) meetings between nonresidents and federal agency officials, and 2) application for and receipt of federal funds based upon those meetings.⁵⁹ The *Coalition* court easily disposed of the first issue of the meetings with federal officials by finding that they implicated first amendment concerns. Therefore, the court concluded that the meetings fell within the government contacts exception to personal jurisdiction, regardless of whether the test of *Environmental Research* or *Rose* was applied.⁶⁰ However, the issue of the receipt of federal funds was more difficult to resolve, as it required the court to choose between the *Environmental Research* and *Rose* tests. The *Coalition* court followed *Environmental Research*'s broader interpretation of the government contacts exception, basing its decision on the simple assertion that a panel of the court of appeals, such as the one that decided *Rose*, cannot overrule an *en banc* decision such as *Environmental Research*.⁶¹ Therefore, those contacts with federal officials, which related to the procurement of federal funds, were excluded from consideration vis-a-vis personal jurisdiction.⁶²

III. TAKING STOCK: RECOGNIZED EXCEPTIONS AND GRAY AREAS

A. *Contacts Generally Falling Within the Exception*

Although the scope of the government contacts exception has created a great deal of confusion and controversy in the District of Columbia courts, certain contacts are generally considered by the courts to fall within the exception. These contacts are grouped loosely under the term "information-gathering."⁶³ Activities such as lobbying,⁶⁴ maintaining an office for the

57. *National Coal*, 603 F. Supp. at 671. As with *Naartex* and *Hughes*, *National Coal* agreed that the maintenance of a government affairs office, limited in this case to verbal and written communication with the Department of Interior, fell within the exception to the long-arm statute. *Id.* at 671-72 (citation omitted).

58. 114 DAILY WASH. L. REP. 961 (D.C. May 12, 1986).

59. *Id.* at 964.

60. *Id.* at 965.

61. *Id.*; see *Naartex*, 722 F.2d at 786.

62. *Coalition*, 114 DAILY WASH. L. REP. at 965.

63. The information-gathering concept was introduced by the *Mueller* court in its expansion of the government contacts principle to include other foreign corporations in addition to the foreign newspaper corporations recognized as exempt from the District of Columbia long-arm statute under *Neely and Layne*. *Mueller Brass Co. v. Alexander Milburn Co.*, 152 F.2d

purpose of monitoring legislative and regulatory matters,⁶⁵ soliciting research grants or other federal funds,⁶⁶ and appearances before federal departments and agencies⁶⁷ are considered information-gathering and therefore fall within the exception. In addition, filings and related dealings with a federal agency, prerequisite to engaging in certain types of business or industry, also fall within the exception.⁶⁸ Moreover, both the *Naartex*⁶⁹ and *Investment Co.*⁷⁰ courts ruled that the defense of a business entity's "proprietary interests" before a governmental body is afforded the same exception as the exercise of the right to petition the government for "non-commercial" reasons.⁷¹

B. Areas of Confusion and Continuing Controversy

The gray areas that continue to prolong the judicial controversy over the scope of the government contacts exception fall into three distinct classes. The first class involves the distinction between actually transacting business for statutory purposes versus mere information-gathering; the second class involves whether the activities comprising the government contacts gave rise to or are related to the plaintiff's claim.⁷² Finally, the third class involves the business relationship between the nonresident defendant and the party representing the defendant through that party's contact with the District of

142, 143 (D.C. Cir. 1945). *Mueller* was the first to recognize that the gathering of information by a foreign corporation from government departments and agencies did not constitute the "doing of business" for purposes of the previous long-arm statute. *Id.* Since *Mueller*, a number of courts, including *Naartex v. Consulting Corp. v. Watt*, 722 F.2d 779, 786 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984); *Investment Co. Inst. v. United States*, 550 F. Supp. 1213, 1216-17 (D.D.C. 1982); *Hughes v. A.H. Robbins Co.*, 490 A.2d 1140, 1145 n.4 (D.C. 1985); and *Environmental Research Int'l v. Lockwood Greene Eng'rs*, 355 A.2d 808, 813 (D.C. 1976) (en banc), have categorized those contacts in the District of Columbia that involve information-gathering from the federal government.

64. *Naartex*, 722 F.2d at 787.

65. *Hughes*, 490 A.2d at 1145 n.4.

66. *Beachboard v. Trustees of Columbia Univ.*, 475 A.2d 398, 401 (D.C. 1984).

67. *National Coal*, 603 F. Supp. at 672.

68. *Investment Co.*, 550 F. Supp. at 1217.

69. 722 F.2d at 787.

70. 550 F. Supp. at 1217.

71. The proprietary interests argument originated in *Naartex*. In that case, the plaintiff attempted to argue that the nonresident defendants made administrative appearances before the Department of Interior in order to protect their oil and gas lease, and not for the purpose of engaging in lobbying activities. *Naartex*, 722 F.2d at 787. Therefore, the plaintiff argued, the exception should not apply. *Id.* The *Naartex* court rejected this argument, holding that the nonresident defendants' attempt to protect their proprietary interests from an unfavorable regulatory decision still qualified as a first amendment exercise in petitioning the government. *Id.*

72. *Hughes*, 490 A.2d at 1145-49.

Columbia.⁷³

With regard to the first category of exceptions, the District of Columbia Court of Appeals in *Beachboard v. Trustees of Columbia University*⁷⁴ held that where a foreign corporation's only contact with the District of Columbia is soliciting research grants and other federal funds, and where the plaintiff's suit does not relate to those activities, the long-arm statute's "transacting business" section does not apply.⁷⁵ In *Hughes v. A. H. Robbins, Co.*,⁷⁶ the court again dealt with a nonresident corporate defendant who established an office for monitoring congressional legislation.⁷⁷ The *Hughes* court found these limited activities to be clearly within the exception.⁷⁸ Further, *Hughes* distinguished between those contacts that involve "information-gathering" as opposed to those that constitute the actual transaction of business, such as entering commercial contracts with the federal government.⁷⁹ The latter, according to *Hughes*, would qualify as contacts within *International Shoe's* meaning and would, thereby, trigger assertion of personal jurisdiction under the long-arm statute.⁸⁰ As the *Hughes* court noted, all of the government contracts pertinent to that case had been negotiated and executed outside of the District of Columbia.⁸¹

In a similar manner to *Hughes*, the *Investment Co.* court said that any application of the government contacts principle for purposes of establishing personal jurisdiction over a nonresident could exclude those business activities that involved the provision of information to or receipt of information from the government.⁸² *National Coal, Coalition*, and *Environmental Research* made the broadest statements concerning the scope of the exception, asserting that all contacts made solely with the federal government are exempt from being considered business transactions for personal jurisdiction purposes. This interpretation originated with *Environmental Research* and was bolstered by *Naartex*, which stated that *Environmental Research* controls because it represents a full court decision, whereas *Rose* was rendered by a panel.⁸³ *Coalition* expanded beyond the recognized exemption covering

73. *Rose v. Silver*, 394 A.2d 1368, 1370-72 (D.C. 1978), *reh'g denied*, 398 A.2d 787 (D.C. 1979).

74. 475 A.2d 398 (D.C. 1984).

75. *Id.* at 401.

76. 490 A.2d 1140 (D.C. 1985).

77. *Id.* at 1143.

78. *Id.* at 1145 n.4.

79. *Id.*

80. *Id.*

81. *Id.*

82. 550 F. Supp. at 1216.

83. 722 F.2d at 786.

the solicitation of federal funds,⁸⁴ and proclaimed that the exception also would cover the procurement of funds.⁸⁵

The District of Columbia courts likewise are divided over the second category of exceptions involving the issue of whether the fact that the plaintiff's claim is related to the activities comprising the government contacts should affect the exception. According to the *Beachboard* court, if the plaintiff's claim arises from the activities relating to the government contacts, the long-arm statute can be invoked as a basis for personal jurisdiction.⁸⁶ Like *Beachboard*, *Hughes* also touched on the relationship between the cause of action and the government contacts.⁸⁷ In a departure from *Beachboard*, the *Hughes* court concluded that those government contacts that were *unrelated* to the cause of action could also be considered in the minimum contacts equation, but that they should be given far less weight than contacts that were related to the claim.⁸⁸ As previously noted, the dissent in *Environmental Research* argued against allowing application of the exception where a claim arose from the activities conducted in the District of Columbia.⁸⁹ However, as the majority understood *Mueller* and its progeny, a denial of personal jurisdiction should be based upon the *nature* of the activities themselves—the government contacts—and not upon the relationship between the suit and the activities.⁹⁰

With respect to the third category, the *Rose* court focused very closely on the business relationship between the nonresident defendant and the party representing that defendant through its contacts with the District of Columbia. *Rose* concerned an agency relationship whereby an attorney was sent by a foreign corporation to set up an office in the District of Columbia to negotiate with and potentially litigate against a federal agency.⁹¹ The *Rose* court held that the foreign corporation had purposefully availed itself of the privilege of conducting activities in the District of Columbia because the attorney had moved to the District of Columbia at the direct instigation of the client to act as the client's fiduciary.⁹² *Rose* made an important distinction between the "unilateral activity" of the independent contractor, which characterized *Environmental Research*, and the agency relationship in *Rose*. According to the court, the "lack of control" aspect over the independent

84. *Beachboard v. Trustees of Columbia Univ.*, 475 A.2d 398, 401 (D.C. 1984).

85. 114 DAILY WASH. L. REP. 961, 965 (D.C. May 12, 1986).

86. 475 A.2d at 401.

87. 490 A.2d at 1146.

88. *Id.*

89. 355 A.2d at 816-17 (Fickling, J., dissenting).

90. *Id.* at 813-14 (opinion of Harris, J.).

91. 394 A.2d at 1369.

92. *Id.* at 1371-72.

contractor in *Environmental Research* was a far cry, from the "right to direct and control" the functions carried out by the corporation's agent.⁹³ Therefore, the court reasoned, the agent had transacted business for the corporation within the meaning of the long-arm statute.⁹⁴ Consequently, according to the *Rose* court, if a fiduciary relationship is present and the nonresident defendant provides for direct control over the agent's activities in the District of Columbia, then the contacts constitute "transacting business" for long-arm statute purposes. Such direct control thereby renders the nonresident defendant amenable to suit in the District of Columbia.⁹⁵

IV. COMMENTARY ON *ROSE* AND *ENVIRONMENTAL RESEARCH*: THE CHOICE BETWEEN UNDESIRABLE EXTREMES

As previously discussed, the federal district courts, have not followed the narrow interpretation of the government contacts exception articulated in *Rose*.⁹⁶ Although the District of Columbia Court of Appeals has not yet addressed the conflict, it is likely that the court will eventually resolve it in favor of a broad interpretation of the exception. The crux of the difficulty with defining the scope of the exception lies in the fact that neither *Environmental Research* nor *Rose* provide a viable solution to the controversy. Both represent undesirable, impracticable extremes that ought to be avoided by the courts.

The undesirability of the District of Columbia Court of Appeals' decision in *Rose* is underscored with an analysis of the types of activities constituting the government contacts in the foregoing cases. The limited contacts made by the nonresident corporations and other entities in these cases included lobbying,⁹⁷ maintenance of a District of Columbia office for the sole purpose of monitoring legislative and/or regulatory matters,⁹⁸ solicitation⁹⁹ and/or receipt¹⁰⁰ of research grants and various other federal funds, and the filing and processing of applications to engage in a certain type of business, when the filings could only be accomplished in the District of Columbia.¹⁰¹ None of these varied activities has anything to do with the first amendment right to petition the government for redress of grievances. Nor did any of these

93. *Id.* at 1372.

94. *Id.* at 1371.

95. *Id.*

96. *Rose*, 394 A.2d at 1374.

97. *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 787 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984).

98. *Hughes v. A.H. Robbins Co.*, 490 A.2d 1140, 1145 n.4 (D.C. 1985).

99. *Beachboard v. Trustees of Columbia Univ.*, 475 A.2d 398, 401 (D.C. 1984).

100. *Coalition v. Dole*, 114 DAILY WASH. L. REP. 961, 965 (D.C. May 12, 1986).

101. *Investment Co. Inst. v. United States*, 550 F. Supp. 1213, 1217 (D.D.C. 1982).

activities, with the possible exception of *Rose*, trigger or contribute to the claim that gave rise to the suit.¹⁰² Yet, according to the *Rose* rationale, none of these activities would qualify for the government contacts exception to the District of Columbia long-arm statute.¹⁰³ Given the unique position of the District of Columbia as a forum for frequent and necessary dealings between nonresident and federal entities, it is inconceivable that merely on the basis of these contacts, individuals and corporations would subject themselves to personal jurisdiction in the District of Columbia. *Rose* attempts to restrict application of the government contacts exception within too narrow a context to be practicable in the District of Columbia.

Policy considerations also underscore the advantages of a broad interpretation of the exception. The District of Columbia Court of Appeals has identified two policy considerations inherent in the government contacts exception.¹⁰⁴ If the twin objectives of: (1) encouraging open access to and free communication with the federal government, and (2) preventing the District of Columbia from becoming a floodgate for litigation based solely on dealings with federal entities are to be achieved, then a broadly applied exception is the vehicle by which to accomplish them. Adherence to *Rose* would expand the amenability of nonresidents to suit, and would ultimately have a stifling effect on the willingness of nonresidents to deal with federal officials and agencies. Worse yet, the application of *Rose* has the potential to turn the District of Columbia into the unwelcome "national judicial forum" that the District of Columbia Court of Appeals has sought to avoid.¹⁰⁵

On the other hand, *Environmental Research's* interpretation of the government contacts exception offers an equally undesirable alternative with respect to its position on the relationship between the activities comprising the government contacts and the plaintiff's claim. The *Environmental Research* court held that the exception would apply even if the claim arose from the activities conducted in the District of Columbia.¹⁰⁶ Such an interpretation is in direct conflict with Supreme Court precedent which has held that the relationship between the defendant, the forum, and the litigation is of central

102. Arguably, even the government contacts in *Rose* were not per se related to the litigation that followed. The attorney who acted as a fiduciary for the foreign corporation sued to recover fees due for the legal services he performed in the District of Columbia. 394 A.2d at 1369. Therefore, the claim really stemmed from the corporation's refusal to pay, and *not* from the actual activities comprising the government contacts.

103. See *supra* note 46 and accompanying text.

104. *Environmental Research Int'l v. Lockwood Greene Eng'rs*, 355 A.2d 808, 813 (D.C. 1976) (en banc).

105. *Id.*

106. *Id.* at 813-14.

concern with respect to the inquiry into personal jurisdiction.¹⁰⁷ To satisfy the requirements for minimum contacts, and thereby assert personal jurisdiction, the Supreme Court has ruled that there must be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum state.¹⁰⁸ If there is a nexus between the parties, the litigation, and the forum state in a way that justifies bringing the parties before a state tribunal, the requirements of *International Shoe* and its progeny are met, and the state can assert personal jurisdiction over the nonresident defendant.¹⁰⁹

It is clear from the Supreme Court's articulation of the concept of minimum contacts that the application of an absolute exception, such as the one fashioned by the *Environmental Research* court, conflicts with established legal precedent that is binding on the District of Columbia courts. For example, to assert that a corporation maintaining an office for monitoring congressional affairs would not be liable to a local landlord for arrears in rent is absurd. Similarly, to preclude a District of Columbia resident from suing for injuries sustained in a car accident in which a nonresident lobbyist is at fault is equally untenable. Therefore, while it is likely that a broad interpretation will guide future decisions rendered by the District of Columbia Court of Appeals, Supreme Court precedent dictates that the interpretation will be fashioned from some middle ground between *Environmental Research* and *Rose*. The *Hughes* and *Beachboard* cases, which were decided nearly a decade after *Environmental Research*, may signal a judicial retreat on the part of the District of Columbia Court of Appeals from the extremes of *Environmental Research* and *Rose*. Both the *Hughes*¹¹⁰ and *Beachboard*¹¹¹ courts recognized that, notwithstanding the government contacts exception, personal jurisdiction can be asserted when a plaintiff's claim arises from activities relating to government contacts.¹¹² Thus, the holdings in those two cases are more in line with Supreme Court precedent.

V. CONCLUSION

The opinions of the District of Columbia Court of Appeals in *Rose* and *Environmental Research* define the parameters of the government contacts controversy within the District of Columbia courts. In view of the District of Columbia's important and unique position as the seat of the federal gov-

107. *Shaffer v. Heitner*, 433 U.S. 186, 207 (1977).

108. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

109. *Shaffer*, 433 U.S. at 207-09.

110. 490 A.2d at 1145-46.

111. 475 A.2d at 401.

112. *See supra* notes 86-88 and accompanying text.

ernment, the District of Columbia Court of Appeals is certain to resolve the conflict soon. To date, federal courts in the District of Columbia have favored *Environmental Research*, while the District of Columbia Court of Appeals has reflected far less uniformity. The variety and increasing frequency of government contacts made by nonresident corporations and individuals require an exception that is broad rather than narrow in scope. Yet, however broadly the scope of the government contacts exception may be defined in future decisions, the District of Columbia Court of Appeals is more likely to be guided by consideration of Supreme Court precedent as it relates to the assertion of personal jurisdiction, and hence, more likely to avoid the ill-advised extremes of *Rose* and *Environmental Research*.

Hilaire Henthorne Butler