2000

# What Does the Constitution Say About the Vouchers?

John H. Garvey
*The Catholic University of America, Columbus School of Law*

# What Does The Constitution Say About Vouchers?

by John H. Garvey

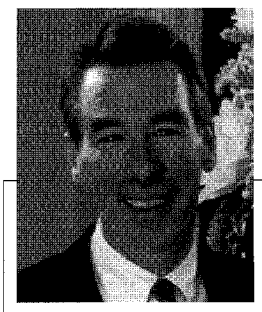
A number of cities and states, dissatisfied with the performance of their public schools, have started voucher programs to give parents some choice in the education of their children, and to provide a competitive stimulus to public schools. Vouchers have always had an appeal for parents of parochial school children, who have religious reasons for seeking an alternative to public education. But nowadays they also appeal to parents – often Latino and African-American – whose children are trapped in underperforming city schools. The idea has surfaced in the presidential election campaign already under way. Senator Bradley once supported the notion, though it may have cost him the endorsement of the teachers' unions. John McCain has proposed a three-year, $5.4 billion voucher demonstration project. Texas Governor George W. Bush has suggested using Title I money or federal block grants for private-school tuition. Governor Jeb Bush got a state plan enacted this year for the worst schools in Florida.[1]

When voucher plans include parochial schools (and they typically do), they are routinely challenged on constitutional grounds. Last year the Wisconsin Supreme Court upheld Milwaukee's Parental Choice Program, against a charge that it violated the establishment clause of the United States Constitution.[2] This year the Ohio Supreme Court rejected a similar claim against the Ohio Pilot Scholarship Program, though it held the program invalid on state law grounds.[3] Maine used to include parochial schools in its voucher program. In 1981 it made them ineligible – though all other public and private schools can participate. Parochial school parents have attacked this exclusion as a violation of the free exercise and free speech clauses – claims rejected this year by both the state supreme court and the First Circuit.[4] Vermont has a rather similar story.[5] The United States Supreme Court thus far has declined to take the matter up. I would like to speculate about what it might decide if it ever did get involved. To give a one sentence summary of my conclusions, I think it should hold that voucher plans do not violate the establishment clause, and that sometimes (though maybe not always) excluding religious schools can violate the free exercise and free speech clauses.

## I. May a Voucher Program Include Parochial Schools?

### *1. The GI Bill*

Let me begin with an example of a voucher plan that we all approve of, and that has always applied to religious schools. The GI bill has never distinguished between religious and secular schools. Veterans have been able to take their education benefit and spend it where they have pleased. This program has several features that explain its wide appeal. In the first place it rewards veterans for service to their country. I don't mean to suggest that we are willing to wink at a constitutional violation because it's done in a good cause. I mention this instead because it shows that the government has no intention of helping religious institutions.[6] A second feature of the GI bill that underscores the same point is this: the benefits go to a large and diverse class. It is not a religious gerrymander. Veterans represent all shades of belief and unbelief. *Lemon v. Kurtzman* holds that a law must have a secular purpose to survive under the establishment clause.[7] These first two features bear on that point.



*John H. Garvey is the Dean of Boston College Law School.*

A third feature that accounts for the popularity of the GI bill is this: the student chooses the school where he or she will spend the money. This means the program does little to affect the distribution of students within the universe of colleges and universities. Students are (we hope) more likely to attend college than they were before. But they will not find religious schools more attractive, relative to their competitors, than they were before. The GI bill does not affect the students' religiosity by enticing them into religious programs. Nor does it affect the religious behavior of institutions by tying benefits to a certain pattern of religious (or secular) behavior. Any changes in religious activity result from private choices made by veterans about where to spend their money. This is what we call in tort law an intervening cause. The government is not responsible for causing religious effects; the GI is. This satisfies the second part of the *Lemon* test: the law does not have the primary effect of advancing or inhibiting religion.[8]

No one would argue that Social Security benefits are unconstitutional because recipients might put them in the collection basket. The GI bill is even less objectionable in this regard. Because it is restricted aid (it can only be spent for a certain purpose), the public is assured that it will get full secular value for its money.[9] The veteran has to use it to buy an education. It's true that the school might infuse that product with a religious spirit. But it's still a college degree: a set of skills, a useful credential in the job market, a preparation for self-sufficiency in the civilian world, etc.

### *2. Witters*

Little wonder that when the Supreme Court finally considered a plan like the GI bill it unanimously upheld it. *Witters v. Washington Department of Services for the Blind*[10] was about a state vocational rehabilitation aid plan for blind people. Witters wanted to use his grant at the Inland Empire School of the Bible, a private Christian college, where he was studying to become a minister. Justice Marshall emphasized the points I have mentioned: [i] The program was designed to help the blind. It was not a sham, secretly engineered to benefit seminaries. [ii] Blindness afflicts people of all shades of belief. Only a few are likely to attend seminaries. This too supports the state's bona fides: the program would be a terribly inefficient way of conveying funds to religious schools. [iii] Students could spend the aid where they wished. So the program did not skew students' religious choices (by making religious schools relatively more attractive than others). Nor did it affect religious behavior of institutions (by tying money to a specific course of conduct). The program was religiously neutral.

There were several concurring opinions in *Witters*, and though no one came right out and said it, they were concerned about the significance of point [ii]. Justice Marshall's opinion suggested that it was relevant to *Lemon*'s effects test, not just its purpose requirement. He implied (though he did not say) that even if the Washington plan had an unimpeachable secular purpose, it might be unconstitutional if too many students chose to spend their money at religious schools. On this point five justices concurred separately.[11]

### *3. Vouchers*

Let us see now whether these principles apply in the same way to the kind of voucher programs that we find in states like Wisconsin, Ohio, and Florida. There are, I think, two relevant differences that crop up in elementary and

secondary schools. The first is that the students are younger. The second is that religious schools might make up a greater fraction of the participating institutions.

Before I discuss the first of these two points, I want to mention a difference that is *not* relevant in the comparison of higher and lower education. It is often said, sometimes rightly, that religion infuses parochial school education to a greater degree than it does the curriculum at religious colleges and universities.[12] This observation is said to have some bearing on the constitutionality of school aid. If the constitution requires some kind of strict separation, this might be possible in a college chemistry class but not in junior high science. And so it might be OK for the National Science Foundation to build a chemistry lab at Georgetown or give a fellowship to one of its faculty, but not OK to do the same things at St. Monica's elementary school. But this observation has no bearing on the comparison we are making. Religion might be off in a corner at Georgetown, but it's still there, and veterans can take their GI benefits anywhere in the university. They can major in theology as well as chemistry. In fact that is what Larry Witters was allowed to do. This form of aid is constitutional in colleges not because it never finds its way into religious pockets, but because it is the students who choose to direct it there.

Does it matter that the students in Wisconsin's and Ohio's and Florida's voucher programs are younger than war veterans and seminary students? Some say it is. The Supreme Court made something of this the day it decided *Lemon* and *Tilton v. Richardson*,[13] which upheld construction grants to religious colleges:

> [C]ollege students are less impressionable and less susceptible to religious indoctrination. Common observation would seem to support that view, and Congress may well have entertained it. The skepticism of the college student is not an inconsiderable barrier to any attempt or tendency to subvert the congressional objectives and limitations.

When the Court spoke of Congress's "objectives and limitations" it had this in mind: the Higher Education Facilities Act is designed to help schools pay for science buildings, language labs, etc. It is not supposed to pay for buildings used for sectarian instruction or religious worship. *Tilton* suggests that because college students are sophisticated, they won't stand for science teachers in the federally funded building trying to pass off creationism as legitimate science.

This might be true. But even if it is, it turns out to be just a variation on the last argument. Let us suppose that sophisticated students at religious schools will help in enforcing the rule that says religion must stay in its proper place — the chapel, the divinity school, perhaps the theology department. That vigilance is not what makes the GI bill (or aid to the blind) constitutional; the student holding that kind of aid can attend chapel daily, major in theology, and become a minister. The saving feature of college tuition aid is that the student makes the decision about where to spend it . . . so if the money finds its way into religious pockets at the university, that effect has an intervening cause. Vouchers for little kids have this same feature. It doesn't matter if they are more susceptible to religious persuasion. The key thing is that their parents make the choice about whether to buy that kind of education or not.

The other difference between college and lower school vouchers is this. Most colleges and universities in America are not religious; veterans can go to any of them. Justice Marshall in *Witters* said there was no evidence "that any other person has ever sought to finance religious education . . . pursuant to the State's program."[14] Would it matter if most of the institutions participating in a voucher program were religious? *Sloan v. Lemon*[15] says it might. Two months after the Supreme Court decided *Lemon v. Kurtzman*, Pennsylvania enacted the Parent Reimbursement Act for Nonpublic Education, which reimbursed parents up to $150 for tuition paid to private schools[16] — a kind of proto-voucher plan. More than 90% of the private school population in Pennsylvania attended religious schools. The Supreme Court held the plan unconstitutional, saying:[17]

> The State has singled out a class of its citizens for a special economic benefit. Whether that benefit be viewed as a simple tuition subsidy, as an incentive to parents to send their children to sectarian schools, or as a reward for having done so, at bottom its intended consequence is to preserve and support religion-oriented institutions. [T]his is quite unlike the . . . benefits that flowed to sectarian schools from programs aiding *all* parents by supplying bus transportation and secular textbooks for their children.

You can imagine a similar claim being made about current voucher programs. The one Ohio adopted in 1996 offered $5.25 million to low-income Cleveland children in K-3. Recipients could spend the vouchers at 43 different private schools; 42 of them were religious.[18] The Milwaukee Parental Choice Program adopted in 1990 allowed a limited number of poor K-12 students to attend private school. For each participating student the state would divert $2500 from the Milwaukee Public Schools to the private school. Parochial schools were at first excluded (a point I examine below), but they were added by the 1995-96 Budget Act, and if allowed to take part, they will absorb a large number of the participating students. What bearing does this have on their constitutionality?

I confess that they are hard to distinguish from *Sloan*. If you are careful about how you describe a voucher plan it is possible to skate around the problem. Pennsylvania in *Sloan* called its act Parental Reimbursement for Nonpublic Education. Parochial schools represented 90%, roughly speaking, of the participating institutions, because the denominator was 'all private schools.' But if you describe your voucher program as a plan that gives each student $2500 for tuition at 'any school public or private,' the denominator is much larger, and the program is indistinguishable from the GI bill.

Nor would it matter if, as a matter of fact, most of the participating students spent their vouchers at private, even parochial, schools. That's how it was with the tuition benefit in *Mueller v. Allen*[19] (a tax deduction rather than a grant). The Court said that it was constitutional because it was formally available to "*all* parents — whether their children attend public school or private."[20] And this result would not vary from year to year with parents' choices. "We would be loath to adopt a rule grounding the constitutionality of a facially neutral law on annual reports reciting the extent to which various classes of private citizens claimed benefits under the law."[21]

Perhaps we should just say that *Witters* has overruled *Sloan* and leave it at that. The distinction between private school tuition grants and all-school vouchers is pretty flimsy when you recall that public school is a free option in both cases. It is, in the phrase I have used, always in the denominator even if it's not discussed in the statute that creates the tuition payment program. Why should that formality be of constitutional significance? I don't have a good answer. Maybe it's like *Minneapolis Star v. Minnesota Commissioner of Revenue*,[22] where the Court struck down a special use tax for newspapers. This was not a law passed to get newspapers.[23] Indeed it was *lower* than the general use tax for other forms of tangible personal property, and the Court said it would be OK to make papers pay that one. The idea was that the political process would protect the press better if any law affecting it had to be addressed to a large crowd. How does this

*Continued on page 31*

 Continued from page 15

apply to *Sloan*? We might say that any school aid law has to put private and public schools together so we can be perfectly sure we don't have any favoritism.

## II. Must a Voucher Program Include Parochial Schools?

I would not say, as some might, that the constitution requires aid to parochial schools. I think it is OK for New York to run a system of public schools and leave it at that.[24] But when the state provides funds for every type of school *but* religious schools I think the rule is different. Thus I would say that Wisconsin's current voucher law (which includes parochial schools) is constitutional, but its 1990 predecessor (which included only nonreligious private schools) was not. And I am concerned for the same reason about the laws in Maine and Vermont excluding *only* religious schools from voucher programs.

This is a question governed by free speech and free exercise law, not establishment clause law. The background rule is this: when the government speaks it is entitled to confine its remarks to a particular subject, and even to take a particular point of view. This, after all, is why we elect a president and a congress. It is a bit like the "market participant" exception to the commerce clause: when the government acts as a participant rather than as a regulator it can do as it likes. It can even discriminate.[25] The president can come out in favor of peace in Northern Ireland and against restrictions on partial birth abortion. The public schools can teach that democracy is a good thing and race discrimination is bad.

The danger we run in thinking of the government as a market participant is that there is no limit to the government's market power.[26] It could conceivably buy up all the newspapers, radio and TV stations, parks, libraries, etc. (unlike the rest of us, it has the power to tax), and then hand them out to its friends. So in free speech law we distinguish between cases where the government itself speaks, and cases where the government hands out scarce resources to speakers. In the latter group of cases (public forum cases) we say that the government, like a private owner, can sometimes restrict the uses of its property. It can reserve it for the discussion of certain topics. For example, NEH can give grants for essays about the bicentennial. Boston can hold school board meetings but not political rallies in its public school gymnasiums. But it cannot discriminate on the basis of viewpoint. *Lamb's Chapel v. Center Moriches Union Free School Dist.*[27] held that the school district could not, when it opened classrooms for discussions about child rearing, exclude people who wanted to discuss the subject from a religious point of view. And *Rosenberger v. Rector*[28] held that this rule even extended to cases where the government was handing out money rather than regulating access to public places. The University of Virginia funded student news, information, and opinion media groups (it paid their printing bills), but it refused to pay for a magazine that discussed things like racism, pregnancy, eating disorders, and music from a Christian point of view. The university tried to defend its action by saying that it was making a judgment based on content, not viewpoint — all discussions of religious thought, pro and con, were off limits. But the Court rightly responded:[29]

> Religion may be a vast area of inquiry, but it also provides, as it did here, a specific premise, a perspective, a standpoint from which a variety of subjects may be discussed and considered. The prohibited perspective, not the general subject matter, resulted in the refusal to make third-party payments, for the subjects discussed were otherwise within the approved category of publications.

You can make an even better case for this proposition in the case of parochial schools. They teach the same subjects as other private and public schools.[30] The big difference is that they teach them from a religious point of view. When the government funds all public and private schools except parochial schools, it is doing the same thing the University of Virginia did in *Rosenberger*.

Though this seems indisputable to me, I confess to some lingering doubts. There is a fine line between *Rosenberger* and another strand of government funding cases. *Rust v. Sullivan*,[31] for example, held that HHS, in funding family planning programs, could refuse to fund those that discussed or promoted abortion. These are pretty hard to tell apart. We might say that *Rosenberger* involves a program to encourage private speech, whereas in *Rust* the state enlists private speakers to convey a message that it has written. But if that is the only difference, why couldn't the University of Virginia announce that it was funding student publications to convey a secular message? Perhaps we might better say that *Rust* upheld a program whose point was action (family planning), not talk. The first amendment can't possibly require the government, whenever it funds a program, to give equal support to the program's opponents. It is not viewpoint control in the first amendment sense to ban sales of cigarettes to minors without giving equal support to tobacco companies. Nor to restrict logging on federal lands without supporting timber interests.

## III. Conclusion

I should caution readers who might be sympathetic to my message that I have seldom been right in predicting the outcome of litigation in the Supreme Court. The best bet might be the opposite of what I say. And I need to add that I have only been discussing constitutional questions. It is another, and to my mind a more difficult, question whether parochial schools should *want* to get government aid. There is a real danger that they will be tempted to adjust their teaching in order to attract the maximum degree of public support. And that would be a more serious loss than defeat on the constitutional issues.

ENDNOTES

[1] Scot Lehigh, *No Longer for Republicans Only – School Vouchers Win New Favor*, Boston Globe E1 (October 10, 1999). The article can be found at 1999 WL 6084708.

[2] *Jackson v. Benson*, 578 N.W.2d 602, (Wis. 1998), *cert. denied*, 119 S. Ct. 466 (1998).

[3] *Simmons-Harris v. Goff*, 711 N.E.2d 203 (Ohio, 1999). The local federal court, ruling on a preliminary injunction motion at about the same time, held that the program probably *did* violate the Establishment Clause. *See Simmons-Harris v. Zelman*, 54 F.Supp.2d 725 (N.D.Ohio,1999). Two days later the court stayed its order in part, to minimize disruption while it decided the case on the merits. *Simmons-Harris v. Zelman*, 1999 WL 669222 (N.D.Ohio 1999).

[4] *Bagley v. Raymond School Dept.*, 728 A.2d 127 (Me. 1999), *cert. denied*, 120 S. Ct. 364 (1999); *Strout v. Albanese*, 178 F.3d 57 (1st Cir. 1999), *cert. denied*, 120 S. Ct. 329 (1999).

[5] *Chittenden Town School Dist. v. Dept. of Educ.*, 738 A.2d 539 (Vt. 1999), *petition for cert. filed*, No. 99-628 (Oct. 8, 1999).

[6] *Cf. Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979).

[7] 403 U.S. 602 (1971).

[8] *See Agostini v. Felton*, 521 U.S. 203, 226-28 (1997).

[9] Jesse H. Choper, Securing Religious Liberty 177 (1995).

[10] 474 U.S. 481 (1986).

[11] White (for himself), Powell (for Burger and Rehnquist), and O'Connor (for herself).

[12] *See Roemer v. Board of Works of Maryland*, 426 U.S. 736, 754-759 (1976) (opinion of Blackmun, J.).

[13] 403 U.S. 672, 686 (1971) (opinion of Burger, C.J.).

[14] 474 U.S. at 488.

[15] 413 U.S. 825 (1973).

[16] The law in *Lemon* had reimbursed private schools for money spent on books and teachers' salaries.

[17] *Sloan*, 413 U.S. at 832. The same day the Court struck down a similar New York program in *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973).

[18] Comment, *The Milwaukee Parental Choice Program: The First Voucher System to Include Religious Schools*, 7 Regent U.L. Rev. 165, 167 n.10 (1996).

Continued on next page

## VOUCHERS Continued from page 31

[19] 463 U.S. 388 (1983).
[20] Id. at 388 (emphasis in original).
[21] Id. at 401.
[22] 460 U.S. 575 (1983).
[23] Like Huey Long's. *Grosjean v. American Press Co.*, 297 U.S. 233 (1936).
[24] I should add that it is becoming increasingly apparent that this is a bad idea, though it may be a constitutional one. Because they are funded with tax dollars (and no one else is), public schools are not subject to the discipline of the market, so they are fat and lazy. What's more, though I think it is constitutional for the government to take a point of view, it *is* a point of view, and it is one that many people find objectionable. I am thinking here about biology, sex education, values clarification, steam-cleaned versions of American history, etc.
[25] *Reeves, Inc. v. Stake*, 447 U.S. 429 (1980).
[26] *See South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82 (1984).
[27] 508 U.S. 384 (1993).
[28] 515 U.S. 819 (1995).
[29] Id. at 831.
[30] True, they also have religion classes and religious exercises. But so too did Wide Awake, the Christian newspaper in *Rosenberger*, have articles on prayer.
[31] 500 U.S. 173 (1991).

## INTERNET AND PERSONAL JURIDICTION Continued from page 17

> the forum state] would, in effect, create national (or even worldwide) jurisdiction, so that every plaintiff could sue in plaintiff's home court every out-of-state defendant who established an Internet web site.[32]

While *Hasbro* and *Digital* nonetheless showed signs of certain "spider web"-like language,[33] at least one recent Superior Court decision flatly rejected that approach. In *Commerce & Industry Insurance Co. v. E.I. duPont de Nemours & Co.*,[34] the court declined to exercise either specific or general jurisdiction based on the defendant's relatively non-interactive website. In *Commerce*, the plaintiffs asserted claims based on the provision by the defendants' subsidiaries of fire protection equipment and systems which were involved in the Malden Mills fire. In dismissing the complaint, the court accepted defendants' arguments that the website was a "passive" one which merely contained information about the company, and for which the only "interactivity" was the prominent display of its e-mail address, the encouragement of comments to be sent via e-mail, and the ability to request the company's financial information.[35]

### Some Practical Advice

Given the vagaries of the current status of the case law, is there nothing a website owner might do to avoid being sued in any state from which its site can be accessed? Other than operating a wholly passive website (which may work wonders for avoiding a lawsuit in Yuma, but may do little for generating sales), the following measures will help in limiting exposure to suit in other states:

- Make sure that any website activity which results in a contract — for example, an order or a subscription form — clearly states that the contract is not complete until the company accepts it, and that it will be completed in the company's home state.
- Consider also including a forum selection clause, stating that any disputes arising out of the transaction will be governed by your home state's law and litigated there.
- If you are posting job openings on your website, be sure to state that your hiring practices comply with both federal and your home state's law, that any resulting employment agreement will be completed in your home state, and that any disputes arising out of the hiring and employment relationship will be governed by your home state's law and litigated there.

These suggestions may not assure the avoidance of lawsuits in other states. Incorporating such suggestions, however, may go a long way towards demonstrating that the company did not purposefully avail itself of the privileges of doing business in a foreign state, and that it therefore did not seek to invoke the benefits and protections of that state's laws.

### Conclusion

So what does all of this mean? First and foremost, those who post websites should be aware that Internet activity has the potential for exposing them to suit in multiple states under varying state laws, many of which could produce widely varying outcomes. There is an inherent tension between promoting commercial activity and minimizing exposure to suit in other states: the more actively one engages in soliciting business via a website with customers or site visitors from other states, the more likely one is to be sued in and subjected to the substantive law of those states. A passive website — one that merely conveys information and does not solicit business and where only the user is "traveling" to the website — is much less likely to support a finding of personal jurisdiction, although it may not be particularly good for sales. Nonetheless, site owners can still incorporate a variety of tools, such as forum selection clauses, to minimize their exposure. One thing, however, is quite certain: as courts continue to develop the law of Internet jurisdiction under the Constitution over the next several years, we certainly will have more answers. But we just as certainly will have more questions by then, too.

ENDNOTES

[1] *CommerceNet and Nielsen Media Research Issue Results of Spring 1999 Internet Demographic Survey* (Press Release June 17, 1999) <http://www.commerce.net/news/press/ann061699.html>
[2] *Id.*
[3] *Id.*
[4] For purposes of this article, we are putting aside the even more complicated question of whether a local retailer in, say, Singapore successfully might bring suit there over that same issue. It is also important to note that, once a court decides to exercise jurisdiction, it will engage in a separate analysis to determine which state's substantive law will apply to the case. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 778 (1984). Thus, it is possible that the law of the state where the lawsuit is filed, the law of the state in which a company is headquartered, or the law of the state where the alleged harm occurred could apply to the case. The determination of which state's law will apply has obvious and potentially extraordinary ramifications for the outcome of the case.
[5] *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414 (1984) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citation omitted)).
[6] This article addresses specific jurisdiction since, obviously, if one is doing so much business in the forum state such that general jurisdiction is proper, the issue of jurisdiction based on an Internet website is moot. A court may exercise general jurisdiction if a defendant engages in "continuous and systematic activity" in the forum state, thereby subjecting a defendant to suit involving any issue, whether or not the lawsuit has anything to do with the defendant's activity in the state. *Foster-Miller, Inc. v. Babcock & Wilcox Canada*, 46 F.3d 138, 144 (1st Cir. 1995) (quoting *United Elec. Workers v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1088 (1st Cir. 1992)).
[7] *See, e.g., International Shoe*, 326 U.S. at 319; *Foster-Miller, Inc. v. Babcock & Wilcox Canada*, 46 F.3d 138, 144 (1st Cir. 1995). The First Circuit has described this analysis as a three-part test: (1) relatedness, (2) purposeful availment or minimum contacts, and (3) reasonableness. *Foster-Miller*, 46 F.3d at 144.
[8] *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (citing International Shoe, 326 U.S. at 319).
[9] *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (emphasis supplied) (internal citations omitted).
[10] *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112 (1987) (plurality opinion).
[11] *See, e.g., Molnycke Health Care v. Dumex Med. Surgical Prods. Ltd.*, 64 F. Supp. 2d 448, 452 (E.D. Pa. 1999) (website where customers can order online insufficient for general jurisdiction); *American Homecare Fed'n v. Paragon Scientific Corp.*, 27 F. Supp. 2d 109, 114 (D. Conn. 1998) (operation of website including toll-free number insufficient for specific jurisdiction); *Digital Equip. Corp. v. Altavista Tech., Inc.*, 960 F. Supp. 456, 466 (D. Mass. 1997) (contract with forum state choice of laws, website and at least three sales to forum state residents sufficient for specific jurisdiction); *Hearst Corp.*