Fordham Law Review

Volume 91 | Issue 1 Article 4

2022

Second Service: 28 U.S.C. § 1448 and State Court Service of Process After Removal

Leigh Forsyth
Fordham University School of Law

SECOND SERVICE: 28 U.S.C. § 1448 AND STATE COURT SERVICE OF PROCESS AFTER REMOVAL

*Leigh Forsyth**

28 U.S.C. § 1448 governs the requirements of process after removal, providing that when defendants are not completely or perfectly served prior to removal, plaintiffs may complete such process or service, or new process may be issued in the same manner as in cases originally filed in the district court. There remains an open question as to whether state court service issued prior to removal, but served after removal, retains its efficacy in federal court under § 1448. This open question has led to divergent interpretations among district courts, with differing consequences. As of this Note's publication, at least twenty-seven district courts and one circuit court have grappled with this question and reached various interpretations of § 1448: at least twelve courts have analyzed the text of § 1448 and concluded that state court process after removal is not permitted under § 1448, and at least eleven have concluded the opposite—that state court process should retain its efficacy after removal. At least six courts are somewhere in the middle.

This Note explores these different interpretations and attempts to resolve the open question of § 1448 in advocacy of permitting completion of state court service of process after removal. The Note attempts to link the different district and circuit court opinions through the themes of federalism, statutory interpretation, notice provided to the defendant through service, and priority of the Federal Rules of Civil Procedure after removal. Ultimately, this Note concludes that these goals are furthered through completion of state court service of process after removal under § 1448, and posits a solution under Rule 4(m) that would ensure plaintiffs' cases are heard on the merits, rather than the technicalities of removal procedure.

* J.D. Candidate, 2023, Fordham University School of Law; B.A., 2016, Emory University. I would like to thank Professor Thomas Lee for his guidance and support. I would also like to thank Judge Cathy Seibel and Jennifer Butwin for starting me on this procedural path, as well as the editors and staff of the *Fordham Law Review* for their diligent editing. Finally, I want to thank my parents, Grace, Gordon, Matthew, and all my friends and family for their unrelenting love. I could not have done this without their encouragement.

INTRODUCTION

On December 22, 1988, Jeffrey Wade filed a products liability suit against the company Black Clawson in New Jersey state court.[1] Mr. Wade then attempted to serve the company at its New York City offices by personally delivering his complaint to the company's assistant to the Vice President himself, rather than through an intermediary, such as a process server.[2] Black Clawson then filed a Notice of Removal, and Mr. Wade's case was removed to federal court in the District of New Jersey.[3] This was when Mr. Wade's procedural headache truly began.

Once the case was removed, Black Clawson filed a motion for summary judgment, or alternatively, a motion to dismiss the complaint for improper service pursuant to Federal Rule of Civil Procedure (FRCP) 12(b)(5) ("Rule 12(b)(5)").[4] One month after Black Clawson filed its motion, Mr. Wade attempted service again.[5] Mr. Wade served Black Clawson's Vice President with a *state* court summons and complaint via regular and certified mail, and two days after that, served the Vice President with the *state* court summons and complaint via a process server.[6]

Black Clawson argued that the first service before removal was defective under New Jersey court rules, and, importantly, that the services after removal were invalid under 28 U.S.C. § 1448 because Mr. Wade had served the state court summons, rather than a federal court summons.[7] Mr. Wade argued that all services were valid.[8] The New Jersey district court agreed with both of Black Clawson's arguments.[9]

Mr. Wade's service prior to removal was defective under New Jersey court rules, but the New Jersey district court also held that the two attempts after removal were invalid as well, even though Mr. Wade had seemingly cured the defects from his first attempt at service.[10] The District of New Jersey found that the service of a state court summons after removal was invalid on its face according to § 1448 because only service of process pursuant to federal procedure was permitted after removal.[11] Because of this incurable

1. Wade v. Black Clawson, No. 89-2385, 1989 WL 138735, at *1 (D.N.J. Nov. 17, 1989).
2. *See id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *See id.* at *4.
8. *Id.*
9. *Id.*
10. *See id.* at *5.
11. *See id.*

mistake, Black Clawson's motion to dismiss for failure to properly serve was granted and Mr. Wade's complaint was dismissed.[12]

The consequences of Mr. Wade's procedural predicament were harsh but not uncommon to plaintiffs in the same situation. The plain text of § 1448 has generated a split in authority regarding whether state court process issued prior to removal can be served after removal, or if the plaintiff must serve a summons from the federal court under FRCP 4 ("Rule 4").

Some federal courts have interpreted this ambiguity in § 1448 to require a plaintiff to file a new summons and complaint in federal court if service of the state court summons and complaint was not completed before removal or if such service was defective. This ambiguity largely arises from the interpretation of the final clause in § 1448, which provides that incomplete, imperfected, or defective service "may be completed or new process issued in the same manner as in cases originally filed in such district court."[13] Courts that have interpreted § 1448 to forbid completion of state court service of process post-removal focus on the notion that the federal court has taken jurisdiction from the state court after the notice of removal is filed, the primacy of federal procedure following removal, the insufficiency of notice provided to the defendant through state court process, and the statutory language "in the same manner as in cases originally filed in such district court."[14] On the other hand, courts interpreting § 1448 to allow post-removal completion of incomplete or ineffective state court service of process emphasize that defendants usually have actual notice of the suit, and that the statutory language of "may be completed" and supporting canons of statutory interpretation compel such a reading.

Plaintiffs who fall victim to these divergent interpretations often must re-serve the defendant(s) more than once (regardless of how the court interprets § 1448), and occasionally, the plaintiff's suit is dismissed entirely for inadequate service, either to be refiled or given up. These complications result in unnecessary expense to the plaintiffs, prolonged litigation, and can result in the plaintiff's case never being heard on its merits.

This Note provides a survey of courts that have analyzed and decided issues of service under § 1448, ultimately advocating that plaintiffs should not be subject to added burdens as § 1448 permits completion of service of state court process after removal. Part I describes the history of removal, including how the federal courts view their jurisdiction over removed cases and the procedure for removing a case from state to federal court. Part I also recounts the legislative history of § 1448 and explains how the problem of service pre- and post-removal has developed and been addressed by Congress. Finally, Part I details the tools of statutory interpretation most commonly applied in interpreting § 1448 and provides some background on how district courts typically approach such issues of statutory interpretation.

12. *Id.* at *5–6.
13. 28 U.S.C. § 1448.
14. *Id.*

Part II surveys the courts that have addressed the problem of whether state court service of process can be completed after removal, starting with the highest court to address § 1448 process after removal, the U.S. Court of Appeals for the Ninth Circuit in *Beecher v. Wallace*.[15] Part II also discusses the legacy of *Beecher*'s interpretation, describing the courts that have followed and departed from *Beecher*'s interpretive framework. Finally, Part II analyzes how themes of federalism, statutory interpretation, authority of federal procedure, and the purpose of service of process are reconsidered by subsequent courts when detangling § 1448.

Part III ultimately concludes that state court service of process must retain its efficacy after removal based on an interpretation of the plain language of § 1448. Such an interpretation is also consistent with how federal courts have historically understood their removal jurisdiction, the original purpose of § 1448, adjacent provisions in the statutory scheme for removal, the purpose of the FRCP, and the requirements of Rule 4 service. Part III also proposes a good cause exemption for § 1448 under Rule 4(m), to further the policy of the statute while still allowing for courts to protect valid concerns of notice provided by service and without dismissing plaintiff's case entirely.

I. THE INTERPLAY OF SERVICE OF PROCESS AND REMOVAL

Removal is the process by which a defendant may unilaterally elect to move a suit pending against them in state court to federal court if the district court has original jurisdiction over the matter.[16] Approximately 32,000 civil cases are removed annually.[17] This part provides background on labyrinthine removal procedure, § 1448's place in that labyrinth, and how district courts typically and historically have interpreted relevant statutes. It is worth starting with how removal came to be and what procedural hurdles both plaintiffs and defendants must jump over before and after removal.

A. A Brief History of Removal and Removal Scholarship

Removal is not a creature of common law or constitutional right, nor is it a constitutionally granted power of the judiciary; rather, it is a purely statutory construction.[18] Removal of cases from state court was first permitted for diversity jurisdiction by the Judiciary Act of 1789[19] and has

15. 381 F.2d 372 (9th Cir. 1967).

16. *See* 28 U.S.C. § 1441.

17. *See Table E-8—U.S. District Courts—Civil Judicial Business (September 30, 2021)*, U.S. CTS., https://www.uscourts.gov/statistics/table/c-8/judicial-business/2021/09/30 [https://perma.cc/VE9K-Q55E] (last visited Sept. 2, 2022) (click on "DOWNLOAD DATA TABLE") (reflecting that, in 2021, 32,275 of the total filings in federal district courts were notices of removal).

18. *See* Martin v. Hunter's Lessee, 14 U.S. 304, 349 (1816) ("This power of removal is not to be found in express terms in any part of the constitution . . . ."); JAMES HAMILTON LEWIS, REMOVAL OF CAUSES 103–06 (1923) (collecting cases and explaining the statutory right of removal).

19. Ch. 20, § 12, 1 Stat. 73, 79–80.

endured in the United States Code since.[20] The removal statutes, however, have proven to be a labyrinth of procedure since their inception. "That there is no other phase of American jurisprudence with so many refinements and subtleties, as relate to removal proceedings, is known by all who have to deal with them."[21]

Removal, as it was first conceived, was available both before and after final judgment in state court,[22] for suits commenced against "an alien,"[23] and for suits in which citizens of one state brought suit against citizens of another state in matters where the amount in controversy exceeded $500.[24] Cases were removable to the next appellate court in the district where the state court suit was pending.[25]

Removal from federal to state court was a cause of concern during the adoption of the U.S. Constitution and the passing of the Judiciary Act of 1789 for Federalists and Anti-Federalists alike, particularly as it related to diversity jurisdiction.[26] But by the early 1880s, federal courts accepted removal and removal procedure, and the U.S. Supreme Court "in no uncertain terms" protected removal as a power conferrable by Congress.[27]

Despite widespread adoption and protection from the Supreme Court, debate continued as to how federal courts obtained jurisdiction over removed cases.[28] Justice Joseph Story believed that federal courts had *appellate* jurisdiction over removed cases, meaning that a state court's original jurisdiction had already attached before removal, and federal courts retained only appellate jurisdiction over the removed case.[29] This understanding was informed by the fact that when section 12 of the Judiciary Act of 1789 authorizing removal was enacted, "a suit already tried to jury verdict in state court could be removed to federal court and there retried by federal judges."[30] Thus, the power of removal was "certainly not" an exercise of original

20. *See* Debra Lyn Basset & Rex R. Perschbacher, *The Roots of Removal*, 77 BROOK. L. REV. 1, 2 (2011) ("[T]he U.S. legal landscape has included removal since the creation of federal courts . . . ."). Removal procedure is currently codified at 28 U.S.C. §§ 1441–1455.

21. Hagerla v. Miss. River Power Co., 202 F. 771, 773 (S.D. Iowa 1912).

22. *See generally* 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1745 (2d. ed. 1923).

23. Thomas H. Lee, *Article IX, Article III, and the First Congress: The Original Constitutional Plan for the Federal Courts, 1787–1792*, 89 FORDHAM L. REV. 1895, 1914–15 (2021).

24. *Id.*

25. Judiciary Act of 1789, ch. 20, § 12, 1 Stat. 73, 79; *see also* Lee, *supra* note 23, at 1914.

26. *See* Scott R. Haiber, *Removing the Bias Against Removal*, 53 CATH. U. L. REV. 609, 612–19 (2004); THE FEDERALIST NO. 82, at 553 (Alexander Hamilton) (Easton Press ed., 1979) ("But this doctrine of concurrent jurisdiction is only clearly applicable to those descriptions of causes of which the State courts have previous cognizance [(*i.e.*, in diversity jurisdiction cases)]. . . . [F]or not to allow the State courts a right of jurisdiction in such cases, can hardly be considered as the abridgment of a preëxisting authority.").

27. Martin v. Hunter's Lessee, 14 U.S. 304, 348–49 (1816).

28. *Compare* 2 STORY, *supra* note 22, § 1745, *with* Ry. Co. v. Whitton's Adm'r, 80 U.S. 270, 287 (1871), *and* Tennessee v. Davis, 100 U.S. 257, 265–66 (1879).

29. 2 STORY, *supra* note 22, § 1745.

30. Lee, *supra* note 23, at 1937.

jurisdiction because "it presupposes an exercise of original jurisdiction to have attached elsewhere."[31]

The Supreme Court called Justice Story's logic into question decades later, suggesting that removal could "more properly be regarded as an indirect mode by which the Federal court acquires *original* jurisdiction of the causes."[32] The Supreme Court has since remained firm on this view of removal jurisdiction, stating that "the jurisdiction exercised on removal is original not appellate."[33]

Of course, whether one characterizes the removal jurisdiction as original or appellate, removal jurisdiction is "by definition" one by which the federal and state courts have *concurrent* jurisdiction.[34] Removal as concurrent jurisdiction views the federal and state courts as having overlapping authority to adjudicate the claim.[35]

Regardless of what form federal jurisdiction takes over a removed case, both plaintiffs and defendants must comply with the procedural requirements of removal set forth in title 28 of the U.S. Code (the "Judicial Code") and the FRCP because, post-removal, the case is solely within the federal judicial system.

B. Removal Mechanics and the Federal Rules of Civil Procedure

The procedure for removal of actions from state to federal court is detailed in 28 U.S.C. §§ 1441–1450.

Generally, cases based on diversity of citizenship and/or cases over which the district courts have original jurisdiction are eligible for removal.[36] A defendant seeking such removal must file a "short and plain statement of grounds for removal" with a district court, along with "all process, pleadings, and orders served upon . . . defendant or defendants."[37] Once the notice is filed, the defendant must give notice to all adverse parties and file a copy with the state court.[38] If a defendant removes a case after other defendants are served, earlier-served defendants must give their consent to the removal.[39] After the notice is filed, the state court is barred from proceeding with the case "unless and until" the case is remanded.[40]

---

31. 2 STORY, *supra* note 22, § 1745.
32. *Whitton's Adm'r*, 80 U.S. at 287 (emphasis added).
33. Freeman v. Bee Mach. Co., 319 U.S. 448, 452 (1943) (citing Virginia v. Rives, 100 U.S. 313, 320 (1879)).
34. *See* Basset & Perschbacher, *supra* note 20, at 5–6.
35. *See* Baldwin v. Sears, Roebuck & Co., 667 F.2d 458, 460 (5th Cir. 1982) ("[A]ll types of civil actions, in which there is concurrent original jurisdiction in both federal and state courts, are removable.").
36. 28 U.S.C. § 1441. The U.S. Supreme Court has interpreted §§ 1441, 1445, and 1447 as establishing a policy of "avoiding interruption of the litigation of the merits of removed causes, properly begun in state courts" in the context of reviewability of orders to remand. United States v. Rice, 327 U.S. 742, 751–52 (1946).
37. 28 U.S.C. § 1446(a).
38. *Id.* § 1446(d).
39. *Id.* § 1446(b)(2)(C).
40. *Id.* § 1446(d).

District courts are authorized to "issue all necessary orders and process" to bring all proper parties before the court, even if they were served with state court process.[41] But all orders, injunctions and other proceedings issued prior to removal "remain in full force and effect until dissolved or modified by the district court."[42] Also, attachments or sequestrations of goods or the estate of a defendant in the state court are held to "answer the final judgment or decree" of the district court in the "same manner they would have been held to . . . had it been rendered by the State court."[43]

Plaintiffs must satisfy the procedural requirement of service of process "[b]efore a federal court may exercise personal jurisdiction over a defendant."[44] Removal to federal court does not waive a defendant's right to object to the sufficiency of service and/or process,[45] but sufficient and complete service of process is necessary for the federal court to obtain personal jurisdiction over the defendant.[46] Without personal jurisdiction over the parties and without proper subject matter jurisdiction, the federal court cannot issue a valid order that is binding on the parties.[47]

Service of process is defined as "a formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action."[48] Federal process under Rule 4 includes a summons and copy of the complaint,[49] but state court requirements can differ.[50] The "core function" of service of process is to "supply notice" of a legal action in such a way that affords the defendant a "fair opportunity to answer the complaint and present defenses and objections."[51] The FRCP also contain a strong, general policy favoring adjudication on the merits over dismissal based on "mere

41. *Id.* § 1447(a).

42. *Id.* § 1450.

43. *Id.*

44. Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co., 484 U.S. 97, 104 (1987).

45. *See, e.g.*, Morris & Co. v. Skandinavia Ins. Co., 279 U.S. 405, 409 (1929); City of Clarksdale v. BellSouth Telecomms., Inc., 428 F.3d 206, 214 n.15 (5th Cir. 2005); Cantor Fitzgerald, L.P., v. Peaslee, 88 F.3d 152, 157 n.4 (2d Cir. 1996) ("Removal does not waive any Rule 12(b) defenses.").

46. *See Omni Cap.*, 484 U.S. at 104.

47. Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701 (1982) (citing Stoll v. Gottlieb, 305 U.S. 165, 171–72 (1938)).

48. Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 700 (1988).

49. FED. R. CIV. P. 4(a)–(c)(1). Even when service of the summons is waived, a copy of the complaint must be furnished on the defendant with the notice and request of waiver. *Id.* 4(d)(1)(C).

50. *See generally* Michael Hartman, *Civil Justice: Service of Process*, NAT'L CONF. OF STATE LEGISLATURES (Feb. 10, 2021), https://www.ncsl.org/research/civil-and-criminal-justice/civil-justice-service-of-process637480363.aspx [https://perma.cc/54JN-JW3P] (collecting relevant statutes from all fifty states on the required contents of a summons, how to serve the summons, whether to include the complaint when serving, and the timeline for service). The individual state requirements for the contents of a summons are beyond the scope of, and are not pertinent to, this Note.

51. Henderson v. United States, 517 U.S. 654, 672 (1996) (analyzing the purpose of service of process and the "uniform system" of Rule 4 to hold that Rule 4 supplanted a federal statute); *see also* Poole v. Amrit, No. 17-CV-05511, 2018 WL 6380792, at *3 (N.D. Ga. Aug. 6, 2018) (analyzing service of process under *Henderson* and § 1448).

technicalities,"[52] which explains why federal courts are generally less rigid about enforcing strict service rules when actual notice was effectuated in a reasonable manner.[53]

Defendants can contest the sufficiency of service by moving to dismiss under Rule 12(b)(5) and can contest the sufficiency of process under FRCP 12(b)(4) ("Rule 12(b)(4)").[54] Defendants will also often move to dismiss under FRCP 12(b)(2) for lack of personal jurisdiction by arguing that incomplete service precludes the court from exercising personal jurisdiction over the defendant.[55] After the defendant files a motion to dismiss, the burden is shifted to the serving party to prove the validity or sufficiency of service and/or process.[56]

If a defendant decides to remove the case before being served or if problems arise with service after removal, the procedure for completion or perfection of service is covered by 28 U.S.C. § 1448. Section 1448 provides in relevant part:

> In all cases removed from any State court to any district court of the United States in which any one or more of the defendants has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service may be completed or new process issued in the same manner as in cases originally filed in such district court.[57]

After a case is removed to federal court, the FRCP apply,[58] but the sufficiency of service of process *prior to removal* is controlled by the applicable state law.[59] The requirements for service of process are detailed

---

52. Foman v. Davis, 371 U.S. 178, 181–82 (1962); *see also* Baumeister v. N.M. Comm'n for the Blind, 409 F. Supp. 2d 1351, 1353–54 (D.N.M. 2006) (applying the "strong policy" from *Foman* to "the interplay" of § 1448 and the FRCP).

53. *See, e.g.*, Hanna v. Plumer, 380 U.S. 460, 462 n.1 (1965).

54. FED. R. CIV. P. 12(b)(4)–(5); *see also* 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1353 (4th ed. 2021) (outlining the differences between a motion under Rules 12(b)(4) and 12(b)(5)). Defendants often confuse the two types of motions or move under both provisions of the rule. *See id.*

55. *See* 5B WRIGHT & MILLER, *supra* note 54, § 1353 (describing the difference between a Rule 12(b)(5) and a Rule 12(b)(2) motion, and distinguishing between "interrelated" issues of personal jurisdiction and service of process); *see also* FED. R. CIV. P. 4(k)(1)(A).

56. *E.g.*, Burda Media, Inc. v. Viertel, 417 F.3d 292, 298 (2d Cir. 2005) (establishing plaintiff's burden when responding to a Rule 12(b)(5) motion); Scott v. Md. State Dep't of Labor, 673 F. App'x 299, 304 (4th Cir. 2016) (same); Henderson v. Texas, 672 F. App'x 383, 384 (5th Cir. 2016) (establishing plaintiff's burden when responding to a motion to dismiss under Rules 12(b)(4) and 12(b)(5)).

57. 28 U.S.C. § 1448.

58. FED. R. CIV. P. 81(c)(1) ("These rules apply to a civil action after it is removed from a state court."); *see, e.g.*, Whidbee v. Pierce Cnty., 857 F.3d 1019, 1023 (9th Cir. 2017) (using FRCP 81(c)(1) to support use of Rule 4 procedure for service of process in removed case); *see also infra* Part II.B.4 and II.C.4. The 1937 adoption of Rule 81 made statutes dealing with the removal of actions, including the former version of § 1448, subject to Rule 4 procedure for service of process. FED. R. CIV. P. 81(c) advisory committee's note to 1937 adoption.

59. Allen v. Ferguson, 791 F.2d 611, 616 n.8 (7th Cir. 1986) (requiring that, when determining whether process was properly served, "a federal court must apply the law of the state under which the service was made"); *accord* Wallace v. Microsoft Corp., 596 F.3d 703, 707 (10th Cir. 2010); *Whidbee*, 857 F.3d at 1023.

in Rule 4.[60] Rules 4(a)–(c) describe what must be contained within the federal process.[61] Rule 4 describes how that process may be served: either by following "state law for *serving* a summons" within the state where the district court is located or service is made, or by delivering the process to the defendant, a person of suitable age and discretion at the defendant's dwelling, or an authorized agent of the defendant.[62] Rule 4(m) requires that defendants be served within ninety days of the complaint being filed, or the action will be dismissed.[63] A court "*must* extend the time for service" if the plaintiff demonstrates good cause for failing to serve within the ninety-day period.[64] The requirements of a good cause showing differ based on jurisdiction.[65] Good cause generally includes a "diligent" but failed effort to serve the defendant.[66] Diligent but failed efforts include confusion over service statutes,[67] a reasonable belief that service had been appropriately accomplished,[68] or defendant's evasion of service.[69] Plaintiff has the burden of establishing good cause.[70]

C. Legislative History of § 1448

28 U.S.C. § 1448 stemmed from a simple purpose.

The U.S. House Committee on the Judiciary for the 66th Congress recommended a bill "providing for service of process in causes removed from a State court to a United States court" for congressional approval in November 1919.[71] The committee relied on Professor W.S. Simkins's book *A Federal Equity Suit*, which described the problem to be remedied: at the time, federal courts had no power to issue process or perfect service after removal from state court.[72] This forced federal courts to dismiss cases where defendants were incompletely or defectively served prior to removal, "because if the State court had no jurisdiction[, the federal court] cannot take

60. FED. R. CIV. P. 4.
61. *Id.* 4(a)–(c).
62. *Id.* 4(e)(1), 4(g), 4(h)(1)(A) (emphasis added).
63. *Id.* 4(m) (emphasis added).
64. *Id.* (emphasis added). Courts are also authorized to "relieve a plaintiff of the consequences of an application of this subdivision even if there is no good cause shown." FED. R. CIV. P. 4(m) advisory committee's note to 1993 amendment; *see also* Henderson v. United States, 517 U.S. 654, 662–63 (1996) (upholding courts' discretion to extend the time to serve, pursuant to the 1993 advisory committee's note).
65. *See, e.g.*, Schmude v. Sheahan, 214 F.R.D. 487, 490 (N.D. Ill. 2003); Seesing v. Miller, No. 21-CV-26, 2021 WL 3410041, at *3 (E.D. Ky. Aug. 4, 2021). *See generally* 5B WRIGHT & MILLER, *supra* note 54, § 1137 n.6 (collecting cases that have found a showing of good cause).
66. 5B WRIGHT & MILLER, *supra* note 54, § 1137.
67. *E.g.*, Dominic v. Hess Oil V.I. Corp., 841 F.2d 513, 516–17 (3d Cir. 1988).
68. *E.g.*, Genz-Ryan Plumbing & Heating Co. v. Sheet Metal Workers' Local 10, 207 F. Supp. 3d 1038, 1046 (D. Minn. 2016).
69. *E.g.*, Hendry v. Schneider, 116 F.3d 446, 449 n.2 (10th Cir. 1997).
70. 5B WRIGHT & MILLER, *supra* note 54, § 1137.
71. H.R. REP. NO. 66-452, at 1 (1919).
72. W.S. SIMKINS, A FEDERAL EQUITY SUIT 860 (2d ed. 1911). The Committee Report mistakenly refers to the author as "Simpkins," *see* H.R. REP. NO. 66-452, at 1, but the accurate spelling is "Simkins."

any."[73] The committee found Simkin's description persuasive and recommended that completion of service be permitted in federal courts to "avoid the necessity of dismissing, paying the costs, and refiling."[74] The committee was particularly concerned with the increased cost to litigants when service could not be completed or perfected in federal court, resulting in the "useless expense" of multiple court filings and prolonged litigation.[75] The committee also wanted to ensure that the proposed act would not enhance the federal courts' jurisdiction in any way.[76]

The bill was submitted with "no objection" from the U.S. Department of Justice, carrying with it a letter of approval from then Attorney General A. Mitchell Palmer.[77] The U.S. Senate Committee on the Judiciary also recommended the bill to pass without amendment, quoting from the House Committee on the Judiciary's report in full to support its recommendation.[78]

The bill was passed in April 1920.[79] The original language of the act differs from its current version, providing for completion or perfection of service when "any one or more of the defendants has not been served with process or in which the same has not been perfected prior to such removal," or when "process . . . served proves to be defective."[80] Notably, the act as it stood in 1920 contained a modifier stating that service may be perfected "in the same manner as in cases which are originally filed in such United States court."[81]

This modifier is similar to the language in § 1448 as it stands today.[82] The current version of § 1448 was enacted in June 1948, when Congress codified the Judicial Code.[83] The amendments were characterized as changes "in phraseology," and Congress did not provide further explanation.[84] However, the language as amended differs significantly.[85] Most notably, the 1920 version provides that when a defendant has not been served before removal, when service has not been perfected prior to removal, or when service prior to removal is defective, such process may be

> completed by the United States court through its officers, or new process as to defendants upon whom process has not been completed may be issued

---

73. SIMKINS, *supra* note 72, at 860.
74. H.R. REP. NO. 66-452, at 1.
75. *Id.* at 1.
76. *Id.*
77. *Id.* at 2.
78. S. REP. NO. 66-453, at 1 (1920).
79. Act of April 16, 1920, ch. 146, 41 Stat. 554 (codified at 28 U.S.C. § 1448).
80. *Id.*
81. *Id.*
82. *See* 28 U.S.C. § 1448 (providing that "process or service may be completed or new process issued *in the same manner as in cases originally filed in such district court*" (emphasis added)).
83. *See* Act of June 25, 1948, Pub. L. No. 80-773, 62 Stat. 869 (codified as amended in scattered sections of 28 U.S.C.).
84. H.R. REP. NO. 80-308, at A137 (1947); H.R. REP. NO. 79-2646, at A132 (1946) (providing no rationale for the phraseology change to § 1448).
85. *Compare* 28 U.S.C. § 1448, *with* Act of April 16, 1920, ch. 146, 41 Stat. 554 (codified at 28 U.S.C. § 1448).

> out of such United States court, or service may be perfected in such court in the same manner as in cases which are originally filed in such United States court.[86]

The 1948 amendment shortened § 1448 into the version that exists today: the modern § 1448 allows incomplete, unperfected, or defective service to be "completed or new process issued in the same manner as in cases originally filed in such district court."[87] Although each clause in the 1920 version was given a modifier, the clauses in the current version were not: either (1) the two remedies—issuance of new federal process or completion of state court service of process—are *both* meant to be modified by the last clause; or (2) *only* the last remedy is meant to be modified, and therefore only new process issued must be executed pursuant to federal procedure and state court process retains its efficacy after removal. These changes in wording may not appear to majorly impact the statute's substance, but the meaning of the statute hinges on the tools and canons of statutory interpretation used—even changes in phraseology can change its meaning. Part I.D. will explain how these canons and tools have been used by the district courts to interpret statutes.

D. Statutory Interpretation and the District Courts

Statutory interpretation at the district court level differs greatly from court to court.[88] District courts generally use interpretive methods and canons less often[89]—and often conduct different interpretive analyses—than would appellate courts.[90] This is partly due to institutional constraints: district courts hear many more cases, most of which deal with more complicated issues of fact than of law, and district court judges rely on in-circuit authority more than interpretive methods when resolving complex issues of law.[91]

However, district courts still use many classic canons of interpretation when faced with interpretive issues.[92] These methods of interpretation

---

86. Act of April 16, 1920, ch. 146.

87. 28 U.S.C. § 1448. "United States court" in the 1920 version was changed to "district court" in the current version because only the district courts possess jurisdiction over removed cases after the amendments. H.R. REP. NO. 79-2646, at A132.

88. *See* Aaron-Andrew P. Bruhl, *Statutory Interpretation and the Rest of the Iceberg: Divergences Between the Lower Federal Courts and the Supreme Court*, 68 DUKE L.J. 1, 14–22 (2018).

89. *See id.* at 64–65.

90. *See id.* at 67–68 (describing the findings of a "matched-corpus" study, where the author found that the canons used in the trial and appellate opinions for the same case were usually different).

91. *See id.* at 14–20; James J. Brudney & Lawrence Baum, *Two Roads Diverged: Statutory Interpretation by the Circuit Courts and Supreme Court in the Same Cases*, 88 FORDHAM L. REV. 823, 834 (2019); Pauline T. Kim, Margo Schlanger, Christina L. Boyd & Andrew D. Martin, *How Should We Study District Judge Decision-Making?*, 29 WASH. U. J.L. & POL'Y 83, 89 (2009).

92. *See* Bruhl, *supra* note 88, at 59 fig.6, 60 fig.7.

include linguistic canons, such as the rule of the last antecedent,[93] and textual tools, such as the presumption of consistent usage.[94]

This Note will focus on the rule of the last antecedent,[95] the presumption of a disjunctive "or,"[96] and the rule against surplusage.[97] These tools of statutory construction have been used by district courts before[98] and have been used both implicitly and explicitly by district courts when analyzing § 1448. Courts have reached different conclusions on whether § 1448 authorizes completion of state service of process after removal depending on which statutory methodology, canon, or tool of interpretation they invoked.[99] These interpretations have had different consequences for plaintiffs at the pre-answer motion or responsive pleading stages,[100] depending on when the defendant raised the insufficient service and/or process defense, which defendants often do before the plaintiff's case has been heard on the merits.

93. *See* Lockhart v. United States, 577 U.S. 347, 351 (2016) ("[W]hen a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it."). The rule of the last antecedent may be overcome when other "indicia of meaning" suggest so. *Id.* at 352; *see, e.g.*, N.H. Lottery Comm'n v. Rosen, 986 F.3d 38, 55–56 (1st Cir. 2021) (suggesting that the rule of the last antecedent should not be applied when the result would require accepting an unlikely premise); *cf.* Grecian Magnesite Mining, Indus. & Shipping Co. v. Comm'r, 926 F.3d 819, 824 (D.C. Cir. 2019) (holding that when other indicia of meaning "all point in the same direction," the rule of the last antecedent should be followed).

94. *See* FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000) ("It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" (quoting Davis v. Mich. Dep't of Treasury, 489 U.S. 803, 809 (1989))). Textual canons and tools have become more popular following the trickle-down adoption of textualism. Bruhl, *supra* note 88, at 58.

95. *See* cases cited *supra* note 93.

96. *See* Encino Motorcars, LLC v. Navarro, 138 S. Ct. 1134, 1141 (2018) (noting that when "or" connects nouns and gerunds in a statute, it is "almost always disjunctive" (quoting United States v. Wood, 571 U.S. 31, 45 (2013))). The meaning of "or" within a statute generally indicates alternatives which should be treated separately. Rine v. Imagintas, Inc., 590 F.3d 1215, 1224 (11th Cir. 2009); *accord* United States v. Nishiie, 996 F.3d 1013, 1023 (9th Cir. 2021); Knutzen v. Eben Ezer Lutheran Hous. Ctr., 815 F.2d 1343, 1349 (10th Cir. 1987).

97. *See* Duncan v. Walker, 533 U.S. 167, 174 (2001) ("'It is our duty to give effect, if possible, to every clause and word of a statute.' We are thus 'reluctan[t] to treat statutory terms as surplusage' in any setting." (citations omitted) (first quoting United States v. Menasche, 348 U.S. 528, 538–39 (1955); and then quoting Babbitt v. Sweet Home Chapter, Cmtys. for Great Ore, 515 U.S. 687, 698 (1995))).

98. *See* cases cited *supra* notes 93, 96 and accompanying text. For instances of district courts using the presumption of a disjunctive "or," see, for example, Villafranco v. Pompeo, 486 F. Supp. 3d 1078, 1082 (S.D. Tex. 2020) (noting that the use of "or" in a statute was disjunctive); Metro. Prop. & Cas. Ins. Co. v. Devlin, 323 F. Supp. 3d 207, 213 (D. Mass. 2018) (same); United States ex rel. Takemoto v. Hartford Fin. Servs. Grp., Inc., 157 F. Supp. 3d 273, 279 (W.D.N.Y. 2016) (same).

99. *See infra* Parts II.B.2, II.C.2.

100. *See* FED. R. CIV. P. 12(b); 5B WRIGHT & MILLER, *supra* note 54, § 1347.

II. A PATH OF ANALYTICAL FOOTSTEPS: THE PROGENY OF *BEECHER V. WALLACE* AND DIVERGENT INTERPRETATIONS OF § 1448

Differing interpretations of § 1448 have split district courts and one circuit court[101] into two main camps.[102] One group has read § 1448 as only allowing service of process after removal to be completed or perfected through compliance with federal procedure. The other group of courts has read § 1448 to allow for completion or perfection of state court service of process after removal and does not require new process to be issued from federal court.

Part II will examine the varying interpretations of § 1448, first describing an opinion from the highest court to decide this issue, the Ninth Circuit, in *Beecher v. Wallace*. Part II will then discuss the various district court opinions which have accepted or rejected the *Beecher* decision, as well as their reasons for doing so. Each side of the split regarding *Beecher*'s interpretation of § 1448 considers issues of (1) federalism; (2) statutory interpretation; (3) the degree of notice provided to the defendant through service; and (4) the interplay between § 1448, the FRCP, and the Judicial Code. Part II.B and II.C will explain the reasoning behind courts' understanding of this issue through those lenses.

A. Beecher v. Wallace*: The Starting Point*

The "sole question" before the Ninth Circuit in *Beecher v. Wallace* was whether "a state court summons issued but not served prior to removal . . . to the federal courts retain[ed] any efficacy for further service of process after the removal."[103] The Ninth Circuit is the highest court to address this issue, and the *Beecher* opinion became the starting point for many courts within and without the Ninth Circuit when dealing with the same question.[104]

To answer this question, the *Beecher* court conducted a "careful reading" of § 1448.[105] The careful reading used notions of federalism and the purpose of service and implicitly invoked common tools of statutory interpretation to reach its conclusion.[106] The purpose of service of process, in the court's opinion, is to give the defendant "notice of the proceeding against him," making service of process an "indispensable prerequisite" to obtaining jurisdiction over a party.[107]

Through its reading of § 1448, the court laid out its understanding of the statutory provisions as applying to three possible situations: (1) where a

101. Beecher v. Wallace, 381 F.2d 372 (9th Cir. 1967). The U.S. Court of Appeals for the Tenth Circuit cited *Beecher* when circling around the issue of § 1448's interpretation but ultimately decided "there [was] no need" to definitively rule one way or the other because the issue of service was resolved on other grounds. Wallace v. Microsoft Corp., 596 F.3d 703, 707 (10th Cir. 2010).

102. *See infra* Appendix A.

103. 381 F.2d at 373.

104. *See infra* Parts II.B–C.

105. *Beecher*, 381 F.2d at 373.

106. *See id.*

107. *Id.*

defendant had not been served at all prior to removal, (2) where a defendant had been served but service had not been perfected, and (3) where a defendant was served but the process was defective.[108]

The court framed its interpretation of § 1448 by differentiating these situations through the lenses of the purpose of service and concerns about federalism.[109] In the first situation, where the defendant had not been served prior to removal, the state court never acquired jurisdiction over the defendant in the first place.[110] But in the second two situations, where service was unperfected or defective before removal, the defendant was put on notice of the case against him, and the state court obtained jurisdiction over him.[111]

The *Beecher* court thought that the last two situations would occur only in very narrow circumstances.[112] Primarily, the second situation, unperfected service, could occur, for example, when the return was not filed in state court prior to removal.[113] There, the court read § 1448 as allowing the plaintiff to complete service by filing the return in state court.[114] The third situation, defective process, could be cured by amendment, and thus could also be completed in federal court without rendering the state court process void.[115]

The first situation, however, could not be remedied by completion of state court service of process. The defendant was never put on notice of the proceeding prior to removal, which rendered the state court process void after removal.[116] The only remedy available when the defendant had not been served prior to removal was to issue new federal process under Rule 4.[117]

From this understanding of § 1448's scope, the court held that state court process issued but not served prior to removal did not "retain any efficacy" after removal.[118] To complete sufficient service, the *Beecher* court held that the plaintiff must obtain and serve new federal process on the defendant.[119]

Beecher's interpretation of § 1448 is foundational for courts that both agree and disagree with its holding, and is at the core of many defendants' Rule 12(b)(4) and 12(b)(5) motions to dismiss.[120] The Ninth Circuit

---

108. *Id.*
109. *See id.*
110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.* Here, the court was referring to filing a proof of mailing or personal delivery of process through an affidavit by the serving party. For an example of a required "return" to complete service, see Velten v. Daughtrey, 226 F. Supp. 91, 92 (W.D. Mo. 1964), which was cited in *Beecher*. *See Beecher*, 381 F.2d at 373.
114. *Beecher*, 381 F.2d at 373.
115. *Id.*
116. *Id.*
117. *Id.*
118. *Id.*
119. *Id.*
120. *See, e.g.*, Cont'l Ill. Nat'l Bank & Trust Co. v. Protos Shipping, 472 F. Supp. 979, 982 (N.D. Ill. 1979) ("Relying on *Beecher v. Wallace*, defendants contend that . . . the service of the state process upon them subsequent to removal did not subject them to the jurisdiction of [the federal court]." (citation omitted)); Tanus Cabinets Designs, Inc. v. Cent. Transp. LLC,

provided succinct reasoning behind its interpretation of § 1448, but the court was clear in its delineation of § 1448's scope and available remedies.

The court seemed to view the use of "or" within the statute as covering three distinct situations, consistent with the presumption of a disjunctive "or."[121] Accordingly, it assigned the two remedies available under the statute —completion of state court process or new federal process issued—to each situation differently by stating that § 1448 "recognizes this distinction."[122]

The court distinguished between the two remedies based on jurisdictional concerns: when a defendant is put on notice of the proceeding and came within the jurisdiction of the state court before removal, the state court process retains efficacy after removal.[123] However, when a defendant is not served with process before removal, they were not put on notice of the pending action nor did they come within the jurisdiction of the state court before removal, and thus the state court process is void after removal.[124] The court's careful balancing between state and federal jurisdiction prioritizes state court jurisdiction above federal jurisdiction, echoing the 66th Congress's concerns[125] when it enacted § 1448's predecessor by affirming that the federal court cannot obtain jurisdiction when the state court has not first acquired it.

The Ninth Circuit has not explicitly overturned *Beecher*, but it has subsequently called its decision into question. The plaintiff in *Richards v. Harper*[126] argued that § 1448 authorized completion of state court service of process after removal, and while the court resolved the issue of service on other grounds, the Ninth Circuit posited that the *Richards* plaintiff may have been correct.[127] Courts that have rejected *Beecher*'s holding cite *Richards* as evidence that *Beecher* should no longer be followed.[128] But despite the Ninth Circuit's suggestion in *Richards*, Part II.B explains that many courts have found the reasoning and holding in *Beecher* to be persuasive and have thus adopted it in their districts.

B. After Removal, Only Federal Process Can Be Served: Subsequent Adoption of Beecher

Many courts following *Beecher* adopted its holding that state court process does not retain its efficacy after removal. They have also adopted its

No. 14-CV-00059, 2014 WL 2863139, at *2 (D. Nev. June 24, 2014) (describing defendant's motion to dismiss, where defendant relied on *Beecher* to argue that plaintiff had to serve process in accordance with the FRCP).

121. *See* cases cited *supra* note 96.

122. *Beecher*, 381 F.3d at 373.

123. *See id.*

124. *See id.*

125. *See supra* text accompanying note 76.

126. 864 F.2d 85 (9th Cir. 1988).

127. *Id.* at 87 (noting that "[a]lthough § 1448 appears to support" the plaintiff's argument that the district court had the power to allow completion of the state court service, the Ninth Circuit's "precedent holds otherwise").

128. *See, e.g.*, Queen v. Schmidt, No. 10-2017, 2015 WL 5175712, at *12 n.10 (D.D.C. Sept. 3, 2015); Minter v. Showcase Sys., Inc., 641 F. Supp. 2d 597, 601 n.4 (S.D. Miss. 2009).

reasoning: only federal process would be allowed because (1) the state court's jurisdiction must be respected and balanced against the federal court's jurisdiction, (2) the plain text of § 1448 compels such an interpretation, (3) state court process cannot provide effective and complete notice to the defendant, and (4) federal law and procedure are prioritized after removal.

1. Federalist Concerns

Courts that have followed *Beecher*'s interpretation display a similar concern about balancing jurisdiction between federal and state courts. At the forefront of concerns about balancing jurisdiction is ensuring that the state court acquired jurisdiction prior to removal—if the state court did not acquire jurisdiction, the federal court has no jurisdiction to take.[129] This can be true even when contemplating the validity of state court process, as was the case in *DiCesare-Engler Productions, Inc. v. Mainman Ltd*.[130]

After the plaintiff unsuccessfully attempted to serve one defendant prior to removal, the *DiCesare* court found that there was no service to complete when the state court did not first acquire jurisdiction over the incompletely served defendant.[131] There, the court held that new process must be issued under Rule 4 before the case could continue on its merits.[132] The *DiCesare* court contemplated that "process in an action removed from state court [could] be authorized under [§ 1448]," but when service was unperfected at the time of removal, the federal court lacked jurisdiction over the defendant.[133]

Ensuring that the state court first acquires jurisdiction prior to removal is a requirement that arises in part from *Beecher*'s assertion that state court process is "null and void" after removal when the defendant was not fully served prior to removal.[134] In *Alexander Technologies, Inc. v. International Frontier Forwarders, Inc.*,[135] the court found that service of state court process on the defendants was "ineffective to bring [the defendants] within the jurisdiction of" the federal court when served after removal, relying in part on the *Beecher* court's assertion.[136] Consequently, the *Alexander Technologies* court denied the plaintiff's request for entry of default on that basis.[137]

The federal court in *Codrington v. Arch Specialty Insurance Co.*[138] addressed the question of whether the plaintiffs' second amended complaint, which was filed in state court and served on the defendants prior to removal,

129. *See supra* text accompanying note 76.
130. 421 F. Supp. 116 (W.D. Pa. 1976).
131. *Id.* at 121.
132. *Id.*
133. *Id.*
134. Beecher v. Wallace, 381 F.2d 372, 373 (9th Cir. 1967).
135. No. H-05-2598, 2006 WL 3694517 (S.D. Tex. Dec. 14, 2006).
136. *Id.* at *1 (quoting Allman v. Hanley, 302 F.2d 559, 562 (5th Cir. 1962); and then citing Beecher v. Wallace, 381 F.2d 372, 373 (9th Cir. 1967)).
137. *Id.* (citing Beecher v. Wallace, 381 F.2d 372, 373 (9th Cir. 1967).
138. No. 19-CV-00026, 2019 WL 3554698 (D.V.I. Aug. 5, 2019).

had become operative.[139] As of the date of removal, the state court had not ruled on the plaintiffs' motion to amend the complaint, but had served a summons and copy of the second amended complaint on the defendants.[140] After the case was removed to federal court, however, that court relied on *Beecher* and found that the state court process was null and void because "exclusive jurisdiction of [that] action became vested" in the federal court following removal.[141] The court thus quashed plaintiffs' prior service and ordered plaintiffs to re-serve defendants with new, federal summonses.[142]

Beecher espouses an all-or-nothing view of state and federal court jurisdiction: where one has jurisdiction, the other must not. For instance, in *Dean Marketing, Inc. v. AOC International (U.S.A.) Ltd.*,[143] the court held that "[a]fter removal of the action to [federal] Court, the state court no longer had jurisdiction of the matter."[144] This view meant that the *Dean Marketing* plaintiff's service of state court process after removal was ineffective, as all service after removal "must be accomplished according to federal procedure"[145] and only federal procedure.

2. Statutory Interpretation of § 1448

The *Beecher* court asserted that its decision arose from a "careful reading" of the statute.[146] Each court, however, interprets § 1448 in a subtly different way, and courts that have adopted *Beecher*'s holding have not delved into § 1448's statutory language as thoroughly as courts that have rejected *Beecher*.[147] Courts that have adopted *Beecher*'s holding focus more on insufficient notice provided by state court process or compliance with the FRCP.[148]

At least one court, however, has analyzed the plain language of § 1448. The court in *Bruley v. Lincoln Property Co.*[149] acknowledged that allowing completion of state court service of process after removal was a "plausible" reading of § 1448, but reasoned that it was "plain that the phrase 'in the same manner . . .' was meant to modify both the completion of service and issuance of new process,"[150] meaning that service may only be completed "in conformity with the federal rules."[151] The *Bruley* court quashed the plaintiff's service and ordered the plaintiff to re-serve the defendant in conformity with Rule 4.[152]

---

139. *Id.* at *2.
140. *Id.*
141. *Id.*
142. *Id.*
143. 610 F. Supp. 149 (E.D. Mich. 1985).
144. *Id.* at 151 (citing 28 U.S.C. § 1446).
145. *Id.* at 152.
146. Beecher v. Wallace, 381 F.2d 372, 373 (9th Cir. 1967).
147. *See infra* Part II.C.2.
148. *See infra* Parts II.B.3–4.
149. 140 F.R.D. 452 (D. Colo. 1991).
150. *Id.* at 454 (quoting 28 U.S.C. § 1448).
151. *Id.*
152. *Id.* at 455.

Bruley implicitly rejected the rule of the last antecedent[153] in its interpretation of § 1448. The rule of the last antecedent can be overcome when the meaning of the statute compels it.[154] Indeed, the *Bruley* court thought that the construction of § 1448 indicated that the modifier "in the same manner as in cases originally filed in such district court" was meant to apply both to completion of service and new process issued.[155] In addition to providing this interpretation of the plain text of § 1448, the *Bruley* court found that the state court process provided insufficient notice and therefore mandated the use of new, federal process after removal.[156] Other courts have found state court process to be similarly deficient in providing notice to defendants.[157]

3. Providing Notice to Defendants

Subsequent courts have also considered notice to the defendants to be a major factor when interpreting § 1448. Courts are split over whether state court service of process can provide the defendant with sufficient notice. When courts see the purpose of service frustrated and find that the defendant was not put on sufficient notice, they are more likely to agree with *Beecher*.

The court in *Bruley* quashed the plaintiff's service of process based on its interpretation of § 1448's text, but the court's holding was bolstered by other factors, including the "fundamental" purpose of Rule 4 service as providing actual notice to defendants.[158] The *Bruley* court reasoned that state court process could not retain efficacy after removal because "mere service of a state court summons" did not put the defendant on notice that the action is pending in federal court.[159] Partially because the *Bruley* plaintiff made no effort to notify the defendant that the case had been removed, the *Bruley* court held that the service must be quashed.[160]

The court in *Alexander Technologies* considered both concerns of overreaching federal jurisdiction and whether the defendant was put on sufficient notice. The court found *Beecher*'s consideration of adequate notice to the defendant persuasive and adopted *Beecher*'s holding that a federal court cannot complete state court service of process "where the defendant has never been put on notice of the state court proceeding prior to

153. *See supra* note 93.
154. *See supra* note 93.
155. *See Bruley*, 140 F.R.D. at 454.
156. *Id.*
157. *See infra* Part II.B.3.
158. *Bruley*, 140 F.R.D. at 454.
159. *Id.* (citing Direct Mail Specialists v. Eclat Computerized Techs., Inc., 840 F.2d 685, 688 (9th Cir. 1988)).
160. *Id.*

removal."[161] The court then dismissed the plaintiff's request for entry of default partially on these grounds.[162]

However, notice can be seen as the trump card in service of process issues—if the defendant had sufficient notice, then the Rule 4 standard can be "liberally construed" to accommodate any technical deficiencies.[163] The court in *Ketchmark v. Brown-Williamson Tobacco Corp.*[164] found that the plaintiff's service of process was deficient under state and federal law,[165] and that these deficiencies were not "merely technical" such that Rule 4 could accommodate the service under a flexible standard if the defendant had sufficient notice.[166] Notably, the *Ketchmark* defendant moved to dismiss the service of process for failure to comply with *state* law, but the *Ketchmark* court was clear that *federal* law governed the service after removal.[167] The court cited *Beecher* and the text of § 1448 without discussing the split over interpretation, but emphasized that the deficiencies in the plaintiff's service were analyzed primarily under the FRCP.[168]

4. Applicability of the Federal Rules After Removal

Many courts that have subsequently adopted the holding in *Beecher* also do so in part because the FRCP establish their sole applicability after removal through FRCP 81(c)(1) ("Rule 81(c)(1)").[169] Rule 81(c)(1) has been used as support for mandating the use of federal procedure after removal.

The court in *Bruley* based its holding on its interpretation of § 1448's language,[170] but the court also found support in the "well-settled rule" that federal procedure governs after removal.[171] The *Bruley* court found that interpreting § 1448 to allow completion of state court service of process

161. Alexander Techs. v. Int'l Frontier Forwarders, Inc., No. H-05-2598, 2006 WL 3694517, at *1 (S.D. Tex. Dec. 14, 2006) (citing Beecher v. Wallace, 381 F.2d 372, 373 (9th Cir. 1967)).

162. *Id.*

163. Ketchmark v. Brown-Williamson Tobacco Corp., No. 18-00079, 2018 WL 3451450, at *2 (D. Haw. July 17, 2018) (quoting Direct Mail Specialists v. Eclat Computerized Techs., Inc, 840 F.2d 685, 688 (9th Cir. 1988)); *id.* at *5 n.8 (citing United Food & Com. Workers Union, Local 197 v. Alpha Beta Co., 736 F.2d 1371, 1382 (9th Cir. 1984)). The *Ketchmark* plaintiff appeared pro se, meaning that the court had to liberally construe the plaintiff's filings regardless, but the court considered the requirement of Rule 4 flexibility independently of the plaintiff's pro se status. *Compare id.* at *1 n.2 ("Because Ketchmark is appearing pro se, the Court liberally construes his filings."), *with id.* at *2 (explaining that "Rule 4 is a flexible rule that should be liberally construed to uphold service" if the defendant received sufficient notice), *and id.* at *5 n.8 (finding that the plaintiff's filings did not comply with Rule 4 even under a liberal construction of the Rule 4 standard).

164. No. 18-00079, 2018 WL 3451450 (D. Haw. July 17, 2018).

165. *See id.* at *3, *5.

166. *Id.*

167. *See id.* at *3, *4 n.7.

168. *See id.*

169. *See* FED. R. CIV. P. 81(c)(1); *see also supra* note 58 and accompanying text.

170. *See* Bruley v. Lincoln Prop. Co., 140 F.R.D. 452, 454 (D. Colo. 1991); *see also supra* text accompanying notes 149–52.

171. *Bruley*, 140 F.R.D. at 454 (citing FED. R. CIV. P. 81(c)).

would give no effect to Rule 81(c)(1).[172] Therefore, only federal service of process pursuant to Rule 4 was allowed after removal.[173]

The court in *Cowen v. American Medical Systems, Inc.*[174] found the plaintiff's original state court service of process to be defective under state law and ordered the plaintiff to re-serve the defendants using a federal summons.[175] The court found that the service had to be perfected using federal process because "after an action is removed, federal law governs," and the procedure for correcting defects after removal is set forth in the FRCP.[176] The court cited Rule 81(c) in support of this finding and ordered the plaintiff to follow Rule 4 procedures to re-serve the defendants.[177]

The magistrate judge in *Amtrust North America v. Sennebogen Maschinenfabrik GmbH*[178] did not resolve the sufficiency of state court service of process after removal because the complaint was dismissed for lack of personal jurisdiction, but the judge indicated that only federal service of process is acceptable after removal.[179] The court cited § 1448 and Rule 81(c)(1) as comprehensive proof that only federal procedure may be used after removal.[180]

In addition to Rule 81(c)(1), courts have found neighboring sections of the Judicial Code to be persuasive when mandating the use of federal procedure after removal. For example, the court in *Dean Marketing* cited 28 U.S.C. § 1446 in support of the finding that, after removal, "the state court no longer had jurisdiction of the matter."[181] Additionally, the *Cowen* court cited 28 U.S.C. § 1447(a) in support of its order that defendants be re-served.[182] In its opinion, the court quoted from § 1447(a) to state that the court was authorized to issue "all necessary orders" to bring the proper parties before it, whether the parties are served with state court process or not.[183] The *Cowen* court found that ordering the plaintiff to re-serve the defendant pursuant to Rule 4 was necessary to bring the defendant before the court.[184]

---

172. *See id.*
173. *See id.*
174. 411 F. Supp. 717 (E.D. Mich. 2006).
175. *Id.* at 720–21.
176. *Id.* at 720 (citing FED. R. CIV. P. 81(c)).
177. *Id.* at 721.
178. No. 19-CV-1004, 2020 WL 5441407 (M.D. Fla. Aug. 25, 2020), *report and recommendation adopted*, No. 19-CV-1004, 2020 WL 5423203 (M.D. Fla. Sept. 10, 2020).
179. *See id.* at *11 n.10 (quoting 28 U.S.C. § 1448; and then citing FED. R. CIV. P. 81(c)(1)).
180. *See id.*
181. Dean Mktg., Inc. v. AOC Int'l (U.S.A.) Ltd., 610 F. Supp. 149, 151 (E.D. Mich. 1985) (citing 28 U.S.C. § 1446). The *Dean Marketing* court appears to be referencing the current version of § 1446(d), which halts all proceedings in the state court after the removal "unless and until the case is remanded." 28 U.S.C. § 1446(d). When *Dean Marketing* was decided in 1985, similar language was contained in § 1446(e). *See* Act of June 25, 1948, Pub. L. No. 80-773, ch. 646, 62 Stat. 869, 939 (codified at 28 U.S.C. § 1446) (stating that, after removal, "the State court shall proceed no further therein unless the case is remanded").
182. *See* Cowen v. Am. Med. Sys., Inc., 411 F. Supp. 717, 720–21 (E.D. Mich. 2006).
183. *Id.* (quoting 28 U.S.C. § 1447(a)).
184. *See id.*

C. State Court Process May Be Served After Removal: Subsequent Rejection of Beecher

Courts that have followed and adopted *Beecher*'s holding have done so because of concerns regarding the balance of federal and state jurisdiction, sufficient notice owed to defendants, and because of the plain language of § 1448, neighboring sections of the Judicial Code, and the FRCP. Similar themes underscore the opinions of courts that have rejected *Beecher*'s holding, and those courts have found the flip side of the coin to be more persuasive when supporting their departure from *Beecher*. Many, possibly a majority,[185] of those court opinions have rejected *Beecher*'s holding and allowed state court service of process to be completed after removal.

1. Absence of Concerns About Federalism

Subsequent courts that have disagreed with *Beecher* do not often bring concerns of federalism into their interpretations of § 1448. For example, the court in *Minter v. Showcase Systems, Inc.*[186] cited to many of the cases adopting *Beecher* and acknowledged their jurisdictional concerns;[187] however, when rejecting the *Beecher* decision, the *Minter* court did not cede to concerns about federalism.[188] The court in *Spiritbank v. McCarty*[189] also acknowledged *Beecher*'s jurisdictional reasoning—that jurisdiction lies solely with the federal court after removal—but did not cede to concerns about federalism in its decision.[190] Instead of balancing federal and state jurisdiction, courts that have permitted completion of service of state court process after removal ground their reasoning more often in dissections of the plain language of § 1448 using the tools of statutory interpretation.

185. *See* Spiritbank v. McCarty, No. 08-CV-675, 2009 WL 1158747, at *2 (N.D. Okla. Apr. 22, 2009) (collecting cases and concluding that "the majority view appears to favor" allowing state court service of process to be completed); *accord* Queen v. Schmidt, No. 10-2017, 2015 WL 5175712, at *12 n.10 (D.D.C. Sept. 3, 2015) (concluding that "perhaps a greater number" of courts have rejected *Beecher*); Oscar Ubaldo Garcia, Inc. v. Allied Prop. & Cas. Ins. Co., No. 17-CV-00243, 2017 WL 11221429, at *1 (W.D. Tex. Nov. 28, 2017) ("[M]any courts, if not the majority of courts, have rejected the Ninth Circuit's holding in *Beecher* . . . ." (citing Queen v. Schmidt, No. 10-2017, 2015 WL 5175712, at *12 n.10 (D.D.C. Sept. 3, 2015))). These courts appear to be referencing only the courts that have explicitly acknowledged the split in authority on § 1448, but in actuality, there are perhaps more courts that favor requiring new process issued under Rule 4 after removal by taking *Beecher*'s holding for granted and avoiding the open question of § 1448's interpretation entirely. *Compare infra* Appendix A, *with infra* Appendix B.

186. 641 F. Supp. 597 (S.D. Miss. 2009).

187. *See id.* at 599–600 (collecting cases that have adopted *Beecher* and quoting their reasoning, including their concerns about overreaching federal jurisdiction).

188. *Id.* at 600–02.

189. No. 08-CV-675, 2009 WL 1158747 (N.D. Okla. Apr. 22, 2009).

190. *Compare id.* at *2 ("[T]he [*Beecher*] court held that following removal, jurisdiction lies solely with the federal district court."), *with id.* (holding that § 1448 permits "completion of state procedure for service").

2. Statutory Interpretation of § 1448

Courts that have rejected *Beecher*'s approach have grounded their analysis in § 1448's plain text and the canons of statutory interpretation. The court in *Orner v. International Laboratories, Inc.*[191] dismissed the defendant's motion to dismiss for insufficient service of process under Rule 12(b)(5) after the plaintiff made repeated attempts and ultimately served the defendant with the state court writ of summons.[192] As is typical with cases involving the § 1448 split, the defendant moved to dismiss by arguing that the service did not comply with federal law.[193]

The *Orner* court acknowledged the split in authority over whether state court process could be served after removal and collected many of the aforementioned cases.[194] However, the court grounded its decision in the "text of § 1448."[195] The *Orner* court read the phrase "may be completed or new process issued in the same manner as in cases originally filed in such district court"[196] as providing two distinct options to plaintiffs after removal—either serving new federal process *or* completing state court process.[197]

The *Orner* court cited the rule against surplusage to reach this conclusion: to read the statute as requiring federal service of process in all cases after removal was to give "no effect" to the word "completed" in the statute.[198] The court then turned to the use of "or" within § 1448, invoking the presumption of a disjunctive "or."[199] The court found that the use of "or" in § 1448 clearly provides two options to plaintiffs after removal because the use of "or" in a statute "is almost always disjunctive, that is, the words it connects are to be given separate meanings."[200] Therefore, the *Orner* court found that § 1448 allows completion of state court service of process *or* serving new federal process.[201] Given that the *Orner* plaintiff's service fell squarely within service contemplated by § 1448, the defendant's motion to dismiss for insufficient service of process was denied.[202]

---

191. No. 20-CV-00449, 2020 WL 6710277 (M.D. Pa. Nov. 16, 2020).
192. *Id.* at *2.
193. *Id.*
194. *See id.* at *5.
195. *Id.*
196. 28 U.S.C. § 1448.
197. *Orner*, 2020 WL 6710277, at *5.
198. *Id.* The court cited *Duncan v. Walker*, 533 U.S. 167, 174 (2001), for its definition of the rule against surplusage and interpreted the statute in question in that case to "give effect, if possible, to every clause and word of a statute." *Orner*, 2020 WL 6710277, at *5 (quoting United States v. Jackson, 964 F.3d 197, 203 (3d Cir. 2020)).
199. *Orner*, 2020 WL 6710277, at *5.
200. *Id.* (quoting United States v. Woods, 571 U.S. 31, 45 (2013)).
201. *Id.*
202. *Id.* The defendant in *Orner* moved to certify the issue of sufficient service for appellate review, but the district court denied the motion. Orner v. Int'l Lab'ys Inc., No. 20-CV-00449, 2020 WL 9749413, at *3 (M.D. Pa. Dec. 21, 2020). The *Orner* court thought that even if the U.S. Court of Appeals for the Third Circuit reversed its analysis of § 1448, the plaintiff's understanding of § 1448 authorizing use of state court process for service after

Orner is seemingly the only case to explicitly use rules and canons of statutory interpretation to parse meaning from § 1448, but the *Orner* court reached the same conclusion as courts that have invoked the rules of statutory interpretation only implicitly. One of the earliest cases to reject *Beecher*, *Continental Illinois National Bank & Trust Co. v. Protos Shipping, Inc.*,[203] condemned *Beecher*'s interpretation of § 1448 for "improperly deif[ying] form over substance."[204] That court rejected *Beecher* explicitly, calling the decision "incorrect as a matter of law."[205] There, the court interpreted the wording of § 1448 to allow completion of state court process after removal.[206] According to the *Protos Shipping* court, the *Beecher* court prioritized the form of service and ignored its "substance," which was the fact that the defendants were put on full notice by the service.[207]

By purporting to give meaning to the "explicit wording" of the statute, the *Protos Shipping* court assumed that the text of the statute makes its meaning obvious.[208] The reasoning in *Protos Shipping* thus serves as a jumping off point for other courts intending to depart from *Beecher*. Those courts, however, offer more textual support for their departure.

Indeed, the court in *Listle v. Milwaukee County*[209] cited *Protos Shipping* when rejecting *Beecher*.[210] The *Listle* court agreed with the *Protos Shipping* court that the decision in *Beecher* "improperly elevate[d] form over substance" and gave weight to *Protos Shipping*'s interpretation of § 1448's "explicit language."[211] The court also went beyond the analysis in *Protos Shipping* by explaining that *Beecher*'s interpretation of § 1448 "gives no meaning to the phrase of the statute allowing 'completion' of unperfected or defective process or service."[212] Further, the *Listle* court interpreted § 1448 as contemplating completion of service of process that had begun prior to removal, which was inherently at odds with requiring issuance of new federal process after removal.[213]

Implicit in the *Listle* court's interpretation of § 1448 was the rule against surplusage. By rejecting an interpretation that "gives no meaning" to one

---

removal was "reasonable" enough to constitute a showing of good cause, and, regardless, the plaintiff should receive an extension on time to serve. *Id.* at *2; *see also infra* Part III.C.

203. 472 F. Supp. 979 (N.D. Ill. 1979).

204. *Id.* at 982–83.

205. *Id.* at 983 n.3.

206. *Id.* at 982.

207. *Id.* at 982–83; *see also infra* Part II.C.3. The court cites to an old version of Rule 4—the section referred to was amended in 1993 and moved to Rules 4(e)(1) and 4(h)(1)(A). *See* FED. R. CIV. P. 4(e) advisory committee's note to 1993 amendment.

208. *See Protos Shipping*, 472 F. Supp. at 982. Viewing § 1448's meaning as obvious based on its plain text is not a position uniquely held by the *Protos Shipping* court: the court in *Scott v. Union Pacific Railroad Co.* viewed its interpretation of § 1448 as so apparent from the statutory language that the only support it provided for this interpretation was the statute itself. No. 06-CV-4057, 2007 WL 215804, at *1 (W.D. Ark. Jan. 25, 2007).

209. 926 F. Supp. 826 (E.D. Wis. 1996).

210. *Id.* at 827.

211. *Id.* at 828.

212. *Id.* at 827.

213. *Id.*

part of the statute, the court favored an interpretation that gives meaning to each clause and word of § 1448.[214] This interpretive move authorizes completion of state court service of process after removal because it expresses two distinct options within § 1448: completion of service of process and issuance of new process. The *Listle* court's interpretation contrasts with textual analyses found in *Beecher* and *Bruley*, which interpret the phrase "in the same manner as in cases originally filed in such district court" as affecting the whole statute, rendering issuance of federal process the only option when service had not been perfected before removal.[215] These textual analyses effectively overlook the rule against surplusage, a move which the *Listle* court implicitly refuted.

The court in *Schmude v. Sheahan*[216] agreed with the reasoning in *Listle* and *Protos Shipping* and cited both cases to support its conclusion that § 1448 "allows for the completion of state service of process if the process was commenced prior to the date of removal."[217] In *Schmude*, much like in *Listle* and in *Protos Shipping*, the court interpreted § 1448 as providing two options to plaintiffs after removal: service pursuant to Rule 4 or completion of state service of process.[218] The *Schmude* court reasoned that "interpreting § 1448 in any other way holds contrary to the *explicit wording* of the statute."[219] Thus, the court appears to agree that the meaning of the statute is obvious from its language, and that both options must be given full expression in order to properly construe the statutory meaning.[220] Giving expression to both service options under § 1448 again implicitly follows the rule against surplusage by refusing to render any part of § 1448's text superfluous.

Meanwhile, the court in *Spiritbank v. McCarty* instead focused on individual words within § 1448 to hold that state court service of process is sufficient following removal. There, the court surveyed previous cases that had discussed different interpretations of § 1448, including *Beecher*, *Bruley*, *Protos Shipping*, *Listle*, and *Schmude*.[221] The court agreed with the reasoning in *Protos Shipping*, interpreting § 1448 to allow completion of state court service of process.[222] The *Spiritbank* court focused on the word "completed," reasoning that its inclusion "clearly indicates completion of state procedure for service."[223] The *Spiritbank* court's textualist reading of § 1448, which hinged on the meaning of the word "completed," allowed the court to reject *Beecher*'s interpretation.[224] The court also apparently agreed with an analysis of § 1448 based on the rule against surplusage by quoting

214. *Id.* at 828.
215. *See supra* text accompanying notes 112–19, 149–55.
216. 214 F.R.D. 487 (N.D. Ill. 2003).
217. *Id.* at 490.
218. *Id.*
219. *Id.* (emphasis added).
220. *See id.*
221. No. 08-CV-675, 2009 WL 1158747, at *1–2 (N.D. Okla. Apr. 22, 2009).
222. *Id.* at *2.
223. *Id.*
224. *See id.*

excerpts from *Listle*, which invoked the rule, in support of its finding that the "the better view" was expressed in *Listle* and its progeny.[225]

Minter v. Showcase Systems, Inc.[226] eventually became one of the more widely cited cases supporting the authorization of service of state court process after removal under § 1448.[227] The *Minter* court provided a detailed survey of the cases supporting and rejecting *Beecher*'s seminal interpretation when describing its departure from *Beecher*.[228] The court honed in on the statutory language to support its conclusion and relied on logic similar to that in the cases it cited: the court emphasized the use of the word "completed" when referring to "such process or service," therefore interpreting the final clause of § 1448 as "clearly providing two alternatives."[229] Moreover, the court reasoned against an interpretation that would only allow federal service of process because such an interpretation would render "the phrase 'may be completed' . . . meaningless."[230]

The *Minter* court's reading of the statute familiarly invoked the rule against surplusage by focusing on expressing the full meaning of the phrase "may be completed" and ensuring that all parts of the statute retained their meaning.[231] The court also read the phrase "may be completed or new process issued" as providing two alternatives to plaintiffs after removal.[232] As other courts have done, the *Minter* court grounded this interpretation in an analysis of the word "completed" within the statutory language, but it also analyzed the phrasing of "such process or service," suggesting that the phrase could only refer to state court process.[233]

The court in *Queen v. Schmidt*[234] focused its "question of statutory interpretation" on § 1448's "key final clause: '*such process or service may be completed* or new process issued.'"[235] The *Queen* court, however, gave weight to different words within that phrase than its predecessors did when concluding that state court service of process retains its efficacy after removal.[236] Indeed, the *Queen* court familiarly found that § 1448 covers three situations following removal,[237] but also noted that these three

225. *Id.*
226. 641 F. Supp. 2d 597 (S.D. Miss. 2009).
227. *See, e.g.*, Jernigan v. Kubota Corp., No. 11-CV-834, 2012 WL 13001791, at *1–2 (M.D. Ala. July 31, 2012); Queen v. Schmidt, No. 10-2017, 2015 WL 5175712, at *11–12 (D.D.C. Sept. 3, 2015); Oscar Ubaldo Garcia, Inc. v. Allied Prop. & Cas. Ins. Co., No. 17-CV-00243, 2017 WL 11221429, at *1 (W.D. Tex. Nov. 28, 2017); Orner v. Int'l Lab'ys, Inc., No. 20-CV-00449, 2020 WL 6710277, at *4 n.3 (M.D. Pa. Nov. 16, 2020); Southers v. Appalachian Reg'l Healthcare, Inc., No. 20-CR-126, 2021 WL 1250315, at *2 n.5 (E.D. Ky. Apr. 5, 2021).
228. *See Minter*, 641 F. Supp. 2d at 601–02.
229. *Id.*
230. *Id.* at 602 (quoting 28 U.S.C. § 1448).
231. *See id.*
232. *Id.* at 601–02.
233. *Id.*
234. No. 10-2017, 2015 WL 5175712 (D.D.C. Sept. 3, 2015).
235. *Id.* at *11 (quoting 28 U.S.C. § 1448).
236. *Id.* at *11–12.
237. *See supra* text accompanying notes 108–17.

situations are "separated by the word 'or,'" and "followed by the provision that 'such process or service may be completed.'"[238] The court held that, because of the use of "or" followed by § 1448's last clause, when a defendant has not been served prior to removal, the plaintiff may complete the state court service of process after removal even if there was no attempt at service prior to removal.[239] The *Queen* court implicitly invoked the rule of the disjunctive "or" by viewing the two clauses in § 1448 as alternatives that should be treated differently.[240] Moreover, the *Queen* court questioned *Beecher*'s three-situation framework by applying the clause "may be completed or new process issued" to all parts of § 1448 equally, whereas the *Beecher* court viewed the completion of state court service as only being available in certain situations covered by § 1448.[241]

The interpretations of § 1448 in favor of completion of state court service of process after removal have hinged on different words, phrases, or clauses within the statute but have are largely supported by the statutory text. In addition to careful readings of § 1448, courts that have either adopted or rejected *Beecher* have all grounded their holdings in considerations of the notice provided to the defendant.

3. Providing Notice to Defendants

When courts have found that the defendant had actual notice, they are more likely to find that the defendant's motion to dismiss or quash service was unmeritorious and thereby approve completion of the state court service of process after removal.

For example, the court in *Protos Shipping* rejected the holding in *Beecher* for "improperly deif[ying] form over substance" partially because the defendants had actual notice of the pending litigation through the state court summons.[242] Prior to removal, the state court service gave the defendants actual notice because it contained the complaint,[243] and, after removal, the defendants received actual notice because the removing defendant served the notice of removal on the second defendant, who had moved to dismiss.[244]

Similarly, the *Listle* court denied the defendant's motion to quash service[245] partially because of its interpretation of § 1448, but also because

238. *Queen*, 2015 WL 5175712, at *11 (quoting 28 U.S.C. § 1448).
239. *Id.* at *11–12.
240. *See id.*; *see also* cases cited *supra* note 96.
241. *Compare Queen*, 2015 WL 5175712, at *11 (quoting 28 U.S.C. § 1448), *with supra* text accompanying notes 108–17.
242. *See* Cont'l Ill. Nat'l Bank & Trust Co. v. Protos Shipping, Inc., 472 F. Supp. 979, 982–83 (N.D. Ill. 1979).
243. *Id.*
244. *Id.*
245. Listle v. Milwaukee Cnty., 926 F. Supp. 826, 828 (E.D. Wis. 1996). The *Listle* plaintiffs sued both Milwaukee County and the Milwaukee County Pension Board, but by the time the county removed the case to federal court, only the county had been completely served. *Id.* at 826–27. The plaintiffs served the pension board after removal with a state court summons and complaint. *Id.* at 827. The pension board then moved to quash service because it claimed that the state court process was insufficient after removal. *Id.*

the court agreed with *Protos Shipping* that quashing the state court service would "improperly elevate[] form over substance."[246] The *Listle* court, too, found that the defendant who moved to quash service had "actual notice" of the complaint through the state court service.[247] Moreover, the court found that that defendant was notified of the removal because both defendants, including the defendant who originally removed the case to federal court, were represented by the same counsel.[248] In both *Protos Shipping* and *Listle*, the courts found that state court service of process was sufficient to put the defendants on actual notice of the pending action *and* of the case's removal, thereby addressing concerns espoused by courts that had found the notice provided by state court process to be insufficient.[249]

Occasionally, plaintiffs have been required to re-serve the defendant out of an abundance of caution resulting from contradictory interpretations of § 1448, but even in these cases, courts have been hesitant to dismiss the case when the defendant had been given actual notice of the suit. For example, the court in *Howse v. Zimmer Manufacturing, Inc.*[250] dealt with the issue of whether service of process was sufficient when the plaintiff amended the complaint after removal to reassert jurisdiction under a different state statute.[251] The *Howse* court found that the original service was defective once the plaintiff amended their complaint because § 1448 required federal service when the service prior to removal was defective.[252] However, the court did not dismiss the complaint for insufficient service because the defendants had received actual notice of the plaintiff's action, as "[i]t serves no useful purpose" to dismiss an action when it would just be "refiled and re-served."[253] The court nevertheless required the plaintiff to re-serve the defendant pursuant to Rule 4.[254]

Additionally, a magistrate judge in *M.A. v. KFC Corp.*[255] addressed a split of authority among the courts within the U.S. Court of Appeals for the Fifth Circuit regarding the interpretation of § 1448 by comparing the contradictory holdings in *Minter* and *Alexander Technologies*. Although the magistrate judge left the issue of whether state court process issued but not served prior

246. *Id.* at 828.
247. *Id.*
248. *Id.*
249. *See supra* text accompanying notes 107, 116, 159–60.
250. 109 F.R.D. 628 (D. Mass. 1986).
251. *Id.* at 630. The plaintiff in *Howse* originally asserted jurisdiction over the defendant pursuant to the Massachusetts long-arm statute but amended the complaint after removal to assert jurisdiction under Massachusetts state law. *Id.* The reassertion of jurisdiction changed the acceptable methods of service, as service by registered mail was not allowed under that state law but was allowed under the long-arm statute. *Id.* at 631. The *Howse* court thus had to decide whether the original service under the long-arm statute retained efficacy after the plaintiff reasserted jurisdiction. *Id.*
252. *Id.*
253. *Id.* (citing William I. Horlick Co. v. Bogue Elec. Mfg. Co., 140 F. Supp. 514, 515 (D. Mass. 1956)).
254. *Id.*
255. No. 17-CV-03114, 2018 WL 4233814 (S.D. Tex. July 13, 2018), *report and recommendation adopted*, No. 17-CV-03114, 2018 WL 4232920 (S.D. Tex. Sept. 5, 2018).

to removal retained efficacy after removal unresolved, the court denied the defendants' Rule 12(b)(5) motion to dismiss because the defendants were given actual notice of the action against them by state court service.[256] However, because the issue had yet to be resolved by the Fifth Circuit, the plaintiff was ordered to re-serve the defendants pursuant to Rule 4.[257]

Although the plaintiff in *Cline v. North Central Life Insurance Co.*[258] was not required to re-serve the defendant because their complaint was ultimately dismissed on other grounds, the court suggested that "failure of service does not compel dismissal" of a suit when the defendant could be re-served or when it is apparent that the defendant received actual notice of the complaint.[259] The *Cline* court also found that § 1448 "would seem to allow for completion after removal of service of state court process issued prior to removal."[260] Partially because the defendant received actual notice of the complaint by admitting to receiving the summons and complaint through state court service of process, the court dismissed the defendant's motion to dismiss.[261]

4. Possible Reconciliation of State Court Service of Process with the Requirements of the Federal Rules of Civil Procedure

At least one court has attempted to reconcile Rule 81(c)(1) with § 1448 in a way that would allow for completion of state court service of process.

In *Carden v. Wal-Mart Stores, Inc.*,[262] the court acknowledged that because of Rule 81(c)(1), the FRCP apply to a case removed to federal court as a "general matter."[263] However, the *Carden* court overcame this general rule by analyzing § 1448's text.[264] Specifically, the court interpreted § 1448 as providing two options when state court service of process was unperfected or defective prior to removal: completion of state court service and issuance of new process under Rule 4.[265] Because the defendant had apparently conceded that multiple attempts at service via state court process had occurred, the court found that the defendant was properly served.[266] The *Carden* court did not see Rule 81(c)(1) and § 1448 as irrevocably in conflict when it comes to allowing state court service of process to be completed after removal. This finding is in contrast with those in *Bruley*, *Cowen*, and *Amtrust North America*, which found that Rule 81(c)(1) disallowed completion of

256. *Id.* at *4–5.
257. *Id.* at *5.
258. No. 05-0959, 2006 WL 1391433 (S.D. W. Va. May 17, 2006).
259. *See id.* at *1–2.
260. *Id.* at *1.
261. *Id.* at *2.
262. 574 F. Supp. 2d 582 (S.D. W. Va. 2008). The court in *Carden* was not analyzing a Rule 12(b)(4) or 12(b)(5) motion; rather, the court had to decide whether a defendant was properly served so that the court could rule on the plaintiff's motion to remand and another defendant's fraudulent joinder claim. *Id.* at 586.
263. *Id.* at 587.
264. *See id.* at 587–88.
265. *Id.*
266. *Id.* at 588.

state court service of process after removal precisely because the service did not conform with the requirements of Rule 4.

III. RISING ABOVE REFINEMENTS AND SUBTLETIES: SECTION 1448 SHOULD PERMIT COMPLETION OF STATE COURT SERVICE OF PROCESS ISSUED BUT NOT SERVED PRIOR TO REMOVAL

The differing opinions as to the proper interpretation of § 1448 view § 1448 as having two exclusive options: either state court service of process can be completed after removal, or it cannot. And courts that find that state court service of process cannot be completed do so because of important considerations—concerns about the balance of state and federal jurisdiction, valid interpretations of the statutory language, the sufficiency of the notice of the action and the removal given to defendants, and careful attention to the requirements of the FRCP and the Judicial Code.

Acknowledging these valid concerns, Part III.A explains that § 1448 must permit completion of state court service of process after removal according to the classic tools of statutory interpretation. However, the concerns raised in *Beecher* and its progeny cannot and should not be ignored: Part III.B argues that an interpretation of § 1448 that allows for completion of state court process after removal should and can be reconciled with *Beecher*'s original reservations. Finally, Part III.C argues that courts that have persisting concerns should not preemptively dismiss a plaintiff's complaint, but rather, should consider a plaintiff's reliance on a reasonable interpretation of § 1448 based on the split in authority as "good cause" for failing to serve under Rule 4(m) and extend the time to serve as a last resort.

A. Section 1448 Permits Completion of State Court Service of Process

Completion of state court service of process falls squarely within § 1448's contemplated remedies according to the classic tools of statutory interpretation. These tools include the rule against surplusage, the presumption of the disjunctive "or," and the rule of the last antecedent.

The rule against surplusage when applied to § 1448[267] suggests that words and phrases such as "not been served with process," "completed," and "or" must be given full expression.[268] This includes allowing state court process that has not been served prior to removal to be completed after removal, *or* allowing plaintiffs to obtain new process issued pursuant to the FRCP. By providing a remedy under both options—completed or new process issued—

267. The full text of § 1448 is reproduced here for ease of reference:

> In all cases removed from any State court to any district court of the United States in which any one or more of the defendants has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service may be completed or new process issued in the same manner as in cases originally filed in such district court.

28 U.S.C. § 1448.

268. *See* cases cited *supra* note 97.

each clause in the statute is given full expression.[269] If the alternative interpretation were adopted, the words "completed" and "or" would be rendered meaningless. There would be no service to complete when a defendant is unserved because the only remedy available would be to have new process issued by the federal court. Furthermore, the "or" would be meaningless because only one option would remain when a defendant is unserved prior to removal, defeating the statute's inclusion of two remedies separated by an "or." Consequently, the phrase "such process or service *may be completed*" would be swallowed entirely by the phrase "new process issued." This is counter to the rule against surplusage.

The rule of a disjunctive "or"[270] when applied to § 1448 suggests that § 1448 provides plaintiffs with two distinct options after removal. The two methods of service in the statute are separated by an "or": "[S]uch process or service may be completed *or* new process issued in the same manner as in cases originally filed in such district court."[271] The second "or" signifies that the two options are intended to be disjunctive and should be treated separately. Completion of service and new process issued should therefore have different meanings, with completion of service referring to state service procedure, and new process issued referring to federal service procedure.[272] If the opposite interpretation were adopted, then the modifier "in the same manner" would be applied to both options as though they were effectively the same. Even the *Beecher* court did not consider this interpretation possible, as it saw completion of state court service of process applicable to different scenarios contemplated by the statute than those situations which required issuance of new, federal process.[273]

Applying the rule of the last antecedent[274] to § 1448 suggests that state court service is permitted to be "completed" or "new process issued in the same manner" as in the federal court.[275] The modifier "new process issued in the same manner as in cases originally filed in such district court" would only be applied to the phrase right before it, "new process issued." Thus, "such service or process may be completed" is not constrained by that modifier and clearly refers to state service of process, allowing for such service to be completed.

Standing alone, the rule of the last antecedent can be overcome,[276] but other indicia in § 1448 clearly suggest that the modifier was intended to apply to both completion of service and to issuance of new process.[277] Indeed, court interpretations of § 1448 are aligned with the rule of the last antecedent:

---

269. For examples of district courts that have used this rule to interpret § 1448, see *supra* text accompanying notes 198, 214–15, 231.

270. *See supra* note 96.

271. 28 U.S.C. § 1448 (emphasis added).

272. For applications of the presumption of a disjunctive "or" applied to § 1448 in practice, see *supra* text accompanying notes 200–01, 238–40.

273. *See supra* text accompanying notes 108, 112–17.

274. *See supra* note 93.

275. 28 U.S.C. § 1448.

276. *See supra* note 93.

277. *See supra* text accompanying notes 153–55.

"such process or service" and "completion" within the statute seem to refer to state court service of process, not federal service,[278] and the separation of the two remedies with an "or" indicates that the two are to be treated differently. Because the statute's meaning does not suggest otherwise, the rule of the last antecedent should not be overcome.

B. Reconciling § 1448's Intended Meaning with Beecher*'s Concerns*

Courts should allow plaintiffs to complete service using state court process under § 1448, not only because the text of § 1448 requires it, but also because completion of such service does not jeopardize *Beecher*'s original concerns about overreaching federal jurisdiction and insufficient notice,[279] nor does it ignore the requirements of the FRCP and the Judicial Code.[280]

1. Allowing Completion of State Court Service of Process Does Not Encroach on State Court Jurisdiction

District courts that have not permitted completion of state court service of process have done so partly because of *Beecher*'s concerns about federal courts taking jurisdiction when the state court did not originally have it.[281] However, allowing plaintiffs to complete service of state court process after removal would not increase the federal courts' jurisdiction.

Firstly, the concerns laid out in *Beecher* and its progeny about overextending the jurisdiction of federal courts do not comport with § 1448's original purpose. Section 1448 was never intended to enhance the jurisdiction of federal courts.[282] Rather, § 1448 was meant to provide federal courts with the power to issue process or complete service after removal in situations where federal courts were hesitant to do so out of jurisdictional concerns.[283] This power was intended to prevent the burden of paying unnecessary costs and refiling cases after they were dismissed.[284] In many cases where completion of state court service was not permitted after removal, plaintiffs had their complaints dismissed or were ordered to re-serve the defendants.[285] *Beecher*'s concerns about federalism have caused prolonged litigation and increased costs to plaintiffs in subsequent cases even though § 1448 was intended to prevent this type of unnecessary burden.

Secondly, federal jurisdiction after removal has not been universally understood in the same way that *Beecher* described it. At one time, the jurisdiction that federal courts obtained after removal was debated: Justice Story asserted that federal courts obtained appellate jurisdiction over the removed action, but the Supreme Court later intimated that federal courts

278. *See supra* text accompanying notes 223, 229, 233.
279. *See supra* Parts II.A, II.B.1, II.B.3.
280. *See supra* Part II.B.4.
281. *See supra* Part II.B.1.
282. *See supra* text accompanying note 76.
283. *See supra* text accompanying notes 72–73.
284. *See supra* text accompanying notes 74–75.
285. *See supra* Part II.B.

obtained original jurisdiction over removed actions.[286] At least one modern court has described removal jurisdiction as concurrent original jurisdiction.[287] The *Beecher* court's view does not comport with the Supreme Court's current view of removal jurisdiction as original jurisdiction, because *Beecher* described an all-or-nothing view of federal and state court jurisdiction during the removal process, in which the state court must have obtained jurisdiction through service before removal could vest all jurisdiction in the federal court.[288] Completion of state court service of process would not give the federal court jurisdiction that the state court did not originally obtain. Rather, completion of state court service of process is harmonious with the most recent Supreme Court formulation of removal jurisdiction as concurrent original jurisdiction. The federal district courts' removal jurisdiction overlaps with state courts' concurrent jurisdiction, and, accordingly, federal district courts should be respectful of state court process (and the plaintiffs who seek to comply with it after removal), particularly because modern procedural requirements permit defendants to remove cases unilaterally by notice. Therefore, allowing completion of state court service of process after removal would not extend or enhance the federal courts' jurisdiction, but rather, would allow the federal courts to retain their rightful original jurisdiction over the removed case by permitting plaintiffs to satisfy the procedural requirement[289] of service.

2. State Court Service of Process Can Provide Defendants with Actual Notice

The Ninth Circuit's reasoning in *Beecher* regarding jurisdiction was intertwined with its understanding of the purpose of service as providing actual notice to defendants.[290] Courts that have refused to permit completion of state court service of process have done so partly because they found that state court process provided insufficient notice to defendants of both the pending action and the status of removal. However, other district courts have found that state court service of process is sufficient to put the defendant on notice of the pending action and the removal, and thus permit completion of state court service of process.

State court process can put a defendant on notice of the pending litigation[291] because state court process documents often include a copy of the complaint.[292] When process does not include a copy of the complaint,

286. *See supra* text accompanying notes 29–33.
287. *See supra* note 35 and accompanying text.
288. *See* Beecher v. Wallace, 381 F.2d 372, 373 (9th Cir. 1967) (describing when the state court acquires jurisdiction over a defendant through service).
289. *See supra* text accompanying note 44.
290. *See Beecher*, 381 F.2d at 373.
291. *See supra* text accompanying notes 242–48.
292. *See* Hartman, *supra* note 50 (compiling state statutory process requirements and finding that thirteen states—Arkansas, Colorado, Illinois, Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, Pennsylvania, South Dakota, Washington, and Wisconsin—do not appear to require serving a copy of the complaint with the summons).

the summons makes clear that the defendant has a specified time within which to respond to the plaintiff's allegations and indicates that the defendant has a claim pending against them that they must answer or risk default.[293] The summons, or the summons and the complaint, contains sufficient information to put the defendant on notice that there is an action pending against them and notifies the defendant of how to respond.

Furthermore, defendants are often separately put on notice of the removal status.[294] 28 U.S.C. § 1446 requires the removing defendant to serve a copy of the notice of removal on all adverse parties, to file a copy of the notice with the state court, and to obtain consent for removal from any earlier-served defendant.[295] These requirements provide many opportunities for defendants other than the removing defendant to be notified of a case's removal. Therefore, state court service of process, when completed according to the requirements of the Judicial Code's removal procedure, does not always deprive the defendant of actual notice. Courts should therefore permit completion of state court service of process when the defendant was provided with actual notice through service.

Some courts may still have reservations about the sufficiency of notice provided by state court process.[296] For example, state court process documents may provide insufficient notice of the claims against a defendant when state law does not require serving the defendant with a copy of the complaint.[297] Additionally, when a case falls outside the scope of 28 U.S.C. § 1446, the defendant may not have actual notice that the case was removed to federal court. These concerns are valid, but in these instances, the remedy should not be dismissal of plaintiff's complaint. Part III.C. argues that insufficient state court service of process can be remedied without dismissing plaintiff's case through a showing of good cause under Rule 4(m) to allow for extended time to serve.

3. Harmonization of Service Under § 1448, the Federal Rules of Civil Procedure, and the Judicial Code

Completion of state court service of process does not conflict with either the FRCP or the Judicial Code.

Completion of state court service of process is not only contemplated under § 1448, but also under Rule 4. Rule 4 allows for service to be made by "following state law for serving a summons in an action brought in" state courts where the district court is located or where the service is made.[298] Rule 4 therefore fuses state and federal procedure for service. Courts that have permitted completion of state court service of process under § 1448

293. *See id.*
294. *See supra* Part II.B.2.
295. 28 U.S.C. §§ 1446(b)(2)(C), 1446(d).
296. *See supra* Part II.B.2.
297. *See* Hartman, *supra* note 50.
298. FED. R. CIV. P. 4(e)(1), 4(g), 4(h)(1)(A). These provisions of Rule 4 provide for conformity among federal and state procedures for *service*, but not for *process*.

have acknowledged that requiring plaintiffs to re-serve would be redundant, as the only real difference would be the inclusion of a federal summons.[299] Therefore, Rule 81(c)(1), which mandates the use of federal procedure after removal, can often be satisfied through state court service of process in compliance with Rule 4's service procedure.

Completion of state court service of process also complies with relevant sections of the Judicial Code. *Beecher* and its successors were concerned about federal courts usurping jurisdiction from state courts, but § 1448 is not the only section of the Judicial Code where state court orders retain their efficacy after removal. For example, 28 U.S.C. § 1450 allows state court sequestrations and attachments to retain efficacy after removal in the same manner as in the original state court.[300] Section 1450 also provides that state court "injunctions, orders, and other proceedings" remain in full force after removal until the district court provides otherwise.[301] It is therefore not anomalous for state court process documents to similarly retain efficacy after removal when § 1448 allows for their completion. Thus, courts should allow state court process documents to retain their efficacy after removal.

Furthermore, the FRCP have been interpreted to favor adjudication on the merits rather than dismissal based on procedural technicalities.[302] Because the burden to prove sufficiency of service is on the plaintiffs, allowing completion of state court service of process after removal furthers this policy[303]: plaintiffs could more easily satisfy service procedure and proceed to the merits of their case rather than defend against Rule 12(b)(4) and 12(b)(5) motions if completion of state court service of process was allowed after removal. Courts could therefore more easily reach the merits of the plaintiff's case.

C. A Good Cause Exemption for a Plaintiff's Reasonable Reliance on an Interpretation of § 1448

Completion of state court service should be considered sufficient service under § 1448, but courts may still have persistent concerns about the inadequacy of state court service of process after removal. But, instead of dismissing the plaintiff's case, courts should extend the time to serve so that the plaintiff can cure any inadequacies in the original service.

Courts have wide discretion to extend the time to serve under Rule 4(m), but courts *must* extend the time to serve if the plaintiff demonstrates "good cause" for failure to serve within the time provided.[304] Courts should

299. *E.g.*, Carden v. Wal-Mart Stores, Inc., 574 F. Supp. 2d 582, 588 n.4 (S.D. W. Va. 2008); *see, e.g.*, Cont'l Ill. Nat'l Bank & Trust Co. v. Protos Shipping, Inc., 472 F. Supp. 979, 982 (N.D. Ill. 1979).

300. 28 U.S.C. § 1450.

301. *Id.*

302. *See supra* note 52 and accompanying text.

303. *See supra* note 56 and accompanying text. Certain sections of the Judicial Code have also been interpreted to disfavor interruption of the case's merits, but such interpretations do not concern § 1448. *See supra* note 36.

304. FED. R. CIV. P. 4(m); *see also supra* note 64 and accompanying text.

consider a plaintiff's completion of service using state court process after removal as demonstrating good cause for their failure to comply with Rule 4(m), which would necessarily provide the plaintiff with an opportunity to correctly serve the defendants without the unnecessary expense of dismissal and refiling.

Although the standard for good cause varies by jurisdiction, good cause is generally found when the plaintiff has made a diligent effort to effectuate proper service.[305] In the case of § 1448, serving state court process after removal has been considered by many courts to be a valid method of service. Moreover, even district courts within the same circuit have disagreed on the validity of state court service after removal,[306] so it can be difficult for plaintiffs to know which method of service would be accepted in any given district. Plaintiffs who have served state court process and have made a diligent effort to effectuate proper service under a reasonable interpretation of § 1448 or a belief that service had been appropriately accomplished under § 1448[307] should be given extended time to serve under Rule 4(m).

At least one court has suggested that reasonable reliance on an interpretation of § 1448 that allows state court service of process after removal would constitute a showing of good cause.[308] Courts have also frequently extended the time to serve for plaintiffs who serve state court process after removal, even when concluding that the state court service after removal was invalid.[309] Extension for time to serve is therefore a familiar and related concept for courts dealing with the § 1448 issue. However, these extensions are granted at the discretion of the district court. Including service of state court process under § 1448 within the good cause standard would instead mandate the extension of time to serve, creating a uniform process for plaintiffs among all districts.

Use of the good cause standard is also a feasible solution for district courts dealing with the § 1448 issue because an analysis under the good cause standard would likely be based on the same facts as an analysis of the validity of service under § 1448.[310] The good cause analysis would therefore be no

305. 5B WRIGHT & MILLER, *supra* note 54, § 1137 n.6.

306. *See, e.g.*, Orner v. Int'l Lab'ys Inc., No. 20-CV-00449, 2020 WL 6710277, at *4 (M.D. Pa. Nov. 16, 2020) ("[O]ther districts within the Third Circuit have split on the question."); M.A. v. KFC Corp., No. 17-CV-03114, 2018 WL 4233814, at *5 (S.D. Tex. July 13, 2018) ("District courts in the Fifth Circuit have differing views on whether state issued service can be utilized once a case has been removed to federal court."), *report and recommendation adopted*, No. 17-CV-03114, 2018 WL 4232920 (S.D. Tex. Sept. 5, 2018).

307. *See supra* notes 65–69 and accompanying text.

308. *Orner*, 2020 WL 9749413, at *2 (finding that the plaintiff's service was based on a reasonable interpretation of § 1448 and agreeing that confusion about service requirements constitutes a showing of good cause (citing Dominic v. Hess Oil V.I. Corp., 841 F.2d 513, 516 (3d Cir. 1988))).

309. *See, e.g.*, *KFC Corp.*, 2018 WL 4233814, at *5; Howse v. Zimmer Mfg. Inc., 109 F.R.D. 628, 631 (D. Mass. 1986); DiCesare-Engler Prods., Inc. v. Mainman Ltd., 421 F. Supp. 116, 121 (W.D. Pa. 1976); Codrington v. Arch Specialty Ins. Co., No. 19-CV-00026, 2019 WL 3554698, at *2 (D.V.I. Aug. 5, 2019).

310. For an example of how § 1448 and extension for time to serve analyses could overlap, see *supra* text accompanying notes 250–57.

more labor intensive than an analysis of the validity of service, for both the plaintiff—who has the burden of establishing good cause[311]—and the court.

The good cause standard would provide courts with a fair remedy when plaintiffs have completed state court service but the service is still deficient in other aspects, such as when plaintiffs provide insufficient notice to defendants about the pending case or the status of removal. In those cases, the court would identify the deficiencies in the plaintiff's original service, and the plaintiff would have an opportunity to correct those deficiencies. For example, if the court found that the state court summons did not provide the defendant with sufficient notice that the case had been removed, the court could grant an extension, and the plaintiff could re-serve the defendant with a federal summons.[312] This would allow courts to effectuate sufficient service on the defendant while also reaching the merits of the case.

Section 1448 has endured many interpretations in the last half-century, and yet the statute has still fallen prey to the age-old adage about removal procedure: section 1448 has become subject to the "refinements and subtleties"[313] of removal proceedings. But these procedural hoops must not unduly prejudice plaintiffs like Jeffrey Wade[314] who have made good faith efforts to comply with the service requirement. When plaintiffs have attempted in good faith to provide defendants with actual notice of the action against them and its removal, when plaintiffs have been respectful of federal jurisdiction and procedure, and when plaintiffs have relied on a reasonable interpretation of § 1448, their case should be heard on its merits. From its inception, § 1448 was intended as a barrier between plaintiffs and the useless expense of multiple filings and prolonged litigation.[315] Jeffrey Wade and plaintiffs like him deserve the full protection of that barrier today.

CONCLUSION

This Note argues that 28 U.S.C. § 1448 must allow completion of state court service of process issued but not served prior to removal, despite many court opinions to the contrary. District courts and one circuit court have held that § 1448 does not permit plaintiffs to complete service after removal with state court process. Other districts have held that state court service of process retains its efficacy for service after removal under § 1448. Both sides have based their interpretations of § 1448 on concerns about an overreaching federal jurisdiction, on the sufficiency of the notice provided to the defendant through service, and on respect for the Federal Rules of Civil Procedure and federal removal procedure statutes.

311. *See supra* text accompanying note 70.

312. *See, e.g.*, Jeong Hae Lee v. Winix, Inc., No. 05-8999, 2006 WL 8434724, at *3, *5 (C.D. Cal. July 24, 2006) (ordering the plaintiff to re-serve the defendants with a federal summons rather than dismiss the case when it was clear that the plaintiff could complete service on the defendants).

313. Hagerla v. Miss. River Power Co., 202 F. 771, 773 (S.D. Iowa 1912).

314. Wade v. Black Clawson, No. 89-2385, 1989 WL 138735 (D.N.J. Nov. 17, 1989); *see supra* text accompanying notes 1–12.

315. *See supra* notes 74–75 and accompanying text.

The legacy of the Ninth Circuit's decision in *Beecher v. Wallace* reveals the consequences of a court reaching the wrong conclusion for the right reasons. Issues of federalism and providing actual notice to defendants through service are incredibly important and deserve careful consideration when determining whether service is effective. However, authorization of state court process after removal does not detract from these concerns. Rather, allowing state court service of process under § 1448 would allow courts to reach plaintiffs' cases on the merits more quickly and easily without enhancing the federal court's jurisdiction, and would not conflict with the Federal Rules of Civil Procedure or federal removal procedure statutes. Moreover, classic interpretive tools and canons of statutory interpretation, including the rule of the last antecedent, the presumption of the disjunctive "or," and the rule against surplusage suggest that § 1448 permits completion of state court service of process after removal. Unless such completion is permitted under § 1448, plaintiffs will continue to incur the unnecessary expense and prolonged litigatory consequences of re-serving defendants or refiling their cases after dismissal, and § 1448's intended purpose will never be fully realized.

APPENDIX A: DISTRICT COURT CASES QUASHING COMPLETION OF STATE COURT SERVICE OF PROCESS AFTER REMOVAL UNDER § 1448

Case Name	District	Citation	Date Decided
Alexander Technologies, Inc. v. International Frontier Forwarders, Inc.	S.D. Tex.	No. H-05-2598, 2006 WL 3694517	Dec. 14, 2006
Amtrust North America v. Sennebogen Maschinenfabrik GmbH	M.D. Fla.	No. 19-CV-1004, 2020 WL 5441407	Aug. 25, 2020
Bruley v. Lincoln Property Co.	D. Colo.	140 F.R.D. 452	Dec. 31, 1991
Club One Casino, Inc. v. Sarantos	E.D. Cal.	No. 17-CV-00818, 2017 WL 4123935	Sept. 18, 2017
Codrington v. Arch Specialty Insurance Co.	D.V.I.	No. 19-CV-00026, 2019 WL 3554698	Aug. 5, 2019
Cowen v. American Medical Systems, Inc.	E.D. Mich.	411 F. Supp. 2d 717	Jan. 31, 2006
DiCesare-Engler Productions, Inc. v. Mainman Ltd.	W.D. Pa.	412 F. Supp. 116	Oct. 19, 1976
Hakim v. Bay Sales Corp.	D.N.J.	No. 06-6088, 2007 WL 2752077	Sept. 17, 2007
Howse v. Zimmer Manufacturing, Inc.	D. Mass.	109 F.R.D. 628	Mar. 12, 1986
Ibarra v. City of Clovis	D.N.M.	No. 04-1253, 2005 WL 8163456	Dec. 14, 2005
Jeong Hae Lee v. Winix, Inc.	C.D. Cal.	No. 05-8999, 2006 WL 8434724	July 24, 2006
Ketchmark v. Brown-Williamson Tobacco Corp.	D. Haw.	No. 18-00079, 2018 WL 3451450	July 17, 2018
Seesing v. Miller	E.D. Ky.	No. 21-CV-26, 2021 WL 3410041	Aug. 4, 2021

Case Name	District	Citation	Date Decided
M.A. v. KFC Corp.	S.D. Tex.	No. 17-CV-03114, 2018 WL 4233814	July 13, 2018
Patterson v. Brown	W.D.N.C.	No. 06CV476, 2008 WL 219965, *rev'd on other grounds sub nom.* Patterson v. Whitlock, 392 F. App'x 185 (4th Cir. 2010) (per curiam)	Jan. 24, 2008
Tadco Construction Corp. v. Peri Framework Systems, Inc.	E.D.N.Y.	460 F. Supp. 2d 408	Nov. 6, 2006
Tanus Cabinets Designs, Inc. v. Central Transport L.L.C.	D. Nev.	No. 14-CV-00059, 2014 WL 2863139	June 24, 2014
Wade v. Black Clawson	D.N.J.	No. 89-2385, 1989 WL 138735	Nov. 17, 1989
Warden v. DirecTV, L.L.C.	D.N.M.	92 F. Supp. 3d 1140	Mar. 23, 2015

APPENDIX B: DISTRICT COURTS ALLOWING COMPLETION OF STATE COURT SERVICE OF PROCESS AFTER REMOVAL UNDER § 1448

Case Name	District	Citation	Date Decided
Baumeister v. New Mexico Commission for the Blind	D.N.M.	409 F. Supp. 2d 1351	Jan. 6, 2006
Carden v. Wal-Mart Stores, Inc.	S.D. W. Va.	574 F. Supp. 2d 582	Sept. 5, 2008
Cline v. North Central Life Insurance Co.	S.D. W. Va.	No. 05-0959, 2006 WL 1391433	May 17, 2006
Continental Illinois National Bank and Trust Co. v. Protos Shipping, Inc.	N.D. Ill.	472 F. Supp. 979	May 14, 1979
Southers v. Appalachian Regional Healthcare, Inc.	E.D. Ky.	No. 20-CR-126, 2021 WL 1250315	Apr. 5, 2021
Dean Marketing, Inc. v. A.O.C. International (U.S.A.) Ltd.	E.D. Mich.	610 F. Supp. 149	May 29, 1985
Jernigan v. Kubota Corp.	M.D. Ala.	No. 11-CV-834, 2012 WL 13001791	July 31, 2012
Listle v. Milwaukee County	E.D. Wis.	926 F. Supp. 826	Mar. 13, 1996
Minter v. Showcase Systems, Inc.	S.D. Miss.	641 F. Supp. 2d 597	June 30, 2009
Orner v. International Laboratories, Inc.	M.D. Pa.	No. 20-CV-00449, 2020 WL 6710277	Nov. 16, 2020
Oscar Ubaldo Garcia, Inc. v. Allied Property & Casualty Insurance Co.	W.D. Tex.	No. 17-CV-00243, 2017 WL 11221429	Nov. 28, 2017
Queen v. Schmidt	D.D.C.	No. 10-2017, 2015 WL 5175712	Sept. 3, 2015
Reed v. City of Cleveland	N.D. Ohio	No. 04CV0546, 2006 WL 3861082	Sept. 6, 2006
Schmude v. Sheahan	N.D. Ill.	214 F.R.D. 487	Apr. 29, 2003

Case Name	District	Citation	Date Decided
Scott v. Union Pacific Railroad Co.	W.D. Ark.	No. 06-CV-4057, 2007 WL 215804	Jan. 25, 2007
Spiritbank v. McCarty	N.D. Okla.	No. 08-CV-675, 2009 WL 1159747	Apr. 22, 2009