Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MURPHY BROTHERS, INC. *v.* MICHETTI PIPE STRINGING, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 97–1909. Argued March 1, 1999– Decided April 5, 1999

On January 26, 1996, respondent Michetti Pipe Stringing, Inc. (Michetti), filed a complaint in Alabama state court seeking damages for an alleged breach of contract and fraud by petitioner Murphy Bros., Inc. (Murphy). Michetti did not serve Murphy then, but three days later it faxed a "courtesy copy" of the file-stamped complaint to a Murphy vice president. Michetti officially served Murphy under local law by certified mail on February 12, 1996. On March 13, 1996 (30 days after service but 44 days after receiving the faxed copy of the complaint), Murphy removed the case under 28 U. S. C. §1441 to the Federal District Court. Michetti moved to remand the case to the state court on the ground that Murphy filed the removal notice 14 days too late under §1446(b), which specifies, in relevant part, that the notice "shall be filed within thirty days after the receipt by the defendant, *through service or otherwise*, of a copy of the [complaint]." (Emphasis added.) Because the notice had not been filed within 30 days of the date on which Murphy's vice president received the facsimile transmission, Michetti asserted, the removal was untimely. The District Court denied the remand motion on the ground that the 30-day removal period did not commence until Murphy was officially served with a summons. On interlocutory appeal, the Eleventh Circuit reversed and remanded, instructing the District Court to remand the action to state court. Emphasizing the statutory words "receipt . . . or otherwise," the Eleventh Circuit held that the defendant's receipt of a faxed copy of the filed initial pleading sufficed to commence the 30-day removal period.

Held: A named defendant's time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the com-

plaint, "through service or otherwise," after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service. Pp. 4–11.

(a) Service of process, under longstanding tradition in our system of justice, is fundamental to any procedural imposition on a named defendant. In the absence of such service (or waiver of service by the defendant), a court ordinarily may not exercise power over a party the complaint names as defendant. See *Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U. S. 97, 104. Accordingly, one becomes a party officially, and is required to take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend. See Fed. Rules Civ. Proc. 4(a) and 12(a)(1)(A). Unless a named defendant agrees to waive service, the summons continues to function as the *sine qua non* directing an individual or entity to participate in a civil action or forgo procedural or substantive rights. Pp. 4–5.

(b) In enacting §1446(b), Congress did not endeavor to break away from the traditional understanding. Prior to 1948, a defendant could remove a case any time before the expiration of the time to respond to the complaint under state law. Because that time limit varied from State to State, however, the removal period correspondingly varied. To reduce the disparity, Congress in 1948 enacted the original version of §1446(b), which required that the removal petition in a civil action be filed within 20 days after commencement of the action or service of process, whichever was later. However, as first framed, §1446(b) did not give adequate time or operate uniformly in States such as New York, where service of the summons commenced the action and could precede the filing of the complaint, so that the removal period could have expired *before* the defendant obtained access to the complaint. To ensure such access before commencement of the removal period, Congress in 1949 enacted the current version of §1446(b). Nothing in the 1949 amendment's legislative history so much as hints that Congress, in making changes to accommodate atypical state commencement and complaint filing procedures, intended to dispense with the historic function of service of process as the official trigger for responsive action by a named defendant. Pp. 5–7.

(c) Relying on the "plain meaning" of §1446(b) that the panel perceived, the Eleventh Circuit was of view that "[receipt] through service or otherwise" opens a universe of means besides service for putting the defendant in possession of the complaint. However, the Eleventh Circuit did not delineate the dimensions of that universe. Nor can one tenably maintain that the words "or otherwise" provide a clue. Cf., *e.g.*, *Potter* v. *McCauley*, 186 F. Supp. 146, 149. The inter-

pretation of §1446(b) adopted here adheres to tradition, makes sense of the phrase "or otherwise," and assures defendants adequate time to decide whether to remove an action to federal court. The various state provisions for service of the summons and the filing or service of the complaint fit into one or another of four main categories. See *ibid.* In each of those categories, the defendant's removal period will be no less than 30 days from service, and in some of the categories, it will be more than 30 days from service, depending on when the complaint is received. First, if the summons and complaint are served together, the 30-day removal period runs at once. Second, if the defendant is served with the summons but is furnished with the complaint sometime after, the removal period runs from the receipt of the complaint. Third, if the defendant is served with the summons and the complaint is filed in court, but under local rules, service of the complaint is not required, the removal period runs from the date the complaint is made available through filing. Finally, if the complaint is filed in court prior to any service, the removal period runs from the service of the summons. See *ibid.* Notably, Rule 81(c), amended in 1949, uses the identical "receipt through service or otherwise" language in specifying the 20-day period in which the defendant must answer the complaint once the case has been removed. Rule 81(c) has been interpreted to afford the defendant at least 20 days after service of process to respond. See *Silva* v. *Madison*, 69 F. 3d 1368, 1376–1377. In *Silva*, the Seventh Circuit distinguished its earlier decision in *Roe* v. *O'Donohue*, 38 F. 3d 298 (defendant need not receive service before time for removal under §1446(b) begins to run), but did not adequately explain why one who has not yet lawfully been made a party to an action should be required to decide in which court system the case should be heard. If, as the *Silva* court rightly determined, the "service or otherwise" language was not intended to abrogate the service requirement for purposes of Rule 81(c), that same language also was not intended to bypass service as a starter for §1446(b)'s clock. The fact that the Seventh Circuit could read the phrase "or otherwise" differently in *Silva* and *Roe*, moreover, undercuts the Eleventh Circuit's position that the phrase has an inevitably "plain meaning." Furthermore, the so-called "receipt rule"– starting the time to remove on receipt of a copy of the complaint, however informally, despite the absence of any formal service– could operate with notable unfairness to defendants in foreign nations. Because facsimile machines transmit instantaneously, but formal service abroad may take much longer than 30 days, plaintiffs would be able to dodge international treaty requirements and trap foreign opponents into keeping their suits in state courts. Pp. 7–10.

(d) In sum, it would take a clearer statement than Congress has

made to read its endeavor to extend removal time (by adding receipt of the complaint) to effect so strange a change– to set removal apart from all other responsive acts, to render removal the sole instance in which one's procedural rights slip away before service of a summons, *i.e.*, before one is subject to any court's authority. P. 11.

125 F. 3d 1396, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, KENNEDY, SOUTER, and BREYER, JJ., joined. REHNQUIST, C. J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.