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# NATIONWIDE PERSONAL JURISDICTION FOR OUR FEDERAL COURTS

A. BENJAMIN SPENCER<sup>†</sup>

Rule 4 of the Federal Rules of Civil Procedure limits the territorial jurisdiction of federal district courts to that of the courts of their host states. This limitation is a voluntary rather than obligatory restriction, given district courts' status as courts of the national sovereign. Although there are sound policy reasons for limiting the jurisdictional reach of our federal courts in this manner, the limitation delivers little benefit from a judicial administration or even a fairness perspective, and ultimately costs more to implement than is gained in return. The rule should be amended to provide that district courts have personal jurisdiction over all defendants who have constitutionally sufficient contacts with the United States, leaving a refined venue doctrine to attend to matters relating to the convenience and propriety of litigating a matter in one particular district versus another.

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"We . . . see no reason why the extent of a Federal District Court's personal jurisdiction should depend upon the existence or nonexistence of a state 'long-arm' statute."<sup>1</sup>

## INTRODUCTION

Traditionally, all first-year law students study personal jurisdiction as part of the basic civil procedure course. Many initial meetings of that class begin with discussions of *Pennoyer v. Neff*,<sup>2</sup> followed by an exploration of *International Shoe Co. v. Washington*<sup>3</sup> and its progeny. This rite of passage is occasioned by the fact that federal district courts are ordinarily subject to the same constraints on their ability to assert personal jurisdiction as the courts of the states in which they are located, a limitation that derives from Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure.<sup>4</sup>

Although sloughing through these cases has great value as a means of introducing law students to case law analysis and inculcating them

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1. Statement of Mr. Justice Black and Mr. Justice Douglas, 374 U.S. 865, 869 (1963).

2. 95 U.S. 714 (1877).

3. 326 U.S. 310 (1945).

4. FED. R. CIV. P. 4(k)(1)(A) ("Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant: (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located . . .").

with critical legal thinking skills, many wonder whether all of the time and attention devoted to the subject is warranted. Given its current relevance to personal jurisdiction in federal courts, it is indeed essential that law students gain an understanding of how to determine whether a party is subject to jurisdiction in any given state. But whether the jurisdictional reach of state courts should be the measuring rod for the jurisdictional reach of federal courts is another matter. Eliminating this linkage would certainly free up time in the first-year procedure course for other more pertinent topics. Of course, that consequence alone cannot justify what would seem to be a major innovation to the rules as they currently stand. Are there more serious grounds for dispensing with the requirement that federal district courts limit their jurisdictional reach to that of their host states? I believe so. My thinking on that prospect follows.

### I. THE CURRENT RULE

Members of the founding generation were concerned that a national court system would subject citizens to suit in distant locales at great inconvenience and in violation of a perceived entitlement to localized justice.<sup>5</sup> Responding to this concern, the First Congress, via the Judiciary Act of 1789, limited effective service to that issued by the district in which the defendant resided or the district in which the defendant was actually present when served.<sup>6</sup> This was the federal practice until the enactment of the Federal Rules of Civil Procedure in 1938.<sup>7</sup> Rule 4(f) carried the torch from there, permitting service of process to be effective anywhere within the *state* in which the issuing district court was located, or beyond the state's borders if otherwise permitted by federal statute.<sup>8</sup> In 1963, the rules were amended to permit a district court's service of process to be effective beyond the host state's borders whenever permitted by the statutes or rules of court of the state in which the district court

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5. Jamelle C. Sharpe, *Beyond Borders: Disassembling the State-Based Model of Federal Forum Fairness*, 30 *CARDOZO L. REV.* 2897, 2903 (2009) ("Those members of the First Congress who set out to create the federal court system were keenly aware that their constituents were 'accustomed to receive justice at their own doors in a simple form,' and repeatedly were warned of the dangers that could attend a geographically expansive national judiciary." (quoting 4 *THE DOCUMENTARY HISTORY OF THE SUPREME COURT OF THE UNITED STATES, 1789-1800*, at 28 (Maeva Marcus & James R. Perry eds., 1992))).

6. Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73, 79 ("[N]o civil suit shall be brought before either of [circuit or district] courts against an inhabitant of the United States, by any original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ . . .").

7. *Robertson v. R.R. Labor Bd.*, 268 U.S. 619, 623 (1925) ("Under the general provisions of law, a United States District Court cannot issue process beyond the limits of the district. And a defendant in a civil suit can be subjected to its jurisdiction in personam only by service within the district. Such was the general rule established by Judiciary Act Sept. 24, 1789 . . . . And such has been the general rule ever since." (citations omitted)).

8. Rule 4(f) originally read, "Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held and, when a statute of the United States so provides, beyond the territorial limits of that state." FED. R. CIV. P. 4(f) (1938 adoption), reprinted in 1 *JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE* § 4 app. 01 (3d ed. 1997 & Supp. 2009).

was located.<sup>9</sup> The current incarnation of the rule linking the scope of effective service in a federal district court to the jurisdictional reach of their respective host states is found in Rule 4(k), which reads, “Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant: (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located . . . .”<sup>10</sup>

Linking federal and state court jurisdiction in this manner makes federal jurisdiction dependent upon both the scope of the host state’s jurisdictional statutes and the constitutional scope of a state’s jurisdictional reach under *International Shoe* and its progeny. Several problems attend this model.

First, incorporating state jurisdictional limits means that there will be some lack of uniformity among the federal courts respecting their own jurisdictional reach. Although most states assert personal jurisdiction to the constitutional limit,<sup>11</sup> federal courts located in states that do not reach so far will be correspondingly constrained.<sup>12</sup> As courts of a common sovereign, it makes little sense for the courts of our national government to have varying jurisdictional reach, and even less sense for the variation to be by virtue of the will of states’ legislatures or courts. The linkage is particularly ill-fitting when federal question cases are concerned; in such cases there can be no claim that the federal court is merely acting as a court of the forum.<sup>13</sup>

The second shortcoming of the current approach is that by forsaking the full constitutional reach of federal courts’ territorial authority, the district courts are deprived of an important aspect of their distinctiveness in the ordinary civil case. The federal courts are not only meant to provide a neutral forum in which outsiders can expect a hearing that is at least theoretically less tainted with localized biases.<sup>14</sup> They are more

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9. Rule 4(e) was amended to read, “Whenever a statute or rule of court of the state in which the district court is held provides . . . for service of a summons . . . upon a party not an inhabitant of or found within the state, . . . service may . . . be made under the circumstances and in the manner prescribed in the statute or rule.” *Id.* 4(e) (1963 amendment), reprinted in 1 MOORE ET AL., *supra* note 8, at § 4 app. 03. Rule 4(f) was amended to indicate that extraterritorial service was effective “when authorized by a statute of the United States or by these rules.” *Id.* 4(f) (1963 amendment), reprinted in 1 MOORE ET AL., *supra* note 8, at § 4 app. 03.

10. *Id.* 4(k)(1).

11. Douglas D. McFarland, *Dictum Run Wild: How Long-Arm Statutes Extended to the Limits of Due Process*, 84 B.U. L. REV. 491, 496–97 (2004) (discussing the long-arm statutes across the states and indicating that 32 states have statutes that expressly or by judicial interpretation confer jurisdiction to the constitutional limit).

12. New York is a notable example of such a state. See N.Y. C.P.L.R. 302 (McKinney 2009).

13. Cf. *Guar. Trust Co. of N.Y. v. York*, 326 U.S. 99, 108 (1945) (“[A] federal court adjudicating a state-created right solely because of the diversity of citizenship of the parties is for that purpose, in effect, only another court of the State . . .”).

14. *Bank of U.S. v. Deveaux*, 9 U.S. 61, 87 (1809) (Marshall, C.J.) (“However, true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and a citi-

generally seen as fora in which litigants can seek justice under circumstances in which state courts—for whatever reason—are unable or unwilling to provide it. The service of the federal courts in the South during the civil rights era comes to mind. Thus, if there are instances where the forum state cannot exercise personal jurisdiction over an individual, but a federal court within that state nonetheless would be a proper forum under applicable venue rules, the federal court's doors should be open to the dispute so long as exercising jurisdiction over the defendant would be constitutional with respect to the national sovereign. Rule 4(k) recognizes this principle, although to a much more limited extent, when it permits district courts to exercise jurisdiction to the constitutional limit in federal question cases when all states—not just the forum state—are unable to exercise personal jurisdiction over the defendant.<sup>15</sup>

Third, the reliance on the *International Shoe* doctrine vis-à-vis state boundaries that is a consequence of Rule 4(k)(1)(A) imports all of the shortcomings of that analysis into the federal court context. The constitutional law of personal jurisdiction doctrine is notoriously confusing and imprecise.<sup>16</sup> Thus, in close or difficult cases, raising and resolving personal jurisdiction challenges consumes an inordinate amount of parties' time and the courts' limited resources. Such satellite litigation contributes to the overall inefficiency of the judicial process and the inability of courts to reduce their burgeoning caseloads. Further, the imprecision of the *International Shoe* analysis and its incorporation of reasonableness considerations renders the outcome of the analysis unpredictable in difficult cases. As a result, litigants have less certainty regarding where a defendant may or may not be subject to jurisdiction, meaning parties end up litigating the jurisdictional question in the plaintiff's chosen forum. Doing so, of course, robs the defendant of some portion of the protection that the jurisdictional linkage rule was designed to deliver.

Finally, connecting federal jurisdictional reach to that of forum states duplicates, in many respects, the considerations comprising the federal venue analysis—making the double regime of personal jurisdic-

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zen, or between citizens of different states.”). Judge Friendly explores and questions this rationale in Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 483, 492–93 (1928).

15. Rule 4(k)(2) reads as follows: “For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if: (A) the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws.” FED. R. CIV. P. 4(k)(2).

16. I have specified my views to that effect in a previous writing. A. Benjamin Spencer, *Jurisdiction to Adjudicate: A Revised Analysis*, 73 U. CHI. L. REV. 617, 618 (2006) (“With each decision, the Court has convulsed away from the simple notion in *International Shoe* that state sovereignty and due process permit jurisdiction over nonresidents who are minimally connected with the forum, to a confused defendant-centric doctrine obsessed with defendants’ intentions, expectations, and experiences of inconvenience.”); see also James Weinstein, *The Federal Common Law Origins of Judicial Jurisdiction: Implications for Modern Doctrine*, 90 VA. L. REV. 169, 171 & n.5 (2004) (describing personal jurisdiction doctrine under *International Shoe* and its progeny as “deeply confused” and collecting critical commentary).



tion and venue somewhat of a belt-and-suspenders approach. Federal venue law is focused on siting an action in states where the defendants reside, or within the districts in which property concerned in the action is located or actions or omissions giving rise to the action occurred.<sup>17</sup> As such, in most instances venue analysis is likely to identify federal districts to hear the action that will not present constitutionally undue burdens on defendants. Granted, venue analysis is not coterminous with personal jurisdiction analysis at the state level, as the latter requires the identification of purposeful forum state contacts on the part of each defendant.<sup>18</sup> But the minimum contacts concern is rooted in a need to give a defendant notice that they are within the sovereign authority of a particular state, not in a need to attend to the right of defendants to participate in the proceedings without undue burden.<sup>19</sup> The former concern is not one that properly pertains to the federal district courts as arms of the national sovereign. The latter concern is addressed by the reasonableness wing of the *International Shoe* analysis, which consists of factors that are addressed to some extent in a federal venue analysis.<sup>20</sup> Venue restrictions, then, can be said to do much (but not all) of the relevant service to the participation interests of defendants, with personal jurisdiction limitations failing to deliver any cognizable additional benefits without the additional attendant costs described above.

## II. A PROPOSED REVISION

My proposal is to delink federal- and state-court personal jurisdiction by amending Rule 4(k) as follows:

**(k) Territorial Limits of Effective Service.** Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant: ~~(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located when exercising jurisdiction is consistent with the United States Constitution.~~ [delete the remainder of current Rule 4(k).]

This change would have the effect of authorizing nationwide service of process in all civil cases in the federal district courts, which the Supreme Court has recognized as constitutionally permissible.<sup>21</sup> To obtain

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17. 28 U.S.C. § 1391 (2006).

18. See *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945).

19. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (“By requiring that individuals have ‘fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign,’ the Due Process Clause ‘gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.’” (alteration in original) (citation omitted) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980))).

20. *Int'l Shoe*, 326 U.S. at 319.

21. *Toland v. Sprague*, 37 U.S. 300, 328 (1838) (“Whatever may be the extent of their jurisdiction over the subject matter of suits, in respect to persons and property; it can only be exercised within the limits of the [federal judicial] district. Congress might have authorized civil process from

personal jurisdiction under this revised rule, a plaintiff would simply need to show that the defendant had minimum contacts with the United States, the current approach taken when Rule 4(k)(2) is applied to establish jurisdiction.<sup>22</sup> Note that if the rule were amended in this way, there would be no need for the remaining components of Rule 4(k); because those provisions reflect circumstances falling within the constitutional scope of federal court territorial jurisdiction, they would become duplicative of the jurisdictional grant of revised Rule 4(k).<sup>23</sup>

In the absence of any linkage between personal jurisdiction in the federal district courts and the scope of such jurisdiction in their respective hosts' state courts, the determination of which among the several district courts would hear a case would be based on an application of the federal statutes governing venue.<sup>24</sup> In the ordinary case, that would limit a plaintiff's choice to (1) a defendant's district within the state in which all defendants reside, (2) a district in which a significant portion of the events or omissions giving rise to the action occurred, (3) the district in which property involved in the action is located, or (4) districts in which defendants could be subjected to personal jurisdiction if none of the other possibilities are available.<sup>25</sup> Ultimately, then, the district chosen would be one that had some connection to the situs of the actions giving rise to the dispute, if not to the location of one or more of the defendants.

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any circuit court, to have run into any state of the Union. It has not done so."); *see also* *Miss. Publ'g Corp. v. Murphree*, 326 U.S. 438, 442 (1946); *Robertson v. R.R. Labor Bd.*, 268 U.S. 619, 622 (1925).

22. *See* Fed. R. Civ. P. 4(k)(2) advisory committee notes to 1993 amendment (explaining that the Fifth Amendment, the basis of jurisdiction under Rule 4(k)(2), "requires that any defendant have affiliating contacts with the United States sufficient to justify the exercise of personal jurisdiction over that party").

23. This includes the so-called 100-mile Bulge Rule of Rule 4(k)(1)(B), which currently permits personal jurisdiction over Rule 14 and Rule 19 parties served in a judicial district within 100 miles of the summoning courthouse. Under the proposed rule, parties so served would be constitutionally subject to jurisdiction in the United States based on having been served with process within the country's borders. *See Burnham v. Superior Court of Cal., County of Marin*, 495 U.S. 604, 628 (1990) (upholding the constitutionality of personal jurisdiction based on in-state service of process). That said, it is open to question whether jurisdiction over corporations would be constitutional solely based on service within the United States since *Burnham* left open the question of whether the in-state service rule applied to corporations. 4A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 1102 (3d ed. 2002 & Supp. 2009) ("Service made upon a corporation, partnership, or other unincorporated association simply by delivering process to a corporate or comparable officer who happens to reside or be physically present in the state at the time the documents are served will not be effective to establish in personam jurisdiction, unless that entity also is doing business so as to be amenable to service of process and the assertion of jurisdiction in the forum state."). But the same uncertainty could be said to exist under the current rule, which purports to authorize service over any Rule 14 or Rule 19 party served within 100 miles of the issuing courthouse, including corporations so served. *See, e.g., Turbana Corp. v. M/V "Summer Meadows"*, No. 03 Civ.2099(HB), 2003 WL 22852742, at \*4 (S.D.N.Y. Dec. 2, 2003) (using the bulge rule to authorize jurisdiction over a corporation in New York whose agent was served in Bridgeport, Connecticut).

24. *See, e.g.*, 28 U.S.C. §§ 1391, 1404, 1406 (2006). In addition to the general venue statute, there are several other special venue statutes as well as venue provisions within the body of various substantive federal statutes. *See, e.g., id.* 42 U.S.C. § 2000e-5(f)(3) (employment discrimination claims); *id.* 29 U.S.C. § 1132(e)(2) (ERISA claims).

25. *Id.* 28 U.S.C. § 1391.

In the event that the plaintiff selects a venue not connected to the defendants' location, dissatisfied defendants may avail themselves of the change of venue statute: 28 U.S.C. § 1404. Section 1404 permits litigants to seek a transfer to a preferred district<sup>26</sup> provided the district is one that would satisfy the venue requirements had the action been filed there originally,<sup>27</sup> and assuming convenience considerations and the interests of justice warrant the transfer.<sup>28</sup> Indeed, once the statute is invoked, courts have occasion to consider a list of convenience and justice factors that closely mirror the list of factors the Supreme Court has identified for consideration for the reasonableness prong of a constitutional personal jurisdiction analysis.<sup>29</sup> In short, plaintiffs may only transfer to districts bearing some connection with the defendants or the dispute, and defendants are given an opportunity to move the case to a preferred alternate qualifying district by invoking many of the same considerations that would have undergirded a constitutional personal jurisdiction analysis.

What are the shortcomings of this proposed approach? Different jurisdictional standards mean that distinctions between federal and state courts within the same state will inevitably arise in terms of defendants' amenability to suit. As a result, plaintiffs with claims that entitle them to bring suit in the federal courts will have an advantage over plaintiffs whose claims must be brought in state court; defendants in the latter category of suits will evade jurisdiction in some state courts when diverse plaintiffs might be able to bring similar suits against those same defendants in federal courts in those states. This might strike some as an unfair distinction, indeed a distinction that the Supreme Court has, in other con-

26. *Id.* § 1404(a) ("For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."). Section 1406 similarly provides for a change of venue, though it presupposes an initial filing in an improper venue. *Id.* § 1406(a).

27. *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960) ("If when a suit is commenced, plaintiff has a right to sue in that district, independently of the wishes of defendant, it is a district where [the action] might have been brought." (alteration in original) (internal quotation marks omitted) (quoting *Blaski v. Hoffman*, 260 F.2d 317, 321 (7th Cir. 1958))).

28. § 1404(a).

29. The factors that courts consider when evaluating a venue transfer request typically include the following:

- (1) the plaintiff's choice of forum, (2) the convenience of witnesses, (3) the location of relevant documents and relative ease of access to sources of proof, (4) the convenience of the parties, (5) the locus of operative facts, (6) the availability of process to compel the attendance of unwilling witnesses, [and] (7) the relative means of the parties.

*Employers Ins. of Wausau v. Fox Entm't Group, Inc.*, 522 F.3d 271, 275 (2d Cir. 2008) (alteration in original) (internal quotation marks omitted) (quoting *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 106–07 (2d Cir. 2006)). Compare these factors with the factors the Court set forth in *Asahi Metal Industry Co. v. Superior Court of California, Solano County*:

A court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies."

480 U.S. 102, 113 (1987) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).



texts, suggested was to be avoided.<sup>30</sup> Of course, this concern is not pertinent to federal question cases, since all prospective plaintiffs would have equal access to the preferable jurisdictional reach of federal courts for such claims. But even in the diversity jurisdiction context, where the disparity would be unavoidable, I do not share the stated concern. I view federal courts as distinctive, and I do not view federal diversity jurisdiction as mere mimicry of state courts.

Another potential defect of the proposed reform is that governing choice-of-law rules would undoubtedly be altered in cases now able to be brought in federal courts in states that could not themselves exercise personal jurisdiction. That is, because federal courts sitting in diversity must apply the conflicts rules of the forum state,<sup>31</sup> diversity cases brought in states not having personal jurisdiction over the defendant will be governed by conflicts rules that would have been inaccessible under the current version of Rule 4(k). This result would allow plaintiffs to shop around for a forum state with the most favorable choice of law rules.<sup>32</sup> But the ability to forum shop would be constrained by the federal venue statute, which provides a narrower menu of options for bringing a suit, meaning that plaintiffs would not simply have the run of all federal districts (except perhaps in the case of claims against aliens).<sup>33</sup> An additional safeguard against this concern might be the fact that many states do not differ wildly in the substance of their choice of law rules,<sup>34</sup> meaning that less still would be at stake in a plaintiff's decision about where to bring a suit.

Finally, there is the Founders' concern about being subjected to suit in distant locales. The absence of a forum state personal jurisdiction requirement may sweep defendants into federal court in states with which they have little or no contacts. For example, suppose a vendor in Virginia sells a faulty product to a visiting Californian. If the product subsequently causes harm to the Californian in California, the Virginia vendor could

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30. *Hanna v. Plumer*, 380 U.S. 460, 468 (1965) (indicating that "avoidance of inequitable administration of the laws" between federal and state court was one of the "twin aims" of the *Erie* doctrine); *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941) (holding that the conflict of laws rules to be applied by federal courts sitting in diversity are to be those of the forum state because "[o]therwise the accident of diversity of citizenship would constantly disturb equal administration of justice in coordinate state and federal courts sitting side by side").

31. *Klaxon*, 313 U.S. at 496.

32. Linda J. Silberman, *Reflections on Burnham v. Superior Court: Toward Presumptive Rules of Jurisdiction and Implications for Choice of Law*, 22 RUTGERS L.J. 569, 587 (1991) ("[A] nationwide service rule would exacerbate forum shopping since a litigant would search for the forum with the most favorable choice-of-law rules.").

33. The general venue statute includes a provision that permits venue in actions against aliens to be brought in any federal district. 28 U.S.C. § 1391(d) (2006).

34. See generally Symeon C. Symeonides, *Choice of Law in the American Courts in 2008: Twenty-second Annual Survey*, 57 AM. J. COMP. L. 269 (2009) (describing the various approaches to choice of law questions taken in the states and indicating that a preponderance tend to follow the Restatement (Second) or some variant of an interest analysis approach, or a traditional *lex loci delicti* approach).

be sued in California federal court consistent with the federal venue statute.<sup>35</sup> This possibility might lead the vendor to be unwilling to sell products to persons from distant states, an outcome that would be discriminatory and harmful to interstate commerce. This is a serious concern, although a court in such a situation would have the power to transfer the case to a Virginia federal court for the convenience of the parties and witnesses and in the interests of justice.<sup>36</sup> Under the current statutes concerning change of venue, such a transfer would not be guaranteed. However, this concern does not suggest that linkage with forum state territorial jurisdiction limitations is necessary. Rather, it indicates that in some instances federal venue law is inadequate to identify the most appropriate district within the federal judicial system for hearing a case. Thus, were de-linkage achieved, the federal venue statute might need to become more robust, tightening the connection between defendants and districts needed to lay venue.

The following amendment to the general venue statute, 28 U.S.C. § 1391, would appear to address this concern:

**§ 1391. Venue generally**

(a) A civil action . . . may . . . be brought only in

. . . .

(2) a judicial district in which a substantial part of the ~~events~~ actions or omissions of the defendant giving rise to the claim occurred . . .<sup>37</sup>

If the venue statute read as proposed, our Virginia vendor could not be sued in California federal court for the Virginia sale of a defective product to a Californian. Proper venue in suits against defendants such as our vendor would exist only in those districts in which the defendant's wrongdoing could be located, not in districts in which only the effects of that wrongdoing were felt.

Although the proposed change to the general venue statute would bring venue law more in line with the constraints that are currently imposed via personal jurisdiction doctrine, I am not certain that changing the venue statute in this manner is advisable. There may be instances when it is perfectly reasonable for a case to be heard in the place of the harm, notwithstanding the defendant's lack of contacts with that district. The proposed venue statute change would preclude proper venue in such districts, which is likely too restrictive. I am more comfortable permitting venue to be determined under the statute as it is currently written and

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35. This is so because a substantial part of the events giving rise to the action would have occurred in the relevant federal district in which the plaintiff was harmed.

36. See 28 U.S.C. § 1404(a) (2006).

37. A conforming change would have to be made to subsection (b) of the statute as well.

allowing disgruntled defendants to challenge that selection under the terms of the change of venue statutes that permit the court to consider the equities of the matter on a case-by-case basis.

#### CONCLUSION

Delinking the jurisdictional reach of federal courts from that of their host states seems to be an innovation that would simplify the identification of a proper court for civil actions without raising any constitutional or sovereignty-related concerns. The participation interests of defendants would not be forsaken but would still have a voice in venue doctrine and in the considerations embedded in the change of venue analysis. There are likely considerations and implications pertaining to this proposal that have not been considered in this Essay. But all in all, my view is that the benefits of revising Rule 4(k) in the manner proposed outweigh the costs that I am able to discern.