Snap Removal and the Absurdity Doctrine

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I. INTRODUCTION

Snap removal, the "swift removal of a case before a forum defendant can be served,"[1] is "the rare case in which it is as clear as anything ever can be that Congress did not mean what in strict letter it

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1. Lonny Hoffman & Erin Horan Mendez, *Wrongful Removals*, 71 FLA. L. REV. F. 220, 222 (2020); *see also* Serafini v. Sw. Airlines Co., 485 F. Supp. 3d 697, 698 (N.D. Tex. 2020) ("Before being served, Southwest removed to this Court—a litigation tactic commonly referred to as 'snap removal.' In other words, Southwest wanted to get away."); Ekeya v. Shriners Hosp. for Child., Portland, 258 F. Supp. 3d 1192, 1201 n.4 (D. Or. 2017).

said."[2] There is no evidence that when the removal statutes were amended in 1948, Congress intended to allow forum defendants to remove a case before being served.[3] Indeed, many courts have reached the opposite conclusion.[4] Thus, allowing snap removal leads to absurd results.[5]

2. J.C. Penney Co. v. Comm'r, 312 F.2d 65, 66 (2d Cir. 1962) (Friendly, J.); *see also* Druker v. Comm'r, 697 F.2d 46, 50 (2d Cir. 1982) (Friendly, J.) ("It would be altogether absurd to suppose that Congress, in fixing the rate schedules in 1969, had any invidious intent to discourage or penalize marriage—an estate enjoyed by the vast majority of its members."); Comm'r v. Gordon, 382 F.2d 499, 513 (2d Cir. 1967) (Friendly, J., dissenting) ("Unless the words used by Congress lead to absurd results, are inconsistent with its apparent purpose, or are filled by history with a meaning different from the ordinary one, none of which can be successfully asserted here, a court's job is to apply what Congress has said."), *rev'd sub nom*., 391 U.S. 83, 98 (1968); Standard Oil Co. (N.J.) v. United States, 338 F.2d 4, 11 (2d Cir. 1964) (Friendly, J., dissenting) ("But Congress did not say that, and what it did say does not produce a result so absurd that we should read into the statute words that Congress did not put there.") (citations omitted). For a more detailed discussion of Judge Friendly's use of the absurdity doctrine, see David M. Dorsen, *Eating Your Cake and Having It Too; Judge Henry Friendly and Tax Law*, 32 VA. TAX. REV. 767, 767–810 (2013) (stating that Judge Friendly's principal technique in tax disputes was to apply the absurdity doctrine) [hereinafter Dorsen, *Eating Your Cake*]; *see also* DAVID M. DORSEN, HENRY FRIENDLY: GREATEST JUDGE OF HIS ERA 260-61 (2012) (relying on the absurdity doctrine yet maintaining his position as a literalist).

3. Goodwin v. Reynolds, 757 F.3d 1216, 1221 (11th Cir. 2014); Laugelle v. Bell Helicopter Textron, Inc., No. 10-1080, 2012 WL 368220, at *3 (D. Del. Feb. 2, 2012) ("Other district courts that have considered this issue have concluded that Congress could not have intended removability to hinge on the timing of service.") (citation omitted); Michael M. Gallagher, *Snap Removal and The Sherlock Holmes Canon*, 53 CUMB. L. REV. 259, 278 (2022–23) [hereinafter Gallagher, *Sherlock Holmes*] ("Congress consequently added four words to section 1441 to prevent plaintiffs from fraudulently joining resident defendants.") (footnote omitted); Jeffrey W. Stempel, Thomas O. Main & David McClure, *Snap Removal: Concept; Cause; Cacophony; and Cure*, 72 BAYLOR L. REV. 423, 476–77 (2020) [hereinafter Stempel et al., *Snap Removal*].

4. *Goodwin*, 757 F.3d at 1221; *Laugelle*, No. 10-1080, 2012 WL 368220, at *3.

5. Kirst *ex rel.* Novavax, Inc. v. Erck, 616 F. Supp. 3d 471, 478 (D. Md. 2022); Deutsche Bank Nat'l Tr. Co. v. Old Republic Title Ins. Grp., Inc., 532 F. Supp. 3d 1004, 1014 (D. Nev. 2021); *In re* Roundup Prods. Liab. Litig., No. 16-md-02741-VC, 2019 WL 423129, at *1 (N.D. Cal. Feb. 1, 2019); Delaughder v. Colonial Pipeline Co., 360 F. Supp. 3d 1372, 1381 (N.D. Ga. 2018); DHLNH, LLC v. Int'l Brotherhood of Teamsters, Local 251, 319 F. Supp. 3d 604, 606 (D.R.I. 2018); Reimold v.

Some courts deem snap removal absurd.[6] Three circuit courts, however, find this practice acceptable.[7] Some scholars claim that snap

Gokaslan, 110 F. Supp. 3d 641, 643 (D. Md. 2015); Phillips Constr., LLC v. Daniels Law Firm, PLLC, 93 F. Supp. 3d 544, 553 (S.D.W. Va. 2015); *In re* Testosterone Replacement Therapy Prods. Liab. Litig., 67 F. Supp. 3d 952, 961–62 (N.D. Ill. 2014); Padgett v. Medtronic, Inc., 41 F. Supp. 3d 582, 587 n.6 (W.D. Ky. 2014); Hawkins v. Cottrell, Inc., 785 F. Supp. 2d 1361, 1373 (N.D. Ga. 2011); Allen v. GlaxoSmithKline PLC, No. 07-5045, 2008 WL 2247067, at *6 (E.D. Pa. May 30, 2008); Vivas v. Boeing Co., 486 F. Supp. 2d 726, 734 (N.D. Ill. 2007); Oxendine v. Merck & Co., 236 F. Supp. 2d 517, 526 (D. Md. 2002); *cf.* Howard M. Wasserman, *The Forum-Defendant Rule, The Mischief Rule, and Snap Removal*, 62 WM. & MARY L. REV. ONLINE 51, 54 (2021) ("By focusing on the mischief Congress targeted with the 'properly joined and served' language, a court could read and interpret the statutory language broadly to prohibit snap removal as a clever evasion of the forum-defendant rule."); Travis Temple, Note, *Absurd Overlap: Snap Removal and The Rule of Unanimity*, 63 WM. & MARY L. REV. 321, 323 (2021); Linda S. Mullenix, *Gaming The System: Protecting Consumers From Unconscionable Contractual Forum-Selection and Arbitration Clauses*, 66 HASTINGS L.J. 719, 740 (2015). *But see* Tex. Brine Co. v. Am. Arb. Ass'n, 955 F.3d 482, 486 (5th Cir. 2020); Gibbons v. Bristol-Myers Squibb Co., 919 F.3d 699, 707 (2d Cir. 2019) (holding that snap removal is not absurd); Encompass Ins. v. Stone Mansion Rest. Inc., 902 F.3d 147, 154 (3d Cir. 2018); Zach Hughes, *A New Argument Supporting Removal of Diversity Cases Prior to Service*, 79 DEF. COUNS. J. 205, 207 (2012). Also, snap removal violates the Anti-Injunction Act. *See* Michael M. Gallagher, *Snap Removal and The Anti-Injunction Act*, 57 TEX. TECH. L. REV. 153 (2024) (stating that snap removal constitutes a multitude of issues, including a violation of the Anti-Injunction Act) [hereinafter Gallagher, *Anti-Injunction Act*].

6. *Kirst ex rel. Novavax, Inc.*, No. TDC-22-0024, 2022 WL 2869742, at *4; Wilmington Tr., N.A. v. Fid. Nat'l Title Grp., Inc., 604 F. Supp. 3d. 1044, 1051 (D. Nev. 2022); Bowman v. PHH Mortg. Corp., 423 F. Supp. 3d 1286, 1292 (N.D. Ala. 2019) ("But the 'properly joined and served' language has created its own opportunities for mischief by defendants."), *appeal dismissed*, 2020 WL 1847512 (11th Cir. Feb. 26, 2020); Williams v. Daiichi Sankyo, Inc., 13 F. Supp. 3d 426, 432 (D.N.J. 2014) ("In sum, permitting these non-forum Defendants to remove before the Plaintiffs are actually capable of serving the forum Defendants violates the intention of the forum defendant rule by permitting gamesmanship."); Lone Mountain Ranch, LLC v. Santa Fe Gold Corp., 988 F. Supp. 2d 1263, 1267 (D.N.M. 2013) ("However in this case, the Court does not find that the goals of the Forum Defendant Rule's 'properly served' language would be promoted by an overly technical reading of the Rule."); Swindell-Filiaggi v. CSX Corp., 922 F. Supp. 2d 514, 521 (E.D. Pa. 2013); Everett v. MTD Prods., Inc., 947 F. Supp. 441, 443 (N.D. Ala. 1996).

7. *Tex. Brine Co.*, 955 F.3d at 486; *Gibbons*, 919 F.3d at 707; *Encompass Ins.*, 902 F.3d at 154. The Sixth Circuit approved this practice in passing. McCall v. Scott, 239 F.3d 808, 813 n.2 (6th Cir. 2001). The Seventh Circuit commented on snap

removal produces illogical results.[8] Other scholars are at peace with this practice.[9] But for whatever combination of reasons, courts have yet to take a close look at the absurdity doctrine.[10] This Article is an effort to contribute to this debate.[11]

Part II examines the history of the absurdity doctrine. Part III evaluates the application of the absurdity doctrine to snap removal. Part IV responds to counterarguments by snap removal supporters. This Article ends with a call for the Court to use the absurdity doctrine and end snap removal.

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removal in dicta. Morris v. Nuzzo, 718 F.3d 660, 670 n.3 (7th Cir. 2013); Holmstrom v. Peterson, 492 F.3d 833, 839 (7th Cir. 2007).

8. Matt Elgin, Case Comment, *Technology & Textualism: A Case Study on the Challenges a Rapidly Evolving World Poses to the Ascendant Theory*, 52 GOLDEN GATE U. L. REV. 97, 125 (2022); Adam B. Sopko, *Swift Removal*, 13 FED. CTS. L. REV. 1, 1 (2021); E. Farish Percy, *It's Time for Congress to Snap to It and Amend 28 U.S.C. § 1441(1)(B)(2) to Prohibit Snap Removals that Circumvent the Forum Defendant Rule*, 73 RUTGERS U. L. REV. 579, 640 (2021); Thomas O. Main et al., *The Elastics of Snap Removal: An Empirical Case Study of Textualism*, 69 CLEV. ST. L. REV. 289, 302 (2021); Jeffrey W. Stempel, *Adding Context and Constraint to Corpus Linguistics*, 86 BROOK. L. REV. 389, 416 (2021); Valerie M. Nannery, *Closing The Snap Removal Loophole*, 86 U. CIN. L. REV. 541, 574 (2018); Arthur D. Hellman, *The Fraudulent Joinder Prevention Act Of 2016: A New Standard and a New Rationale for an Old Doctrine*, 17 FEDERALIST SOC'Y REV. 34, 44 n.98 (2016); Jordan Bailey, Case Comment, *Giving State Courts the Ol' Slip: Should a Defendant Be Allowed to Remove an Otherwise Irremovable Case to Federal Court Solely Because Removal Was Made Before Any Defendant Is Served?*, 42 TEX. TECH. L. REV. 181, 213 (2009).

9. Hughes, *supra* note 5, at 207; Saurabh Vishnubhakat, *Pre-Service Removal in the Forum Defendant's Arsenal*, 47 GONZ. L. REV. 147, 161 (2011); Matthew Curry, Note, *Plaintiff's Motion to Remand Denied: Arguing for Pre-Service Removal Under the Plain Language of the Forum Defendant Rule*, 58 CLEV. ST. L. REV. 907, 932 (2010).

10. *See Tex. Brine Co.*, 955 F.3d at 486 (acknowledging the absurdity doctrine but not fully applying it); *Gibbons*, 919 F.3d at 707; *Encompass Ins.*, 902 F.3d at 154.

11. I have previously written about other issues raised by snap removal. *See* Gallagher, *Sherlock Holmes*, *supra* note 3, at 278; Gallagher, *Anti-Injunction Act*, *supra* note 5, at 1–15. By this point, it is safe to say that snap removal is controversial. Little v. Wyndham Worldwide Operations, Inc., 251 F. Supp. 3d 1215, 1220 (M.D. Tenn. 2017); Maggie Gardner, *District Court En Bancs*, 90 FORDHAM L. REV. 1541, 1584 n.290 (2022); Danielle Gold & Rayna E. Kessler, *How to Avoid 'Snap Removals'*, TRIAL, July 2019, at 56; E. Farish Percy, *The Fraudulent Joinder Prevention Act of 2016: Moving the Law in the Wrong Direction*, 62 VILL. L. REV. 213, 228 n.94 (2017).

II. THE ABSURDITY DOCTRINE

Near the end of the nineteenth century, the Court observed: "[n]othing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, *and, if possible, so as to avoid an unjust or absurd result*."[12] The Court first applied the absurdity doctrine in criminal cases.[13] It has held that a sheriff who arrested a suspected murderer acting as a mail carrier had not obstructed the mail,[14] concluded that a minister from another country was not a foreign laborer under a labor statute,[15] and declined to apply a bookkeeping portion of the National Prohibition Act to two individuals.[16] These criminal cases involved "overly inclusive statutory language"[17] that the Court treated "as a flat contradiction of the legislature's intent and purpose."[18]

12. Lau Ow Bew v. United States, 144 U.S. 47, 59 (1892) (emphasis added) (citations omitted). *But cf.* Barnhart v. Sigmon Coal Co., 534 U.S. 438, 459 (2002) ("Respondents correctly note that the Court rarely invokes such a test to override unambiguous legislation.").

13. *See* United States v. Katz, 271 U.S. 354, 362 (1926) ("General terms descriptive of a class of persons made subject to a criminal statute may and should be limited where the literal application of the statute would lead to extreme or absurd results, and where the legislative purpose gathered from the whole Act would be satisfied by a more limited interpretation."); Church of the Holy Trinity v. United States, 143 U.S. 457, 459 (1892); United States v. Kirby, 74 U.S. 482, 486 (1869).

14. *Kirby*, 74 U.S. at 487 ("[T]he act of Congress which punishes the obstruction or retarding of the passage of the mail, or of its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder." (footnote omitted)).

15. Church of the Holy Trinity , 143 U.S. at 458.

16. *Katz*, 271 U.S. at 363.

17. Dorsen, *Eating Your* Cake, *supra* note 2, at 796 (footnote omitted).

18. *Id.* (footnote omitted). One scholar characterized the absurdity doctrine as "a version of strong intentionalism." John F. Manning, *The Absurdity Doctrine*, 116 HARV. L. REV. 2387, 2400 (2003) [hereinafter Manning, *Absurdity*]. According to Professor Manning, "application of the absurdity doctrine to disturb a clear statutory text risks displacing whatever bargain legislators actually reached through the complex and path-dependent legislative process." *Id.* at 2486. Another scholar called the absurdity doctrine an "escape device within textualism." Jonathan R. Siegel, *What Statutory Drafting Errors Teach Us about Statutory Interpretation*, 69 GEO. WASH. L. REV. 309, 326 (2001). According to Professor Siegel, the absurdity doctrine "undermines the foundation of the textualist theory of statutory interpretation." *Id.; accord* Linda D. Jellum, *Why Specific Absurdity Undermines Textualism*, 76 BROOK.

In 1930 the Court held that the absurdity doctrine applies only in "rare and exceptional circumstances."[19] It found that "the absurdity must be so gross as to shock the general moral or common sense,"[20] concluding that the remedy for an incongruity that did not satisfy this high standard rested "with the lawmaking authority, and not with the courts."[21]

Ten years later, though, the Court had a change of heart.[22] In evaluating the Motor Carrier Act of 1935,[23] it reiterated that the best source of legislative intent is "the words by which the legislature undertook to give expression to its wishes."[24] But, as the Court noted, the literal meaning of a word does not always control.[25] It emphasized exceptions to the plain meaning rule:

> When that meaning has led to *absurd or futile results*, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but *merely an unreasonable one* "*plainly at variance with the policy of the legislation as a whole*" this Court has followed that purpose, rather than the literal words.[26]

The Court expanded the absurdity doctrine to include situations in which upholding plain meaning will produce not only absurd or futile results, but also unreasonable ones.[27] By this time, the Court had determined that construing statutes in order to avoid glaringly absurd

L. REV. 917, 917–39 (2011); Glen Staszewski, *Avoiding Absurdity*, 81 IND. L.J. 1001, 1047–64 (2006).

19. Crooks v. Harrelson, 282 U.S. 55, 60 (1930).

20. *Id.* (citation omitted).

21. *Id.* (citations omitted).

22. *See* United States v. Am. Trucking Ass'ns, 310 U.S. 534, 543–44 (1940) (applying the absurdity doctrine).

23. *Id.* at 534–44.

24. *Id.* at 543.

25. *Id.* ("Often these words are sufficient in and of themselves to determine the purpose of the legislation.").

26. *Id.* (emphasis added) (quotation & footnotes omitted).

27. *Id.* at 544 (declining to accept "a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion").

results had "long been a judicial function."[28] The Court later applied the absurdity doctrine to civil and constitutional cases.[29]

The absurdity doctrine is a "longstanding canon of statutory interpretation"[30] that "reflects the law's focus on ordinary meaning rather than literal meaning."[31] This doctrine seeks to accomplish "what all rules of interpretation seek to do: *make sense* of the text."[32] Some dispute this doctrine's validity;[33] no one disputes its popularity.[34]

28. Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U.S. 315, 333 (1938) (footnote omitted); *see also* United States v. Brown, 333 U.S. 18, 27 (1948) ("No rule of construction necessitates our acceptance of an interpretation resulting in patently absurd consequences.").

29. *See, e.g.*, Clinton v. City of New York, 524 U.S. 417, 429 (1998) ("There is no plausible reason why Congress would have intended to provide for such special treatment of actions filed by natural persons and to have precluded entirely jurisdiction over comparable cases brought by corporate persons."); Pub. Citizen v. United States Dep't of Just., 491 U.S. 440, 455 (1989) ("Looking beyond the naked text for guidance is perfectly proper when the result it apparently decrees is difficult to fathom or where it seems inconsistent with Congress' intention . . . .").

30. Bostock v. Clayton Cnty, 590 U.S. 644, 789 n.65 (2020) (Kavanaugh, J., dissenting).

31. *Id.*

32. *Id.* (quoting ANTONIN SCALIA & BRYAN A. GARNER, READING LAW 235 (2012)) (emphasis added). As two scholars observed, the absurdity doctrine, as well as the new major questions cases, "attempt, in a way, to constrain statutes when a literal reading of the text may support a seemingly severe or counterintuitive outcome." Daniel T. Deacon & Leah M. Litman, *The New Major Questions Doctrine*, 109 VA. L. REV. 1009, 1047 (2023).

33. *Compare* Manning, *Absurdity*, *supra* note 18, at 2486 ("Under our system of government, the Court should permit such displacement only when the legislature's action violates the Constitution, rather than an ill-defined set of background social values identified on an ad hoc basis by the Court."), *with* Staszewski, *supra* note 18, at 1014 ("[T]he judiciary's authority to interpret statutes contrary to their plain meaning to avoid absurd results that were not expressly anticipated by Congress is thoroughly supported by a more public-spirited understanding of the legislative process and constitutional structure.").

34. *See Clinton*, 524 U.S. at 429 ("Acceptance of the Government's new-found reading of § 692 'would produce an absurd and unjust result which Congress could not have intended.'"); *Pub. Citizen*, 491 U.S. at 455; United States v. Brown, 333 U.S. 18, 27 (1948); Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U.S. 315, 333 (1938).

Justices Brennan,[35] Rehnquist,[36] Stevens,[37] O'Connor,[38] Scalia,[39] Kennedy,[40] Sotomayor,[41] Gorsuch,[42] and Kavanaugh,[43] among others, have recognized the absurdity doctrine.[44] This group of nine is no

35. *Pub. Citizen*, 491 U.S. at 453–54.

36. Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982).

37. *Clinton*, 524 U.S. at 429.

38. Fed. Bureau of Investigation v. Abramson, 456 U.S. 615, 640 (1982) (O'Connor, J., dissenting).

39. *See* United States v. X-Citement Video, Inc., 513 U.S. 64, 82 (1994) (Scalia, J., dissenting) ("I have been willing, in the case of civil statutes, to acknowledge a doctrine of 'scrivener's error' that permits a court to give an unusual (though not unheard-of) meaning to a word which, if given its normal meaning, would produce an absurd and arguably unconstitutional result.") (citation omitted); *see also* Green v. Bock Laundry Mach. Co., 490 U.S. 504, 527 (1989) (Scalia, J., concurring) ("We are confronted here with a statute which, if interpreted literally, produces an absurd, and perhaps unconstitutional, result.").

40. *Pub. Citizen*, 491 U.S. at 470–71 (Kennedy, J., concurring).

41. Lawson v. FMR LLC, 571 U.S. 429, 471–72 (2014) (Sotomayor, J., dissenting).

42. Yellen v. Confederated Tribes of Chehalis Rsrv., 594 U.S. 338, 381 n.3 (2021) (Gorsuch, J., dissenting); *see also* Lexington Ins. v. Precision Drilling Co., 830 F.3d 1219, 1219–24 (10th Cir. 2016) (applying the absurdity doctrine).

43. Bostock v. Clayton Cnty., 590 U.S. 644, 789 n.4 (2020) (Kavanaugh, J., dissenting).

44. *Pub. Citizen*, 491 U.S. at 453–54; Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982); Clinton v. City of New York, 524 U.S. 417, 429 (1998); Fed. Bureau of Investigation v. Abramson, 456 U.S. 615, 640 (1982) (O'Connor, J., dissenting); *Green*, 490 U.S. at 527 (Scalia, J., concurring); *Pub. Citizen*, 491 U.S. at 470–71 (Kennedy, J., concurring); *Lawson*, 571 U.S. at 471–72 (Sotomayor, J., dissenting); *Yellen*, 594 U.S. at 381 n.3 (Gorsuch, J., dissenting); *Bostock*, 590 U.S. at 789 n.4 (Kavanaugh, J., dissenting). A venerable judge applied the absurdity doctrine in tax cases. Druker v. Comm'r, 697 F.2d 46, 50 (2d Cir. 1982); J.C. Penney Co. v. Comm'r, 312 F.2d 65, 66 (2d Cir. 1962); Comm'r v. Gordon, 382 F.2d 499, 513 (2d Cir. 1967) (Friendly, J., dissenting), *rev'd sub nom.*, 391 U.S. 83, 98 (1968); Standard Oil Co. (N.J.) v. United States, 338 F.2d 4, 11 (2d Cir. 1964) (Friendly, J., dissenting); Dorsen, *Eating Your Cake*, *supra* note 2, at 795–805.

monolith.[45] Construing the removal statutes to allow for snap removal, in turn, leads to ample absurdity.[46]

III. SNAP REMOVAL AND THE ABSURDITY DOCTRINE

The problems caused by snap removal stem from a law passed by Congress.[47] In 1948, Congress amended section 1441.[48] "Under the new iteration of the rule, a defendant could remove a diversity case 'only if none of the parties in interest *properly joined and served* as defendants is a citizen of the State in which such action is brought.'"[49] Congress added the phrase "properly joined and served" to stop

45. *See* John M. Manning, *What Divides Textualists from Purposivists?*, 106 COLUM. L. REV. 70, 91–98 (2006) (distinguishing textualism from purposivism and then offering a refinement of the legislative process justification for textualism); *cf.* Gallagher, *Sherlock Holmes*, *supra* note 3 (observing that the Sherlock Holmes canon has "gained broad approval").

46. *E.g.*, Delaughder v. Colonial Pipeline Co., 360 F. Supp. 3d 1372, 1381 (N.D. Ga. 2018) ("The snap removal issue is uncertain, and the Court does not discount the arguments on the other side of the divide. That said, in the face of uncertainty, remand is appropriate.").

47. *See* Goodwin v. Reynolds, 757 F.3d 1216, 1221 (11th Cir. 2014) (discussing 28 U.S.C. § 1441(b)); *see also* Sullivan v. Novartis Pharms. Corp., 575 F. Supp. 2d 640, 644 (D.N.J. 2008) (discussing the removal doctrine); Stan Winston Creatures, Inc. v. Toys "R" Us, Inc., 314 F. Supp. 2d 177, 181 (S.D.N.Y. 2003) (discussing removal).

48. 28 U.S.C. § 1441(b)(2) (1948) (allowing removal in a diversity case "only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought"); Nannery, *supra* note 8, at 548.

49. Nannery, *supra* note 8, at 548 (footnote omitted).

"gamesmanship by plaintiffs."[50] Unfortunately, though, a new form of gamesmanship arose.[51]

Seizing on the plain meaning of the phrase "properly joined and served," resident defendants started removing cases prior to service.[52] This practice quickly divided courts.[53] Three circuit courts blessed this

50. *Goodwin*, 757 F.3d at 1221; *see also* Pecherski v. General Motors Corp., 636 F.2d 1156, 1159 (8th Cir. 1981) ("[T]he 1948 amendment to the removal statute did not change the *Pullman* requirements for removal . . . ."); Gentile v. Biogen Idec, Inc., 934 F. Supp. 2d 313, 319–20 (D. Mass. 2013) ("A review of the Supreme Court jurisprudence at the time of the 1948 revision, however, suggests the purpose of the 'properly joined and served' language was to prevent plaintiffs from defeating removal through improper joinder of a forum defendant . . . ."); Hawkins v. Cottrell, Inc., 785 F. Supp. 2d 1361, 1378 (N.D. Ga. 2011) ("The 1948 changes to the removal statute were made to prevent a plaintiff from joining but never serving a forum defendant, with the purpose of defeating removal."); Ethington v. Gen. Elec. Co., 575 F. Supp. 2d 855, 861 (N.D. Ohio 2008) ("Congress intended the 'joined and served' part of the forum defendant rule to prevent gamesmanship by plaintiffs . . . ."); *Stan Winston Creatures*, 314 F. Supp. 2d at 181 ("The purpose of the 'joined and served' requirement is to prevent a plaintiff from blocking removal by joining as a defendant a resident party against whom it does not intend to proceed, and whom it does not even serve."); Stempel et al., *Snap Removal*, *supra* note 3, at 478 ("If there was any congressional desire to have 1948's new service provisions overturn the basic forum defendant rule, one would expect to find at least some 'barking' to that effect. But there appears to be no—not a shred—of such evidence supporting snap removal.").

51. *Hawkins*, 785 F. Supp. 2d at 1378; *see also Delaughder*, 360 F. Supp. 3d at 1381 ("The fact that the very words included to prevent gamesmanship have opened an avenue for more gamesmanship is an ironic absurdity that the Court will not enforce . . . .").

52. Serafini v. Sw. Airlines Co., 485 F. Supp. 3d 697, 699 (N.D. Tex. 2020) (stating that snap removal is a recent litigation tactic); Breitweiser v. Chesapeake Energy Corp., No. 3:15-CV-2043-B, 2015 WL 6322625, at *2 (N.D. Tex. Oct. 20, 2015).

53. Little v. Wyndham Worldwide Operations, Inc., 251 F. Supp. 3d 1215, 1220 (M.D. Tenn. 2017) ("[D]istrict courts have struggled with the issue, leading to conflicting results, not only nationwide, but among the district courts in the Sixth Circuit.") (citations omitted).

practice,[54] while two circuit courts worried about it.[55] District courts around the country have criticized snap removal.[56] And this criticism is warranted because snap removal produces two absurd results.[57]

A. Snap Removed Cases Involving Non-Diverse Parties

Product liability cases often involve a resident plaintiff, a resident seller, and a foreign defendant.[58] Because most states recognize strict product liability under the Second Restatement of Torts,[59] plaintiffs often sue both the seller and the manufacturer to maximize potential recovery.[60] However, if the plaintiff does not serve

54. Gibbons v. Bristol-Myers Squibb Co., 919 F.3d 699, 707 (2d Cir. 2019); Encompass Ins. v. Stone Mansion Rest. Inc., 902 F.3d 147, 154 (3d Cir. 2018); Tex. Brine Co. v. Am. Arb. Ass'n, 955 F.3d 482, 487 (5th Cir. 2020). The Sixth Circuit approved this practice in dictum. McCall v. Scott, 239 F.3d 808, 813 n.2 (6th Cir. 2001). The Seventh Circuit has yet to evaluate the merits of snap removal. Morris v. Nuzzo, 718 F.3d 660, 670 n.3 (7th Cir. 2013).

55. *Goodwin*, 757 F.3d at 1221 n.15; *Pecherski*, 636 F.2d at 1161 n.6.

56. *Delaughder*, 360 F. Supp. 3d at 1381; Gentile v. Biogen Idec, Inc., 934 F. Supp. 2d 313, 319–20 (D. Mass. 2013); *Hawkins*, 785 F. Supp. 2d at 1378; Ethington v. Gen. Elec. Co., 575 F. Supp. 2d 855, 861 (N.D. Ohio 2008); Stan Winston Creatures, Inc. v. Toys "R" Us, Inc., 314 F. Supp. 2d 177, 181 (S.D.N.Y. 2003).

57. One scholar asserts that the mischief rule can solve the problems caused by snap removal. Howard M. Wasserman, *The Forum-Defendant Rule, the Mischief Rule, and Snap Removal*, 62 WM. & MARY L. REV. ONLINE 51, 54 (2021); Samuel L. Bray, *The Mischief Rule*, 109 GEO. L.J. 967, 968 (2021).

58. *Cf.* Colpoys v. Future Motion, Inc., No. 8:23-cv-1528-KKM-AAS, 2023 WL 5917007, at *1–2 (M.D. Fla. Aug. 17, 2023) (applying 28 U.S.C. § 1441 to a products liability case).

59. *E.g.*, Aubin v. Union Carbide Corp., 177 So. 3d 489, 494 (Fla. 2015) (applying the Restatement); ISK Biotech Corp. v. Douberly, 640 So. 2d 85, 88–89 (Fla. Dist. Ct. App. 1994); Jones v. Heil Co., 566 So. 2d 565, 567 n.1 (Fla. Dist. Ct. App. 1990); RESTATEMENT (SECOND) OF TORTS § 402A (AM. L. INST. 1965).

60. *Cf. Colpoys*, 2023 WL 5917007, at *1–2. In this situation, there is no suggestion of improper joinder. *See id.* (discussing products liability); *cf.* Goodwin v. Reynolds, 757 F.3d 1216, 1222 (11th Cir. 2014) ("In particular, there is no indication that Plaintiff fraudulently joined the forum defendant, Reynolds, for the sole purpose of triggering the forum-defendant rule.").

the resident seller quickly enough, the foreign defendant can remove the case[61] to federal court even though federal jurisdiction is absent.[62]

Federal courts have recently held that snap removal is improper if complete diversity is absent.[63] Although these cases solve the problem of improper removal, they do not eliminate the absurdity that accompanies snap removal.[64] Even though complete diversity is required to get to federal court, snap removal occurs despite the existence of complete diversity.[65] Even though federal courts must always examine jurisdiction, jurisdiction never exists.[66]

"[T]hrough snap removals, numerous defendants have jiggered jurisdiction."[67] Another reason why snap removal is absurd is because it stems from procedural tinkering.[68]

B. Snap Removed Cases Violating the Forum Defendant Rule

Assume that a Minnesota citizen sues a Johnson & Johnson subsidiary that is a New Jersey citizen in New Jersey state court. The parties are completely diverse. The claims are negligence and strict product liability. As the Johnson & Johnson subsidiary is a New Jersey citizen, the forum defendant rule applies.[69] In this situation, "the protection-from-bias rationale behind the removal power evaporates

61. *Colpoys*, 2023, WL 5917007, at *1 ("Future Motion removed the case before Colpoys served Elite Water Sports . . . .").

62. *Id.* ("[D]iversity jurisdiction does not exist.") (citation omitted).

63. M & B Oil, Inc. v. Federated Mut. Ins., 66 F.4th 1106, 1109 (8th Cir. 2023) ("From the beginning, M & B sued two defendants: St. Louis and Federated. One of them is a fellow Missourian, so there has never been complete diversity. And without complete diversity, there is no 'original jurisdiction.'") (citing 28 U.S.C. § 1441(a)); *In re* Levy, 52 F.4th 244, 248 (5th Cir. 2022) (per curiam) ("Because the only basis for removal in this case was diversity jurisdiction, and complete diversity is lacking, the district court must dismiss for want of jurisdiction."); *Colpoys*, 2023 WL 5917007, at *1 ("So the fact that Elite Watersports was not yet served does not matter for the diversity inquiry.").

64. Gallagher, *Anti-Injunction Act*, *supra* note 5, at 9–11.

65. *Id.*

66. *Id.*

67. Cincinnati Ins. Co. v. Omega Elec. & Sign Co., 652 F. Supp. 3d 879, 881 (E.D. Mich. 2023).

68. Gallagher, *Anti-Injunction Act*, *supra* note 5, at 8–10.

69. *See* 28 U.S.C. § 1441(b)(2).

. . . ."[70] Even so, the subsidiary, whose legal department monitors electronic filings daily,[71] chooses to remove the case. Some folks may applaud this move, but no one should be enthusiastic.[72]

Although the forum defendant rule is not jurisdictional,[73] it is important because it "helps control federal dockets, preserve state prerogatives, and reduce defendant forum shopping."[74] Snap removal,

70. Gentile v. Biogen Idec, Inc., 934 F. Supp. 2d 313, 319 (D. Mass. 2013); *see also* O'Brien v. AVCO Corp., 425 F.2d 1030, 1033 (2d Cir. 1969) (citing Bank of the United States v. Deveaux, 9 U.S. 61, 87 (1809)) (explaining that the historical rationale for diversity jurisdiction was to allow out-of-state parties to have their case tried in impartial forums); Guar. Tr. Co. of N.Y. v. York, 326 U.S. 99, 111 (1945) ("Diversity jurisdiction is founded on assurance to non-resident litigants of courts free from susceptibility to potential local bias."); Lively v. Wild Oats Mkts., Inc., 456 F.3d 933, 940 (9th Cir. 2006); *cf.* Sopko, *supra* note 8, at 67 ("Diversity jurisdiction is about bias. It exists to insulate out-of-state defendants from potential bias from state judges and juries.") (footnote omitted); Taylor Simpson-Wood, *Has the Seductive Siren of Judicial Frugality Ceased to Exist?* Dataflux *and Its Family Tree*, 53 DRAKE L. REV. 281, 287 (2005); Henry M. Hart, Jr., *The Relations Between State and Federal Law*, 54 COLUM. L. REV. 489, 513 (1954).

71. *Cf.* U.S. Bank Nat'l Ass'n, As Tr. For Greenpoint Mortg. Funding Tr. Mortg. Passthrough Certificates, Series 2006-AR6 v. Fid. Nat'l Title Grp., Inc., 604 F. Supp. 3d 1038, 1043–44 (D. Nev. 2022) ("But with the advent of electronic dockets, sophisticated, monied, or hyper-vigilant defendants are monitoring court filings and removing before any defendant has been served, with the goal of eluding the forum-defendant rule.").

72. *See Gentile*, 934 F. Supp. 2d at 314 ("[S]ection 1441(b), by its plain language, does not permit removal of this non-federal question case before any defendant has actually been served."); *cf.* Nannery, *supra* note 8, at 574 ("The forum defendant rule has limited the statutory right of removal in diversity cases since the beginning of the federal Judicial Code.").

73. Holbein v. TAW Enters., Inc., 983 F.3d 1049, 1053 (8th Cir. 2020) (en banc); Morris v. Nuzzo, 718 F.3d 660, 665 (7th Cir. 2013); Lively v. Wild Oats Mkts., Inc., 456 F.3d 933, 939 (9th Cir. 2006); Handelsman v. Bedford Vill. Assocs. Ltd. P'ship*,* 213 F.3d 48, 50 n.2 (2d Cir. 2000); Pacheco de Perez v. AT&T Co.*,* 139 F.3d 1368, 1372 n.4 (11th Cir. 1998); Korea Exch. Bank, N.Y. Branch v. Trackwise Sales Corp.*,* 66 F.3d 46, 50 (3d Cir. 1995); *In re* Shell Oil Co.*,* 932 F.2d 1518, 1521–23 (5th Cir. 1991); Moores v. Greenberg*,* 834 F.2d 1105, 1106 n.1 (1st Cir. 1987); Plastic Moldings Corp. v. Park Sherman Co.*,* 606 F.2d 117, 119 n.1 (6th Cir. 1979); Am. Oil Co. v. McMullin, 433 F.2d 1091, 1093–95 (10th Cir. 1970).

74. Scott Dodson, *Beyond Bias in Diversity Jurisdiction*, 69 DUKE L.J. 267, 315 (2019) ("On the other hand, the forum-defendant bar gives plaintiffs a distinct advantage against defendants because the bar prevents defendants from invoking a

however, clogs federal dockets, tramples on state prerogatives, and constitutes forum shopping.[75] Neither the parties nor the courts benefit from this practice.[76] The inversion of a rule that exists to protect defendants further illustrates why snap removal is illogical.[77]

IV. COUNTERARGUMENTS

A. Snap Removal Is Not Absurd at All

Defenders of the practice contend that snap removal is unremarkable.[78] Thus, the argument goes, there is no reason to depart from the plain language of section 1441(b)(2), which has long used the phrase "properly joined and served."[79] Snap removal defenders thus

federal forum that plaintiffs could have invoked in the first instance.") (footnote omitted).

75. *See* Delaughder v. Colonial Pipeline Co., 360 F. Supp. 3d 1372, 1381 (N.D. Ga. 2018) (holding that snap removal is "clear gamesmanship"); Perez v. Forest Lab'ys, Inc., 902 F. Supp. 2d 1238, 1243 (E.D. Mo. 2012) ("Pre-service removal by means of monitoring the electronic docket smacks more of forum shopping by a defendant, than it does of protecting the defendant from the improper joinder of a forum defendant the plaintiff has no intention of serving."); Vivas v. Boeing Co., 486 F. Supp. 2d 726, 734 (N.D. Ill. 2007) ([T]o allow a resident defendant to remove a case before a plaintiff even has a chance to serve him would provide a vehicle for defendants to manipulate the operation of the removal statutes."); Oxendine v. Merck & Co., 236 F. Supp. 2d 517, 526 (D. Md. 2002) ("[R]emovability can not rationally turn on the timing or sequence of service of process.").

76. *Delaughder*, 360 F. Supp. 3d at 1381; *Perez*, 902 F. Supp. 2d at 1243; *Vivas*, 486 F. Supp. 2d at 734; *Oxendine*, 236 F. Supp. 2d at 526.

77. *E.g.*, *Delaughder*, 360 F. Supp. 3d at 1381.

78. Gibbons v. Bristol-Myers Squibb Co., 919 F.3d 699, 707 (2d Cir. 2019) ("Put simply, the result here—that a home-state defendant may in limited circumstances remove actions filed in state court on the basis of diversity of citizenship—is authorized by the text of Section 1441(b)(2) and is neither absurd nor fundamentally unfair."); *see also* Ripley v. Eon Lab'ys Inc., 622 F. Supp. 2d 137, 139 (D.N.J. 2007) (discussing the court's reason for denying a motion to remand).

79. Watanabe v. Lankford, 684 F. Supp. 2d 1210, 1219 (D. Haw. 2009) ("This Court has found no reason to depart from the plain language of § 1441(b)."); *see also* Reynolds v. Pers. Representative of the Estate of Johnson, 139 F. Supp. 3d 838, 843 (W.D. Tex. 2015) ("[T]he Court finds that Cactus Drilling's removal is not barred by the plain language of § 1441(b)(2) . . ."). *But see* Deutsche Bank Nat'l Tr. Co. as Tr. for Am. Home Mortg. Inv. Tr. 2007-1 v. Old Republic Title Ins. Grp., Inc., 532 F. Supp. 3d 1004, 1018 (D. Nev. 2021) ("Snap removal is not a result that Congress

contend that the absurdity doctrine "cannot justify a departure from the plain text of the statute."[80] Implicit in this argument is the assumption that plaintiffs generally prefer state courts and defendants generally prefer federal courts.[81] Whatever the validity of this assumption, snap removal leads to improper and incongruous results.[82]

As shown above, snap removal can result in a federal court overseeing a case in which diversity jurisdiction is absent.[83] Both the Fifth and the Eighth Circuits recently disapproved of snap removed cases in which the parties were not completely diverse.[84] These two cases show that federal courts are carefully evaluating snap removal.[85] These two cases, however, also show that due to snap removal, violations of the removal statutes will occur time and again.[86] Applying the absurdity doctrine will avoid these violations.[87]

contemplated or intended, and permitting it would obviate the forum defendant rule's purpose.").

80. *Gibbons*, 919 F.3d at 706.

81. *See id.*

82. *See* Gallagher, *Sherlock Holmes*, *supra* note 3, at 288–89 (discussing the problems with snap removal).

83. Gallagher, *Anti-Injunction Act*, *supra* note 5, at 4.

84. M & B Oil, Inc. v. Federated Mut. Ins. Co., 66 F.4th 1106, 1110 (8th Cir. 2023); *In re* Levy, 52 F.4th 244, 247 (5th Cir. 2022) (per curiam); *cf.* Benjamin Lorentz, Note, *Snap Removal in the Eighth Circuit*, 99 N.D. L. REV. 463, 476–81 (2024) (discussing *M & B Oil*, *Inc.*). *But cf.* Theodore P. "Jack" Metzler, Jr., *A Lively Debate: The Eighth Circuit and the Forum Defendant Rule*, 36 WM. MITCHELL L. REV. 1638, 1654 n.104 (2010) ("[M]ost courts, including in the Eighth Circuit, have held that the presence of an in-state defendant does not forbid removal under the forum-defendant rule if the forum defendant has not been served at the time of removal.") (citations omitted).

85. *M & B Oil*, *Inc.*, 66 F.4th at 1110; *In re Levy*, 52 F.4th at 247.

86. *M & B Oil*, *Inc.*, 66 F.4th at 1110; *In re Levy*, 52 F.4th at 247.

87. *Cf.* Goodwin v. Reynolds, 757 F.3d 1216, 1221 (11th Cir. 2014) ("Defendants would have us tie the district court's hands in the face of such gamesmanship on the part of Defendants. Moreover, their argument, if accepted, would turn the statute's 'properly joined and served' language on its head.") (footnotes omitted).

B. Snap Removal Is Not All That Absurd

Snap removal fans argue that snap removal does not "rise[] to the level of the absurd or bizarre."[88] In their view, snap removal is counterintuitive, but defensible.[89] Still, snap removal can result in a federal court overseeing a case in which jurisdiction is lacking.[90] It also turns the forum defendant rule on its head.[91] Asserting that snap

88. Encompass Ins. v. Stone Mansion Rest. Inc., 902 F.3d 147, 154 (3d Cir. 2018); *see also* Grandinetti v. Uber Techs., Inc., 476 F. Supp. 3d 747, 756 (N.D. Ill. 2020) ("[P]erfection is not required of congressional drafters on pain of federal courts rewriting a statute. At the end of the day, the result in this case does not rise (or perhaps the right word is 'descend') to the requisite level of absurdity.") (citing *Encompass Ins.*, 902 F.3d at 153–54).

89. *See Encompass Ins.*, 902 F.3d at 154 (affirming the district court's order remanding the case); *see also* Wragge v. Boeing Co., 532 F. Supp. 3d 616, 622 (N.D. Ill. 2021) ("The Court, like other courts in this District, finds that allowing snap removal does not frustrate the overall purpose of the statutory scheme or contravene Congress' intent in creating the forum defendant rule."); Knightsbridge Mgmt., Inc. T/A Knightsbridge Rest. Grp. v. Zurich Am. Ins., 518 F. Supp. 3d 1248, 1254 (S.D. Ill. 2021) ("While the Court acknowledges the unusual result of having a forum defendant remove a case that it would not otherwise be able to remove, the Court is governed by the plain language of the statute, which is clear and unambiguous."); Serafini v. Sw. Airlines Co., 485 F. Supp. 3d 697, 698–99 (N.D. Tex. 2020) ("Southwest's removal is proper under the removal statute's plain text . . ."); Dutton v. Ethicon, Inc., 423 F. Supp. 3d 81, 90 (D.N.J. 2019) ("Defendants' removal in *Snader* does not violate the forum defendant rule."); Dechow v. Gilead Scis., Inc., 358 F. Supp. 3d 1051, 1054 (C.D. Cal. 2019) ("Adopting any other interpretation of the statute would violate the Court's mandate to enforce a statute according to its text."); Wensil v. E.I. DuPont De Nemours & Co., 792 F. Supp. 447, 449 (D.S.C. 1992) ("The Court recognizes that the plaintiffs are being deprived of their original choice of forum merely because the South Carolina defendants are served after the non-resident defendants. However, this fortuitous result could have been prevented by serving a South Carolina resident defendant first.").

90. Gallagher, *Anti-Injunction Act*, *supra* note 5, at 4.

91. Lone Mountain Ranch, LLC v. Santa Fe Gold Corp., 988 F. Supp. 2d 1263, 1267 (D.N.M. 2013) ("However in this case, the Court does not find that the goals of the Forum Defendant Rule's 'properly served' language would be promoted by an overly technical reading of the Rule."); Swindell-Filiaggi v. CSX Corp., 922 F. Supp. 2d 514, 521 (E.D. Pa. 2013) ("Congress intended for the removal statute to limit the right of removal. Thus, Defendants' argument fails to overcome the fact that rewarding a 'race to remove' is at odds with Congress's intent in limiting the right of removal.").

removal has some merit ignores the procedural delays and jurisdictional problems caused by snap removal.[92]

C. Congress Should Fix Things

Snap removal supporters believe that Congress, not the courts, should fix any problems caused by snap removal.[93] Admittedly, some courts have reached this conclusion in evaluating motions to remand.[94] They have also observed that Congress has left the phrase "properly joined and served" intact for decades.[95]

The absurdity doctrine, in turn, is not a remedy for a garden-variety complaint about a statute.[96] "The remedy for any dissatisfaction with the results in a particular case lies with Congress."[97] And unlike the Court, "Congress may amend the statute,"[98] but there are two problems with relying on Congress. First, Congress will not act.[99]

92. Nannery, *supra* note 8, at 585; *see also* Stempel et al., *supra* note 3, at 476 ("Snap removal thus adds more time and expense to litigation . . ."); *cf.* Zachary D. Clopton & Alexandra D. Lahav, *Fraudulent Removal*, 135 HARV. L. REV. F. 87, 88 (2021) ("[F]raudulent removal wastes judicial resources . . . ."); Main, *supra* note 8, at 295 ("Ironically, paradoxically even, the forum defendant rule now facilitates gamesmanship by defendants.").

93. Leech v. 3M Co., 278 F. Supp. 3d 933, 943 (E.D. La. 2017) ("Leech raises policy concerns with application of the plain language of the statute. However, those concerns are appropriately the concerns of Congress, and courts are not free to substitute their own judgment for that of lawmakers."); *cf.* Duff v. Aetna Cas. & Sur. Co., 287 F. Supp. 138, 139–40 (N.D. Okla. 1968) (allowing snap removal).

94. *Leech*, 278 F. Supp. 3d at 943–44.

95. *See id.* at 943; *see also* Doe v. Daversa Partners, No. 20-cv-3759, 2021 WL 736734, at *6 (D.D.C. Feb. 25, 2021) ("Congress has recently considered remedial steps to address snap removals and that is where the solution to this policy disagreement lies, not with this Court.") (citations omitted).

96. Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 577 (1982).

97. *Id.* at 576.

98. *Id.* (first citing Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 123–24 (1980); and then citing Reiter v. Sonotone, 422 U.S. 330, 344–45 (1979)).

99. *See* Sopko, *supra* note 8, at 60 (highlighting Congress' failure to curb snap removal). *But cf.* Arthur Hellman et al., *Neutralizing the Stratagem of "Snap Removal": A Proposed Amendment to the Judicial Code*, 9 FED. CTS. L. REV. 103, 106 (2016) ("[T]he conflict will not be resolved by the United States Supreme Court at any time in the near future.").

Although some bills have traveled through the halls of Congress,[100] none have become law.[101] "Because of the political economy surrounding a legislative solution, it likely presents a more challenging path relative to others."[102]

Second, Congress should not be the first branch to act.[103] The Court has long interpreted statutes in order to avoid irrational results.[104] To say that the ball is in Congress' court ignores the Court's role in interpreting statutes and rewards defendants for improperly removing cases.[105] Enough problems have arisen; the Court's intervention is overdue.[106]

V. CONCLUSION

No rule of statutory construction requires "acceptance of an interpretation resulting in patently absurd consequences."[107]

100. *See* Removal Jurisdiction Clarification Act of 2020, H.R. 5801, 116th Cong. (2020) (Congress' attempt to resolve this issue); *see also* Fraudulent Joinder Prevention Act of 2016, H.R. 3624, 114th Cong. (2016) (same).

101. *See* Sopko, *supra* note 8, at 60 (implying that legislative solutions are ineffective for limiting snap removal).

102. *Id.*

103. *Id.* ("[T]he more viable pathway to fixing snap removal lies in the courts").

104. Clinton v. City of New York, 524 U.S. 417, 429 (1998); Pub. Citizen v. U.S. Dep't of Just., 491 U.S. 440, 455 (1989); United States v. Brown, 333 U.S. 18, 27 (1948); United States v. Am. Trucking Ass'ns, 310 U.S. 534, 543–44 (1940); Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U.S. 315, 333 (1938); United States v. Katz, 271 U.S. 354, 363 (1926); Lau Ow Bew v. United States, 144 U.S. 47, 59 (1892); United States v. Kirby, 74 U.S. 482, 486–87 (1868).

105. Sopko, *supra* note 8, at 60.

106. Pecherski v. General Motors Corp., 636 F.2d 1156, 1161 n.6 (8th Cir. 1981); *see also* Rizzi v. 178 Lowell St. Operating Co., 180 F. Supp. 3d 66, 69 (D. Mass. 2016) (interpreting the Hobbs Act); *In re* Avandia Mktg., Sales Pracs. & Prods. Liab. Litig., 624 F. Supp. 2d 396, 411 (E.D. Pa. 2009); Sands v. Geller, 321 F. Supp. 558, 562 (S.D.N.Y. 1971); Gallagher, *Sherlock Holmes*, *supra* note 3, at 279–86; Stempel et al., *Snap Removal*, *supra* note 3, at 476; Temple, *supra* note 5, at 323; *cf.* Amir Shachmurove, *Making Sense of the Resident Defendant Rule*, 52 U.C. DAVIS L. REV. ONLINE 203, 223 (2019) (concluding that *Pullman* remains "valid far and wide more than seventy-five years later").

107. United States v. Brown, 333 U.S. 18, 27 (1948); *see also* Lau Ow Bew v. United States, 144 U.S. 47, 59 (1892) (stating that courts should construe statutes "to avoid an unjust or an absurd conclusion").

Prohibiting snap removal avoids absurdity and honors Congressional intent.[108] Allowing snap removal encourages canny defendants to engage in a practice that causes delay and obstruction.[109] Rather than create "needless jurisdictional problems,"[110] the Court should apply the absurdity doctrine,[111] maintain the boundary between state and federal trial courts,[112] and prohibit snap removal.[113]

108. Delaughder v. Colonial Pipeline Co., 360 F. Supp. 3d 1372, 1380–81 (N.D. Ga. 2018).

109. Christopher Terranova, *Erroneous Removal as a Tool for Silent Tort Reform: An Empirical Analysis of Fee Awards and Fraudulent Joinder*, 44 WILLAMETTE L. REV. 799, 799 (2008) ("By erroneously removing cases to federal court, defendants impose a cost (in time and money) on plaintiffs and the court system."). *But see* Texas Brine Co. v. Am. Arb. Ass'n, 955 F.3d 482, 487 (5th Cir. 2020) (rejecting the argument that snap removal "is an example of an abuse of the statute"); Wensil v. E.I. DuPont De Nemours & Co., 792 F. Supp. 447, 449 (D.S.C. 1992) ("The Court recognizes that the plaintiffs are being deprived of their original choice of forum merely because the South Carolina defendants are served after the non-resident defendants. However, this fortuitous result could have been prevented by serving a South Carolina resident defendant first.").

110. *Pecherski*, 636 F.2d at 1161 n.6.

111. Deutsche Bank Nat'l Tr. Co. as Tr. for Am. Home Mortg. Inv. Tr. 2007-1 v. Old Republic Title Ins. Grp., Inc., 532 F. Supp. 3d 1004, 1015 (D. Nev. 2021).

112. *Pecherski*, 636 F.2d at 1161; Rizzi v. 178 Lowell St. Operating Co., 180 F. Supp. 3d 66, 69 (D. Mass. 2016); *In re* Avandia Mktg., Sales Pracs. & Prods. Liab. Litig., 624 F. Supp. 2d 396, 411 (E.D. Pa. 2009).

113. Cincinnati Ins. v. Omega Elec. & Sign Co., 652 F. Supp. 3d 879, 881 (E.D. Mich. 2023); *In re* Abbott Lab'ys., Preterm Infant Nutrition Prods. Liab. Litig., No. 3026, 2022 WL 2257182, at *9 (N.D. Ill. June 23, 2022); *In re* Paraquat Prods. Liab. Litig., No. 3:21-md-3004-NJR, 2022 WL 3754820, at *5–9 (S.D. Ill. Aug. 30, 2022); *cf.* Morgan v. Estate of Cook, 180 F. Supp. 2d 1301, 1304 (M.D. Ala. 2001) (analyzing an attempt to avoid snap removal); Zachary D. Clopton, *Catch and Kill Jurisdiction*, 121 MICH. L. REV. 171, 196 (2022); Gallagher, *Sherlock Holmes*, *supra* note 3, at 289; Stempel et al., *Snap Removal*, *supra* note 3, at 506.