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Blair Rotert

Boston College Law School, blair.rotert@bc.edu

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MOTION DENIED: PROCEDURAL PITFALLS PREVAIL IN MOTIONS TO REMAND

Abstract: On May 6, 2021, in *Shipley v. Helping Hands Therapy*, the U.S. Court of Appeals for the Eleventh Circuit held that non-jurisdictional remands must be based on timely motions to remand that assert procedural defects. This holding revisited a split between the U.S. Court of Appeals for the Ninth and Fifth Circuits regarding the proper interpretation of 28 U.S.C. § 1447(c)'s non-jurisdictional remand provision. The Ninth Circuit—much like the Eleventh Circuit but with different reasoning—found that both the raising of the procedural defect and the motion to remand must be timely, whereas the Fifth Circuit held that only the motion to remand must be timely. This Comment argues that the Eleventh Circuit's approach is preferable because it better employs canons of statutory interpretation and arrives at a conclusion that is supported by legislative intent.

INTRODUCTION

One of the most significant considerations for litigants in the United States is the forum in which their case is adjudicated.¹ In particular, whether a case is heard in federal or state court can have far-reaching implications for plaintiffs and defendants alike.² As such, litigants fiercely contest removal and remand efforts, seeking to use the appropriate statutes for their own benefit.³

¹ See Debra Lyn Bassett, *The Forum Game*, 84 N.C. L. REV. 333, 344 (2006) (characterizing choosing the forum best suited to a case as critical to “vigorous and effective representation”); Paul Rosenthal, *Improper Joinder: Confronting Plaintiffs’ Attempts to Destroy Federal Subject Matter Jurisdiction*, 59 AM. U. L. REV. 49, 55 (2009) (describing forum selection as perhaps “the most important strategic decision” made by litigants).

² See Kevin M. Clermont & Theodore Eisenberg, *Do Case Outcomes Really Reveal Anything About the Legal System? Win Rates and Removal Jurisdiction*, 83 CORNELL L. REV. 581, 581, 599 (1998) (noting that removal influences a case’s outcome, in particular a plaintiff’s likelihood of success, because it “shift[s] the biases, inconveniences, court quality, and procedural law” in a defendant’s favor); E. Farish Percy, *The Tedford Equitable Exception Permitting Removal of Diversity Cases After One Year: A Welcome Development or the Opening of Pandora’s Box?*, 63 BAYLOR L. REV. 146, 148 (2011) (describing how the “high stakes” of whether a case is heard in state or federal court leads litigants to attempt to “manipulate” statutory removal requirements). Removal, which is authorized in 28 U.S.C. § 1441, empowers a defendant to transfer a case from state to federal court when, among other situations, a federal court has original or diversity jurisdiction. 28 U.S.C. §§ 1441(a), 1441(b).

³ See E. Farish Percy, *Inefficient Litigation Over Forum: The Unintended Consequences of the JVCA’s “Bad Faith” Exception to the Bar on Removal of Diversity Cases After One Year*, 71 OKLA. L. REV. 595, 602 (2019) (quoting Michael W. Lewis, *Comedy or Tragedy: The Tale of Diversity Jurisdiction Removal and the One-Year Bar*, 62 SMU L. REV. 201, 206 (2009)) (referring to removal and remand as among “the most hotly contested procedural issues” in modern civil litigation); Percy, *supra* note 2, at 148 (detailing how forum selection’s importance leads parties to construe removal

Accordingly, a dispute between federal circuit courts over how to interpret 28 U.S.C. § 1447(c)'s non-jurisdictional remand requirements could significantly impact plaintiffs' ability to return to state court, where their chances of success may be greater.⁴

Part I of this Comment provides an overview of the constitutional, statutory, and common law provisions in place when the U.S. Court of Appeals for the Eleventh Circuit entered the debate over non-jurisdictional remand requirements.⁵ Part II discusses the U.S. Court of Appeals for the Ninth, Fifth, and Eleventh Circuits' differing approaches to § 1447(c)'s meaning.⁶ Finally, Part III argues that the Eleventh Circuit's interpretation of § 1447(c) is more compelling than the Ninth and Fifth Circuits' interpretations because it more appropriately conducts statutory interpretation and its conclusion aligns with congressional intent.⁷

I. THE LEGAL AND FACTUAL BACKDROP OF *SHIPLEY V. HELPING HANDS THERAPY*

In 2021, in *ShIPLEY v. Helping Hands Therapy*, the U.S. Court of Appeals for the Eleventh Circuit assessed whether a timely motion to remand suffices when the procedural removal defect permitting remand is untimely raised, making it the third federal circuit court to address this issue.⁸ Section A of this Part describes the constitutional, statutory, and common law landscape of re-

requirements in their favor). Remand, which is authorized by 28 U.S.C. § 1447, allows plaintiffs to return a case to state court when there is a jurisdictional or non-jurisdictional removal defect. 28 U.S.C. § 1447(c).

⁴ 28 U.S.C. § 1447(c); see Clermont & Eisenberg, *supra* note 2, at 581, 593–95 (contrasting the 34% success rate of plaintiffs in removed diversity cases with the 71% success rate of plaintiffs in original diversity cases and arguing that original diversity case data effectively approximates state case data); *infra* note 8 and accompanying text (describing the conflicting holdings of the Ninth, Fifth, and Eleventh Circuits concerning the correct interpretation of § 1447(c)).

⁵ See *infra* notes 8–37 and accompanying text.

⁶ See *infra* notes 38–66 and accompanying text.

⁷ See *infra* notes 67–77 and accompanying text.

⁸ See *ShIPLEY v. Helping Hands Therapy (ShIPLEY III)*, 996 F.3d 1157, 1160–61 (11th Cir. 2021), *cert. denied*, 142 S. Ct. 861 (2022) (holding remand improper under § 1447(c), despite a timely motion, because the plaintiff raised the procedural defect in removal through a reply more than thirty days after removal and, thus, forfeited the defect); *BEPCO, L.P. v. Santa Fe Mins., Inc.*, 675 F.3d 466, 471 (5th Cir. 2012) (holding that a remand based on a procedural defect raised in a reply more than thirty days after removal complied with § 1447(c) because the plaintiff timely filed the underlying motion to remand); *N. Cal. Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co.*, 69 F.3d 1034, 1038 (9th Cir. 1995) (vacating a remand order even though the motion to remand was timely filed within thirty days because the remand relied upon on a procedural defect that was untimely raised in a reply); see also *Motion to Remand*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining a motion to remand as a request to return a case removed to federal court back to state court due to lack of jurisdiction or procedural defects in removal).

removal and remand when the Eleventh Circuit decided this case.⁹ Section B discusses the factual and procedural history of *Shipley*.¹⁰

A. The Jurisprudence of Removal and Remand

Out of concern that state courts would favor home state litigants, the Founding Fathers and early Congresses of the United States provided federal courts with diversity jurisdiction.¹¹ Additionally, Congress empowered out-of-state defendants to remove litigation from state court to federal court.¹² That being said, Congress and federal courts have hardly forsaken plaintiffs, who historically possess the right of forum selection.¹³ In fact, Congress enacted limitations on removal and provided plaintiffs with the ability to remand.¹⁴ Likewise, federal courts generally operate with a presumption toward remand.¹⁵

⁹ See *infra* notes 11–25 and accompanying text.

¹⁰ See *infra* notes 26–37 and accompanying text.

¹¹ U.S. CONST. art. III, § 2; see 28 U.S.C. § 1332(a)(1) (providing district courts with diversity jurisdiction over civil actions between citizens of different states and which involve an amount in controversy of more than \$75,000); *Dodge v. Woolsey*, 59 U.S. (18 How.) 331, 354 (1856) (rationalizing diversity jurisdiction as a way of ensuring diverse litigants have confidence in the U.S. legal system’s fairness); *Bank of the U.S. v. Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809) (linking the creation of federal courts and diversity jurisdiction in the Constitution to concerns about state court prejudice against non-resident defendants); Scott R. Haiber, *Removing the Bias Against Removal*, 53 CATH. U. L. REV. 609, 613–16 (2004) (detailing how some of the Founding Fathers’ concerns about “actual or perceived local prejudice” by state courts led to the creation of federal courts and diversity jurisdiction).

¹² See 28 U.S.C. § 1441 (authorizing removal of certain lawsuits from state to federal court); Haiber, *supra* note 11, at 618 (describing removal as carrying out diversity jurisdiction and ensuring fairness for litigants (citing *Martin v. Hunter’s Lessee*, 14 U.S. (1 Wheat.) 304, 348–49 (1816))).

¹³ See Haiber, *supra* note 11, at 627, 630–32, 637–38 (characterizing federal judicial holdings that curtail removal as prioritizing plaintiffs’ forum selection rights); *infra* notes 14–15 and accompanying text (detailing statutory limits on removal and federal courts’ treatment of removal).

¹⁴ See 28 U.S.C. § 1446(b) (requiring defendants to file for removal within thirty days of receiving a removable initial pleading or within thirty days of receiving papers indicating that a case has become removable); *id.* § 1446(c) (prohibiting the removal of a case that later becomes removable under diversity jurisdiction more than one year after the case’s filing unless the plaintiff operated in bad faith); *id.* § 1447(c) (authorizing remand when a federal court lacks jurisdiction or there is a non-jurisdictional defect); *id.* § 1447(d) (providing that outside of a few exceptions remand orders are unreviewable); see also Haiber, *supra* note 11, at 630 (citing *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 106–09 (1941)) (holding that congressional legislation and intent demonstrated a preference for restricting federal jurisdiction and removal); 16 MOORE’S FEDERAL PRACTICE—CIVIL, § 107.140(3)(a)(iii) (Matthew Bender 3d ed. 2022) (describing the one-year removal limit as reflecting Congress’s desire to curb diversity jurisdiction).

¹⁵ See Haiber, *supra* note 11, at 631–32, 636–37 (describing federal courts’ philosophy towards removal as based on a strict construction of removal statutes that favors limiting removal and resolves doubts through remand); Thomas R. Hrdlick, *Appellate Review of Remand Orders in Removed Cases: Are They Losing a Certain Appeal?*, 82 MARQ. L. REV. 535, 535–36 (1999) (describing how removal decisions must closely adhere to the statutory language and how doubts must be resolved against removal); MOORE’S FEDERAL PRACTICE—CIVIL, *supra* note 14, § 107.140(3)(a)(i)(C) (citing *Bosky v. Kroger Texas, LP.*, 288 F.3d 208, 211 (5th Cir. 2002)) (referencing that removal statutes should be “strictly construed against removal and for remand”).

Title 28 of the U.S. Code § 1447(c) provides that a case can be remanded back to state court in two instances—when the federal court does not possess subject matter jurisdiction and when there is a non-jurisdictional removal defect.¹⁶ Although jurisdictional remand can occur until final judgment, § 1447(c) limits remand due to a non-jurisdictional defect to within thirty days after removal.¹⁷ This time restriction reflects Congress’s view that forum disputes need to be settled as early on in the litigation as possible.¹⁸ Moreover, most circuit courts agree that remands based on non-jurisdictional defects must be initiated through a motion by one of the parties rather than by the court.¹⁹ Thus, when a party does not file a motion to remand within thirty days of removal, the party forfeits any non-jurisdictional removal defects.²⁰

The intertwined legal landscapes of removal and remand are further implicated—and restricted—by defendants’ general inability to appeal a remand order under 28 U.S.C. § 1447(d).²¹ Notably, however, in 1976, in *Thermtron*

¹⁶ 28 U.S.C. § 1447(c).

¹⁷ *Id.*; see MOORE’S FEDERAL PRACTICE—CIVIL, *supra* note 14, § 107.151(1)(a)(i) (describing how subject matter jurisdiction defects necessitate remand and cannot be waived by the court or the parties regardless of how far into litigation said defects are discovered); see also *Judgment*, BLACK’S LAW DICTIONARY, *supra* note 8 (defining final judgment as a “court’s last action,” which “settles the rights of the parties and disposes of all issues in controversy”); *Waive*, BLACK’S LAW DICTIONARY, *supra* note 8 (defining waive as the action of “voluntarily” and “knowingly” relinquishing a claim).

¹⁸ See MOORE’S FEDERAL PRACTICE—CIVIL, *supra* note 14, § 107.151(1)(d)(i) (linking the thirty-day limit for a motion to remand where there is a non-jurisdictional defect to Congress’s desire to quickly resolve any “forum selection battle”).

¹⁹ See *id.* at (1)(a)(ii) (referencing decisions by the Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits holding that a federal court cannot remand a case *sua sponte* on the basis of a non-jurisdictional defect); see also *Sua Sponte*, BLACK’S LAW DICTIONARY, *supra* note 8 (defining *sua sponte* as action taken by a court “without prompting” or “on its own motion”).

²⁰ See MOORE’S FEDERAL PRACTICE—CIVIL, *supra* note 14, §§ 107.151(1)(a)(ii), (d)(i) (describing how the inability of a court to remand a case *sua sponte* for non-jurisdictional defects means that a plaintiff’s failure to file a motion to remand results in losing the right to assert any non-jurisdictional defects); *Forfeiture*, BLACK’S LAW DICTIONARY, *supra* note 8 (defining forfeiture as the “loss of a right” through “neglect”). Although the breadth of non-jurisdictional defects is unclear, it certainly encompasses procedural defects in removal, such as untimeliness. See 28 U.S.C. § 1447(c) (describing a non-jurisdictional defect as a “defect other than lack of subject matter jurisdiction”); Hrdlick, *supra* note 15, at 561–65, 572–73, 576–78 (outlining how previous statutory phraseology of, legislative intent behind, and case law developments concerning the phrase “any defect other than lack of subject matter jurisdiction” indicate a reference to procedural defects in removal (quoting 28 U.S.C. § 1447(c))); 1 MOORE’S MANUAL—FEDERAL PRACTICE AND PROCEDURE, § 8.80(2)(b) (Matthew Bender 2022) (“[A] defect in removal procedure refers to any defect that concerns any issue other than the issue of whether the case could originally have been filed in federal district court, and the term includes all non-jurisdictional defects existing at the time of removal.”); see also *Things Remembered v. Petrarca*, 516 U.S. 124, 128 (1995) (identifying untimely removal as “precisely the type of removal defect contemplated by § 1447(c)”; *In re Uniroyal Goodrich Tire Co.*, 104 F.3d 322, 324 (11th Cir. 1997) (deeming untimeliness of removal a procedural rather than jurisdictional defect); *Maniar v. FDIC*, 979 F.2d 782, 784 (9th Cir. 1992) (same); *FDIC v. Loyd*, 955 F.2d 316, 320 (5th Cir. 1992) (same).

²¹ See 28 U.S.C. § 1447(d) (restricting review of remand orders to cases that were removed under 28 U.S.C. §§ 1442 and 1443).

Products, Inc. v. Hermansdorfer, the United States Supreme Court created a narrow exception to the prohibition on reviewing remands.²² Specifically, *Thermtron* found that §§ 1447(c) and 1447(d) are *in pari materia*, or interpreted with reference to one another.²³ Accordingly, the Supreme Court, reading §§ 1447(c) and 1447(d) together, determined that although remands issued in accordance with § 1447(c)'s requirements are *not* reviewable, remands issued in violation of § 1447(c)'s requirements *are* reviewable.²⁴ The Supreme Court reasoned that this exception ensured that district courts only remanded cases that Congress had authorized to be remanded.²⁵

B. *The Facts of Shipley v. Helping Hands Therapy*

On September 8, 2016, Betty R. Shipley, a recent knee replacement recipient, suffered an injury during treatment with a Helping Hands Therapy physi-

²² 423 U.S. 336, 345–46 (1976).

²³ *Id.* (“These provisions, like their predecessors, ‘are *in pari materia* and are to be construed accordingly rather than as distinct enactments.’” (quoting *Emps. Reinsurance. Corp. v. Bryant*, 299 U.S. 374, 380 (1937))); see *In Pari Materia*, BLACK’S LAW DICTIONARY, *supra* note 8 (defining *in pari materia* as a “canon of [statutory] construction” whereby statutes “may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject”).

²⁴ 28 U.S.C. § 1447(c); see *Thermtron*, 423 U.S. at 346 (“This means that only remand orders issued under § 1447(c) and invoking the grounds specified therein—that removal was improvident and without jurisdiction—are immune from review under § 1447(d).”).

²⁵ *Thermtron*, 423 U.S. at 351 (citing *United States v. Rice*, 327 U.S. 742, 751 (1946)) (justifying its extension of remand reviewability as consistent with Congress’s intent that district courts only remand cases as authorized in the underlying statute). Although Congress later amended the statutory remand language referenced in *Thermtron*, *Thermtron*’s holding largely remains intact and lives on in more recent Supreme Court decisions. See *Powerex Corp. v. Reliant Energy Servs.*, 551 U.S. 224, 230 (2007) (characterizing the 1996 amendment to § 1447(c) as “immaterial to *Thermtron*’s gloss on § 1447(d)"); *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 634, 640–41 (2006) (reasserting *Thermtron*’s holding after the 1996 amendment to § 1447(c)); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 711–12 (1996) (reaffirming *Thermtron*’s holding after the 1988 amendment to § 1447(c)); *Thermtron*, 423 U.S. at 345–46 (holding that remand orders are only unreviewable if they are authorized by § 1447(c)); see also 28 U.S.C. § 1447(c) (2020) (authorizing remand “on the basis of any defect other than lack of subject matter jurisdiction”); 28 U.S.C. § 1447(c) (1988) (amended in 1996) (authorizing remand “on the basis of any defect in removal procedure”); 28 U.S.C. § 1447(c) (1982) (amended in 1988) (authorizing remand when “it appears that the case was removed improvidently”); Hrdlick, *supra* note 15, at 563–65, 576 (describing how the 1996 amendment’s legislative history suggests that the change from “on the basis of any defect in removal procedure” to “on the basis of any defect other than lack of subject matter jurisdiction” is a “technical clarification” or “correction” not “intended to alter dramatically existing case law on the thirty-day limit or scope of the appellate bar” (quoting 142 CONG. REC. H10459 (daily ed. Sept. 17, 1996) (statement of Rep. Pat Schroeder))).

cal therapist.²⁶ According to Shipley, the physical therapist's actions resulted in her knee replacement failing and left her in considerable, ongoing pain.²⁷

Subsequently, on October 12, 2017, Shipley sued Helping Hands Therapy and the physical therapist for negligence under the Alabama Medical Liability Act in the Circuit Court of Hale County, Alabama.²⁸ Defendants filed for removal on October 11, 2018.²⁹ Seeking to return to state court, Shipley, on November 8, 2018, filed a timely motion to remand asserting subject matter jurisdiction deficiencies.³⁰

After Defendants replied refuting her jurisdictional arguments, Shipley, on December 4, 2018, filed a reply which—for the first time—asserted a procedural defect in the removal process.³¹ Specifically, Shipley argued that Defendants' removal was untimely and, thus, in violation of 28 U.S.C. § 1446 because it occurred more than thirty days after Defendants received the initial pleading and because no new information ever triggered a removal period.³² Defendants pushed back, arguing that their removal was timely and that, in any case, Shipley waived this defect when her motion to remand did not raise it.³³ Ultimately, despite a magistrate judge's recommendation that Shipley's motion to remand be denied as untimely, a district court judge for the Northern Divi-

²⁶ *Shipley III*, 996 F.3d 1157, 1158 (11th Cir. 2021), *cert. denied*, 142 S. Ct. 861 (2022); *Shipley v. Helping Hands Therapy (Shipley II)*, No. 18-0437, 2019 U.S. Dist. LEXIS 144707, at *2 & n.1 (S.D. Ala. Aug. 26, 2019) (quoting *Shipley v. Helping Hands Therapy (Shipley I)*, No. 18-437, 2019 U.S. Dist. LEXIS 103449 (S.D. Ala. June 19, 2019)), *vacated by Shipley III*, 996 F.3d 1157, *cert. denied*, 142 S. Ct. 861 (2022).

²⁷ *Shipley II*, 2019 U.S. Dist. LEXIS 144707, at *2. Shipley asserted that in the wake of this incident she required another surgery and filed for disability. *Id.* at *2–3. Additionally, she claimed that her continuous pain left her largely housebound, in need of regular pain medicine, and unable to move around without a cane or wheel chair. *Id.*

²⁸ *Shipley III*, 996 F.3d at 1158; *Shipley II*, 2019 U.S. Dist. LEXIS 144707, at *2. Specifically, Shipley alleged that the physical therapist “acted negligently and with wantonness” in treating her and requested both compensatory and punitive damages. *Shipley III*, 996 F.3d at 1158; *Shipley II*, 2019 U.S. Dist. LEXIS 144707, at *2.

²⁹ *Shipley III*, 996 F.3d at 1158. Defendants asserted that the case became removable on October 1, 2018, because of complete diversity between the parties and because Shipley's claimed injuries, responses to Requests for Admission, and refusal to reschedule a motion to compel hearing demonstrated satisfaction of the amount in controversy requirement. *Shipley II*, 2019 U.S. Dist. LEXIS 144707, at *2–5. Furthermore, Defendants argued that the court order scheduling the motion to compel hearing satisfied the “other paper” requirement. *Id.* at *24; *see also* 28 U.S.C. § 1446(b)(3) (providing defendants with thirty days to file a notice of removal after an “amended pleading, motion, order[,] or other paper” indicates that a case is newly removable).

³⁰ *Shipley III*, 996 F.3d at 1158; *see* 28 U.S.C. § 1447(c) (requiring that motions to remand be filed within thirty days).

³¹ *Shipley III*, 996 F.3d at 1159.

³² 28 U.S.C. § 1446(b)(1) (requiring defendants to initiate removal within thirty days of receiving the initial pleading or summons); *id.* § 1446(b)(3) (providing defendants with thirty days to initiate removal after new information permits removal); *Shipley II*, 2019 U.S. Dist. LEXIS 144707, at *8. Shipley contended there was no new information because her factual allegations had remained the same since she filed her lawsuit on October 12, 2017. *Shipley II*, 2019 U.S. Dist. LEXIS 144707, at *8.

³³ *Shipley II*, 2019 U.S. Dist. LEXIS 144707, at *9.

sion of the U.S. District Court of Alabama deemed Shipley's motion to remand timely and granted it.³⁴

Defendants appealed and on May 6, 2021, the U.S. Court of Appeals for the Eleventh Circuit vacated the District Court's remand order as unauthorized under § 1447(c).³⁵ In addition to finding the remand order reviewable, the Eleventh Circuit held that § 1447(c) only authorized remands for procedural defects when there was a timely motion to remand *and* the procedural defect was timely raised within that motion.³⁶ Thus, Shipley, by waiting to raise un-

³⁴ *Id.* at *1, *25–26. Acknowledging a circuit split on how to interpret § 1447(c), the magistrate judge decided that the statute required not just that a motion to remand be filed within thirty days, but that a procedural removal defect be raised within that time period as well. *See Shipley I*, No. 18-437, 2019 U.S. Dist. LEXIS 103449, at *19–23 (S.D. Ala. June 19, 2019) (first citing *N. Cal. Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co.*, 69 F.3d 1034, 1038 (9th Cir. 1995); and then citing *BEPCO, L.P. v. Santa Fe Mins., Inc.*, 675 F.3d 466, 471 (5th Cir. 2012)). Thus, because Shipley raised untimeliness fifty-four days after removal, the magistrate judge believed that Shipley waived any procedural removal defects and recommended that the motion to remand be denied. *Id.* at *22–23. Although the magistrate judge found the Ninth Circuit's interpretation of § 1447(c) more compelling, the district court judge preferred the Fifth Circuit's approach and found Shipley's motion to remand sufficient despite its silence on the procedural defect. *See Shipley II*, 2019 U.S. Dist. LEXIS 144707, at *11–15 (holding that a timely motion to remand satisfies statutory remand requirements when a procedural defect in removal is subsequently and untimely raised). *Compare* *BEPCO, L.P. v. Santa Fe Mins., Inc.*, 675 F.3d 466, 471 (5th Cir. 2012) (granting a motion to remand based on a timely motion and an untimely raised procedural removal defect), *with* *N. Cal. Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co.*, 69 F.3d 1034, 1038 (9th Cir. 1995) (denying a motion to remand as untimely because the procedural defect warranting remand was untimely raised in a reply). Additionally, the district court judge determined that Defendants' removal was untimely and, thus, that Shipley's motion to remand should be granted. *Shipley II*, 2019 U.S. Dist. LEXIS 144707, at *25–26. Specifically, the district court judge believed that § 1446(b) permitted removal beginning on August 31, 2018, when the "totality" of Shipley's initial allegations from her complaint and discovery responses indicated to Defendants that the minimum amount in controversy had been met. *Id.* Accordingly, as Defendants only had until September 30, 2018, to remove the case under § 1446(b), their October 11, 2018 removal was untimely. *Id.*; *see* 28 U.S.C. § 1446(b) (allowing a defendant to file a notice of removal for thirty days after the defendant receives "a copy of an amended pleading, motion[,] or other paper from which it may first be ascertained that the case is one which is or has become removable").

³⁵ *Shipley III*, 996 F.3d at 1159–61. Regarding reviewability, Defendants argued that the Eleventh Circuit could hear this appeal because the remand order was not based on a procedural defect raised in a motion to remand that was filed within thirty days of removal as required in § 1447(c). *Id.* at 1159. Regarding the motion to remand, Defendants asserted that Shipley untimely raised the procedural removal defect and, as a result, waived such an argument. *Id.* Shipley, in response, contested both the court's jurisdiction and Defendants' assertion that she waived her timeliness argument. *Id.*

³⁶ *Id.* at 1159–61. Following the Ninth Circuit, the Eleventh Circuit held that "a remand order pursuant to § 1447(c) must be 'openly based' on (1) a lack of subject matter jurisdiction, or (2) 'a motion to remand the case filed within 30 days of the notice of removal which is based upon a defect in the removal procedure.'" *See id.* at 1159–60 (determining that a non-jurisdictional remand is only authorized if there is a timely motion to remand that raises a non-jurisdictional defect); *Pittsburg-Des Moines*, 69 F.3d at 1038 (holding that a non-jurisdictional remand requires a timely motion to remand and a timely raised non-jurisdictional defect).

timeliness of removal until her December 4, 2018 reply, forfeited this objection.³⁷

II. THE CIRCUIT SPLIT REGARDING NON-JURISDICTIONAL REMANDS

In 1995, in *Northern California District Council of Laborers v. Pittsburg-Des Moines Steel Co.*, the U.S. Court of Appeals for the Ninth Circuit first ruled on whether a timely motion to remand that failed to address a later and untimely raised procedural removal defect sufficiently meets § 1447(c)'s requirements.³⁸ In 2012, in *BEPCO, L.P. v. Santa Fe Minerals, Inc.*, the U.S. Court of Appeals for the Fifth Circuit next addressed this issue and created a split with the Ninth Circuit.³⁹ After nearly a decade of silence on the issue, in 2021, in *Shipley v. Helping Hands Therapy*, the U.S. Court of Appeals for the Eleventh Circuit joined the debate and sided with the Ninth Circuit.⁴⁰ Section A of this Part outlines the Ninth Circuit's holding and reasoning.⁴¹ Section B of this Part discusses the Fifth Circuit's decision, which led to the circuit split.⁴² Finally, Section C of this Part explains the Eleventh Circuit's holding in *Shipley* as it relates to the underlying split.⁴³

A. The Ninth Circuit Sets the Stage

Although jurisdiction-based remands can occur at any point prior to final judgment under § 1447(c), non-jurisdictional remand timing requirements are less clear.⁴⁴ For example, in 1995, in *Northern California District Council of*

³⁷ *Shipley III*, 996 F.3d at 1159–61. The court held that neither Shipley's timely motion to remand alleging a lack of subject matter jurisdiction nor her untimely reply alleging a procedural defect qualified as "a motion to remand the case on the basis of any defect other than subject matter jurisdiction . . . made within 30 days after the filing of the notice of removal." *Id.* at 1160 (quoting 28 U.S.C. § 1447(c)). The Eleventh Circuit also clarified that rather than "waiv[e]" a procedural objection, Shipley "forfeit[ed]" a procedural objection because the loss of her ability to assert it was involuntary. *Id.* at 1161 n.3; see also *Shipley II*, 2019 U.S. Dist. LEXIS 144707, at *15 (determining that Shipley's failure to timely raise defendants' procedural removal defect did not "waive" said defect). Compare *supra* note 17 (defining waive), with *supra* note 20 (defining forfeiture).

³⁸ See *Pittsburg-Des Moines*, 69 F.3d at 1038 (holding that a timely motion to remand did not warrant a procedurally-based remand under § 1447(c) because the procedural defect was untimely raised in a reply).

³⁹ See *BEPCO*, 675 F.3d at 471 (holding that an untimely raised procedural defect in the removal process was sufficient for remand under § 1447(c) because the motion to remand itself was timely).

⁴⁰ See *Shipley III*, 996 F.3d at 1159–61 (first citing *BEPCO, L.P. v. Santa Fe Mins., Inc.*, 675 F.3d 466, 471 (5th Cir. 2012); and then citing *N. Cal. Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co.*, 69 F.3d 1034, 1038 (9th Cir. 1995)) (holding that a timely motion to remand could not justify remand where the procedural removal defect permitting remand was untimely raised in a reply).

⁴¹ See *infra* notes 44–52 and accompanying text.

⁴² See *infra* notes 53–61 and accompanying text.

⁴³ See *infra* notes 62–66 and accompanying text.

⁴⁴ See 28 U.S.C. § 1447(c) (compelling remand when there is a jurisdictional defect preceding final judgment and requiring a motion to remand to be filed within thirty days of removal when there

Laborers v. Pittsburg-Des Moines Steel Co., the Ninth Circuit considered whether § 1447(c) permitted a remand based on a procedural defect raised in a reply more than thirty days after removal, but where the plaintiff filed a timely, unrelated motion to remand.⁴⁵

The plaintiff in this case originally filed a motion to remand within thirty days of removal arguing that a forum selection clause between the parties mandated returning the case to state court.⁴⁶ Subsequently, in a reply outside this thirty-day window, the plaintiff argued for a procedurally-based remand because defendants failed to join a co-defendant in their notice of removal.⁴⁷ The district court ultimately issued the remand order on the basis of this procedural defect despite the plaintiff's timing.⁴⁸

The defendants appealed the remand order, contesting the district court's authority to remand the case based on a procedural defect in removal raised outside of § 1447(c)'s thirty-day period.⁴⁹ The Ninth Circuit agreed with the defendants and vacated the remand order.⁵⁰ According to the court, the statute

is a non-jurisdictional defect). Although § 1447(c) clearly requires that a motion to remand be filed within thirty-days of removal, it is debatable whether the non-jurisdictional defect on which the remand may ultimately be based must be incorporated in this motion or whether it can be raised later on and outside of this thirty-day period. *See id.* (specifying that plaintiffs must file motions to remand within thirty days of removal, but not the time within which the grounds for remand must be raised); *Shipley III*, 996 F.3d at 1161 (holding that a procedural removal defect must be timely raised in a motion to remand); *BEPCO*, 675 F.3d at 471 (holding that a procedural removal defect can be raised more than thirty days post-removal if a timely motion to remand was filed); *Pittsburg-Des Moines*, 69 F.3d at 1038 (holding that a procedural removal defect must be timely raised even if a motion to remand was timely filed).

⁴⁵ *Pittsburg-Des Moines*, 69 F.3d at 1037–38. Plaintiffs initiated the underlying action to obtain confirmation of an arbitration outcome. *Id.* at 1035. Notably, this case took place before Congress's 1996 amendment to § 1447(c). *See id.* at 1037 n.4 (quoting 28 U.S.C. § 1447(c) (1988)). Compare 28 U.S.C. § 1447(c) (2020) (permitting remand "on the basis of any defect other than lack of subject matter jurisdiction"), with 28 U.S.C. § 1447(c) (1988) (amended in 1996) (allowing remand "on the basis of any defect in removal procedure"). Congressional intent suggests this amendment was "technical" and "not intended to alter dramatically existing case law" and Supreme Court holdings treat these versions similarly when evaluating remand issues, so the Ninth Circuit's decision in this case remains valuable as a source of comparison. *See* 142 CONG. REC. H10459 (daily ed. Sept. 17, 1996) (statement of Rep. Pat Schroeder) (characterizing Congress's 1996 amendment to 28 U.S.C. § 1447(c) as merely "a technical clarification"); Hrdlick, *supra* note 15, at 576 (describing the legislative history and intent of the 1996 amendment to § 1447(c)); *see also supra* note 25 and accompanying text (detailing § 1447(c)'s evolution and the Supreme Court's consistency in applying *Thermtron* notwithstanding the 1988 and 1996 amendments to § 1447(c)).

⁴⁶ *Pittsburg-Des Moines*, 69 F.3d at 1037.

⁴⁷ *Id.* at 1036, 1037.

⁴⁸ *Id.*

⁴⁹ *Id.* Defendants interpreted § 1447(c) as requiring (1) that the motion to remand be filed within thirty days of removal and (2) that the procedural removal defect underlying the remand order be raised within thirty days of removal. *Id.* at 1037. In contrast, the plaintiff interpreted § 1447(c) as requiring only that the motion to remand be filed within the statutory time limit. *Id.*

⁵⁰ *Id.* at 1037–38. Although remand orders are generally unreviewable under § 1447(d), the court held that it had jurisdiction and, thus, could hear this appeal because the "question goes to the district

required plaintiffs to raise procedural removal defects within the thirty-day post-removal period.⁵¹ The Ninth Circuit grounded its reading of the statute in Congress’s underlying intent—to settle forum selection debates sooner rather than later and to avoid multiple forum changes down the road.⁵²

B. The Fifth Circuit Creates a Split

Almost two decades after the Ninth Circuit’s holding, in 2012, the Fifth Circuit, in *BEPKO, L.P. v. Santa Fe Minerals, Inc.*, created a circuit split regarding the interpretation of § 1447(c)’s non-jurisdictional remand provision.⁵³ Three years into litigation, ICAROM, a later-joined defendant, removed the lawsuit under 28 U.S.C. § 1441(d).⁵⁴ Within thirty days, plaintiff BEPCO responded with a motion to remand.⁵⁵ After learning additional information about ICAROM’s relationship with the other defendants, however, BEPCO—more than thirty days post-removal—raised a procedural removal defect by reply.⁵⁶ The district court, agreeing that removal had a procedural defect, granted BEPCO’s motion and remanded the case.⁵⁷

court’s power to order a remand, not to the merits of the court’s finding of a defect in removal procedure.” *Id.* at 1038; see 28 U.S.C. § 1447(d) (prohibiting, subject to a few exceptions, review of a remand order).

⁵¹ *Pittsburg-Des Moines*, 69 F.3d at 1038 (holding that “the critical date” under § 1447(c) was when the plaintiff raised a procedural defect to justify remand rather than when the plaintiff filed a motion to remand).

⁵² *Id.* The court concluded that interpreting the statute to permit procedural defects in removal to be raised beyond the prescribed thirty days “would elevate form over substance” and undermine legislative intent. *Id.*

⁵³ *Compare* *BEPKO, L.P. v. Santa Fe Mins., Inc.*, 675 F.3d 466, 471 (5th Cir. 2012) (holding that § 1447(c) merely requires that the motion to remand be filed within thirty days of removal), *with* *Pittsburg-Des Moines*, 69 F.3d at 1038 (holding that under § 1447(c) both a motion to remand and a raised procedural defect must be timely). Unlike the Ninth Circuit’s holding, the Fifth Circuit’s holding grappled with § 1447(c) after it was amended by Congress in 1996 to its current form. See *BEPKO*, 675 F.3d at 471 (quoting 28 U.S.C. § 1447(c) (2020)) (permitting remand “on the basis of any defect other than lack of subject matter jurisdiction”); *Pittsburg-Des Moines*, 69 F.3d at 1037 n.4 (quoting 28 U.S.C. § 1447(c) (1988) (amended in 1996)) (allowing remand “on the basis of any defect in removal procedure”); see also *supra* note 25 (explaining § 1447(c)’s evolution).

⁵⁴ *BEPKO*, 675 F.3d at 468–69; see 28 U.S.C. § 1441(d) (allowing a foreign state involved in a civil suit to remove said suit to district court). BEPCO initiated this suit to receive compensation from Santa Fe Minerals, Inc. and its insurers after settling a land and water contamination action with owners of property on which both parties previously operated. *BEPKO*, 675 F.3d at 468. Among the insurers implicated by defendants was the Insurance Corporation of Ireland, which was subsequently known as ICAROM and qualified as a foreign state for purposes of removal. *Id.* at 468–69. On this basis, ICAROM filed a notice of removal on January 27, 2011. *Id.*

⁵⁵ *BEPKO*, 675 F.3d. at 468–69. Specifically, BEPCO’s motion asserted that ICAROM waived its removal right and that defendants had inappropriately joined ICAROM to contrive removal proceedings. *Id.* at 469.

⁵⁶ *Id.* at 468–69. On March 11, 2010, BEPCO amended its claim to include, among other things, information about insurance policy JHB-CJP-441. *Id.* at 468. When ICAROM was subsequently joined, defendants indicated that ICAROM was implicated by insurance policy T11669. *Id.* In its reply to the motion to remand, though, ICAROM disclosed that it was also implicated by insurance

ICAROM appealed the remand, but its arguments fell on deaf ears.⁵⁸ The Fifth Circuit determined that the statutory thirty-day limit applied solely to the timing of a motion to remand.⁵⁹ Accordingly, the Fifth Circuit held that the district court's remand aligned with § 1447(c)'s requirements because BEPCO filed its underlying motion to remand within thirty days of ICAROM's notice of removal.⁶⁰ The court's interpretation stemmed from what it saw as the statute's plain meaning and clear reference to restricting motions to remand rather than the raising of issues.⁶¹

C. The Eleventh Circuit Enters the Debate and Joins the Ninth Circuit

In 2021, in *Shipley v. Helping Hands Therapy*, the Eleventh Circuit sided with the Ninth Circuit in its interpretation of § 1447(c), holding that non-jurisdictional remands are only available when the motion to remand asserts a procedural defect within thirty days of removal.⁶² Thus, according to the Elev-

policy JHB-CJP-441. *Id.* at 469. On this basis, BEPCO replied and asserted that ICAROM's removal was untimely and, thus, procedurally defective as its liability under insurance policy JHB-CJP-441 rendered it a defendant beginning March 11, 2010. *Id.* at 468–69.

⁵⁷ *Id.* at 469, 469 n.2.

⁵⁸ *Id.* at 469, 470–71. Much like it did before the district court, ICAROM asserted that remand was improper under § 1447(c) because BEPCO failed to raise the procedural defect in remand within thirty days of removal. *Id.* at 469. Additionally, given the § 1447(d) appellate bar on remands, ICAROM argued its appeal was reviewable because the district court lacked authority under § 1447(c) to remand a case on procedural grounds that went unraised during the statutory thirty-day period. *Id.* at 470; see 28 U.S.C. § 1447(d) (stating that remand orders are generally unreviewable); *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336, 345–46 (1976) (specifying that remand orders are only reviewable if they are unauthorized under § 1447(c)). The Fifth Circuit disagreed with both of these arguments though. *BEPCO*, 675 F.3d at 470–71.

⁵⁹ *BEPCO*, 675 F.3d at 471 (“On its face, Section 1447(c)'s [thirty]-day requirement governs the timeliness of the filing of a motion to remand, not the time limit for raising removal defects.”). Under this interpretation, as long as a motion to remand is timely, plaintiffs face no time constraint in raising procedural removal defects. See *id.* (holding that the “central inquiry is whether the remand motion satisfies the [thirty]-day requirement”).

⁶⁰ *Id.* Because BEPCO's motion to remand was timely, it was irrelevant under a § 1447(c) timeliness analysis that BEPCO failed to raise the untimeliness of ICAROM's removal until later. *Id.* Furthermore, the court held that because the district court's remand was based on untimely removal and, thus, authorized, the remand order was not reviewable. *Id.*

⁶¹ *Id.* (first citing *Schexnayder v. Entergy La., Inc.*, 394 F.3d 280, 284 (5th Cir. 2004); and then citing *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010)). According to the Fifth Circuit, when statutory language is unambiguous like that in § 1447(c), courts must operate according to the language's ordinary meaning. *Id.* (quoting *Schexnayder*, 394 F.3d at 284 (“By its own terms, § 1447(c) is limited to *motions*, not *issues*.”)). Notably, the Fifth Circuit specifically dismissed the Ninth Circuit's holding in *Northern California District Council of Laborers v. Pittsburgh-Des Moines Steel Co.*, which ICAROM raised, as “unpersuasive” because it inadequately analyzed the statutory text and relied instead on statutory purpose. *Id.* at 470 n.4.

⁶² See *Shipley III*, 996 F.3d 1157, 1159–61 (11th Cir. 2021), *cert. denied*, 142 S. Ct. 861 (2022) (holding that a non-jurisdictional remand under § 1447(c) requires a timely motion to remand that raises a non-jurisdictional defect); *N. Cal. Dist. Council of Laborers v. Pittsburgh-Des Moines Steel*

enth Circuit, Shipley’s motion to remand should have been denied because it relied on a procedural defect raised more than thirty days after removal.⁶³ Although it acknowledged that the Ninth and Fifth Circuits were split on the issue, the Eleventh Circuit charted its own course in analyzing non-jurisdictional remands.⁶⁴ Specifically, it looked to the plain meaning of the text to interpret § 1447(c) as the Fifth Circuit did, but came to the same conclusion that the Ninth Circuit came to by looking at congressional intent.⁶⁵ As the Eleventh Circuit understood the plain text meaning of § 1447(c) to require a timely motion to remand that raised a non-jurisdictional defect, it found the remand order unauthorized and vacated it.⁶⁶

III. THE ELEVENTH CIRCUIT’S READING OF 28 U.S.C. § 1447(C) IS MORE COMPELLING GIVEN THE PLAIN TEXT MEANING OF THE STATUTE AND CONGRESSIONAL INTENT

The U.S. Court of Appeals for the Eleventh Circuit, unlike the U.S. Court of Appeals for the Ninth and Fifth Circuits, employed the proper approach to interpreting § 1447(c) *and* came to the correct conclusion about its meaning.⁶⁷

Co., 69 F.3d 1034, 1038 (9th Cir. 1995) (holding that a procedural remand under § 1447(c) required both a timely motion to remand and a timely raised procedural defect).

⁶³ See *Shipley III*, 996 F.3d at 1160 (“Neither Shipley’s motion nor her reply brief was ‘[a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction . . . made within 30 days after the filing of the notice of removal.’” (quoting 28 U.S.C. § 1447(c))). Although the Ninth Circuit’s holding allows for a procedural defect to be raised in a timely reply, the Eleventh Circuit seemingly goes further by specifying that the timely motion to remand must itself raise the procedural issue. Compare *id.* (citing *In re Bethesda Mem’l Hosp., Inc.*, 123 F.3d 1407, 1409 (11th Cir. 1997)) (interpreting § 1447(c) as requiring “a motion to remand the case filed within 30 days of the notice of removal which is based upon a defect in the removal procedure”), with *Pittsburg-Des Moines*, 69 F.3d at 1038 (interpreting § 1447(c) as “requir[ing] that a defect in removal procedure be raised in the district court within 30 days after the filing of the notice of removal” without specifying how said defect must be raised).

⁶⁴ See *infra* note 65 and accompanying text (describing the different approaches and holdings of the Fifth, Ninth, and Eleventh Circuits).

⁶⁵ Compare *Shipley III*, 996 F.3d at 1159–61 (relying on a previous Eleventh Circuit holding which analyzed the statute’s “plain text” and legislative intent to determine that § 1447(c) non-jurisdictional remands require a timely motion to remand alleging a procedural defect), with *BEPCO*, 675 F.3d at 470 n.4, 471 (using the meaning of the statute “[o]n its face” to conclude that § 1447(c) required just a timely motion to remand for non-jurisdictional remands), and *Pittsburg-Des Moines*, 69 F.3d at 1038 (assessing § 1447(c)’s legislative intent to determine that both the motion to remand and raising of a procedural defect must be timely).

⁶⁶ *Shipley III*, 996 F.3d at 1159–61. According to the Eleventh Circuit, Shipley’s motion to remand, although timely, was based on a jurisdictional defect rather than a procedural one as required by § 1447(c). *Id.* at 1160. Additionally, the Eleventh Circuit noted that Shipley’s reply asserting a non-jurisdictional defect was untimely under § 1447(c) because it was filed more than thirty days post-removal. *Id.* at 1160–61.

⁶⁷ Compare *id.* at 1159–61 (looking at the statute’s “plain text” to determine that non-jurisdictional remands are authorized only when there is a timely motion to remand asserting a procedural defect), with *BEPCO*, 675 F.3d at 471 (drawing from the statute’s “[o]n its face” meaning to determine that

Unlike the Ninth Circuit, which immediately considered § 1447(c)'s legislative intent, the Eleventh Circuit appropriately began its analysis by examining the statutory text.⁶⁸ Although the Fifth Circuit also began its analysis this way, its interpretation is less logical than the Eleventh Circuit's based on § 1447(c)'s language and construction.⁶⁹ Specifically, rather than looking holistically at the relevant portion of § 1447(c), the Fifth Circuit inexplicably dropped the modifying phrase "on the basis of any defect other than lack of subject matter jurisdiction" from its interpretation.⁷⁰ In contrast, the Eleventh Circuit derived § 1447(c)'s plain meaning from the clause as a whole, ensuring it ascertained

the timeliness analysis for non-jurisdictional remands looks only at the timing of the motion to remand), and *Pittsburg-Des Moines*, 69 F.3d at 1038 (relying on legislative intent to hold that a procedural defect in removal must be timely raised even if there is already a timely motion to remand). See *infra* notes 68–77 and accompanying text (using accepted rules of statutory interpretation to analyze the approaches and holdings of the Fifth, Ninth, and Eleventh Circuits).

⁶⁸ Compare *ShIPLEY III*, 996 F.3d at 1159 ("Because this is a question of statutory interpretation our analysis starts with § 1447(c)'s plain text."), with *Pittsburg-Des Moines*, 69 F.3d at 1038 ("Any other reading of the statute would elevate form over substance. The purpose of the [thirty]-day time limit is 'to resolve the choice of forum at the early stages of litigation,' and to 'prevent the shuffling [of] cases between state and federal courts after the first thirty days.'" (quoting *Maniar v. FDIC*, 979 F.2d 782, 785, 786 (9th Cir. 1992) (citation omitted) (internal quotations omitted))). The Eleventh and Fifth Circuits identify and follow the Supreme Court's longstanding and oft-repeated canon of construction that statutory interpretation starts with the text and requires an assumption that the text's ordinary meaning correctly reflects Congress's intent. See *ShIPLEY III*, 996 F.3d at 1159 (beginning its statutory analysis by looking at the plain text); *BEPCO*, 675 F.3d at 471 (starting its statutory analysis by looking at the statute's "plain" meaning); Morell E. Mullins, Sr., *Tools, Not Rules: The Heuristic Nature of Statutory Interpretation*, 30 J. LEGIS. 1, *6 & n.17 (2003) (detailing the almost "universa[l]" nature and "long pedigree" of beginning statutory interpretation by looking at the underlying text); William D. Popkin, *The Collaborative Model of Statutory Interpretation*, 61 S. CAL. L. REV. 543, 591–92 (1988) (discussing the "primary significance" of statutory language's plain meaning in statutory interpretation); Eric M. Sherman, Note, *Chasing Perfection: Collateral Indications and Ambiguous Debtor Names on Financing Statements Under Article 9*, 61 B.C. L. REV. 2229, 2249–50 (2020) (indicating that interpreting statutes according to their "plain and ordinary meaning" is "a common canon of statutory interpretation"); see e.g., *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010) (indicating that statutory interpretation requires analyzing the language first and operating with the mindset that a statute's plain meaning closely reflects its legislative intent); *Gross v. FBL Fin. Servs.*, 557 U.S. 167, 175 (2009) (same).

⁶⁹ See *ShIPLEY III*, 996 F.3d at 1159–60 (interpreting § 1447(c) as requiring that a procedural removal defect be timely raised in a motion to remand); *BEPCO*, 675 F.3d at 471 (construing § 1447(c) as requiring that only the motion to remand be timely); Popkin, *supra* note 68, at 592–93 (describing how evaluating the plain text meaning of a statute requires evaluating not just the "isolated word," but also the "internal context" and "external context" of the statutory language); see also 28 U.S.C. § 1447(c) (stating "[a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction").

⁷⁰ See *BEPCO*, 675 F.3d at 471 (finding that § 1447(c)'s language defines the timing of the motion to remand as the "central inquiry"); Popkin, *supra* note 68, at 592–93 (detailing the importance of evaluating aspects of "internal context," such as modifying phrases, to discern the plain meaning of statutory language).

the statute's intent to restrict non-jurisdictional remands to within thirty days of removal.⁷¹

Additionally, the consistency between the Eleventh Circuit's plain text analysis of § 1447(c) and the statute's legislative intent bolsters the strength of the Eleventh Circuit's holding.⁷² By deciding that procedural removal defects must be asserted within thirty days to secure remand, the Eleventh Circuit limited the possibility of forum changes that stall and complicate litigation just as Congress intended.⁷³ As the plain meaning of statutory text is believed to correctly reflect congressional intent and the meaning of ambiguous text is often resolved through examination of congressional intent, this constancy reinforces the Eleventh Circuit's—and ultimately the Ninth Circuit's—interpretation of § 1447(c).⁷⁴

Although statutory limits on removal and the judicial presumption toward remand may appear to weigh in favor of the Fifth Circuit's more permissive, remand-friendly holding, Congress's underlying desire to limit diversity jurisdiction is not exclusive.⁷⁵ Congress, after all, specifically checked non-jurisdictional

⁷¹ See *Shiple* III, 996 F.3d at 1159–61 (construing § 1447(c)'s relevant clause comprehensively to require not just a timely motion to remand, but also a timely motion to remand alleging a non-jurisdictional defect); Popkin, *supra* note 68, at 592–93 (specifying that plain text analysis requires evaluation of the statutory language in its totality).

⁷² See *Shiple* III, 996 F.3d at 1159–61 (holding that procedurally based remands are only authorized where the motion to remand is both timely and raises a procedural defect); *infra* notes 73–74 and accompanying text (describing the link between legislative intent and plain text meaning generally and with respect to § 1447(c)).

⁷³ See *Shiple* III, 996 F.3d at 1161 (vacating a remand based on a procedural defect raised by reply outside the statutory thirty day window despite a timely remand motion); *In re Bethesda Mem'l Hosp., Inc.*, 123 F.3d 1407, 1410 (11th Cir. 1997) (indicating that the “congressional intent of § 1447(c) was to prevent ‘the shuffling [of] cases between state and federal courts after the first thirty days’ based on purely procedural defects when each court has subject matter jurisdiction” (alteration in original) (quoting *FDIC v. Loyd*, 955 F.2d 316, 322 (1992))); *Pittsburg-Des Moines*, 69 F.3d at 1038 (stating that the “purpose of the [thirty]-day time limit is ‘to resolve the choice of forum at the early stages of litigation,’ and to ‘prevent the shuffling [of] cases between state and federal courts after the first thirty days’” (quoting *Maniar v. FDIC*, 979 F.2d 782, 785, 786 (9th Cir. 1992) (citation omitted) (internal quotations omitted))); MOORE'S FEDERAL PRACTICE—CIVIL, *supra* note 14, § 107.151(1)(d)(i) (describing the thirty-day limit for non-jurisdictional motions to remand as reflective of Congress's desire to quickly eliminate “forum selection battle[s]”).

⁷⁴ See *Hardt*, 560 U.S. at 251 (describing the understanding that the plain text meaning of a statute mirrors its legislative intent); *Shiple* III, 996 F.3d at 1160–61 (holding that § 1447(c) requires both a timely motion to remand and a timely raised procedural removal defect); *N. Cal. Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co.*, 69 F.3d 1034, 1038 (9th Cir. 1995) (finding that non-jurisdictional remands are only authorized if both the motion to remand and the assertion of a non-jurisdictional removal defect are timely); Mullins, *supra* note 68, at *9–10 (detailing how if the meaning of the text is unclear, many courts dig into legislative intent to uncover a statute's proper interpretation); Popkin, *supra* note 68, at 592–93 (describing how congressional purpose contextualizes a statute's plain text meaning).

⁷⁵ See *BEPCO*, 675 F.3d at 471 (interpreting § 1447(c) to permit remand on the basis of an untimely raised procedural defect so long as there is a timely motion to remand); Haiber, *supra* note 11, at 630–32 (describing congressional legislation and intent as showing an inclination against federal

remands with § 1447(c)'s thirty-day limit because it wanted forum selection disputes settled as early on in litigation as possible notwithstanding its preference for remands.⁷⁶ Thus, despite the procedural pitfall it creates, the Eleventh Circuit's holding is reconcilable with the presumption toward remand because § 1447(c)'s time limit exists to serve a separate congressional interest.⁷⁷

CONCLUSION

In 2021, in *Shipley v. Helping Hands Therapy*, the U.S. Court of Appeals for the Eleventh Circuit held that a plaintiff forfeited a procedural removal defect by failing to raise it within thirty days of removal even though she filed a timely motion to remand. This decision revived a dormant debate between the U.S. Court of Appeals for the Ninth and Fifth Circuits over whether a timely motion to remand alone sufficed or whether the procedural defect warranting remand must also be timely raised. Although the Eleventh Circuit's interpretation of 28 U.S.C. § 1447(c) resembled the Ninth Circuit's, the Eleventh Circuit's holding is preferable because it followed the Fifth Circuit's method of statutory interpretation and focused on the plain text meaning of the statute to reach its decision. Beyond using better methodology, the Eleventh Circuit set itself apart by adopting a more logical plain text meaning of § 1447(c) than the Fifth Circuit that also comports with congressional intent. Moving forward, other courts should adhere to the Eleventh Circuit's analysis when plaintiffs seek remand based on a timely motion and untimely raised procedural removal defect.

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jurisdiction and removal and a federal judicial presumption toward remand); Hrdlick, *supra* note 15, at 535–36 (describing how federal courts resolve doubts against removal); MOORE'S FEDERAL PRACTICE—CIVIL, *supra* note 14, § 107.140(3)(a)(iii) (linking the one-year limitation on removal to Congress's dislike of diversity jurisdiction and detailing strict construction requirements for removal statutes); *infra* note 77 and accompanying text (discussing § 1447(c) and its congressional intent as indicative of congressional motives other than limiting removal).

⁷⁶ 28 U.S.C. § 1447(c); see *infra* note 77 and accompanying text (detailing Congress's purpose in enacting § 1447(c)).

⁷⁷ 28 U.S.C. § 1447(c). Compare Haiber, *supra* note 11, at 630–32 (detailing federal jurisdiction and removal's disfavored status with Congress and a presumption toward remand by federal courts), and Hrdlick, *supra* note 15, at 535–36 (indicating a presumption toward remand within the federal court system), with MOORE'S FEDERAL PRACTICE—CIVIL, *supra* note 14, § 107.151(1)(d)(i) (describing the thirty-day limit on non-jurisdictional motions to remand as consistent with Congress's goal of quickly dispensing with “forum selection battle[s]”).