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Multiparty Joinder and Venue: How Missouri is Acting Against Historic Procedural Law Principles in an Effort to Curb Forum Shopping

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NOTE

Multiparty Joinder and Venue: How Missouri is Acting Against Historic Procedural Law Principles in an Effort to Curb Forum Shopping

State ex rel. Johnson & Johnson v. Burlison, 567 S.W.3d 168 (Mo. banc 2019).

Jackson Gilkey[*]

I. INTRODUCTION

Missouri has a problem. St. Louis City has become such a haven for plaintiffs to achieve easy victories with large awards that Missouri courts are now considered the second-worst forum by businesses for litigation.[1] *State ex rel. Johnson & Johnson v. Burlison* attempted to fix this problem by requiring stricter application of joinder and venue statutes. But, in doing so, the Missouri Supreme Court and Legislature are acting against the historical and philosophical underpinnings of procedural law. Rather than trying to fix the substantive issues for why plaintiffs would rather bring their cases in this state, this decision instead makes it harder for any and all plaintiffs to join in a lawsuit, even if it is most efficient to do so. Missouri is treating its symptoms, not curing its disease. By choosing the easy way out and abandoning the historical development of procedural law, Missouri residents may find it highly difficult or impossible to resolve their disputes arising in a modern world.

In 2014, dozens of plaintiffs joined in a single suit against Johnson & Johnson, alleging that its talc powder caused them to develop ovarian cancer.[2] Although the lawsuit was filed in St. Louis City, only some of the plaintiffs

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1. *Missouri Lawmakers Vote to Limit Some Civil Lawsuits*, ASSOCIATED PRESS (May 2, 2019), https://apnews.com/bbb3e96387c847979f8476f927e854a3 [perma.cc/LJ8J-AUDV].

2. State *ex rel*. Johnson & Johnson v. Burlison, 567 S.W.3d 168 (Mo. 2019) (en banc).

were residents or were first injured there.[3] Both the Circuit Court of the City of St. Louis and the Missouri Court of Appeals, Eastern District, refused to sever a party for improper venue.[4] However, the Missouri Supreme Court ultimately reversed and held that permissive joinder rules do not extend to allow joinder of plaintiffs that cannot independently establish venue.[5] The majority emphasized that venue must be considered independently as a prerequisite to joinder.[6] Two dissenting judges focused on the statutory language of the Missouri venue and joinder statutes and concluded that the permissive joinder statute is broad enough to allow a case to proceed in a particular court so long as one of the parties meet the venue requirements and the other claims arise out of the same transaction or occurrence.[7] After the case was decided, the Missouri Legislature explicitly adopted the case into the permissive joinder statute, enshrining the holding of the majority.[8]

This Note highlights the danger in Missouri's approach to procedural reform and offers an alternative method for thinking through the undeniable problems the state faces. It begins by discussing the underlying facts and holding of *Burlison* in Part II. Then, Part III summarizes the development of modern joinder and venue law, including the philosophical shifts from early common law to the enactment of the Federal Rules of Civil Procedure and their implementation by Missouri statute. Part IV examines the reasoning behind the majority and two dissenting opinions in *Burlison*. Finally, Part V compares the net result of current procedural jurisprudence with the underlying principles evident in the development of procedural law and offer some examples of substantive solutions to the problem.

This Note discusses how this holding matches the nation-wide trend toward limiting the ability of multiple parties to bring their claims in a single action, cutting against the purposes behind the historical development of joinder and venue rules. Though the resources of the court system would arguably be most efficiently utilized by liberal joinder rules, modern legislative bodies have adopted much legislation aiming to reduce the ability of plaintiffs' attorneys to participate in forum shopping and create quasi-class actions.[9] Further, this decision will almost certainly achieve a similar effect of other tort reform measures in making it more difficult for individual plaintiffs to bring suit if their individual damages are not high enough and curbing the disparity of where multiparty lawsuits occur.

On the other hand, the holding cuts against the rationale behind modern party joinder rules and will likely have unintended consequences such as

3. *Id.*

4. *Id.* at 169–70.

5. *Id.* at 171.

6. *Id.* at 171–72.

7. *Id.* at 176–90 (Draper III, J. and Wilson, J., dissenting).

8. MO. REV. STAT. § 507.040 (2018) ("The general assembly hereby expressly adopts the holding of *State ex rel. Johnson & Johnson v. Burlison*, No. SC96704, as issued on February 13, 2019, as it relates to joinder and venue.").

9. *See infra* Part III.B.

straining smaller courts not used to handling these sorts of claims. Further, by reverting to geographic requirements for venue rather than focusing on dispute resolution efficiency, the ability of courts to resolve ever-evolving disputes with less and less ties to geography in an efficient manner will be greatly inhibited. This Note ultimately concludes that, while there are genuine concerns regarding issues of forum shopping, the solution should not and cannot be merely closing the courthouse doors.

II. FACTS AND HOLDING

Johnson & Johnson manufactures and sells, among other things, body powder that contains talc.[10] In 2014, multiple plaintiffs brought suit in the Circuit Court of the City of St. Louis against Johnson & Johnson, alleging that the company's talc-based powder caused the users to develop ovarian cancer.[11] The plaintiffs sought relief under various state law tort theories, including strict liability for failure to warn, breach of warranty, negligent misrepresentation, and others.[12]

In Missouri, procedural law is found within both rules promulgated by the Missouri Supreme Court and statutes enacted by the legislature. At issue in this case are: (1) the permissive joinder statute, (2) the court rule, and (3) the relevant venue statute. The statute and the rule regarding permissive joinder are essentially identical, allowing for claims to be joined if they arise "out of the same transaction or occurrence."[13] Importantly, both are written broadly, with little mention of venue.[14] By contrast, the venue statute is written very narrowly, providing exact requirements to establish venue for different categories of cases.[15]

Johnson & Johnson moved to sever the parties and transfer venue as only one plaintiff, Valerie Swann, was a resident of St. Louis City.[16] The company argued that the parties were improperly joined under Missouri Rule of Civil Procedure ("MRCP") 52.05(a).[17] The circuit court rejected this argument, finding that severance was not required because the only requirement for permissive joinder of parties is that similar issues of law and fact arose out of the "same transaction or occurrence."[18]

However, things became muddled once another plaintiff, Michael Blaes, attempted to join the lawsuit in 2016.[19] Blaes claimed that his deceased wife

10. *Burlison*, S.W.3d at 170.

11. *Id.* at 169.

12. *Id.* at 169–70 (other causes of action included civil conspiracy, concert of action, fraud, and wrongful death).

13. MO. REV. STAT. § 507.040 (2018); MO. R. CIV. P. 52.05.

14. *See* § 507.040; MO. R. CIV. P. 52.05.

15. *See* § 508.010.

16. *Burlison*, 567 S.W.3d at 170.

17. *Id.*

18. *Id.*

19. *Id.*

had contracted ovarian cancer from using the talc powder.[20] They resided in St. Louis County when they bought the talc powder, she used the talc powder in St. Louis County, and they bought the talc powder from a business in St. Louis County.[21] In response, Johnson & Johnson filed a motion for severance and transfer for lack of jurisdiction and venue once the court designated Blaes's claim for a separate trial.[22] This motion was denied.[23] Then, the defendants sought a writ of prohibition from the circuit court to prevent the joint case from moving forward, [24] which was denied by the Eastern District of Missouri.[25] The defendants then sought a writ of prohibition from the Missouri Supreme Court, which granted a preliminary writ before issuing its order.[26]

The Missouri Supreme Court held a writ of prohibition was proper because the venue statutes require that plaintiffs bring tort claims in the county where they were first injured and any joinder rule that would allow Blaes to be joined with the other plaintiffs absent venue being proper for Blaes himself would be an improper application of the rules of civil procedure.[27] The majority opinion emphasized that principles of venue must be considered independently from considerations of permissive joinder.[28] No longer may parties join so long as they satisfy permissive joinder's "same transaction or occurrence" test regardless of whether each plaintiff satisfies, or does not satisfy, the requirements of the venue statute.[29] If any plaintiff does not satisfy the venue requirements, his or her claim should be severed.[30]

III. LEGAL BACKGROUND

Burlison is part of a trend across the country making it more difficult for multiple plaintiffs to join in a single lawsuit arising from the same alleged misconduct of a single defendant. This Section outlines the concepts of

20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.* at 171. Unlike a writ of mandamus, where a party is seeking a higher court to order a lower court to take an action, a writ of prohibition seeks to stop a court from doing something it is about to do. *Id.* In this context, it would be sought to stop a court from allowing a party to be joined to a case when the opposing party argues the court has no ability to do so for lack of venue. *Id.* Thus, it avoids issues of undue prejudice under Missouri Rule of Civil Procedure 84.13(b) by answering questions of joinder preemptively rather than only taking up the issue after the merits of the case have been decided. *Id.*
25. *Id.*
26. *Id.* at 170–71.
27. *Id.* at 177.
28. *Id.*
29. *Id.* at 180.
30. *Id.* at 177–78.

joinder and venue as they have existed traditionally, as well as the developments that led to the modern framework.

A. Historical Development of Joinder from Common Law to the Modern Rules

Early common-law procedure was grounded in a rights-centered view.[31] This view focused on identifying substantive rights and obligations. For plaintiffs, joinder was allowed when multiple parties had at least some dominion over a substantive right.[32] Conversely, defendants could be joined only when they shared a duty over that plaintiff's or plaintiffs' substantive right(s).[33] If two parties were viewed as "joint" owners of a substantive right, they were required to bring suit together.[34] But, if the rights were "several" rather than "joint," each individual owner of the right would have to bring his or her claim in a separate proceeding because each of their interests could be viewed as separate from the other.[35] A similar exercise would be conducted to determine the "joint" or "several" status of an obligation.[36] If the obligation was joint, the defendants were required to be joined.[37] If the obligation was several, the defendants could be joined, but it was not required.[38] These concepts led to the distinction between permissive and compulsory joinder.[39]

Unlike the rigid rights and obligations analysis of the courts of law, common-law courts of equity employed a much more liberal concept of joinder.[40] Instead of focusing the analysis on whether something was held severally or jointly, equity's aim was "to have in court all persons whose rights or property are involved in any particular litigation and to render a complete decree adjusting all the rights and protecting all the parties against future litigations."[41] This liberal approach allowed for complicated controversies to be packaged into a single litigation unavailable in courts of law and opened the courthouse doors to previously unknown categories of cases and plaintiffs.[42]

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31. Robert G. Bone, *Mapping the Boundaries of the Dispute: Conceptions of Ideal Lawsuit Structure from the Field Code to The Federal Rules*, 89 COLUM. L. REV. 1, 7 (1989).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 8.

37. *Id.*

38. *Id.*

39. *Id.* at 9.

40. Jack B. Weinstein & Eileen B. Hershenov, *The Effect of Equity on Mass Tort Law*, 1991 U. ILL. L. REV. 269, 281 (1991).

41. *Id.* at 281–82.

42. *Id.* at 282.

This joinder mechanism dramatically changed as the legal world shifted from a rights-centered to a right-remedy point of view.[43] The right-remedy legal framework began by establishing a foundational cornerstone of some primary "right."[44] The legal system's job was to determine the character of and relationship between the various "rights."[45] Therefore, rather than the legal remedy being grounded in concepts of violation of an obligation, remedies were viewed as derivative rights of the primary "right."[46] While seemingly metaphysical and semantic, this change in legal philosophy led to a fundamental shift: no longer were remedies modeled after an obligation, but remedies were designed to shift the legal equilibrium back to the natural state where the "right" holder did not have his or her "right" violated.[47] Remedies, in a sense, were viewed as a legal homeostasis, being specifically crafted to do whatever was needed to place the "right" holder back in the state of nature without infringement.[48]

Under this theory, procedural law served as the second derivative of the primary "right."[49] Just as the remedy was specifically designed to protect the "right," the procedure was designed to achieve the remedy.[50] Because joinder is a subset of procedural law, the rules of joinder were designed to facilitate seeking a remedy that would fully protect the "right."[51] If the proper remedy required many parties to be joined, the parties would be joined.[52] As this legal framework began to take hold in the nineteenth century, many jurists began to favor the joinder rules of courts of equity, as the rigid approach of the law courts would sometimes serve as an insurmountable obstacle to achieving an appropriate remedy.[53] This also granted courts the ability to properly adjudicate issues of growing complexity in an evolving world.[54]

This shift in philosophy led to the adoption of the first codified rules of procedure: the New York Field Code ("the Field Code").[55] The Field Code eliminated the division between courts of law and equity, abolishing the highly specific requirements of common law writs that had developed over time.[56] Additionally, the Field Code adopted the more liberal standards of

43. Bone, *supra* note 31, at 10–12.
44. *Id.* at 12.
45. *Id.* at 13.
46. *Id.* at 12–13.
47. *Id.* at 8–9.
48. *Id.* at 17.
49. *Id.* at 15.
50. *Id.*
51. *Id.* at 22.
52. *Id.*
53. *Id.*
54. *Id.*
55. An Act to Simplify and Abridge the Practice, Pleadings and Proceedings of the Courts of this State, 1848 N.Y. Laws 497.
56. Bone, *supra* note 31, at 10.

joinder found in courts of equity, leaving behind the highly technical questions of "joint" and "several" ownership found within courts of law.[57]

The philosophical ideas underlying the Field Code would ultimately lead to rules outlining an enigmatic approach seeking to identify an ideal procedure to obtain an ideal remedy for an infringed right.[58] Necessarily, the joinder rules had to be extensively broad to incorporate any potential plaintiff or defendant required to obtain the platonic procedure.[59] "All persons having an interest in the subject of the action, and in obtaining the relief demanded," could be joined as plaintiffs.[60] Similarly, "Any person may be made a defendant, who has or claims an interest in the controversy, adverse to the plaintiff, or who is a necessary party to complete determination or settlement of the question."[61]

After enactment of the Field Code, the next evolutionary stage for procedural law was the enactment of the Federal Rules of Civil Procedure ("the FRCP") in 1938.[62] The FRCP, in general, retained the flexibility favored by the Field Code and traditional courts of equity over the rigidity of common-law joinder rules, but they also sought to provide more definite, workable standards instead of the mysterious tests of the right-remedy jurisprudence.[63] The focus shifted to a much more pragmatic approach, aiming to promote "litigation packaging" to avoid inefficiencies of trying multiple cases over equivalent issues.[64] Under the FRCP, a suit was no longer conceptualized as pitting rights against obligations or as seeking the ideal remedy to restore the holder of a right back to the position he or she would be in absent infringement of that right; the scope of a suit was now determined along transactional lines.[65] If a party was involved in the relevant "transaction or occurrence," he or she could be properly joined in the suit.[66] The "transaction or occurrence" test still survives in modern permissive joinder rules.[67]

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57. *Id.*

58. *Id.* at 46–47.

59. *Id.*

60. *Id.* at 47 (citations omitted).

61. *Id.* (citations omitted).

62. Richard D. Freer, *Rethinking Compulsory Joinder: A Proposal to Restructure Federal Rule 19*, 60 N.Y.U. L. REV. 1061, 1065–67 (1985).

63. *Id.*

64. *Id.*

65. *Id.* at 1067.

66. *Id.*

67. *See* FED. R. CIV. P. 20(a) ("Persons may join in one action as plaintiffs if: (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action."); *see also* MO. R. CIV. P. 52.05(a) ("All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action.").

Missouri's historical development of civil procedure closely mirrored that which was occurring on the national level.[68] In fact, Missouri has traditionally been a leader in the civil procedure realm.[69] Missouri adopted the Field Code in 1849, just one year after the Code's original enactment in New York.[70] Missouri was also one of the first states to establish a system of rules based on the FRCP.[71] Generally, Missouri's development of procedural law perfectly tracks the national development, including the fundamental goal to "secure the just, speedy and inexpensive determination of every action."[72]

B. The Interplay of Modern Joinder Rules with Venue and Jurisdiction

The FRCP represented the pragmatic theory of joinder winning out over either version of the rights-based theory of legal claims. Modern joinder rules reflect a willingness to defer to the experts of trial efficiency – the trial court – to determine when the operative facts are so similar that judicial economy is best served by allowing many parties to join in a single suit.[73] The purpose behind the rules is to promote trial convenience and expedient resolution of the relative disputes.[74] Granting the trial court this discretion also helps prevent multiple, repetitive lawsuits.[75]

The modern formulation of joinder rules does not give trial courts complete discretion in issues of joinder. Instead, the FRCP provide that joinder may not be used to extend jurisdiction or venue over a party where it would otherwise be lacking.[76] Jurisdiction and venue each have their own complicated historical development.[77] Because this will be discussed in further detail later in this Note, a simple statement of the difference between joinder, jurisdiction, and venue will suffice. Jurisdiction is the requirement that a tribunal must have power over the individual against whom the lawsuit is brought; venue is the requirement that a tribunal is the proper arena for the

68. Joseph J. Simeone, *Approaches to Teaching Civil Procedure: Reflections on Fifty Years of Teaching Civil Procedure*, 47 ST. LOUIS UNIV. L.J. 87, 87 (2003).

69. *Id.*

70. *Id.*

71. *Id.*

72. MO. R. CIV. P. 41.03; FED. R. CIV. P. 1.

73. Mary Kay Kane, *Permissive Joinder of Parties under Rule 20(a) – Purpose and Scope*, 7 FED. PRAC. & PROC. CIV. § 1652 (Wright & Miller eds., 3d ed. 2019).

74. *See* League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency, 558 F.2d 914, 917 (9th Cir. 1977).

75. *Id.*

76. *See* FED. R. CIV. P. 82 ("These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts."); *see also* MO. R. CIV. P. 51.01 ("These Rules shall not be construed to extend or limit the jurisdiction of the courts of Missouri, or the venue of civil actions therein.").

77. *See infra* Part V.A.

dispute to be adjudicated.[78] Jurisdiction and venue, therefore, are a required relationship between the court and the parties, whereas joinder requires a relationship between parties with a similar interest.[79] Therefore, just because a sufficient relationship between parties can be established does not necessarily mean that a relationship between the parties and the court is established. As an example of this interplay, the ability of federal district courts to allow permissive joinder over plaintiffs that would otherwise fail to satisfy diversity jurisdiction requirements[80] has been a difficult problem without a clear answer.[81]

While the requirement that jurisdiction and venue be satisfied independent of permissive joinder was grounded in the text of the FRCP, the implementation of independent inquiries seemed to cut against much of the reasoning for allowing liberal joinder of parties in the first instance.[82] The ability for jurisdictional requirements to almost completely restrict the joinder rules from realizing the efficiencies they were designed to enable led to the enactment of such legislation as the Mutliparty, Multiforum Trial Jurisdiction Act of 2002.[83] Even then, however, substantial limitations were implemented to ensure that it only applied to a small fraction of cases.[84] A district court will only be granted original jurisdiction involving minimum diversity if the case involves a single accident, at least seventy-five people died, and one of three requirements are met: (1) a defendant resides in a state different than the state where the accident occurred; (2) "two defendants reside in different states; or (3) substantial parts of the accident took place in different states."[85]

Notably, Missouri has not been nearly as willing to enact legislation allowing for multiparty cases, likely due to the tort reform movement.[86] Beginning in the 1980s, Missouri leaders and legislators began to join a chorus of individuals calling for drastic changes to the tort system.[87] Specifically,

78. *See infra* Part V.A.

79. *See infra* Part V.A.

80. In order for federal courts to hear cases regarding state law between two parties, the plaintiff and defendant must be citizens of different states, and the amount in controversy must exceed $75,000. *See* 28 U.S.C. § 1332(a) (2018).

81. *See, e.g.*, Zahn v. Int'l Paper Co., 414 U.S. 291, 301 (1973) (holding that each individual plaintiff must meet the $75,000 amount in controversy threshold before being allowed to join under rule 20); *but see* Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 570 (2005) (overturning *Zahn* on the grounds that supplemental jurisdiction allows for the joinder of parties so long as the same transaction or occurrence test has been satisfied and at least one plaintiff meets the $75,000 threshold).

82. *See generally* Thomas D. Rowe, Jr. & Kenneth D. Sibley, *Beyond Diversity: Federal Multiparty, Multiforum Jurisdiction*, 135 U. PA. L. REV. 7 (1986).

83. *See* 28 U.S.C. § 1369 (2018).

84. *Id.*

85. *Id.*

86. *See* Barbara A. Geisman, *Reform or Reshuffle? Consequences of the 2005 Missouri Tort Reform Act*, 42 WASH. U. J.L. & POL'Y 155, 156 (2013).

87. *Id.* at 158.

there was growing concern that both the number of lawsuits and size of damage awards resulting from product liability, toxic tort, and medical malpractice cases were becoming excessive and unsustainable.[88] Plaintiffs' attorneys were able to utilize expansive interpretations of old venue rules to creatively and strategically establish venue in counties that were traditionally known to be more plaintiff-friendly or to award higher amounts of punitive damages.[89] Proponents of tort reform thought that corporations would either not be able to continue operating within Missouri, or they would be disincentivized from bringing their businesses to this state.[90] It was the reformers' view that Missouri businesses would continue to be unjustly, or at least disproportionately, punished unless changes were made regarding damage caps or procedural requirements.[91]

The most relevant tort reform effort for purposes of this Note is the new standard for determining proper venue. Under the new venue statutes enacted by the Missouri Tort Reform Act[92] in 2005, venue in a tort action is proper only in the county where the plaintiff was first injured by the alleged acts or conduct.[93] For purposes of determining where a plaintiff was first injured, the inquiry is directed at the initial place of trauma or exposure rather than the first location where symptoms are manifested.[94] And because the new venue rules were rather straightforward in their implementation, it became more and more difficult to bring a tort action in a county not contemplated by the plain language of the venue statute.[95]

State ex rel. Johnson & Johnson v. Burlison, then, arises from a complex legal history. On one hand, the long-term development of joinder concepts has invariably tended to side with the more expansive principles of the courts of equity over the narrower courts of law. On the other hand, Missouri's recent history shows a level of disdain for abstract principles of venue and jurisdiction. Missouri, instead, chooses to rely on bright-line tests to ensure fairness and justice, thereby barring plaintiffs from using procedural tools to gain strategic advantages. While the right-remedy mode of thought was ultimately rejected in favor of the pragmatists who designed our modern civil procedure rules, the principles of joinder are still grounded in trying to maximize judicial efficiency while trying to obtain an appropriate remedy for

88. *Id.* at 164–65, 178.

89. *See* Craig A. Adoor & Joseph J. Simeone, *The Law of Venue in Missouri*, 32 ST. LOUIS U. L.J. 639, 642 (1988); *see also* Darin P. Shreves, *Counselor, Stop Everything – Missouri's Venue Statutes Receive an Expansive Interpretation*, 75 MO. L. REV. 1067, 1068 (2010).

90. Geisman, *supra* note 86, at 158 (noting that Missouri's United States Senator John C. Danforth even "launched into a tirade on the senate floor against some lawyers who specialize in products-liability lawsuits.").

91. *Id.*

92. H.B. 393, 93d Gen. Assemb., 1st Reg. Session (Mo. 2005).

93. MO. REV. STAT. § 508.010.4 (2018).

94. § 508.010.14.

95. Geisman, *supra* note 86, at 158.

an alleged infringement. *Burlison* represents a crossroads between pragmatic packaging of disputes to most efficiently litigate relevant factual and legal issues and a legislative intent to curb multiparty litigation fervor in the friendliest of venues.

IV. INSTANT DECISION

Against the factual and historical backdrop, the Missouri Supreme Court ultimately had to decide one issue: does meeting the requirements of permissive joinder remove questions of proper venue or must venue be satisfied before a party can be properly joined?

A. Judge Powell's Majority Opinion

The majority opinion, written by Judge W. Brent Powell, focused on MRCP language that restricts the ability of the rules to extend venue via a rule where venue would otherwise be improper.[96] Under the joinder statute, the only way Blaes could establish venue was for him to be permissively joined with other plaintiffs who were properly within the St. Louis City venue.[97] The permissive joinder rule could not be used to bring him into the case, however, because he had no independent basis for venue because he was first injured St. Louis County.[98] The majority noted that MRCP 51.01 mandates that the MRCP could not be used to extend jurisdiction or venue over a party where either would otherwise be lacking.[99]

The majority did not solely rely on statutory interpretation to arrive at its conclusion; it also found that Missouri case law supported its finding.[100] The majority analogized to its earlier holding in *State ex rel. Turnbough v. Gaertner*, finding that permissive joinder may not be used to establish venue when each claim would not, independently, satisfy venue requirements.[101] The court then turned to the plaintiff's other argument that the recent decision

96. State *ex rel.* Johnson & Johnson v. Burlison, 567 S.W.3d 168, 171 (Mo. 2019) (en banc); MO. R. CIV. P. 51.01 ("These Rules shall not be construed to extend or limit the jurisdiction of the courts of Missouri, or the venue of civil actions therein.").

97. *Burlison*, 567 S.W.3d at 171.

98. *Id.* at 173.

99. *Id.* at 172.

100. *Id.* at 173.

101. 589 S.W.2d 290, 292 (Mo. 1979) (en banc). In *Turnbough*, a plaintiff brought personal injury claims against two separate defendants, but the plaintiff chose to bring both claims in a single action in St. Louis City. *Id.* at 290. But the venue was only proper over one of the claims. *Id.* at 291. Also, relying on the language of 51.01, the *Turnbough* court held that venue was not properly had over the other claim, as permissive joinder could not extend venue where it would not otherwise be proper. *Id.* at 291–92.

of *State ex rel. Kinsey v. Wilkins*[102] invalidated the holding of *Turnbough*.[103] The majority found that the *Kinsey* decision was merely an application of the place of first injury principle, the very principle that Blaes failed to satisfy.[104] Therefore, the plaintiff's argument failed, and the Circuit Court of the City of St. Louis was not the proper venue for Blaes's claim.[105]

B. Judge Draper's Dissent

The first dissent, written by Judge George W. Draper III, focused on the fact that the majority opinion's analysis – that the joinder rule cannot independently create venue when otherwise unavailable – ignores the language of the relevant statutes and rules.[106]

First, the dissent argued the joinder rule itself is actually a direct copy from a joinder statute and therefore has just as much legal power as any other statute.[107] It does not receive a lesser level of influence than the venue statute.[108] Because both statutes utilize the language "notwithstanding other provisions of law," neither may counteract the other, and permissive joinder should be allowed if the same transaction or occurrence test is satisfied.[109] Essentially, under Judge Draper's view, venue and permissive joinder operate independently from each other, and neither may be used to invalidate the other.[110]

The dissent contended that the majority opinion cited factually inapposite cases, as they involved a plaintiff suing multiple defendants.[111] Specifically, Judge Draper emphasized that in *State ex rel. Jinkerson v. Koehr*, the court held that joinder was improper because the same transaction or occurrence test was not satisfied.[112] It was not the case that venue had to be satisfied first before a joinder analysis could be performed; the joinder requirements, in that case, simply were not met.[113] According to the dissent,

102. 394 S.W.3d 446 (Mo. Ct. App. 2013). *Kinsey* involved a plaintiff who was injured by two, successive automobile accidents where the plaintiff sustained injuries to the same parts of his body from both accidents. *Id.* at 447–48. The plaintiff in that case brought a consolidated action against both defendants in the county where the first accident occurred. *Id.* That court found venue was proper in the county where the first accident occurred because, "Section 508.010.4 confers venue for separate, yet successive automobile accidents occurring in different counties, in the county of first injury." *Id.* at 453.

103. *Burlison*, 567 S.W.3d at 173–74.

104. *Id.* at 174.

105. *Id.*

106. *Id.* at 176–83 (Draper, J., dissenting).

107. *Id.* at 176.

108. *Id.* at 178; MO. REV. STAT. § 507.040 (2018); MO. R. CIV. P. 52.05.

109. *Burlison*, 567 S.W.3d at 180–81 (Draper, J., dissenting).

110. *See id.* at 180.

111. *Id.* at 176.

112. *Id.* at 182.

113. *Id.*

Jinkerson was not a case about the interplay of joinder and venue but rather a case that turned on the application of joinder alone.[114] Finally, the facts that led to joinder not being satisfied were the same facts that failed to satisfy the venue requirements.[115]

Beyond the factual differences of the cited authority with the current case, Judge Draper also did not agree with the majority's reading of the venue statute.[116] Specifically, Judge Draper did not believe that the post-tort-reform venue provisions provided an answer as to where venue lies in a case where multiple plaintiffs could at least initially be joined after meeting MRCP 52.05(a)'s joinder requirements.[117] Further, the cases most relied on by the majority were dealing with the older version of the venue statute.[118] Without appropriate authority, and without any statutory provision directly on point, Judge Draper could not find any venue grounds to sever an otherwise properly joined party.[119]

C. Judge Wilson's Dissent

Judge Paul C. Wilson's opinion disagreed with the majority from a different angle. Rather than grounding his discussion in whether permissive joinder could override venue deficiencies for individual plaintiffs, Judge Wilson believed that the venue requirements themselves had been satisfied.[120]

First, Judge Wilson noted that the language of the statute only requires a single claim in the case to have the original injury occur in the county where venue is sought.[121] In Judge Wilson's view, the statute's use of the word "claim" instead of "action" was relevant to how it should be interpreted, and the drafters would have understood this fundamental difference.[122] Under the majority's reasoning, the venue requirements would extend to every individual claim in the action, a result that cuts against the plain language of the statute.[123] Therefore, when parties are joined properly – so long as one claim from at least one party meets the venue requirement – the other claims, including those filed by other parties, cannot be severed for a lack of venue.[124]

Notably, Judge Wilson completely agreed with the majority opinion that venue and permissive joinder operate as independent functions rather than one begetting the other.[125] Unlike the theoretical structure of Judge Draper's

114. *Id.*
115. *Id.*
116. *Id.* at 183.
117. *Id.*
118. *Id.* at 182.
119. *Id.* at 183.
120. *Id.* at 183–90 (Wilson, J., dissenting).
121. *Id.* at 184.
122. *Id.*
123. *Id.* at 184–85.
124. *Id.* at 186–87.
125. *Id.* at 188.

dissent, Judge Wilson's reasoning was grounded in a definition of venue that only becomes lax once permissive joinder is satisfied.[126] If Blaes could not be joined under the MRCP, he would not satisfy the venue requirements, but the venue requirements only mandate that a single claim of the entire action be in compliance.[127] So, while Judge Wilson agreed with the majority's underlying reasoning and only differed on issues of statutory interpretation, his mode of conceptualizing venue would necessarily require that the court first allow for joinder to see if any one of the individual claims can meet the venue requirements.[128]

D. Subsequent Legislative Action

If there was ever a chance that the reasoning of either dissenting opinion could eventually become controlling law in a later decision, it was quickly quashed by the Missouri Legislature. Effective August 18, 2019, the Missouri Legislature amended Section 507.040 of the Revised Statutes of Missouri – the section relating to permissive joinder – to adopt the majority's view that permissive joinder could not be used to establish venue when additional plaintiffs could not independently satisfy the requirement.[129] Because the amended statute makes clear that it adopts the holding both as it relates to joinder and venue, it also eliminates any ability of the Supreme Court to reconsider whether Judge Wilson's interpretation of the venue statute is correct.[130]

V. COMMENT

State ex rel. Johnson & Johnson v. Burlison seems to be another victory for the tort reform movement that has proven so influential in Missouri over the past several decades. But, just as the original implementation of the FRCP came at a time where the traditional common law writ system or the newly implemented field codes proved ineffective in addressing the evolving legal disputes of the industrial and post-war eras, this case may serve as an example of how advances in technology and communication have left us in a new legal landscape. In this new landscape, the traditional rules of venue and jurisdiction improperly restrict what would otherwise be the most logical and efficient packaging of factual and legal disputes to be resolved in a way that most fits the rationale behind the implementation of the FRCP in the first place. This Section aims to place this case holding within the context of an

126. *Id.* at 189–90.

127. *Id.* at 190.

128. *Id.*

129. MO. REV. STAT. § 507.040.2 (2018) ("The general assembly hereby expressly adopts the holding of *State ex rel. Johnson & Johnson v. Burlison*, No. SC96704, as issued on February 13, 2019, as it relates to joinder and venue.").

130. *Id.*

increasingly heightened obstacle to dispute packaging to evaluate the future ramifications of the holding.

A. The Increasing Meaninglessness of Geography Calls for Liberal Joinder Application

Part II outlined how the legal world developed from highly technical requirements for joinder all the way to the modern rules. Implicit within that development was a fundamental need to create a procedural system that could adapt to a world that was scientifically developing faster than the court system's ability to create new writs.[131] However, while the FRCP had to change the mechanism for which party joinder was evaluated to match the legal needs of modern society, the technological advancements of that era did not necessitate an entire rethinking of concepts of jurisdiction or venue.[132] For this reason, FRCP 84 – and its Missouri counterpart upon which the majority in *Burlison* based its decision – prohibited joinder rules from extending jurisdiction or venue when either could not be independently established.[133]

But, studying the historical development of questions of venue and jurisdiction leads to the conclusion that novel rules will need to be developed if modern disputes are to ever be effectively litigated. Early concepts of personal jurisdiction were focused on whether a court physically had the ability to enforce a judgment against the plaintiff – the court must have some control over either the person or that person's property.[134] This was intrinsically tied to the geography of any jurisdictional body, as the only situation where jurisdiction could extend beyond a state's borders was if the defendant was found and served in the jurisdiction.[135]

Venue's historical development is even more intrinsically tied to geography. At English common law, venue had to be proximate to the location where the acts or conduct of a lawsuit occurred because of stringent requirements that jurors have personal knowledge of the events.[136] As the legal world evolved in the nineteenth and twentieth centuries, venue was still mostly associated with finding a forum where the a defendant resided or could be found.[137] One of the earliest hurdles of these concepts of venue and jurisdiction was with regard to corporations, as it was not as intuitive to

131. Weinstein & Hershenov, *supra* note 40, at 279.

132. Bone, *supra* note 31, at 8–9.

133. FED. R. CIV. P. 84; MO. R. CIV. P. 51.01.

134. *See, e.g.*, McDonald v. Mabee, 243 U.S. 90, 91–92 (1917) ("The foundation of jurisdiction is physical power . . . the ground for giving subsequent effect to a judgment is that the court rendering it had acquired power to carry it out . . . .").

135. *See, e.g.*, Louisville, C. & C.R. Co. v. Letson, 43 U.S. 497, 530–31 (1844); Bank of Augusta v. Earle, 38 U.S. 519, 528 (1839).

136. E. Lawrence Vincent, *Defining 'Doing Business' to Determine Corporate Venue*, 65 TEX. L. REV. 153, 156 (1986).

137. *Id.* at 157.

determine where some sort of legal construct "resided."[138] Even with the development of corporate venue, courts still rooted the discussion of these topics in concepts of geography, aiming to identify the state of incorporation, the nerve center of the company, and any state with sufficient contacts to establish residency.[139]

"The times they are a changin'."[140] Every day, advances in technology cause the world to shrink.[141] Technological advancements have made it possible for communications across the entire planet to be made at the speed of light.[142] Transportation technology has given normal individuals the ability to make the treks of humankind's greatest explorers in a fraction of the time with a fraction of the skill of those expeditioners.[143] Gone are the days where individuals are restricted to only communicating with those who reside within the same county, state, or national border.[144] Even mundane forms of modern communication have the ability to reach far beyond the geographic scope of the jurisdiction where one resides.[145]

Whether this advancement in technology is an overall benefit for society is outside the scope of this Note. Rather, the importance of technological advances lies within the very foundational ideas of venue and jurisdiction that so frequently serve as checks to the liberal policy of permissive joinder. As most scholars maintained when implementing the FRCP in the early twentieth century, consolidation of claims and parties into a single suit could greatly increase the efficiency of the court system, thereby making all the relevant parties better off.[146] While the pursuit of a platonic procedure was rightfully abandoned for considerations of pragmatism, the underlying theory guiding the rules of joinder calls for these rules to be flexible enough to adapt to whatever changes modernity may bring.[147]

Unlike in the 1930s, the disputes of the modern world are not likely to fit neatly within geographic boundaries. Just how the FRCP adjusted the procedural approach to accommodate the declining two-party model of resolving legal disputes, so too should the modern joinder rules allow for the packaging of parties and claims that may not naturally conform to hundred-year-old conceptions of jurisdiction and venue. Yet, not only have the last two decades shown a lack of progress in expanding the bounds of joinder, but

138. *See id.*

139. *See id.*; *see also* Int'l Shoe Co. v. Washington, 326 U.S. 310, 319 (1945).

140. BOB DYLAN, THE TIMES THEY ARE A-CHANGIN' (Columbia Records 1964).

141. *See* Anne Krueger, *Economic Growth in a Shrinking World: The IMF and Globalization, Address by Anne Krueger, Acting Managing Director, IMF*, IMF, (June 2, 2004) https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp060204 [perma.cc/C7SW-VLBH].

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *See* Bone, *supra* note 31, at 38–39.

147. *Id.* at 25.

statutory reform in states like Missouri painstakingly confirm that traditional concepts of jurisdiction and venue must still serve as checks to the broad scope of joinder. Does it make sense to keep jurisdiction and venue from developing and thus freeze the development of joinder?

B. Modern Concerns of Expansive Joinder Application Led the Missouri Legislature to Adopt the Holding of Burlison

Even through the lens of corporate defendants, the ability for multiple plaintiffs to join in a single lawsuit dealing with a single nucleus of operative facts may prove to be advantageous by eliminating the need to provide resources for a multitude of repetitive lawsuits.[148] However, corporations proved to be some of the most vociferous opponents to the ever-expanding use of joinder alongside venue in the late twentieth century and were one of the strongest driving forces behind tort reform.[149]

An underlying concern espoused by those in the legislature and by business leaders was the ability for many out-of-state plaintiffs to file joint suits in Missouri due to broad joinder application.[150] When the U.S. Chamber of Congress surveyed businesses in 2018 on how well they are treated by state courts, Missouri ranked forty-ninth.[151] Governor Parson supported changing the standards for joinder claiming the change offers "long overdue relief to Missouri businesses that have been taken advantage of by rampant abuse of our state's legal system."[152]

This concern of business leaders and legislators is not unsupported. St. Louis has become a primary choice by many out-of-state plaintiffs in product liability cases.[153] From 2014 to 2015, the number of petitions increased from around 3000 to almost 13,000 in St. Louis City courts.[154] Over 140 mass tort claims were filed in St. Louis City in 2016, and 8900 of the plaintiffs in those cases had no residential ties to the city.[155] *Bloomberg Businessweek* did not mince words in calling St. Louis City "a venue that over the past three years has developed a reputation for fast trials, favorable rulings, and big awards."[156] Regarding talc-based cases, the product at issue in *Burlison*,

148. Mary Kay Kane, *Permissive Joinder of Parties under Rule 20(a) – Purpose and Scope*, 7 FED. PRAC. & PROC. CIV. § 1652 (Wright & Miller eds., 3d ed. 2019).

149. *See* Geisman, *supra* note 86, at 182.

150. *Missouri Lawmakers Vote to Limit Some Civil Lawsuits*, *supra* note 2.

151. *Id.*

152. *Id.*

153. Philip S. Goldberg et al., *The U.S. Supreme Court's Personal Jurisdiction Paradigm Shift to End Litigation Tourism*, 14 DUKE J. CONST. L. & PUB. POL'Y 51, 85 (2019).

154. *Id.* at 85–86.

155. *Id.*

156. Margaret Cronin Fisk, *Welcome to St. Louis, the New Hot Spot for Litigation Tourists*, BLOOMBERG BUSINESSWEEK, (Sept. 29, 2016) https://www.bloomberg.com/news/articles/2016-09-29/plaintiffs-lawyers-st-louis [perma.cc/8MNG-R7E8].

around two-thirds of all claims were filed in St. Louis City.[157] The propensity for large awards seems to be meritorious, with four suits generating $300 million in damages each.[158]

Because plaintiffs' attorneys across the country seemed to have an unlimited ability through the combination of the pre-*Burlison* loose joinder, venue, and jurisdiction rules to choose a particular arena for the lawsuit, they were able to target St. Louis as a premier forum.[159] Another technological advancement, the ability to collect and process incredibly large sets of data, allowed these attorneys to develop sophisticated methods for determining which venues would give them the highest chances of winning a case with a very large damage award.[160] For this issue, tort reform has proven very successful, reducing the disproportionate share of disputes heard by plaintiff-friendly courts.[161]

But this was not the only result of tort reform, and some of the other results are not so easily justified. In Missouri, not only did the legislature's action shift where lawsuits were brought, it also considerably lowered the amount of lawsuits brought altogether.[162] Specifically, the data show the types of lawsuits that have seemed to disappear are those where the individuals do not have a strong enough financial incentive to bring any sort of suit against a defendant unless they have the ability to join their claim with others in a similar situation.[163] There are certain claims that, by their nature, result from a large injury caused by a single defendant, but the total damages are diffused amongst so many plaintiffs that each individual claim is not economically viable for a lawsuit. This, in fact, is the main theory behind allowing class actions.[164] Further, some districts that were already quite economically strained have become even more so with an increase in tort filings due to geography-based venue.[165] Additionally, in other areas of law where an individual's claims entailed high enough damages to support individual cases, restrictive joinder rules ultimately led to an *increase* in case filings.[166]

Therefore, there is an underlying tension between two legitimate concerns. On one hand, the technological development of society has rendered archaic concepts of geography-based venue and joinder obsolete and contrary to the fundamental principles underlying the FRCP. On the other

157. Goldberg et al., *supra* note 153, at 86.

158. *Id.*

159. *See* Geisman, *supra* note 86, at 169.

160. *See id.* at 182–83.

161. *Id.* at 181.

162. *Id.*

163. *Id.* at 175.

164. *See* Owen M. Fiss, *The Political Theory of the Class Action*, 53 WASH. & LEE L. REV. 21, 22 (1996).

165. *See* Geisman, *supra* note 86, at 175.

166. *See* Dongbiao Shen, *Misjoinder or Mishap? The Consequences of the AIA Joinder Provision*, 29 BERKELEY TECH. L.J. 545, 560 (2014).

hand, other technological developments have developed increasingly sophisticated methods for choosing the perfect forum to maximize the chance of quick and large damages awards. The latter seems to be winning the argument, as modern tort reform movements are indisputably a regression in the historical development of joinder and venue. The statute enacted by the Missouri Legislature harkens back to the days where a blacksmith could only expect any dispute to arise from the community where members would buy his horseshoes.

But the data do seem to indicate that joinder and venue rules, left unrestrained, can lead to the merits of the case being decided on a choice of venue rather than issues of law and fact. Further, even if many courts would reach the same decision, liberal joinder rules can allow plaintiffs' attorneys to isolate the location inclined to grant the largest damage award to a highly predictable extent.[167] Procedural law serving as an effective end-all-be-all for substantive issues goes against even the most liberal interpretation of the purpose behind the FRCP. If this legislation has similar effects as prior tort reforms, procedure as a substantive tool will certainly be diminished, but at the cost of shutting the courthouse doors to many. Can the principle of broadening venue and joinder enough to adjudicate the modern dispute efficiently and effectively ever be balanced by the principle of venue and joinder not being used as substantive law?

C. The Net Result of Burlison *and its Subsequent Legislation and Possible Paths Forward*

The decision in *Burlison* and the subsequent action by the Missouri Legislature do not make Missouri an outlier but rather end the practice of Missouri being one of the remaining stalwarts not fully abiding by recent United States Supreme Court rulings on personal jurisdiction.[168] Both federal and Missouri procedural law will now, effectively, only allow multiparty actions to be brought in a forum where the defendant "resides."[169] This is because, unless all the injuries occurred in the same location, only general

167. Goldberg et al., *supra* note 153, at 86.

168. *See Judicial Hellholes: City of St. Louis, Missouri*, AM. TORT REFORM FOUND. (Dec. 3, 2018), https://www.judicialhellholes.org/2018-2019/the-city-of-st-louis-missouri/ [perma.cc/GE53-NQ72] (discussing how St. Louis courts have been slow to apply *Bristol-Meyers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773 (2017)). The holding of *Bristol-Meyers Squibb* requires that personal jurisdiction not be used to join out of state parties when there is not a sufficient nexus between the actions of a defendant with that forum state. 137 S. Ct. at 1780. The Court spoke to geography-based concepts of procedure, referring to the territorial limits of states over the defendants residing out-of-state. *Id.* The only state that would have been proper for all the claims to be brought together would be the state of incorporation or primary place of business where general jurisdiction could be established. *See id.* at 1781.

169. *See* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011); *see also* State *ex rel.* Johnson & Johnson v. Burlison, 567 S.W.3d 168, 174–75 (Mo. 2019) (en banc).

jurisdiction may be utilized.[170] For corporations, that would be either their state of incorporation or their primary place of business.[171] As discussed above, by requiring cases to be brought in the "home-field" of corporations if parties are to be joined, the overall amount of lawsuits have fallen.

The problem with tort reform efforts, such as the act passed by the Missouri Legislature, is that they almost always approach changes in procedural law by creating absolute limitations on the applications of joinder, venue, or personal jurisdiction. This approach does address the underlying concern that venue should not be the deciding factor of a case, but the reform's success is predicated on a regression of the liberal joinder application required to match the restorative needs of an evolving society. Instead, if the reform efforts aimed to identify and eliminate the *substantive* differences present in the most troublesome districts, both seemingly conflicting rationales behind joinder rules could be furthered.

As an example of a substantive difference between Missouri procedural law and that commonly found nationwide, a New Jersey state court disqualified the same experts that provided testimony for many talc cases in St. Louis City.[172] Both federal courts and Missouri courts utilize essentially equivalent language for qualifying expert witnesses.[173] However, Missouri differs from nationwide jurisdictions through a functionally different application of the requirement that the expert's opinions be "the product of reliable principles and methods."[174] In Missouri, weaknesses in the factual underpinnings of an expert's opinions or knowledge merely go to the weight of the testimony rather than to admissibility.[175] The only way a court will exclude expert witness testimony is if it "is so slight as to render the opinion fundamentally unsupported."[176] Enacting legislation superseding this application may not completely remove the problem, but it would at least help mitigate using Missouri forums for less meritorious cases. Further, this change would not serve as an inhibition for plaintiffs to seek relief in the first place.

Importantly, while much of the concern espoused by the legislators in passing the bill was directed toward out-of-state plaintiffs, the holding in *Burlison* went further. The holding, and now statutory language, requires that even each *Missouri* plaintiff must satisfy venue requirements.[177] Because the venue requirements are intrinsically tied to county lines, the same regression of procedural values would occur even within the state.

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170. *See Goodyear*, 564 U.S. at 919; *see also Burlison*, 567 S.W.3d at 174.

171. *See Goodyear*, 564 U.S. at 924; *see also Burlison*, 567 S.W.3d at 181 (Draper, III, J., dissenting) (quoting MO. REV. STAT. § 508.010.5(1) (2018)).

172. Goldberg et al., *supra* note 153, at 86.

173. *Compare* FED. R. EVID. 702 *with* MO. REV. STAT. § 490.065 (2018).

174. § 490.065.2(1)(c).

175. Whitnell v. State, 129 S.W.3d 409, 414 (Mo. 2004) (en banc).

176. *Id.*

177. State *ex rel.* Johnson & Johnson v. Burlison, 567 S.W.3d 168, 171 (Mo. 2019) (en banc).

One possible way to lessen forum shopping within the state without making great sacrifices in judicial economy would be to enact a Missouri analog of Federal Multidistrict Litigation ("MDL").[178] At the federal level, if "civil actions involving one or more questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings."[179] Congress has created a judicial panel on MDL, and this panel assigns cases to a specific judge and district.[180] Once discovery, pretrial motions, and other pretrial proceedings are completed, the various claims are then sent back to their respective districts for trial so long as the case is not dismissed or settled.[181]

If Missouri were to pass legislation similar to federal MDL, the legislature could help ensure that liberal construction and application of joinder and venue rules do not act in a substantively dispositive manner while also maintaining a policy of pragmatic and efficient dispute resolution. By having one court handle pretrial procedures, much of the inefficiency of repeating highly similar discovery and pretrial motions would be eliminated. But, because the cases would ultimately be sent to their respective circuits for trial, disparate treatment toward corporations and irregularities in damage awards would be mitigated. Finally, if Missouri also enacted a panel to decide which judge and court would conduct the pretrial proceedings, many aspects of forum shopping would be taken out of the strategic hands of the parties.

Both options showcase that there are better approaches to resolve conflicting policy rationales than merely choosing one that is more important than the other. The historical purpose behind the development of liberal joinder and venue rules is clear. It is also clear that the liberal application of these rules has led to procedural law being applied as substantive rules, cutting against its primary role of efficient and fair dispute resolution. If a holistic solution is sought, a remedy, rather than mere treatment of procedural symptoms, is more likely to be achieved.

VI. CONCLUSION

Joinder was designed to evolve with society: that is why a rule from 1938 still operates effectively without a major overhaul. Legitimate concerns have arisen regarding its liberal application in the modern world as contemplated by the reformers that brought about modern procedural thought. However, restraining the progress of procedural law to inhibit its detriments is no different than treating the symptoms of a disease without seeking its cure. The goal of tort reform – to figure out how to reduce unfair forum shopping – is a

178. *See* Andrew D. Bradt, Zachary D. Clopton, *MDL v. Trump: The Puzzle of Public Law in Multidistrict Litigation*, 112 NW. U. L. REV. ONLINE 85, 97 (2018) (arguing that the MDL has reduced forum shopping at the federal level).

179. 28 U.S.C. § 1407(a) (2018).

180. § 1407(b).

181. § 1407(a).

justified goal. But procedural changes that close the courthouse doors to modern disputes cannot be an acceptable solution.