No. 24-783

IN THE

Supreme Court of the United States

ENBRIDGE ENERGY, LIMITED PARTNERSHIP, et al.,

Petitioners,

v.

DANA NESSEL,
Attorney General of the State of Michigan, on behalf of the People of the State of Michigan,

Respondent.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Sixth Circuit

BRIEF OF NORTH AMERICA'S BUILDING TRADES UNIONS AND UNITED STEELWORKERS AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI[1]

North America's Building Trades Unions ("NABTU") is a labor organization composed of fourteen national and international unions and over 330 provincial, state, and local building and construction trades councils representing more than three million workers in the construction industry. Thousands of those workers are employed in the pipeline and energy sector, including:

- Pipefitters and welders represented by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada;
- Heavy equipment operators, mechanics, and surveyors represented by the International Union of Operating Engineers, who operate, maintain, and repair the equipment used on pipeline projects;
- Transportation workers represented by the International Brotherhood of Teamsters, who move material and people to, from, and around the sites where pipelines are built, repaired, and maintained;
- Construction laborers represented by the Laborers International Union of North America, who clear rights of way, prepare jobsites, place pipes, and restore the landscape after the pipeline is buried; and

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[1] Counsel of record for all parties received notice of amici's intent to file this brief at least ten days before its due date. No counsel for a party authored this brief in whole or in part, and no person other than amici or their counsel made a monetary contribution to the preparation or submission of this brief.

- Electricians represented by the International Brotherhood of Electrical Workers, who work at pumping and service stations along pipelines to ensure that the instruments, valves, gauges, pumps, and motors operate properly.

Members of all of NABTU's affiliates also perform critical maintenance and repair of facilities that rely on pipelines like the Line 5 pipeline at issue in this case, including refineries that refine crude oil and fractionators that separate propane and butane from natural gas liquids.

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC ("United Steelworkers" or "USW") represents approximately 600,000 members in the United States and Canada in numerous industrial and other sectors, including the energy sector, where it represents employees working in oil refineries, as well as those involved in maintaining and constructing pipelines. USW is the largest union in the American refining industry, representing production and maintenance workers at over seventy refining locations in the United States — facilities that together contribute over two-thirds of the nation's domestic fuels. USW represents workers in refineries that are fed by Line 5 and whose employment would be jeopardized if Line 5 were closed.

NABTU and USW have a strong interest in this case, which could determine the future employment and well-being of thousands of their members.

INTRODUCTION AND SUMMARY OF ARGUMENT

On June 27, 2019, Michigan Attorney General Dana Nessel sued in state court to enjoin operation of the Line 5 pipeline. Pet. 3a. Over a year later, Governor Gretchen Whitmer issued a notice of revocation of an easement that authorizes petitioners (together, "Enbridge") to operate the Line 5 pipeline in the Straits of Mackinac, and the Governor filed suit in state court to enforce that notice. Pet. 4a. Enbridge removed Governor Whitmer's lawsuit to federal district court, and Attorney General Nessel agreed to hold her state-court action in abeyance. Pet. 9.

The district court denied Governor Whitmer's motion to remand on November 16, 2021. Pet. 6a. Governor Whitmer then voluntarily dismissed the case in an attempt to avoid the issues at stake from being determined in federal court. R.38:12.

Enbridge then removed Attorney General Nessel's case (this case) to federal court on December 15, 2021. Pet. 7a. The district court denied the Attorney General's motion to remand, finding that "[i]t would be an absurd result for the Court to remand the present case and sanction a forum battle," and that "[i]n this battle about the correct law to apply . . . this Court has already said important federal interests determine federal jurisdiction and a federal forum." Pet. 37a.

Attorney General Nessel filed an interlocutory appeal, and the Sixth Circuit reversed. The Sixth Circuit held that "there is no equitable exception to § 1446(b)'s timing requirements." Pet. 24a. In so holding, the Sixth Circuit exacerbated a split in the Circuits that this Court should resolve.

I. Congress provided for federal-question removal

as part of a Reconstruction-era effort to ensure consistent interpretations of important federal issues. The evolution of federal-question removal law shows efforts to strike a balance between decision making by the most competent court, on the one hand, and speedy, fair resolution of disputes, on the other. Today, that balancing is reflected in 28 U.S.C. § 1446(b), which provides defendants with thirty days to remove a case.

II. Section 1446(b)'s thirty-day deadline period is a nonjurisdictional claims-processing provision. As such, it is "presumptively subject to equitable tolling." *Harrow v. Dep't of Def.*, 601 U.S. 480, 489 (2024) (quoting *Boechler, P.C. v. Comm'r*, 596 U.S. 199, 209 (2022)). The Fifth, Seventh, and Eleventh Circuits have held that the thirty-day deadline in Section 1446(b) is subject to equitable tolling. The Second Circuit had been the lone circuit to find that the thirty-day period is not subject to equitable tolling. Now the Sixth Circuit has furthered the split by holding that equitable tolling does not apply to Section 1446(b), and that the thirty-day deadline must be met for a complaint to be removed, irrespective of the circumstances.

III. As a result of the decision below, this lawsuit would be remanded back to state court while parallel litigation continues in federal court. The outcome of this forum battle will measurably impact the livelihoods of amici's members.

Thousands of NABTU and USW members in the United States and Canada operate and maintain the Line 5 pipeline and its associated industrial facilities. They earn solid, middle-class wages and benefits. Closing just two of the refineries that rely on Line 5 could cost approximately $129 million in lost wages

and benefits, strain social safety nets, and threaten joint labor-management apprenticeship programs. Workers across Line 5 will face similarly devastating impacts if the pipeline is shut down. This case shows that whether the thirty-day removal deadline can be tolled is an important issue that can affect scores of nonparties.

IV. The court below should have evaluated whether the facts of this case merited equitable tolling, rather than hold that equitable tolling is unavailable under Section 1446(b) in all instances. Congress did not intend to rebut the equitable tolling presumption with respect to removal. The removal statute does not contain unusually emphatic or highly detailed language, and tolling would not affect parties' substantive rights. Nothing about Section 1446(b)'s text, its context, or cases interpreting it show that Congress intended to prevent tolling of its thirty-day deadline. This Court should grant certiorari to resolve the conflict between the circuits.

ARGUMENT

I. Federal-Question Removal Balances the Need for Consistent Decisions on Important Federal Issues with the Goal of Swift Litigation.

Since the Judiciary Act of 1789, ch. 20, § 12, 1 Stat. 73, 79-80, Congress has provided for some form of removal of state cases to federal court. But for over eighty years, there was no federal-question removal procedure. In the years before Reconstruction, federal courts were primarily responsible for protecting "citizens litigating outside of their own states and thereby exposed to the threatened prejudice of unfriendly tribunals," and not for vindicating rights established

under federal law. Felix Frankfurter & James M. Landis, *The Business of the Supreme Court: A Study in the Federal Judicial System* 64 (1928).

Then came a "radical change[] in the law regulating removals." *Gold-Washing & Water Co. v. Keyes*, 96 U.S. 199, 204 (1878). In 1875, Congress allowed *any* party — defendant or plaintiff — to remove cases "arising under the Constitution or laws of the United States, or treaties made . . . under their authority" by petitioning before the case was tried in state court. Act of Mar. 3, 1875, ch. 137, §§ 2-3, 18 Stat. 470, 470-71.

The 1875 removal reform was "part of a larger substantive law and jurisdictional revolution" arising out of Reconstruction. Michael G. Collins, *The Unhappy History of Federal Question Removal*, 71 Iowa L. Rev. 717, 720 (1986). Federal courts became "the primary and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States." Frankfurter & Landis, *supra*, at 65. And federal-question removal "ensure[d] that the tribunal better informed on questions of federal law would adjudicate" federal-law cases, promoting consistency in the interpretation of important federal issues. 16 James W. Moore et al., *Moore's Federal Practice* § 107.03 (3d ed. 2023).

As a result, federal judges' workloads increased, and casehandling delays grew. *See* Frankfurter & Landis, *supra*, at 77-78. In 1887, Congress restricted the removal right to defendants and pushed back the deadline for removing from any time before trial to any time before the defendant was required to respond to the plaintiff's complaint. Act of Mar. 3, 1887, ch. 373, § 1, 24 Stat. 552, 553-54.

One purpose of the 1887 law was to establish a uniform removal procedure "unaffected by local law definition or characterization of the subject matter to which it is to be applied." *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 104 (1941). But basing the limitations period on the time for responding to the complaint caused the removal deadline to vary from state to state. *See Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 351 (1999). To create a uniform end-date that left adequate time to decide whether to remove the case, Congress enacted 28 U.S.C. § 1446(b), which originally provided that "[t]he petition for removal of a civil action or proceeding may be filed within twenty days after commencement of the action or service of process, whichever is later." Act of June 25, 1948, Pub. L. No. 80-773, § 1446(b), 62 Stat. 869, 939.

Section 1446(b) was amended one year later to change the timing trigger to receipt of the initial pleading or service of summons. Act of May 24, 1949, Pub. L. No. 81-72, § 83(a), 63 Stat. 89, 101. That law also added the precursor of what is today Section 1446(b)(3), which alternatively triggers the limitations period when the defendant first receives notice that the case is or has become removable. These changes protected defendants from having to remove a suit before knowing what the suit was about. *Murphy Bros.*, 526 U.S. at 351-52. Congress later extended the removal deadline from twenty to thirty days, where it stands today. *Id.* at 352 n.3.

The evolution of the removal statutes shows that Congress wanted to accommodate both the need for consistent interpretations of federal issues *and* the desire for "fair and unprotracted administration of justice." *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 77 (1996).

Because of the important role removal plays in the "proper allocation of decision-making responsibilities between state and federal courts," *Wilson v. Intercollegiate (Big Ten) Conference Athletic Ass'n*, 668 F.2d 962, 965 (7th Cir. 1982), defendants must have a fair opportunity to decide whether to remove, *see Murphy Bros.*, 526 U.S. at 351-52. At the same time, defendants should not be able to "wait and see" how a state proceeding goes before deciding whether to remove, and state courts should not have to waste significant time and resources processing a case that will ultimately be removed to federal court. *See Johnson v. Heublein Inc.*, 227 F.3d 236, 242 (5th Cir. 2000).

II. Circuits Have Split on Whether Section 1446(b)'s Thirty-Day Period Can Be Equitably Tolled.

Just last term, this Court explained: "The procedural requirements that Congress enacts to govern the litigation process are only occasionally as strict as they seem." *Harrow*, 601 U.S. at 483. Instead, "most time bars are nonjurisdictional." *Id.* at 484 (quoting *United States v. Kwai Fun Wong*, 575 U.S. 402, 410 (2015)). As such, "a court may be able to excuse the party's non-compliance for equitable reasons." *Id.* Stated differently, "nonjurisdictional [timing rules] 'are presumptively subject to equitable tolling.'" *Id.* at 489 (quoting *Boechler*, 596 U.S. at 209) (brackets in original). That's because "[e]quitable tolling is a traditional feature of American jurisprudence and a background principle against which Congress drafts limitations periods." *Boechler*, 596 U.S. at 208-09.

Equitable tolling applies to procedural timing rules, such as those set forth in 28 U.S.C. § 1446(b), "[e]xcept — and this 'except' is important — in a small set of cases, where the procedural rule counts as

'jurisdictional.'" *Harrow*, 601 U.S. at 484. A procedural rule is jurisdictional only if "it governs a court's adjudicatory capacity, that is, its subject-matter or personal jurisdiction." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011).

The court below correctly recognized that Section 1446(b)'s thirty-day deadline does not fall in that small set of jurisdictional rules. Pet. 19a. Instead, filing deadlines like Section 1446(b) "are quintessential claim-processing rules" that "promote the orderly progress of litigation." *Henderson*, 562 U.S. at 435. Without a "'clear' indication that Congress wanted the rule to be 'jurisdictional,'" claim-processing rules are subject to the equitable tolling presumption. *Id.* at 436.

This Court described the timing requirements in the 1875 predecessor to today's removal statutes as "modal and formal," compared to the "jurisdictional," "indispensable" section "defin[ing] the cases in which a removal may be made" (today, 28 U.S.C. § 1441). *Ayers v. Watson*, 113 U.S. 594, 598 (1885). Lower courts have since overwhelmingly agreed, holding that Section 1446(b)'s thirty-day deadline is a procedural claim-processing rule and not a jurisdictional requirement.[2]

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[2] *See, e.g.*, *Universal Truck & Equip. Co. v. Southworth-Milton, Inc.*, 765 F.3d 103, 109-10 (1st Cir. 2014); *Agyin v. Razmzan*, 986 F.3d 168, 182 (2d Cir. 2021); *Farina v. Nokia, Inc.*, 625 F.3d 97, 114 (3d Cir. 2010); *Westlake Legal Grp. v. Yelp, Inc.*, 599 F. App'x 481, 484 (4th Cir. 2015) (per curiam); *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983) (per curiam); *Seaton v. Jabe*, 992 F.2d 79, 81 (6th Cir. 1993); *N. Ill. Gas Co. v. Airco Indus. Gases*, 676 F.2d 270, 273 (7th Cir. 1982); *Fin. Timing Publ'ns, Inc. v. Compugraphic Corp.*, 893 F.2d 936, 940 (8th Cir.

Given that Section 1446(b) is nonjurisdictional, the Fifth, Seventh, and Eleventh Circuits equitably toll the thirty-day deadline set forth in Section 1446(b) on a case-by-case basis. *E.g.*, *Gillis v. Louisiana*, 294 F.3d 755, 759 (5th Cir. 2002); *Loftin v. Rush*, 767 F.2d 800, 805 (11th Cir. 1985); *Wilson*, 668 F.2d at 965. Echoing this Court's opinion in *Ayers*, these circuits have explained that "modal," "technical" defects should not necessarily prevent review of cases within federal courts' jurisdiction. *Loftin*, 767 F.2d at 805. "[E]xceptional circumstances" can excuse untimely filings. *Getty Oil Corp. v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1264 (5th Cir. 1988). For example, in *Loftin*, the government removed several weeks after the thirty-day period expired. But because the state court had awarded a judgment that grossly exceeded its authority and implicated important federal issues, the Eleventh Circuit excused the government's delay. 767 F.2d at 805.

Equitable tolling by no means nullifies Section 1446(b). For example, in *Wilson*, a student athlete sued in state court claiming violations of federal and state equal protection and due process law. The defendants did not timely remove. The plaintiff later amended his complaint to include additional claims, but those new claims "merely . . . purport[ed] to further show that the treatment of which Wilson complained was unlawful." 668 F.2d at 966. The defendants eventually removed, but only after it became clear that "they were doing badly in the state courts."

1990); *Corona-Contreras v. Gruel*, 857 F.3d 1025, 1029 (9th Cir. 2017); *McLeod v. Cities Serv. Gas Co.*, 233 F.2d 242, 244 (10th Cir. 1956); *Moore ex rel. Rice v. N. Am. Sports, Inc.*, 623 F.3d 1325, 1329 (11th Cir. 2010) (per curiam); *Harris v. U.S. Dep't of Transp.*, 122 F.4th 418, 425 (D.C. Cir. 2024).

Id. The Seventh Circuit explained that tolling *is* available where an amended complaint "so changes the nature of [a plaintiff's] action as to constitute 'substantially a new suit begun that day.'" *Id.* at 965 (quoting *Fletcher v. Hamlet*, 116 U.S. 408, 410 (1886)). But the court also noted that Section 1446(b)'s thirty-day period is designed to deprive defendants "of the undeserved tactical advantage" of waiting to see how state litigation pans out before removing. *Id.*

The Second Circuit has split with these courts. Despite the importance of consistent decisions on important federal issues and Section 1446(b)'s nonjurisdictional nature, the Second Circuit treats the thirty-day limit as unbending: "[N]othing in the statute provides a court with *any* discretion to allow a party to cure a failure to meet the statute's requirements once the thirty-day period for removal lapses." *Taylor v. Medtronic, Inc.*, 15 F.4th 148, 153 (2d Cir. 2021) (emphasis added).

The Sixth Circuit's decision below further deepens the split. Now both the Second and Sixth Circuit find that Section 1446(b)'s claim-processing rules "leave no room for equitable exceptions." Pet. 24a.

III. Remanding This Case to State Court Would Imperil the Jobs, Wages, and Benefits of Thousands of Third Parties.

Whether the thirty-day deadline for removing a case can be tolled is important to defendants. Pet. 23-26. But it also impacts third parties, like the thousands of NABTU and USW members that operate and maintain the Line 5 pipeline and its associated industrial facilities. If this case is remanded back to state court while "closely parallel[]" litigation continues in federal court, thousands of NABTU and USW

members risk being caught in the crossfire of a forum battle. Pet. 4a.

Line 5 has transported energy sources through Wisconsin and Michigan and Ontario, Canada, for over six decades. Refineries in Michigan, Ohio, Pennsylvania, Ontario, and Quebec depend on the crude oil Line 5 delivers, and facilities in Wisconsin, Michigan, and Ontario rely on Line 5 to provide natural gas liquids ("NGLs") to produce propane and butane essential to meeting consumer heating demands in those and other jurisdictions.

For members of the building and construction trades, the work associated with Line 5 falls into two basic categories: (1) maintaining the current pipeline, and (2) servicing the heavy industry Line 5 supports. Along Line 5's route, Enbridge operates pump stations and other facilities that NABTU members routinely service. Workers ensure that pressure gauges and pumps are operating properly, and they repair and replace equipment as needed. These workers also monitor Line 5 itself — inspecting the pipeline and its structural components (including its supports) for problems like corrosion, dents, and cracks, and making necessary repairs, which can include anything from reinforcing a portion of pipe to full-scale replacement of a pipe segment. Line 5 further supports thousands of jobs in facilities that process and use crude oil and NGLs, including refineries and fractionators.

Line 5 begins at its main terminal in Superior, Wisconsin, where USW represents approximately 140 Enbridge production and maintenance employees. Traversing Michigan, Line 5 is the exclusive source of NGLs to a fractionator in Rapid River, Michigan, which is the primary source of propane for the Upper Peninsula. The pipeline also provides nearly 30% of

the crude processed by Marathon Oil's Detroit facility.

Crude oil transported by Line 5 reaches two Ohio refineries, as well: PBF Energy Toledo and the Cenovus Refinery. USW represents approximately 375 production and maintenance and office and technical employees at PBF Energy's Toledo Refinery, and 325 process, production, and maintenance employees at the Cenovus Refinery (formerly known as the bp-Husky Toledo Refinery).

In Canada, Line 5 is the major source of product to Sarnia, Ontario's vast industrial base. Line 5 is the only existing, feasible transportation mode to provide NGLs to Plains Midland Canada's Sarnia fractionator, which produces butane and propane. Line 5 crude oil also reaches Imperial Oil's Sarnia operations (a complex consisting of a refinery, chemical plant, and petroleum research facility), the Suncor Sarnia refinery, and the Shell Sarnia refinery. Line 5 feeds pipelines that support the Imperial Nanticoke refinery in Ontario, the Suncor Montreal and Valero Levis refineries in Quebec, and United Refining's facility in Warren, Pennsylvania.

These are all large facilities, covering acres of land and housing a web of complex, heavy machinery that must operate consistently and, except in the case of required maintenance, without interruption to provide the energy and fuel needed to meet consumer demand. The skilled building trades workers represented by NABTU's affiliates constantly monitor, maintain, and repair this equipment in facilities across the Upper Midwest and in Canada. Thousands of these workers are employed on an ongoing basis in these facilities, while thousands of others are brought in on an as-needed or regularly scheduled basis when the plants are completely shut down for full-scale

equipment overhauls.

If Line 5 ceased operation, the refineries in Michigan, Ohio, Ontario, Quebec, and Pennsylvania that depend on the products the pipeline carries would either have to significantly reduce production or close down completely. In either case, the impact on workers who depend on Line 5 for their employment would be dramatic.

Take just the two Ohio refineries. Data collected by NABTU's affiliated unions shows that in 2020 — during the COVID-19 pandemic — their members performed 2,000,614 hours of routine and large-scale maintenance at the PBF Energy and Cenovus refineries in Toledo, Ohio. That's approximately equivalent to full-time employment for ***one thousand workers***, which is in addition to the production and other maintenance work performed by USW members employed directly at these facilities.[3]

Wage rates vary by trade and by experience level, but for perspective, the average hourly wage for building trades workers in Lucas County (the site of the refineries) is approximately $41.03. *See* ACT Ohio,

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[3] Because many construction trades workers often work intermittently, moving from job to job and employer to employer, and because wages and benefits are paid and reported on an hourly basis, employment in the industry is commonly tracked through hours of work rather than numbers of individual workers. Assuming the reported hours reflect full-time employment (forty hours a week for fifty weeks in a year), these numbers would represent work for 1,000 individuals. However, while the employees performing routine maintenance are likely employed on an ongoing basis in these refineries, many more are brought in for large-scale, albeit short-term, projects, meaning the lives of far more than 1,000 individual workers would be affected by shuttering these plants.

Lucas County Prevailing Wage Rates (averaging wages for the second-highest and second-lowest total prevailing rates, which are often pegged to the unions' negotiated rates).[4] At that rate, losing 2,000,614 hours of work would translate into a loss of $82.08 million in wages at the Ohio refineries alone.

Shutting down Line 5 would have a similarly devastating effect on the refinery workers USW represents. It is highly unlikely they would be able to find jobs with similar wage, benefit, and retirement savings structures elsewhere in their regional economy following a disruption in supply to the Toledo refineries. The threats of disruption are tangible, and the potential for a replacement means of transporting the crude oil to the refineries is, at best, highly speculative.

The light crude oil Line 5 supplies to PBF Energy's Toledo Refinery is primarily refined into jet fuel that supplies the bulk of the fuel for the Detroit Metro Airport. PBF Energy's Toledo Refinery processes approximately 189,000 barrels per day, or the equivalent of 900 to 1,000 tanker truck loads. There are currently no viable alternative sources of crude oil for this facility, as its location lacks the infrastructure to receive the needed supply by rail or truck. For that reason, it is almost certain that if Line 5 were shut down, the production and maintenance employees at this facility would lose their jobs. Those are good-paying, family-sustaining jobs (with straight-time hourly wage rates ranging from $41.20 to $51.55 for senior production and maintenance employees) that allow USW members to contribute to the economic vitality of Toledo

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[4] https://www.actohio.org/issues/prevailing-wage/by-county/lucas-county/ (last visited Feb. 12, 2025).

and its surrounding communities.

The Cenovus Toledo Refinery likewise receives crude oil transported on Line 5. Should Line 5 be shut down, Cenovus would need to locate an alternative source for crude oil, and even if the facility did not close altogether, its operations would be disrupted, and with it, the financial stability of USW's members, whose straight time hourly rates for senior employees range from $44.76 to $55.55 per hour.

For NABTU's affiliates' members, job loss means more than lost income. In the construction industry, unions often negotiate collective bargaining agreements with multiemployer contracting groups to ensure that as the workers move from job to job and contractor to contractor, they work under similar conditions and accrue benefits that travel with them. These agreements require employers to pay hourly wages commensurate with the employees' skills *and* to contribute to jointly-trusteed employee benefit funds that pool the contributions for the benefit of all workers employed under the multiemployer contract. These funds provide employees with health insurance and pension benefits and finance the building trades' robust training programs.

Entitlement to these vital benefits and the amount an employer is required to pay out depend on the availability of work and the number of hours worked. For example, workers often must work some minimum number of hours during a specified period to be eligible for health insurance. Retirement benefits are also computed based on hours worked, so any break in employment reduces the resources a worker can expect to rely on in retirement. Moreover, the overall viability of the benefit funds covering these workers depends on the amount of work available in the area

over time.

Returning to the Toledo refineries, at an average hourly benefit contribution of $23.46 (based on averaging the prevailing fringe benefit contributions for the second-highest and second-lowest total rates), the potential closure of the two refineries could place annual benefit contributions of $46.92 million in jeopardy. That amounts to a total of approximately ***$129 million*** in potentially lost wages and benefits at just the Ohio refineries. Many of NABTU's affiliates' members would struggle to find comparable work in the same geographic area, straining these workers and their families, as well as the area's overall social safety net.

This level of dislocation would threaten the construction industry's ability to train for the future. The trades and their signatory contractors fund and operate a vast network of apprenticeship and other training programs. Because the programs are financed by contributions based on hours worked under the parties' collective bargaining agreements, their financial viability depends on the availability of work. But so too does the training, the heart of which is the ability to merge classroom and on-the-job instruction. Without jobs to staff, the vital on-the-job training element disappears, threatening the building trades' ability to bring new workers into industries that could provide them with solid and sustainable well-paying careers.

The situation is the same in all the facilities that depend on Line 5. Sudden closures of the pipeline threaten catastrophic losses of good-paying, middle-class jobs that provide skilled workers in the United States and Canada with consistent employment, health insurance, pensions, and other benefits, and opportunities for the next generation of working

people to achieve the same.

IV. Section 1446(b)'s Thirty-Day Deadline Is Subject to Equitable Tolling.

Not only did the Sixth Circuit further a circuit split concerning whether equitable tolling applies to Section 1446(b), but it erred in its holding. Whether the presumption in favor of equitable tolling has been rebutted is a straightforward question of statutory interpretation. *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014). This Court looks to several key factors, including whether the statute sets out its time limits in "unusually emphatic form," using "highly detailed" language, "several times in several different ways." *Holland v. Florida*, 560 U.S. 631, 646 (2010) (quoting *United States v. Brockamp*, 519 U.S. 347, 350-51 (1997)). The Court also considers whether tolling the limitations period would have substantial practical consequences and whether the deadline is already "unusually generous." *Id.* at 646-47 (quoting *United States v. Beggerly*, 524 U.S. 38, 48 (1998)).

Applying those factors, the Court held in *Holland* that the Antiterrorism and Effective Death Penalty Act's ("AEDPA") one-year statute of limitations was not intended to rebut the presumption in favor of equitable tolling. 560 U.S. at 649. AEDPA's language was not unusually emphatic and did not reiterate its time limitation in different ways. The one-year limitations period was not unusually long (compared to the "unusually generous" twelve-year period in *Beggerly*, 524 U.S. at 48), and equitable tolling would not interfere with other aspects of the AEDPA claim. *Holland*, 560 U.S. at 647. "In short, AEDPA's 1-year limit reads like an ordinary, run-of-the-mill statute of limitations." *Id.*

Compare that with the limitations period for filing tax refund claims, analyzed in *Brockamp*. At the time, 26 U.S.C. § 6511 provided that "no credit or refund shall be allowed or made after the expiration of the period of limitation" and that "the amount of the credit or refund shall not exceed the portion of the tax paid within the [applicable limitations] period." 519 U.S. at 351. Section 6511 also set out six "very specific exceptions" to its time limits. *Id.* Reading tolling into Section 6511 "would work a kind of linguistic havoc." *Id.* at 352. Its "detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, taken together, indicate . . . that Congress did not intend courts to read other unmentioned, open-ended, 'equitable' exceptions into the statute that it wrote." *Id.*

But in *Boechler*, the Court found that another limitations period in the Tax Code did *not* overcome the equitable tolling presumption. Under 26 U.S.C. § 6330(d)(1), taxpayers have thirty days to petition the Tax Court for review of certain determinations by the IRS Independent Office of Appeals. Unlike the deadline in *Brockamp*, the Section 6330(d)(1) deadline "is not written in 'emphatic form' or with 'detailed' and 'technical' language, nor is it reiterated multiple times." *Boechler*, 596 U.S. at 210. Section 6330(d)(1) has a single exception, compared to the six exceptions in *Brockamp*.

Here, the statutory language is straightforward: Defendants must file "within 30 days" of the triggering event. 28 U.S.C. § 1446(b). Allowing tolling of the short thirty-day period will not interfere with substantive rights under the removal statute, since the limitations period has nothing to do with whether the

federal court has original jurisdiction over the case. *See id.* § 1441(a).

Though the removal statutes "are nested within U.S. Code Title 28, Part IV, titled '*Jurisdiction* and Venue,'" Pet. 22a, Congress does not rebut the presumption in favor of equitable tolling for all statutes touching on a single subject matter. Compare, for example, the outcomes in *Boechler* and *Brockamp*. Both cases involved Tax Code provisions, but only the limitations period in *Brockamp* would have disrupted federal tax policy. *Boechler*, 596 U.S. at 210. Section 1446(b)'s thirty-day period does not affect federal courts' determinations of whether they have jurisdiction.

The court below misapplied the canon *expressio unius est exclusio alterius* — the expression of one thing implies the exclusion of others — to find that the "exceptions" to Section 1446(b)'s "default" thirty-day period implied "'a clear intent to compel rigorous enforcement' of its deadlines, limited *only* by its explicit exceptions." Pet. 20a-21a (quoting *Nutraceutical Corp. v. Lambert*, 586 U.S. 188, 193 (2019)) (emphasis added). To start, several of the "exceptions" identified by the court are not exceptions, but instead are *triggers* to the running of the thirty-day limitations period. See, for example, *Holland*, where this Court rejected a similar argument that triggers (like a final judgment, the initial recognition of a constitutional right, and the first discovery of the factual predicate of a claim) were actually exceptions to AEDPA's statute of limitations. 560 U.S. at 647.

Section 1446(b) provides that the thirty-day period for removal starts to run *either* (a) after receipt of the initial pleading, 28 U.S.C. § 1446(b)(1), (b) after service of summons, *id.*, or (c) after receipt of an amended

pleading, motion, order, or other paper, *id.* § 1446(b)(3). These events trigger the thirty-day period. They do not delineate exceptions to compliance with the 30-day deadline.

And crucially, the *expressio unius* canon applies only when "items not mentioned were excluded by deliberate choice, not inadvertence." *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003). For example, in *Holland*, the Court explained that Congress's decision to expressly allow tolling of AEDPA's statute of limitations when an application for collateral review was pending did not show that Congress intended to exclude tolling from other applications of the limitations period. Rather, because the statute required exhaustion of state remedies, "Congress *had to* explain how the limitations statute account[ed] for the time during which such state proceedings [were] pending." 560 U.S. at 648 (emphasis added).

Here, the court below fixated on Sections 1446(b)(2)(C) and (c)(1), but these provisions do not suggest that Congress intentionally omitted equitable tolling from Section 1446(b). Section 1446(b)(2)(C) provides that an earlier-served defendant may consent to removal outside the thirty-day window if a later-served defendant files a timely notice of removal. That provision merely explains the workings of the consent mechanism *once a timely notice of removal has been filed* — it does not excuse an initial failure to timely remove. And under Section 1446(c)(1), a diversity case may generally not be removed "more than 1 year after commencement of the action." Congress added that provision not to excuse untimely removals, but instead to avoid removal after a late-stage creation of diversity jurisdiction, such as when the plaintiff settles "with a diversity-destroying defendant on

the eve of trial." H.R. Rep. No. 100-889, pt. 1, at 72 (1988).

That's not to say that Section 1446(b)'s thirty-day period applies to removal in all cases. *See, e.g.*, 28 U.S.C. §§ 1441(d) (extended removal period in civil actions against foreign states); 1442a (extended removal period in suits against members of the armed forces); 1454(b)(2) (extended removal period in patent and copyright cases). But "Congress *had to* explain" how removal would work in unique, special circumstances other than the usual federal-question or diversity case. *Holland*, 560 U.S. at 648 (emphasis added). Congress did not deliberately rebut the general equitable tolling presumption just because it had to expand the removal period to accommodate cases with longer periods for responding to complaints, *see* H.R. Rep. No. 94-1487, at 32 (1976) (civil actions against foreign states), extended tolling of other limitations periods, *see* 50 U.S.C. § 3936(a) (suits against members of the armed forces), or cases in federal district courts' exclusive jurisdiction, *see* 28 U.S.C. § 1338(a) (patent and copyright cases).

Finally, the court below argued that removal statutes must be "strictly construed against removal out of respect for state sovereignty." Pet. 22a. But as explained above, Section 1446(b) also balances the need for consistent determination of important federal issues. Without any signal from Congress, courts should not refuse to apply the background principle of equitable tolling to Section 1446(b)'s thirty-day limitations period.

Therefore, the court below was wrong to punt evaluation of whether equitable tolling was warranted and, in so doing, to force a forum battle that will threaten amici's members' livelihoods.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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