No. 24-783

IN THE

Supreme Court of the United States

ENBRIDGE ENERGY, LP, *et al.*,

Petitioners,

v.

DANA NESSEL, ATTORNEY GENERAL OF MICHIGAN, ON BEHALF OF THE PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

JOHN J. BURSCH
BURSCH LAW PLLC
9339 Cherry Valley Avenue SE,
Suite 78
Caledonia, MI 49316

JEFFERY V. STUCKEY
DICKINSON WRIGHT PLLC
123 W. Allegan Street,
Suite 900
Lansing, MI 48933

ALICE E. LOUGHRAN
Counsel of Record
BRENDAN HAMMOND
STEPTOE LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-6202
aloughran@steptoe.com

PHILLIP J. DEROSIER
DICKINSON WRIGHT PLLC
500 Woodward Avenue,
Suite 4000
Detroit, MI 48226

Counsel for Petitioners

QUESTION PRESENTED

Whether district courts have the authority to excuse the thirty-day procedural time limit for removal in 28 U.S.C. 1446(b)(1).

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners (Defendants-Appellees below) are Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc., and Enbridge Energy Partners, L.P.

Respondent (Plaintiff-Appellant below) is Dana Nessel, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan.

Petitioners Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc., and Enbridge Energy Partners, L.P., are each indirect subsidiaries of Enbridge, Inc., a publicly traded company. No publicly held corporation owns 10% or more of Enbridge, Inc.'s stock.

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

Federal Statutes

Federal Regulations

Treaty

Other Authorities

OPINIONS BELOW

The opinion of the Sixth Circuit is reported at 104 F.4th 958 and reprinted at Pet. App. 1a–25a. The Sixth Circuit's order denying rehearing en banc is unreported but reprinted at Pet. App. 50a. The opinions of the U.S. District Court for the Western District of Michigan are also unreported but reprinted at Pet. App. 26a–42a and 43a–45a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. 1254(1). The Sixth Circuit entered judgment on June 17, 2024, and denied Enbridge's timely petition for rehearing en banc on August 16, 2024. Enbridge filed a timely petition for certiorari on the extended due date of January 13, 2025. This Court granted certiorari on June 30, 2025.

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions—28 U.S.C. 1441(a), 1446, and 1447—are reproduced in the appendix. App., *infra*, 1a–6a.

INTRODUCTION

This case arises from efforts by state officials to permanently shut down an international pipeline that supplies energy to millions in the Midwest and Canada. The Attorney General of Michigan filed this action in state court. When Enbridge removed the case to federal court, the Attorney General argued that removal was untimely under 28 U.S.C. 1446(b)(1). The district court ruled that it had subject matter jurisdiction, and that the 30-day window for removing was tolled on equitable grounds. The Sixth Circuit reversed, holding that the 30-day window for removal is mandatory and immune from exceptions. The question presented is whether a district court may equitably toll the 30-day removal window.

"Equitable tolling is a traditional feature of American jurisprudence and a background principle against which Congress drafts limitations periods." *Boechler, P.C.* v. *Comm'r of Internal Revenue*, 596 U.S. 199, 208–09 (2022). For that reason, "nonjurisdictional limitations periods are presumptively subject to equitable tolling." *Id.* at 209. To rebut that presumption, the Attorney General must show that Congress expressed a "clear intent" to prohibit tolling. *Nutraceutical Corp.* v. *Lambert*, 586 U.S. 188, 192 (2019).

The Attorney General cannot meet that high bar here. To start, Congress did not make Section 1446(b)'s 30-day window a condition to the federal court's exercise of jurisdiction. Section 1446 is litigant-focused, speaking to a *defendant's* 30-day window for removing. Both courts below ruled that Section 1446(b)'s windows are not jurisdictional.

Nor did Congress express a clear intent to prohibit equitable tolling. Section 1446(b)'s text identifies two triggers for removing, using short, 30-day windows for both. Unlike other statutes where this Court has determined that Congress clearly prohibited tolling, Section 1446(b) contains no text singling out the two 30-day windows for "inflexible treatment." *Nutraceutical*, 586 U.S. at 193. To the contrary, Section 1447(c) directs the federal courts to remand only in one defined subset of cases: lack of subject matter jurisdiction. That Congress expressly required remand in those situations but not others confirms that district courts can equitably toll the 30-day removal window. Despite being aware of the presumption in favor of equitable tolling, Congress has never seen fit to prohibit equitable tolling in Section 1446(b). Equitable tolling in exceptional circumstances is important to fulfill the federal interests underlying the removal statute.

In the end, the 30-day removal windows in Section 1446(b) are nothing more than ordinary claims-processing rules subject to equitable tolling in appropriate cases. Because the Attorney General cannot overcome the presumption that limitations periods are subject to equitable tolling, this Court should reverse with instructions to rescind the remand order.

STATEMENT

A. Statutory Background

Generally, a defendant has a federal statutory right to remove to federal court "any civil action brought in a State court of which the district courts of the United States have original jurisdiction …." 28 U.S.C. 1441(a).

Section 1446 addresses the "procedure for removal" by delineating two removal triggers. 28 U.S.C. 1446. First, Section 1446(b) specifies a short time—30 days—for a defendant to remove after receiving "the initial pleading." 28 U.S.C. 1446(b)(1). Second, "if the case stated by the initial pleading is not removable," a defendant has "thirty days" to remove after receiving "an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. 1446(b)(3). Congress also curtailed the removal of diversity-of-citizenship actions beyond one-year after an action's commencement. 28 U.S.C. 1446(c). But there is no statutory cap on removing civil actions based on original jurisdiction.

Section 1447 addresses the "procedure after removal generally." It directs a plaintiff to file a remand motion based on defects "other than lack of subject matter jurisdiction" within 30 days of the removal notice. 28 U.S.C. 1447(c). It specifically directs that federal courts "shall" remand cases to state court when the court lacks subject matter jurisdiction: "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." *Id.*

Appellate review is limited. Remand orders generally are "not reviewable on appeal or otherwise." 28 U.S.C. 1447(d). After final judgment, procedural violations of the removal statute are not a basis for reversal if there is subject matter jurisdiction when the judgment is entered. *Caterpillar, Inc.* v. *Lewis*, 519 U.S. 61, 74–78 (1996); accord *Grubbs* v. *Gen. Elec. Credit Corp.*, 405 U.S. 699, 705–06 (1972).

B. Factual Background

Enbridge's Line 5 has been serving energy markets in the Midwest and Canada for over 70 years. Pet. App. 2a; J.A. 26a. Line 5 extends over 645 miles, traversing Wisconsin and Michigan before crossing into Ontario, Canada. Pet App. 2a. It was built in 1953 to significantly reduce the amount of petroleum products that had been traveling by tankers on the Great Lakes. J.A. 24a–25a, 112a–113a. Line 5's route has not changed since its original construction.

When Line 5 reaches the Straits of Mackinac, it separates into two pipelines—known as the "Straits Pipelines"—that run on the lake floor for approximately four miles and reunite on the Straits' southern side. Pet. App. 2a, 28a; J.A. 27a, 112a. The Straits Pipelines traverse the bottomlands pursuant to a perpetual easement that the State of Michigan granted to Enbridge's predecessor in 1953. Pet. App. 2a; J.A. 26a, 113a–114a. They are shown in the separate, magnified box, on the map below:

For decades, Line 5 has been a vital piece of a massive transportation network on which Americans and Canadians depend to satisfy their energy needs. Dkt.43:1, 8; Dkt. 40:5–12; J.A. 26a.[1] Line 5 transports both natural gas liquids and light crude oil. Pet. App. 27a. It transports an average of 540,000 barrels of light crude oil and natural gas liquids daily. J.A. 26a. Line 5 supplies approximately 38% percent of all crude oil in Michigan, northern Ohio, western

[1] Unless otherwise noted, references to the court docket as "Dkt." are to the Sixth Circuit CM/ECF docket in the case below, Sixth Circuit No. 23-1671. References to the district court's CM/ECF docket in No. 1:21-cv-01057 is indicated by "Dist. Dkt." Page cites are to the original page number of the document, not the page numbers of the ECF header.

Pennsylvania, Ontario, and Quebec. Dkt.40:5; Dkt.43:5. And it supplies virtually all the propane in Ontario and most of Michigan. Dkt.40:5–6; Dkt.43:3.

Line 5 serves ten refineries in the Great Lakes region. Dkt.40:5–6; Dkt.43:5–8. Most of the output is transportation fuels—gasoline, jet fuel, and diesel. Dkt.43:5, 7. Line 5's natural gas liquids product consists primarily of propane and butanes. Dkt.40:4, 6; Dkt.43:5. Propane is mostly consumed by the residential (home heating) and agricultural sectors, while a type of butane is used primarily as a feedstock for gasoline production. Dkt.43:5, 7–8. Line 5 and the facilities it serves provide jobs and benefits for thousands of workers in the United States and Canada. Dkt.40:4–13; Dkt. 43:6.

Line 5 has operated safely in the Straits of Mackinac for 72 years. It has never released any Line 5 products in the Straits of Mackinac. J.A. 115a.

Pursuant to federal law, Line 5's operations are subject to enhanced safety measures and scrutiny by the federal safety regulator due to their location on the bottomlands.[2] In 2020, Congress mandated that the federal regulations include additional protections to prevent anchor strikes in the Great Lakes region. 49 U.S.C. 60109(g)(5). The implementing federal

---

[2] 49 U.S.C. 60102(a)(2) (directing the Department of Transportation to promulgate comprehensive federal safety standards for interstate pipelines); 49 U.S.C. 60109(g)(5) (requiring pipeline operators—when putting together their integrity management plans for the federal safety regulator—to "assess potential impacts by maritime equipment or other vessels, including anchors … or any other attached equipment").

regulations cover a broad variety of oversight regarding pipeline integrity and safety in the Straits.[3] In addition, Enbridge has operated a maritime operations center since 2020 that provides 24/7 surveillance of the Straits Pipelines and protects against the risk of anchor strikes from passing vessels.[4]

In December 2018, the Michigan Legislature enacted legislation to allow Enbridge to construct—at its cost—a tunnel to house a replacement for the Line 5 segment in the Straits of Mackinac. 2018 Mich. Legis. Serv. P.A. 359. The replacement tunnel is to be built in bedrock, as much as 100 feet below the Straits lakebed. J.A. 118a–119a. The Michigan Legislature did not order Line 5 to be shut down while the tunnel is being built. J.A. 118a–119a.

---

[3] *E.g.*, 49 C.F.R. 195.454 (Titled, "Integrity assessments for certain underwater hazardous liquid pipeline facilities located in high consequence areas"); 49 C.F.R. 195.452 (Titled, "Pipeline integrity management in high consequence areas" and imposing requirements pertaining to the physical support of any interstate pipeline located in a high-consequence area like the Straits); 49 C.F.R. 195.557 ("each buried or submerged pipeline must have an external coating for external corrosion control"); 49 C.F.R. 195.559 (dictating coating material for external corrosion control); 49 C.F.R. 195.561 (requiring inspections of external pipe coating); 49 C.F.R. 195.246 (requirements to minimize the introduction of secondary stresses and the possibility of damage to the pipe).

[4] Enbridge Maritime Operations Center: Watching the Waters 24/7, https://www.youtube.com/watch?v=uFEt2hYPcJw; https://www.enbridge.com/Projects-and-Infrastructure/Public-Awareness/Line-5-Newsroom/Straits-of-Mackinac-maritime-operations-center.aspx.

C. Procedural History

1. The Michigan Governor and Attorney General took a different tack. In 2019 and 2020, they filed separate lawsuits seeking to shut down Line 5 permanently. Both cases were filed in state court. Pet. App. 3a–4a.

First, the Michigan Attorney General filed this action on behalf of the People of the State of Michigan in June 2019. Pet. App. 3a. Her complaint alleged that Line 5 was at risk of release in the Straits of Mackinac due to the "inherent risks of pipeline operations" and potential "anchor strikes" from shipping traffic. J.A. 22a, 35a, 51a. The Attorney General asserted violations of three state laws: Michigan's public trust doctrine, common-law public nuisance, and environmental protection act. Pet. App. 3a; J.A. 29a, 50a–51a. For relief, she sought a permanent injunction shutting down Line 5 in the Straits "after a reasonable notice period to allow adjustments by affected parties ….." J.A. 23a, 53a.

In state court, Enbridge moved to dismiss the Attorney General's action, challenging the legal sufficiency of the state-law claims. Pet. App. 3a; J.A. 104a–105a; J.A. 124a–145a, 155a–165a; Mich. Civ. R. 2.116(B), (C). Enbridge also argued that the state-law claims were preempted by the federal Pipeline Safety Act. Pet. App. 3a; J.A. 145a–155a. The Attorney General filed a dispositive motion on one of her state-law claims. Pet. App. 3a. In June 2020, the state court issued a temporary restraining order requiring a stoppage of Line 5's operations in the Straits after Enbridge reported possible damage to one of the pipe's anchor support in the Straits bottomlands. Pet. App.

4a; J.A. 80a. The state court later lifted the TRO after Enbridge's federal safety regulator represented in a letter that inspections revealed no integrity issues with Line 5's operations in the Straits. Pet. App. 4a; J.A. 60a, 62a, 67a–68a.

To date, Enbridge has not filed an answer in the Attorney General's state-court action; no discovery has taken place; and the state court has not issued any ruling on the merits. Pet. App. 3a–4a, 29a; J.A. 55a–103a.

Second, the Governor of Michigan filed a virtually identical lawsuit in November 2020. Pet. App. 4a.[5] The Governor's complaint alleged the same basic facts and state-law theories as the Attorney General's complaint. Pet. App. 4a, 33a.

But the Governor included an additional claim that Line 5 violated state safety standards in the 1953 easement for crossing the Straits of Mackinac. Pet. App. 28a; *Michigan* v. *Enbridge, LP*, 571 F. Supp. 3d 851, 854 (W.D. Mich. 2021). The Governor attached to the complaint a purported Notice of Revocation or Termination of the 1953 easement, served on Enbridge the same day. *Michigan*, 571 F. Supp. 3d at 854. Due to the alleged easement violation, the Governor asked for an order requiring that Line 5 cease operations in the Straits "within 180 days"—i.e., by May 12, 2021. Pet. App. 4a.

---

[5] This suit was filed by the Governor of Michigan, the State of Michigan, and the Michigan's Director of Natural Resources. *Michigan* v. *Enbridge, LP*, 571 F. Supp. 3d 851, 854 (W.D. Mich. 2021). Consistent with the opinions below, Enbridge refers to this lawsuit as "the Governor's" suit.

2. The Governor's shutdown order marked a momentous turning point in the Straits Pipeline litigation, after which significant foreign-affairs implications came into play.

In response to the shutdown order, Canada's Minister of Natural Resources declared that Line 5 "is vital to Canada's energy security," and that the pipeline's continued operation was "non-negotiable." Dkt.38:7; Dkt.43:8.[6] Canada's Prime Minister raised Line 5's importance directly with the U.S. President and cabinet members. Dkt.38:7.[7] Canada's House of Commons created a special committee to conduct hearings on the Line 5 shutdown order and present recommendations to safeguard Canadian interests. Dkt.38:7–8; Dkt. 43:8.[8]

Canadian officials also explained that the Governor's shutdown order, if enforced, would put the United States in violation of commitments made to Canada in the 1977 Transit Pipelines Treaty. See *Agreement Between the Government of the United States of America and the Government of Canada Concerning Transit Pipelines*, Jan. 28, 1977, 28

---

[6] Seamus O'Regan on Line 5 Shutdown, Canadian Minister of Natural Resources, https://openparliament.ca/debates/2021/5/6/seamus-oregan-2/only/.

[7] *Enbridge's Line 5: An Interim Report* at 11, Report of the Special Committee on the Economic Relationship between Canada and the United States (Apr. 2021), https://www.ourcommons.ca/Content/Committee/432/CAAM/Reports/RP11234513/caamrp01/caamrp01-e.pdf.

[8] *Enbridge's Line 5: An Interim Report* at 3, *supra* note 7.

U.S.T. 7449, 1977 WL 181731 (hereafter "1977 Treaty" or "Treaty"). This Treaty was signed to protect five cross-border pipelines—including Line 5 specifically—as well as a pipeline that the United States intended to build from Alaska to the lower 48 States. S. Exec. Rep. No. 95-9, 95th Congress, 1st Session, p. 80 (July 15, 1977) (U.S. State Department's response to questions from Senate committee on foreign relations). The U.S. ratification history has several references to Line 5, confirming that the political branches viewed Line 5 as falling within the ambit of the Treaty's protection. *Id*. at 47, 57–58, 80.

The Treaty parties agreed that no "public authority" in the territory of either party would take any "measures" that would have the effect of "impeding … in any way" the transmission of hydrocarbons in transit. Art. II(1) of 1977 Treaty, 28 U.S.T. 7449. They also agreed that disputes regarding the Treaty's interpretation, application, and operation shall be settled by negotiation between the parties or arbitration. Art. IX(1) and (2) of 1977 Treaty, 28 U.S.T. 7449. President Carter ratified the Treaty with the advice and consent of the Senate. It remains in force.[9]

---

[9] U.S. Department of State, *Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 2020*, at 67, www.state.gov/wp-content/uploads/2020/08/TIF-2020-Full-website-view.pdf.

3. Following Canada's intercession, resolution of the Straits Pipelines dispute moved to federal court. Enbridge timely removed the Governor's action from state court to federal court. Pet. App. 27a–28a. And Enbridge filed a federal court *Ex parte Young* action against the state officials. Pet. App. 27a.

Enbridge did not remove the Michigan Attorney General's suit at that time. But the Attorney General had agreed to hold her state-court action in abeyance. The parties thus asked the state court—and the state court agreed—to hold the Attorney General's action in abeyance because the federal court rulings could "potentially impact" the state-court action.[10] The Attorney General agreed that her suit and the two federal suits related to the "same controversy" of Line 5's continued operations in the Straits. Pet. App. 33a, 40a.

In federal court, the Governor of Michigan filed a motion to remand the Straits Pipeline controversy to state court. Pet. App. 5a. There was extensive briefing from the parties and supporting amici.[11] The Government of Canada filed an amicus brief in support of Enbridge. Pet. App. 5a–6a. Canada explained that the Governor's shutdown order violated the 1977 Treaty terms. Pet. App. 5a–6a. Article II(1) of the Treaty prohibits any "public authority" in the United States—which includes state

---

[10] *Nessel* v. *Enbridge Energy, LP*, Case No. 19-474-CE, 2021 WL 12359980, at *1 (Mich. Cir. Ct. Jan. 20, 2021).

[11] *Michigan* v. *Enbridge Energy, LP*, Case No. 20-cv-1142, Dkt. Nos. 41, 42, 43, 44, 45, 46, 48, 49, 51, 75, 76, 77, 78 (W.D. Mich.).

officials and courts—from instituting any "measures" that would have the effect of "impeding … or interfering with … in any way the transmission of hydrocarbons" along Line 5. Pet. App. 5a–6a.[12] Canada also explained that a shutdown would have immediate and severe adverse impacts to Canada's economy and energy security. [13]

In March 2021, the parties submitted to a voluntary facilitative mediation in federal court with their chosen mediator, the Honorable Gerald E. Rosen.[14] Those mediation efforts lasted several months. In September 2021, the parties completed the mediation without settlement and so notified the court.[15]

Shortly thereafter, on October 10, 2021, the Government of Canada notified the United States that it was formally invoking the dispute resolution provisions in Article IX of the 1977 Treaty. Pet.

---

[12] Brief of Amicus Curiae the Government of Canada in Partial Support of Defendants, *Michigan* v. *Enbridge Energy, LP*, Case No. 20-cv-1142, Dkt. No. 45 at 9–10 (W.D. Mich. June 1, 2021); see also Brief of Amicus Curiae the Government of Canada in Partial Support of Plaintiffs, Case No. 1:20-cv-01141-JTN-RSK, 2022 WL 1580822 (W.D. Mich. Apr. 5, 2022).

[13] Brief of Amicus Curiae the Government of Canada in Partial Support of Defendants, *Michigan* v. *Enbridge Energy, LP*, Case No. 20-cv-1142, Dkt. No. 45 at 1, 4–6 (W.D. Mich. June 1, 2021).

[14] *Michigan* v. *Enbridge Energy, LP*, Case No. 20-cv-1142, Dkt. No. 24 (W.D. Mich. Mar. 18, 2021).

[15] *Michigan* v. *Enbridge Energy, LP*, Case No. 20-cv-1142, Dkt. No. 67 (W.D. Mich. Sept. 21, 2021).

App. 6a, 27a & n.2; Dist. Dkt.20:5. Canada's Foreign Minister released a statement the same day, explaining that the 1977 Treaty "guarantees the uninterrupted transit of light crude oil and natural gas liquids between the two countries" along Line 5.[16]

In November 2021, the federal district court denied the Governor's motion to remand the Straits Pipeline controversy to state court. Pet. App. 6a, 28a, 35a. The district court held that "this case is properly in federal court" due to substantial and disputed federal issues embedded in the complaint. *Michigan*, 571 F. Supp. 3d at 854 (citing *Grable & Sons Metal Prods., Inc.* v. *Darue Eng'g & Mfg.*, 545 U.S. 308 (2005)). Though the Governor's state-law claims hinged on her claim that the State of Michigan owned the bottomlands, federal law expressly burdens the State's ownership by retaining all powers and control of the bottomlands for constitutional purposes of commerce and international affairs. *Michigan*, 571 F. Supp. 3d at 858–59 (citing 42 U.S.C. 1311(b)).

The federal court then made rulings reflecting its view of the merits. The court ruled that Congress vested the federal pipeline agency with "exclusive jurisdiction" to issue any emergency order requiring the shutdown of interstate pipelines like Line 5. *Id.* at 859-60 (discussing 49 U.S.C. 60104(c), 60117(p)). It also recognized the binding effect of the 1977 Treaty:

---

[16] Statement by Minister Garneau on Line 5 transit pipeline, Global Affairs Canada (Oct. 4, 2021), https://www.canada.ca/en/global-affairs/news/2021/10/statement-by-minister-garneau-on-line-5-transit-pipeline.html.

"with Canada's [recent] invocation of the dispute resolution provision in the 1977 Treaty, the federal issues in this case are under consideration at the highest levels of this country's government." *Id.* at 860. Based on the substantial federal issues embedded in the complaint, the federal court refused to remand the Straits Pipeline controversy to state court. Pet. App. 35a; *Michigan*, 571 F. Supp. 3d at 859–62.

Two weeks later, the Governor of Michigan voluntarily dismissed her lawsuit—for the express purpose of enabling state officials to pursue the same issues in state court. Pet. App. 28a–29a & n.4; Pet. App. 40a. In a same-day press release, the Governor explained that she "disagree[d]" with the federal court's decision to keep the case, so she was "shifting … legal strategy to give Michigan state courts the final say … by voluntarily dismissing" her complaint. J.A. 7a. The Governor believed this maneuver—designed to deprive the federal court of jurisdiction—would "clear the way for … Attorney General Dana Nessel's lawsuit to go forward," giving "state courts … the final say" on the federal issues implicated by the parties' dispute. J.A. 7a.[17]

Also the same day, the Michigan Attorney General announced that she "fully support[ed]" the Governor's decision because her pending suit in state court

---

[17] The Governor's press release is available on the state's webpage. *Whitmer Takes Action to Protect the Great Lakes*, https://www.michigan.gov/whitmer/news/press-releases/2021/11/30/governor-whitmer-takes-action-to-protect-the-great-lakes.

presented the "most viable path to permanently decommission Line 5." J.A. 7a. But despite dismissing her action, the Governor did not withdraw her Notice of Termination and Revocation of the 1953 easement. Enbridge's *Ex parte Young* action against the state officials thus remains pending in federal court. Pet. App. 27a–28a & n.3; Pet. App. 34a & n.9.[18]

5. At this point, the Attorney General's case had been dormant for almost a year. J.A. 58a–59a. The Michigan Attorney General asked the state court to convene a status conference and take the case out of abeyance, so that the court could decide the pending motions. J.A. 58a; Pet. App. 37a.

On December 15, 2021, Enbridge removed the Attorney General's action to federal court under 28 U.S.C. 1331. Pet. App. 6a–7a, 29a. Enbridge stated in part that the notice of removal was timely under 28 U.S.C. 1446(b)(3) because it was filed within

---

[18] In Enbridge's *Ex parte Young* action, both parties filed dispositive motions in February 2022, and those motions remained pending for over two years. *Enbridge Energy, LP* v. *Whitmer*, No. 20-cv-1141 (W.D. Mich.). In June 2024, the federal district court denied the defendants' motion to dismiss based on sovereign immunity. Defendants filed an interlocutory appeal, but the Sixth Circuit affirmed. *Enbridge Energy, LP* v. *Whitmer*, 135 F.4th 467 (6th Cir. 2025). After defendants filed an answer, the federal district court set a briefing schedule on Enbridge's renewed motion for summary judgment and on defendants' motion to abstain or stay in favor of the state-court proceedings in this case. *Enbridge Energy, LP* v. *Whitmer*, No. 20-cv-1141, Dkt. No. 117 (W.D. Mich.) The parties filed their motions on August 1, 2025, and the Government of Canada filed an amicus brief in partial support of Enbridge. *Id.* at Dkt. Nos. 120, 121, 124, 128, 129.

30 days of receiving an "order" from which it may be ascertained that the case became removable. Pet. App. 6a–7a, 29a; J.A. 1a–2a.

In the notice of removal, Enbridge explained that the Attorney General's case was not unambiguously removable when filed. J.A. 8a. Indeed, the Michigan Governor (represented by the Attorney General) vigorously argued that her broadly similar complaint in *Michigan* v. *Enbridge* was *not* removable and that it satisfied just one of the *Grable* doctrine's four requirements. J.A. 8a. By denying the Governor's remand order, the federal court made it unambiguously clear that the Attorney General's complaint is likewise removable under *Grable* and is "properly in federal court." J.A. 9a. Enbridge filed its removal notice within 30 days of the order denying remand in the Governor's action. J.A. 9a.

Enbridge further explained that its *Ex parte Young* suit against the state officials remains pending in federal court. J.A. 2a. The federal court had set a briefing schedule on Enbridge's motion for summary judgment in that case. J.A. 2a. The court explained: "Removal ensures that both cases between Enbridge and the state officials concerning the officials' attempt to shut down the Straits Pipelines are considered in federal court." J.A. 2a.

For subject-matter jurisdiction in federal court, Enbridge relied on the same grounds invoked when it removed the Governor's suit: the embedded-federal-question doctrine articulated in *Grable*, federal common law of foreign affairs, and the federal officer removal statute, 28 U.S.C. 1442. J.A. 10a–17a.

The Attorney General moved to remand her action to state court, arguing Enbridge's removal was not timely and the federal court lacked subject-matter jurisdiction. Pet. App. 9a, 29a, 30a & n.6, 39a.

D. The Opinions Below

1. The federal district court denied the Michigan Attorney General's motion to remand. Pet. App. 26a–42a. It ruled that the 30-day procedural time-requirement in Section 1446(b)(1) was equitably tolled due to exceptional circumstances present in this case. Pet. App. 31a–38a.

The district court started its analysis by recognizing that the 30-day removal window was not jurisdictional. Pet. App. 31a–32a & n.7.

The court then ruled that the presumption of equitable tolling for non-jurisdictional deadlines applied to Section 1446(b)'s 30-day removal windows. Pet. App. 31a–32a, 34a–36a. The court found exceptional circumstances warranted tolling, including the "important federal interests" at stake and the Attorney General's attempt at "forum manipulation." Pet. App. 37a–41a.

The court explained that it had already ruled in the Governor's action that the federal forum is the proper place to decide the "important federal interests" raised in the Straits Pipeline controversy. Pet. App. 36a–37a, 41a. Further, Enbridge's *Ex parte Young* action—which includes the same issues—remains pending in federal court. Pet. App. 34a & n.9, 36a. The Attorney General "admits that there are identical issues across the related Straits Pipelines cases." Pet. App. 40a.

The court also found that the Michigan Attorney General sought to "gain an unfair advantage through the improper use of judicial machinery." Pet. App. 39a. The Attorney General had initially agreed to hold her state-court action in abeyance pending the federal court's rulings in the Governor's action. Pet. App. 29a. After the federal court ruled against the Governor, the Attorney General sought to reopen her state-court action to create a "race to judgment" and a "collision course between the state and federal forum." Pet. App. 29a, 34a & n.9, 35a–38a, 41a. "[U]nhappy with the result in the [Governor's] action," the Attorney General sought "piecemeal litigation and conflicting results." Pet. App. 40a. "The Court will not accept the State's invitation to … perpetuate a forum battle." Pet. App. 37a.

In these exceptional circumstances, tolling the 30-day window was consistent with the removal statute's purposes and the "efficient administration of justice." Pet. App. 35a–41a.

The district court also held Enbridge's removal was proper under the judicially created revival exception to the 30-day requirement in 28 U.S.C. 1446(b)(3), because it was filed within 30 days of the court's order denying remand in the State's parallel action. Pet. App. 38a. "A lapsed right to remove may be restored where a litigation event, such as a court order, starts a virtually new, more complex, and substantial case." Pet. App. 38a. Enbridge removed within 30 days of the court's order denying remand in the Governor's action—which order provided solid and unambiguous information the case was removable. Pet. App. 29a.

The district court also rejected the Attorney General's arguments that there was no subject matter jurisdiction. Pet. App. 38a–39a, 41a. The court reiterated that it found subject matter jurisdiction under the *Grable* doctrine in the Governor's action, which included the same state law claims alleged in the Attorney General's action. Pet. App. 39a–40a. The Attorney General was estopped from relitigating the same jurisdictional issues. Pet. App. 39a–40a.

The Attorney General moved to certify the order for interlocutory review under 28 U.S.C. 1292(b). Pet. App. 43a. The district court granted the motion, and the Sixth Circuit granted permission to file an interlocutory appeal. Pet. App. 45a, 46a–49a.

2. While the case was pending in the Sixth Circuit, the United States filed an amicus brief in February 2024 in a different appeal involving Line 5, pending before the Seventh Circuit.[19] In its amicus brief, the U.S. Government confirmed that Line 5 was protected by the 1977 Treaty and that this Treaty is self-executing. Dkt.50:30 & n.5. The U.S. Government expressed a "strong interest" in preventing any action with respect to Line 5 that would "expos[e] the United States to … substantial monetary damages" and affect "trade and diplomatic relations with Canada." Dkt.50:2–3, 30. Enbridge filed a copy of the United States amicus brief with the Sixth Circuit. Dkt.50.

---

[19] *Bad River Band* v. *Enbridge*, Appeal Nos. 23-2309, 23-2467 (7th Cir. argued Feb. 2024). To date, the Seventh Circuit has not released its opinion in *Bad River*.

3. The Sixth Circuit reversed the district court, holding that Section 1446(b)'s removal window is mandatory and "leave[s] no room for equitable exceptions." Pet. App. 24a. The panel recognized that the removal deadlines are not jurisdictional. Pet. App. 19a. But, according to the panel, the statutory text and context revealed "a clear intent" to compel strict enforcement of the 30-day windows for removal in Section 1446(b)(1). Pet. App. 20a–22a.

The panel expressed no opinion on subject-matter jurisdiction and assumed Enbridge's jurisdictional theories could give rise to federal jurisdiction. Pet. App. 7a–8a & n.2.

The Sixth Circuit directed the district court to enter an order remanding this case to state court. Pet. App. 25a. On September 11, 2024, the district court remanded the case to state court. Dist. Dkt.43.

SUMMARY OF ARGUMENT

The question presented is whether Section 1446(b)'s 30-day removal windows are subject to equitable tolling. Equitable tolling "effectively extends an otherwise discrete limitations period set by Congress." *Lozano* v. *Montoya Alveraz*, 572 U.S. 1, 10 (2014). While the availability of equitable tolling is "fundamentally a question of statutory intent," the "inquiry begins" with the presumption that "Congress legislates against a background of common-law adjudicatory principles." *Id.* at 10 (citation modified).

"[E]quitable tolling is part of the established backdrop of American law." *Id.* at 11; *Irwin* v. *Dep't of Veterans Affs.*, 498 U.S. 89, 95–96 (1990); *Boechler,* 596 U.S. at 209; *Holland* v. *Florida*, 560 U.S. 631, 651 (2010) ("long history of judicial application of equitable tolling"). As a result, "Congress is *presumed* to incorporate equitable tolling" into statutory deadlines. *Lozano*, 572 U.S. at 11 (emphasis added); *Harrow* v. *Dep't of Def.*, 601 U.S. 480, 489 (2024); *Holland*, 560 U.S. at 645–46; *Irwin*, 498 U.S. at 95.

To overcome the presumption, the Michigan Attorney General must demonstrate, through evidence relating to Section 1446, that: (1) Congress clearly stated that federal jurisdiction is conditioned on a defendant satisfying Section 1446(b)'s 30-day window, or (2) Congress clearly intended to prohibit equitable tolling of those 30-day windows. See *United States* v. *Wong*, 575 U.S. 402, 408–10 (2015) (plaintiff must establish, "through evidence relating to a particular statute of limitations," that Congress clearly opted to forbid equitable tolling).

The Michigan Attorney General can demonstrate neither.

As the Attorney General conceded below, Section 1446's 30-day windows are non-jurisdictional. The statutory text speaks to "defendants desiring to remove," not the court's power to adjudicate the case. 28 U.S.C. 1446(a). It directs the defendant to file the removal notice within 30 days of the initial complaint or "other paper" from which removal may be first ascertained. 28 U.S.C. 1446(b)(1), (b)(3). This is a quintessential, non-jurisdictional, claims-processing rule.

Moreover, Section 1447 distinguishes between the procedural requirements in Section 1446 and the court's subject matter jurisdiction. In speaking directly to the court, Section 1447(c) requires a remand only when the court lacks subject matter jurisdiction. Given the statutory text and structure, both courts below ruled that the 30-day windows were not jurisdictional.

Nor did Congress clearly intend to prohibit equitable tolling. Section 1446(b) does not speak to the court's authority but instead sets forth a short, 30-day period for removing a civil action from state to federal court. 28 U.S.C. 1446(b)(1). It does contain a second opportunity for removal. But this opportunity applies *only if* the "case stated by the initial pleading is not removable." 28 U.S.C. 1446(b)(3). This language is remarkably similar to the filing deadlines that this Court has consistently ruled are subject to equitable tolling.

For example, in *Boechler*, the statute contained a 30-day deadline for filing a petition for review to the Tax Court. *Boechler,* 596 U.S. at 204, 209. The statute also contained an exception for bankruptcy situations, when the taxpayer is prohibited from filing a petition for review due to a pending bankruptcy proceeding. *Id.* at 210. Despite that one statutory exception, the Court held that 30-day filing deadline could be equitably tolled in appropriate cases. *Id.* at 211.

Section 1446(b) is a far cry from the statutes where the Court ruled that tolling was prohibited. In those cases, the statutory text either expressly prohibited tolling or was part of a comprehensive scheme detailing lists of exceptions that already accounted for equitable considerations and that tied substantive recovery to those exceptions. Section 1446(b) contains none of these features.

Instead, the 30-day windows are set forth in straightforward language that "one can … plausibly read as containing an implied 'equitable tolling' exception." *United States* v. *Brockamp*, 519 U.S. 347, 350 (1997). The Court should so hold and reverse the judgment of the court of appeals, with instructions to rescind the remand order.

ARGUMENT

I. Section 1446(b)'s 30-day windows for removing are not jurisdictional

Both lower courts ruled that Section 1446(b)'s 30-day removal windows are not jurisdictional. Pet. App. 19a, 31a & n.7. The parties agreed.[20] Despite this agreement, whether to classify the statutory 30-day windows as jurisdictional is an important initial determination with significant practical consequences. *Boechler,* 596 U.S. at 203; *Henderson ex rel. Henderson* v. *Shinseki*, 562 U.S. 428, 434 (2011). Accordingly, Enbridge starts the analysis there.

A. Statutory filing deadlines are not jurisdictional unless Congress clearly states they are

Because drastic consequences attach to the jurisdictional label, this Court has "tried in recent cases to bring some discipline to the use of this term." *Henderson*, 562 U.S. at 435. "[A] rule should not be referred to as jurisdictional unless it governs a court's adjudicatory capacity, that is, its subject-matter or personal jurisdiction." *Id.*; *Boechler*, 596 U.S. at 203. Jurisdictional requirements "speak to the power" of the court to adjudicate the case. *Reed Elsevier, Inc.* v. *Muchnick*, 559 U.S. 154, 160-61 (2010) (citation omitted).

---

[20] Attorney General of Michigan's Opening Brief, Dkt.18-24-25 (filed Sept. 18, 2023); Enbridge's Answering Brief, Dkt.38-24 (filed Nov. 20, 2023).

"[N]ot all procedural requirements fit that bill." *Boechler*, 596 U.S. at 203. "Among the types of rules that should not be described as jurisdictional are … 'claim-processing rules.'" *Henderson*, 562 U.S. at 435. These rules "'promote the orderly progress of litigation' but do not bear on a court's power." *Boechler*, 596 U.S. at 203 (quoting *Henderson*, 562 U.S. at 435). Claims processing rules speak to the litigant—i.e., the procedural steps the litigant should take at certain specified times. *Id.*; *Riley* v. *Bondi*, 145 S. Ct. 2190, 2202 (2025); *Wilkins* v. *United States*, 598 U.S. 152, 159 (2023).

"[M]ost time bars are nonjurisdictional" claims-processing rules. *Wong*, 575 U.S. at 410; *Harrow* v. *Dep't of Def.*, 601 U.S. 480, 482 (2024); *Hamer* v. *Neighborhood Hos. Servs. of Chi.*, 583 U.S. 17, 25 & n.9 (2017); *Sebelius* v. *Auburn Reg'l Med. Ctr.,* 568 U.S. 145, 154 (2013). "That is true whether or not the [deadline] is 'framed in mandatory terms.'" *Harrow*, 601 U.S. at 484 (quoting *Wong*, 575 U.S. at 410).

This Court will treat a statutory filing deadline as jurisdictional only if Congress "clearly states" that it is jurisdictional. *Auburn Reg'l*, 568 U.S. at 153 (citing *Arbaugh* v. *Y & H Corp.*, 546 U.S. 500, 516 (2006)). This test—aptly described as the "clear-statement rule"—"leave[s] the ball in Congress' court." *Santos-Zacaria* v. *Garland*, 598 U.S. 411, 416–417 (2023) (citation modified). Congress need not "'incant magic words'" to supply a clear statement, but "traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences." *Wong*, 575 U.S. at 410. This is a "high bar." *Id.* at 409.

B. Section 1446(b)'s text and structure do not clearly show an intent to make the 30-day removal windows jurisdictional

Applying the clear-statement rule here, Section 1446(b)'s 30-day windows for removal are non-jurisdictional.

First, Section 1446(b)'s text does not speak in jurisdictional terms or condition the court's authority to hear the case on compliance with the 30-day removal window. *Wong*, 575 U.S. at 411–12 ("What matters" is whether the statute "'speak[s] in jurisdictional terms or refer[s] in any way to the jurisdiction of the district courts'"); cf. 26 U.S.C. 6330(e)(1) ("Tax Court shall have no jurisdiction … unless a timely appeal has been filed"), cited in *Boechler*, 596 U.S. at 206. Section 1446(b) is litigant-focused, speaking to the *defendant*'s procedural obligations. It states that "a defendant … desiring to remove" a civil action shall file a notice of removal in federal court "within 30 days" of defendant's receipt of the initial pleading or "other paper" from which removal may be first ascertained. 28 U.S.C. 1446(a), (b)(1), (b)(3). This is a quintessential processing rule. *Riley*, 145 S. Ct. at 2202–03.

This Court has ruled that similar statutory language—speaking of the litigant's obligations, not the power of the court—are non-jurisdictional. See *Riley*, 145 S. Ct. at 2202–03; *Ft. Bend County, Tex.* v. *Davis*, 587 U.S. 541, 551 (2019); *Henderson*, 562 U.S. at 431, 435–442; *Auburn Reg'l*, 568 U.S. at 154. It is "'of no consequence'" that Section 1446's 30-day windows are stated in mandatory terms—i.e., "shall file." *Harrow*, 601 U.S. at 485; *Wong*, 575 U.S. at 411

("The language is mandatory … but … that is true of most such statutes, and we have consistently found it of no consequence."); *Henderson*, 562 U.S. at 439. A "time limitation may be emphatic, yet not jurisdictional." *Auburn Reg'l*, 568 U.S. at 155 (citing *Kontrick* v. *Ryan*, 540 U.S. 443, 454 (2004)); *Wong*, 575 U.S. at 411–12; *Hamer*, 583 U.S. at 25 & n.9 ("we have made plain that most statutory time bars are nonjurisdictional") (citation modified).

Second, the 30-day removal windows are placed in the procedural section. Titled "Procedure for removal of civil actions," Section 1446 establishes the procedures by which a defendant may seek to remove a civil case from state to federal court. This placement of the filing timeframes is significant. *Henderson*, 562 U.S. at 439 (filing deadline's placement in subchapter captioned "Procedure" indicates it is not jurisdictional); *Boechler*, 596 U.S. at 207 (emphasizing the lack of "a clear tie between the [filing] deadline and the jurisdictional grant").

Third, Congress addressed the requirement of establishing the federal court's subject matter jurisdiction in a separate provision—28 U.S.C. 1441(a). Section 1441(a) provides that the defendant has the right to remove a civil action from state to federal court when there is original jurisdiction in federal court. *Id.*; *Caterpillar*, 482 U.S. at 392. Neither Section 1441(a) nor Section 1446 condition *the court's jurisdiction* on the defendant's satisfying the time limitations for removal. The fact that Congress addressed subject-matter jurisdiction in "an entirely separate provision" confirms that Section 1446(b)'s windows are not jurisdictional. *Zipes* v. *Trans World*

Airlines, Inc., 455 U.S. 385, 394 (1982); *Wilkins*, 598 U.S. at 159; *Wong*, 575 U.S. at 411–12; *Arbaugh*, 546 U.S. at 515.

Fourth, Section 1447(c) distinguishes between the court's subject-matter jurisdiction and procedural defects in the removal notice. Titled "Procedure after removal generally," Section 1447(c) imposes a duty on the plaintiff to file a remand motion "on the basis of any defect *other than* lack of subject matter jurisdiction" within 30 days of the removal notice. 28 U.S.C. 1447(c) (emphasis added). This sentence confirms that procedural requirements—including those in Section 1446(b)—can be waived. See *Caterpillar*, 519 U.S. at 76; *Brown* v. *Demco,* 792 F.2d 478, 481 (5th Cir. 1986) (waiver and equitable tolling are available for Section 1446(b)'s 30-day windows).

Section 1447(c) then mandates that the court remand the case to state court if there is no subject matter jurisdiction. *Id.* Section 1447(c) thus distinguishes between two types of defects in the removal process—procedural and subject matter jurisdiction. This language and structure would have little meaning if Section 1446 were construed to impose jurisdictional requirements.

Finally, a century's worth of precedent and practice confirms that Section 1446(b)'s time windows are not jurisdictional. When interpreting the predecessor statute in the late 1800s, this Court repeatedly held that the removal windows are not jurisdictional. *Ayers* v. *Watson*, 113 U.S. 594, 597 (1885); *French* v. *Hay*, 89 U.S. 238, 245 (1874) (plaintiff waived objection to untimely removal); *Northern Pac. R.R.* v. *Austin*, 135 U.S. 315, 318 (1890)

("the time within which a removal must be applied for is not jurisdictional, but modal and formal"); *Powers* v. *Chesapeake & O Ry.*, 169 U.S. 92, 98 (1898) ("the time of filing a petition for removal is not essential to the jurisdiction" and the "failure to comply with it may be the subject of waiver or estoppel"); *Rexford* v. *Brunswick-Balke-Collender Co.*, 228 U.S. 339, 345 (1913) (same).

More recently, the Court addressed the one-year statutory bar for removing a case to federal court based on diversity-of-citizenship. *Caterpillar*, 519 U.S. at 75 n.13. There, the plaintiff failed to raise the one-year bar in its opposition brief to the certiorari petition, but both parties addressed the issue in their briefs on the merits. *Id.* This Court referred to the plaintiff's failure to properly raise the issue as "a non-jurisdictional argument," subject to waiver under this Court's Rule 15.2. *Id.*

In short, Section 1446(b) does not clearly "mandate [a] jurisdictional reading." *Boechler*, 596 U.S. at 204. To the contrary, the text and statutory context confirm that the 30-day time windows are non-jurisdictional processing rules.

II. Section 1446's 30-day removal window is subject to equitable tolling

A. Statutory filing deadlines are presumptively subject to equitable tolling

Non-jurisdictional filing deadlines "are presumptively subject to equitable tolling." *Boechler,* 596 U.S. at 209. That's because "such a principle is likely to be a realistic assessment of legislative intent." *Auburn Reg'l*, 568 U.S. at 159 (citation modified). Congress enacts procedural time limits "against the backdrop of judicial doctrines creating exceptions, and typically expects those doctrines to apply." *Harrow*, 601 U.S. at 483.

Because of the "long history" of equitable tolling in American jurisprudence, *Holland*, 560 U.S. at 651, the presumption that tolling is available has become "hornbook law." *Young* v. *United States*, 535 U.S. 43, 49 (2002). And Congress does not "alter that backdrop lightly[.]" *Boechler,* 596 U.S. at 209.

For removal, the presumption is reinforced because equitable principles traditionally apply. In *Powers*, the defendant filed an untimely notice of removal after the plaintiff voluntarily dismissed the resident defendants. 169 U.S. at 98. The plaintiff said the removal was untimely. *Id.* at 96. Yet the Court held that equitable tolling was warranted: "[T]he incidental provision as to the time must, when necessary to carry out the purpose of the statute, yield to the principal enactment as to the right." *Id.* at 101. This Court "will not construe a statute to displace courts' traditional equitable authority absent the clearest command." *Holland*, 560 U.S. at 646 (citation modified).

To overcome the presumption of equitable tolling here, the Attorney General must show that Congress manifested a "clear intent to preclude tolling." *Nutraceutical*, 586 U.S. at 192. But there is nothing unique about Section 1446(b) that clearly evidences Congress' intent to preclude equitable tolling.

B. The Michigan Attorney General has not rebutted the presumption

Applying traditional tools of statutory construction, the Attorney General has not rebutted the presumption in favor of equitable tolling.

1. "Start with the text." *Arellano* v. *McDonough*, 598 U.S. 1, 8 (2023). Section 1446(b) states that the defendant "shall … file" the removal notice within 30 days after receipt of the "initial pleading." 28 U.S.C. 1446(b)(1). If the case stated by the initial pleading is not removable, the defendant may file the notice within 30 days of receipt "of an amended pleading, motion, order or other paper" from which removability has been first ascertained. 28 U.S.C. 1446(b)(3).

Notably, Section 1446(b) "does not expressly prohibit" equitable tolling. *Boechler,* 596 U.S. at 209. Nor does it "speak directly" to *the court's* authority to toll the filing deadlines. *United States* v. *Texas*, 507 U.S. 529, 534 (1993) ("[T]o abrogate [such] a common-law principle, the statute must 'speak directly' to the question addressed by the common law."). Section 1446(b) is litigant-focused, speaking to the *defendant's* procedural windows for removal. *Boechler,* 596 U.S. at 209 (tolling allowed where the "30-day time limit is directed at the taxpayer, not the court").

While Section 1446(b)(1)—like many statutory deadlines—directs that the defendant "shall … file" within 30-days of the initial pleading, its language is not meaningfully different from that of other statutes this Court has found subject to equitable tolling. *E.g., Boechler,* 596 U.S. at 204, 209–11 (tolling available for petitions for review to Tax Court even though "[a]ll agree that the [statutory] provision imposes a 30-day deadline to file those petitions"); *Wong*, 575 U.S. at 420 ("'shall be forever barred' is an ordinary … way of setting a deadline, which does not preclude tolling when circumstances warrant"); *Zipes*, 455 U.S. at 394 & n.10 (tolling applies to statute stating that an EEOC charge "shall be filed within one hundred and eighty days after" alleged unlawful practice occurred); *Mata* v. *Lynch*, 576 U.S. 143, 145, 1447 (2015) (statute says motions to reopen "shall be filed within 90 days" of deportation order, but all appellate courts to have addressed the matter agree that this deadline may be tolled); see also *Nutraceutical*, 586 U.S. at 193 ("the simple fact that a deadline is phrased in an unqualified manner does not necessarily establish that tolling is unavailable"). "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.

Section 1446(b)'s 30-day filing deadline is also short, further supporting equitable tolling. See *Caterpillar*, 519 U.S. at 76 (referring to the 30-day limit in Section 1447(c) as a "short time"). While the grounds for removal might be obvious from the face of the complaint in some cases, this is not always so. As the court below recognized, Enbridge was "navigating complicated doctrines" concerning the basis for

removal and applying them to "unique facts under time constraints …." Pet. App. 16a. The district court rightly upheld removal under the *Grable* doctrine in this case, but *Grable* is a narrow exception to the well-pleaded complaint rule that governs most cases. "Whatever the virtues of the [*Grable*] standard, it is anything but clear." *Grable*, 545 U.S. at 321 (Thomas, J., concurring).

The 30-day window is nothing like the "unusually generous limitations" periods more suggestive of a capped time period. *United States* v. *Beggerly*, 524 U.S. 38, 47–49 (1998) (extensions of 12-year statute of limitations through tolling not warranted); cf. *Boechler*, 596 U.S. at 209 (equitable tolling of 30-day deadline to file petition for review with Tax Court); *Bowen* v. *City of New York*, 476 U.S. 467, 478, 480–82 (1986) (equitable tolling of 60-day limitations period for filing court action challenging Social Security decisions).

Equally important, Congress did not build into Section 1446(b) its own equitable tolling language to displace the common-law rule. See *Boechler*, 596 U.S. at 209–10. Section 1446(b) does contain a second opportunity for removal: within 30 days of an "amended pleading, motion, order or other paper" from which it may be ascertained that the case has become removable. 28 U.S.C. 1446(b)(3). But this opportunity applies *only if* the "case stated by the initial pleading is not removable." *Id.* Because Section 1446(b) does not address *the court's* equitable authority, allowing equitable tolling here would not supplant different tolling provisions that Congress itself wrote into the law.

Section 1446(b) is remarkably similar to the 30-day filing deadline at issue in *Boechler*, where the Court ruled that equitable exceptions applied. 596 U.S. at 204, 209–10. There too, the statute set forth a 30-day window for filing a petition for review to the Tax Court. *Id.* at 204, 209 (citing 26 U.S.C. 6330(d)(1)).

The statute in *Boechler* contained a single exception for situations when the taxpayer is prohibited from filing a petition for review due to a pending bankruptcy proceeding. *Id.* at 210 (citing 26 U.S.C. 6330(d)(2)). Despite that one exception, the Court held that Section 6330(d)(1)'s filing deadline can be equitably tolled in appropriate cases. *Id.* at 210–11; *Holland*, 560 U.S. at 647–48 (applying equitable tolling despite an exception codified into the statute); *Harrow*, 560 U.S. at 647 ("AEDPA's 1-year limit reads like an ordinary, run-of-the mill statute of limitations.").

Section 1446(b) contains no language that this Court has ruled precludes equitable tolling. In *Nutraceutical*, for example, the Court concluded that equitable tolling is not permitted by Civil Procedure Rule 23(f)'s 14-day window for filing a petition for permission to appeal a district court's class-action certification decision. 586 U.S at 193. The decision turned not on the language of Rule 23(f) but, rather, on the fact that the federal appellate rules had "singled out" Rule 23(f)'s 14-day window "for inflexible treatment." *Id.* While the federal rules generally authorize extensions for good cause, they also state that an appellate court "'may not extend the time to file … a petition for permission to appeal.'" *Id.*

(quoting Fed. R. App. P 26(b)(1)). "The Rules thus express a clear intent to compel rigorous enforcement of Rule 23(f)'s deadline" for filing a petition for permission to appeal. *Id.*; accord *Greenlaw* v. *U.S.*, 554 U.S. 237, 252–53 (2008) (no equitable tolling for notices of appeal where Fed. R. App. P. 26(b) explicitly bars courts from granting extensions beyond 30 days).

Nor is Section 1446(b) similar to the statutory text in *Arellano*, where the Court ruled that the presumption in favor of equitable tolling had been overcome. 598 U.S. at 8–9. There, the statute set a default rule for the effective date of a veteran's disability compensation award—when the Department of Veterans Affairs receives the veteran's benefits application. *Id.* at 8, citing 38 U.S.C. 5110(a)(1). That default rule applies "unless specifically provided otherwise in this chapter." *Id.* at 5 (citation modified). Sixteen detailed exceptions "provided otherwise" in the same chapter. *Id.* at 8 (quoting 38 U.S.C. 5110(b)(1)). These 16 exceptions dictated specific legislative choices for when a veteran's claim may enjoy an earlier effective date. *Id.* Some statutory exceptions accounted for equitable considerations; others did not. *Id.* at 9. Congress also capped retroactive benefits at roughly one year in all but one instance. *Id.* at 9–10 & n.2.

If Congress wanted courts to retain equitable tolling authority for such veteran claims, it would not have "spelled out a long list of situations in which a claimant is entitled to adjustment—and instructed the VA to stick to the exceptions 'specifically provided.'" *Id.* at 9 (quoting 38 U.S.C. 5110(a)(1)). There is no analogous list of explicit exceptions here.

Nor is this case like *Brockamp*, where the Court found no tolling for certain tax refund claims under the Internal Revenue Code. 519 U.S. at 348. Where the statutory text imposes the limitations in simple language, "one can often plausibly read [it] as containing an implied 'equitable tolling' exception." *Id*. at 350. But the limitations language there was set forth in a "highly detailed technical manner," with different time periods and limited exceptions. *Id*.

Furthermore, the statute in *Brockamp* reiterated those limitations periods "several times in several ways," imposed substantive limitations on the amount of recovery, and reinforced the point by saying refunds failing to comply "'shall be considered erroneous.'" 519 U.S. at 350–51 (quoting 26 U.S.C. 6514). To imply equitable tolling into such a comprehensive statutory scheme would "work a kind of linguistic havoc" because "one would have to assume an implied exception for tolling virtually every time a number appears." *Id*. at 352. The statute's "detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, taken together, indicate to us that Congress did not intend courts to read other unmentioned, open-ended, 'equitable' exceptions into the statute." *Id.*

By contrast, Section 1446(b)'s windows are not part of a comprehensive scheme, do not have technical language, lack detailed exceptions, and have no substantive limitations on recovery. They are instead set forth in straightforward language that "one can … plausibly read as containing an implied 'equitable tolling' exception." *Brockamp*, 519 U.S. at 350.

2. Nothing in the statutory structure and purpose rebuts the presumption of equitable tolling.

While Section 1446 is litigant-focused, Section 1447 speaks to the court's authority. Section 1447(c) requires the district court to remand "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction." 28 U.S.C. 1447(c).

Since Congress directed a remand for lack of subject-matter jurisdiction but not for procedural defects, it is reasonable to infer that district courts retain equitable authority in the latter context. *E.g.*, *State Farm Fire & Cas. Co.* v. *U.S. ex rel. Rigsby*, 580 U.S. 26, 34 (2016) (given other "provisions that do require, in express terms, the dismissal" in certain circumstances, it "is proper to infer that, had Congress intended to require dismissal for" other reasons, "it would have said so.").

Further, Section 1447 honors the district court's traditional authority over procedural issues. As this Court explained, Section 1447 sets forth "a procedure calling for expeditious superintendence *by district courts*." *Caterpillar*, 519 U.S. at 76 (emphasis added). The plaintiff must file a motion for remand within 30 days of the removal notice for any non-jurisdictional defects. 28 U.S.C. 1447(c). But the district court is not empowered to waive subject-matter jurisdiction. *Id*. Appellate review of remand orders is strictly limited, and procedural defects are not a basis for reversal once judgment is entered. *Caterpillar*, 519 U.S. at 76–77. The statute avoids the burdens of shuffling the case between federal and state courts where the federal court has subject-matter jurisdiction. *Id.*

Equitable tolling comports with this statutory regime. District courts are "well equipped to apply traditional doctrines," including equitable tolling and estoppel. *Heimeshoff* v. *Hartford Life & Acc. Ins. Co.*, 571 U.S. 99, 114 (2013). The district court should retain the authority to toll the "incidental" removal windows "when necessary to carry out the purpose of the [removal] statute," thereby allowing federal courts to exercise their legitimate authority. *Powers*, 169 U.S. at 101. Given the district court's prominent role in protecting the statutory purposes, federal removal from state to federal court is an "area of the law where equity finds a comfortable home." *Holland*, 560 U.S. at 647. And Congress has not amended Section 1446(b) to prohibit equitable tolling despite being presumably aware of this Court's precedent holding that equitable tolling is implied. *Id.* at 646; *Irwin*, 498 U.S. at 95–96.

In short, Congress did not speak clearly in Section 1446(b) or the statutory structure to rebut the Court's longstanding presumption in favor of equitable tolling.

3. The Michigan Attorney General argued below that significant uncertainty will hang over state-court proceedings if a defendant can remove a case outside the 30-day window. According to the Attorney General, a defendant could litigate the case on the merits in state court initially and then remove the case to federal court if the state court issues adverse substantive rulings.

Not so. Tolling of the removal windows will be confined to a very small number of cases. See *Boechler*, 596 U.S. at 211 (rejecting a similar

argument for tax collection actions). In many cases, the defendant will take substantial actions in the state court that amount to a waiver of the right to remove. 14C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3721 at 37–42 (2018) (discussing case law on waiver of right to remove).

But this case is unique. Despite the passage of time, the state-court proceedings were delayed. The Governor chose to file her own lawsuit, and the Attorney General agreed to hold this action in abeyance. To date, the state court has not issued any rulings on the merits; Enbridge has not filed an answer; and there has been no discovery. Pet. App. 3a–4a, 29a; J.A. 55a–103a.

While the Attorney General argued waiver here, no court has adopted that argument—for good reason. The Attorney General emphasized below that the state court issued a TRO in June 2020 after Enbridge reported possible damage to one of the pipe's anchor support in the Straits bottomlands. Pet. App. 4a. But a TRO is not a merits ruling. A defendant does not waive removal by opposing a TRO.[21]

---

[21] E.g., *Rock Hemp Corp.* v. *Dunn*, 51 F.4th 693, 701 (7th Cir. 2022) ("Appellees' decision to file motions to dismiss and begin discovery does not evince a clear and unequivocal intent to remain in state court ...."); *Cogdell* v. *Wyeth*, 366 F.3d 1245, 1249 (11th Cir. 2004) ("the removing defendant did not waive its right of removal by filing a motion to dismiss the plaintiff's complaint while the case was still pending in state court"); *Robertson* v. *U.S. Bank, N.A.*, 831 F.3d 757, 761 (6th Cir. 2016) ("Because a motion for a temporary injunction is necessarily resolved *before* a court reaches the merits of a case, [defendant] did not show any intent to litigate on the merits [in state court] by opposing the

The Attorney General also emphasized that the parties filed cross motions for summary disposition under Michigan's civil procedural rules—the equivalent of a federal motion for judgment on the pleadings—and participated in oral arguments about those motions. But taking such actions dictated by local rules or the state-court judge does not constitute a waiver either.[22] In any event, waiver is not an issue encompassed in the question presented for which this Court granted certiorari.

In sum, the Attorney General's concerns about uncertainty in the state-court proceedings are without merit and, in any event, are not sufficient to rebut the presumption in favor of tolling.

4. The district court here limited any tolling of the 30-day removal window to the "exceptional" and "extraordinary" circumstances of this case. Pet. App. 31a, 36a, 38a, 40a–41a. Allowing tolling of the 30-day windows in exceptional circumstances would not shift the workload from states to federal courts.

[plaintiffs'] motion."); *Rothner* v. *City of Chicago*, 879 F.2d 1402, 1404, 1418 (7th Cir. 1989) (no waiver even though defendant opposed a TRO in state court and filed an interlocutory appeal from the order).

[22] See 14C Wright & Miller, *Federal Practice and Procedure* § 3721 at 39 & n.100 (collecting cases); *Grubb* v. *Donegal Mut. Ins. Co.*, 935 F.2d 57, 58–60 (4th Cir. 1991) (defendant did not waive its right to remove by allowing a summary judgment hearing to proceed before removing the action to federal court); *In re Bridgestone/Firestone, Inc., ATX, ATX II*, 128 F. Supp. 2d 1198, 1201 (S.D. Ind. 2001) (filing of motion to dismiss in state court does not waive the right to remove).

"Federal courts have typically extended equitable relief only sparingly." *Irwin*, 498 U.S. at 96. In finding exceptional circumstances here, the district court relied on several factors. *First*, the district court emphasized the conduct of the Michigan Attorney General, including "forum manipulation" and "gamesmanship." Pet. App. 35a–41a.

The Attorney General initially agreed to hold the state-court action in abeyance in favor of the federal court but later tried to maneuver out of that agreement and avoid a federal forum after the federal court denied the Governor's motion to remand the Straits Pipeline controversy to state court. Pet. App. 27a, 35a–39a; *Nessel*, 2021 WL 12359980, at *1.

Second, the district court emphasized the substantial federal interests at stake, including the foreign-affairs issues. Pet. App. 36a–37a, citing *Michigan*, 571 F. Supp. 3d at 858–60. These foreign affairs issues were triggered by the Governor's shut-down order and magnified when Canada invoked the dispute resolution provisions of the 1977 Treaty in October 2021. Pet. App. 27a & n.2, 28a–29a.

The Nation's foreign policy is committed to the political branches of the federal government, not individual states. *American Ins. Assoc.* v. *Garamendi*, 539 U.S. 396, 414–15 (2003). Canada has no formal relations with Michigan or its courts. But it does have diplomatic relations with the United States and an agreement prohibiting any public authority from permanently shutting down Line 5. Art. II(1) of 1977 Treaty, 28 U.S.T. 7449. Any disputes over the Treaty's operation and terms must be resolved between the two Nations. Art. IX of 1977 Treaty.

As the United States has explained, this country has a "strong interest" in preventing any action with respect to Line 5 that would "expos[e] the United States to … substantial monetary damages" and affect "trade and diplomatic relations with Canada." Dkt.50:2–3. See *United States ex rel. Kennedy* v. *Tyler*, 269 U.S. 13, 19 (1925) (an exceptional case in which a federal court may appropriately interfere by habeas involves state interference with "the delicate relations of [the federal] government with a foreign nation").

Finally, the district court relied on interests in the uniform and consistent administration of the Straits Pipeline controversy. Pet. App. 35a, 37a, 41a. Enbridge had filed an *Ex parte Young* action against the state officials. Pet. App. 27a. That action remains pending; in fact, the federal district court set a briefing schedule on Enbridge's motion for summary judgment shortly after denying the Governor's remand motion. Pet. App. 33a–34a; J.A. 2a. The district court recognized that Enbridge's removal of the Attorney General's action was "an effort to maintain uniform and consistent administration of justice." Pet. App. 35a. In contrast, the Michigan Attorney General sought to "perpetuate a forum battle" and a "race to judgment" between the state and federal courts. Pet. App. 35a, 37a.

The district court thus understood equitable tolling to contain a high bar: the presentation of exceptional circumstances. This limitation inevitably accommodates federal-state relations. See *Sprint Commc'ns, Inc.* v. *Jacobs*, 571 U.S. 69, 82 (2013); *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592, 602 (1975).

The Sixth Circuit did not disturb the district court's findings on exceptional circumstances. Instead, the Sixth Circuit ruled that Section 1446(b)'s windows are mandatory and immune from *any* exceptions. Pet. App. 2a, 24a.

C. The Sixth Circuit relied on weak inferences, not clear congressional intent

The Sixth Circuit did not identify clear congressional intent necessary to overcome the presumption in favor of equitable tolling. Instead, the panel pointed to weak inferences in the statutory text and structure.

First, the Sixth Circuit emphasized that the default rule is written in mandatory language—"shall be filed within 30 days" after receipt of the initial complaint or summons. Pet. App. 20a. As explained, "the simple fact that a deadline is phrased in an unqualified manner does not necessarily establish that tolling is unavailable." *Nutraceutical*, 586 U.S. at 193. Such language is insufficient to satisfy the clear-statement rule. Otherwise, numerous equitable-tolling cases this Court has decided would have come out the other way.

Second, the Sixth Circuit added that, if the defendant receives the initial complaint or summons at different times, Section 1446(b) says that the applicable deadline is "whichever period is shorter." Pet. App. 20a. But this language speaks to the litigant, not to the court's equitable powers. *Boechler*, 596 U.S. at 209.

Moreover, this language was added in 1949 to achieve uniformity on a nationwide basis as to when the 30-day clock is triggered. *Murphy Bros., Inc.* v. *Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 349, 352 & n.4 (1999) (explaining this language was added to address the situation "in States such as Kentucky, which required the complaint to be filed at the time the summons issued, but did not require service of the complaint along with the summons"); *Weeks* v. *Fidelity & Cas. Co. of N.Y.*, 218 F.2d 503, 504 (5th Cir. 1955). Fine-tuning the rule to address divergent state practices says nothing about whether equitable tolling is permissible.

Third, the Sixth Circuit asserted that Section 1446(b) "includes explicit exceptions—and carveouts from those exceptions—to that default rule." Pet. App. 20a. But none of the cited provisions are "exceptions" to the default rule. They instead set triggers of the 30-day window in limited circumstances where the default rule does not apply. See *Holland*, 560 U.S. at 647 (distinguishing between events that trigger the clock and exceptions to the basic time limits). And again, all these provisions speak to the litigant, not the court.

In the Sixth Circuit's view, the "first" exception to the default rule arises in cases with multiple defendants served at different times. Pet. App. 21a, citing 28 U.S.C. 1446(b)(2)(C). But this is not an exception. This language merely clarifies how the rule of unanimity—derived from the common law—works when defendants are served at different times. See *Robertson* v. *U.S. Bank, N.A.*, 831 F.3d 757, 761 (6th Cir. 2016); *Taylor* v. *Medtronic, Inc.*, 15 F.4th

148, 150 (2d Cir. 2021) ("common law long required all defendants to consent to removal") (citing *Chi., Rock Island, & Pac. Ry. Co.* v. *Martin*, 178 U.S. 245, 248 (1900)). If a later-served defendant removes within 30 days of service of the complaint or summons on that defendant, an earlier-served defendant "may consent" to that removal "even though that earlier-served defendant did not previously initiate or consent to removal." 28 U.S.C. 1446(b)(2)(C). Thus, the same 30-day window is the trigger, but the earlier-served defendant may "consent" to a notice of removal filed by a later-served defendant.

Given this, interpreting Section 1446(b) to contain an implied equitable-tolling exception would not wreak any "kind of linguistic havoc." *Brockamp*, 519 U.S. at 352. To the contrary, lower courts have applied equitable tolling for years in the multidefendant removal situation while remaining consistent with the statutory scheme and purpose. E.g., *Gillis* v. *Louisiana*, 294 F.3d 755, 759 (5th Cir. 2002).

The Sixth Circuit's reasoning regarding a second exception is similarly flawed. The panel referred to the situation where the initial case is not removable but a later-received paper gives notice that the case has become removable. Pet. App. 21a, citing 28 U.S.C. 1446(b)(3). This is not an exception either. As the Sixth Circuit acknowledged, this opportunity arises only when the initial pleading is not removable. Pet. App. 21a. Section 1446(b)(3) merely sets a different trigger for the 30-day window in such a case. *Holland*, 560 U.S. at 647. That's all.

The Sixth Circuit pointed out that Section 1446(b)(3)'s 30-day window contains an express limitation—"except as provided in subsection (c)." Pet. App. 21a. Section 1446(c), in turn, curtails the ability of a defendant to remove based on diversity of citizenship after one year. 28 U.S.C. 1446(c) (no removal after one year in diversity-of-citizenship cases unless the district court finds bad faith). But as the Sixth Circuit acknowledged, this one-year cap does not apply here since Enbridge removed based on original federal-court jurisdiction. Pet. App. 21a; J.A. 10a–17a.

Regardless, Section 1446(c) is not a "carveout" to the 30-day removal window. Pet. App. 20a. Instead, it sets a one-year cap for removing when the initial complaint is not removable based on diversity of citizenship but later becomes removable. 28 U.S.C. 1446(b)(3), (c). Before 1988, the courts were split on whether the one-year cap was an absolute limit on the district court's authority or subject to equitable tolling. See H.R. Rep. No. 112-10, at 15 (2011), *reprinted in* 2011 U.S.C.C.A.N. 576, 580. Congress amended Section 1446(c) to "resolve the conflict" in favor of allowing tolling of the one-year limitation when plaintiff has acted in bad faith to prevent a defendant from removing sooner. *Id.* If anything, this enactment history suggests that Congress favored equitable tolling for Section 1446(b)'s 30-day windows.

Courts can apply both equitable tolling to Section 1446(b)'s windows and Section 1446(c)'s one-year cap without working any "kind of linguistic havoc." *Brockamp*, 519 U.S. at 350, 352. Section 1446(c)

applies only when the initial complaint is not removable based on diversity of citizenship but a later paper gives notice that the case has become removable on that ground. In that situation, the district courts would apply equitable tolling to Section 1446(b)(3)'s 30-day window, unless the case was commenced more than one year earlier and the district court does not find plaintiff acted in bad faith in preventing an earlier removal. Section 1446(c) far from evinces a clear intent to prohibit equitable tolling of the 30-day default window.

Fourth, the Sixth Circuit stressed that the removal statute is "nested" in 28 U.S.C. Part IV, titled "*Jurisdiction* and Venue." Pet. App. 22a, emphasizing the word jurisdiction. But Part IV contains multiple chapters and subchapters. Congress could have placed the removal provisions in Chapter 85—titled "District Courts; Jurisdiction"—but did not. Instead, Congress elected to put the removal provisions in a different chapter (Chapter 89) and in a section entitled "*Procedure* for Removal of Civil Actions." 28 U.S.C. 1446 (emphasis added). Everyone agrees that the 30-day removal window is not jurisdictional. Pet. App. 19a, 31a & n.7. To the extent Part IV's title is relevant, it hardly displays such clear intent as to overcome the presumption in favor of equitable tolling of the procedural deadlines in Section 1446.

Finally, the Sixth Circuit said the removal statute is to be "strictly construed" against removal to promote deference to state courts. Pet. App. 22a–23a. But "[t]here is no presumption against federal jurisdiction in general, or removal in particular."

Back Doctors Ltd v. *Metro. Prop. & Cas. Ins. Co.*, 637 F.3d 827, 830 (7th Cir. 2011).

This Court's decision in *Shamrock Oil & Gas Corp.* v. *Sheets*, 313 U.S. 100 (1941)—cited by the panel below—does not say otherwise. There, this Court said that "the policy of the successive acts of Congress … is one calling for the strict construction of such legislation." *Id*. at 108. But in using the phrase "strict construction," the *Shamrock* Court was referring to a particular congressional policy at the time, not some overriding constitutional command to interpret the removal statute narrowly.

As this Court later explained, "whatever apparent force this argument might have claimed when *Shamrock* was handed down has been qualified by later statutory development." *Breuer* v. *Jim's Concrete of Brevard*, 538 U.S. 691, 697–98 (2003) (referring to the 1948 statutory amendment "requiring any exception to the general removability rule to be express"); *Murphy Bros.,* 526 U.S. at 347–48, 356 (interpreting Section 1446(b)'s "through service or otherwise" restriction to mean that the removal period does not begin until formal service).

In any event, any tool of strict construction is not evidence that *Congress* intended to preclude equitable tolling; they are different concepts.

The Sixth Circuit erred in reversing the district court. Nothing in the statutory text or structure makes clear that Congress intended to prohibit equitable tolling for Section 1446(b)'s windows. The parties should be returned to the position they occupied absent the panel's error, with the stay in place pursuant to 28 U.S.C. 1446(d).

CONCLUSION

The judgment of the court of appeals should be reversed with instructions to rescind the remand order.

Respectfully submitted,

JOHN J. BURSCH
BURSCH LAW PLLC
9339 Cherry Valley Ave. SE, No. 78
Caledonia, MI 49316

ALICE E. LOUGHRAN
Counsel of Record
BRENDAN HAMMOND
STEPTOE LLP
1330 Connecticut Ave. NW
Washington, D.C. 20036
(202) 429-6202
aloughran@steptoe.com

JEFFERY V. STUCKEY
DICKINSON WRIGHT, PLLC
123 W. Allegan St.
Suite 900
Lansing, MI 48933

PHILLIP J. DEROSIER
DICKINSON WRIGHT, PLLC
500 Woodward Ave.
Suite 4000
Detroit, MI 48226

AUGUST 2025

APPENDIX

TABLE OF APPENDICES

Page

APPENDIX — RELEVANT STATUTORY PROVISIONS

1. 28 U.S.C. § 1441, paragraphs (a) and (d) provide:

Removal of civil actions

(a) **Generally**.—Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

* * *

2. 28 U.S.C. § 1446 provides:

Procedure for removal of civil actions

(a) **Generally**.—A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) **Requirements; Generally**.—(1) The notice of removal of a civil action or proceeding shall be filed within 30 days

after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action. (B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal. (C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) **Requirements; Removal Based On Diversity Of Citizenship**.—(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the

action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—

(i) nonmonetary relief; or

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

(3)(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

(d) **Notice To Adverse Parties And State Court.—** Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) **Counterclaim in 337 Proceeding.—**With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

[(f) Redesignated (e)]

(g) Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of

section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

3. 28 U.S.C. § 1447 provides:

Procedure after removal generally

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was rewmoved pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.