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
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

David R. Jury
UNITED STEELWORKERS
60 Boulevard of the Allies
Room 807
Pittsburgh, PA 15222

Jonathan D. Newman
Counsel of Record
Jacob J. Demree
SHERMAN DUNN, P.C.
900 Seventh Street, N.W.
Suite 1000
Washington, D.C. 20001
newman@shermandunn.com
(202) 785-9300

Mosaic - (301) 927-3800 - Cheverly, MD

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Constitutions, Statutes, and Rules

Other Authorities

INTEREST OF AMICI[1]

North America's Building Trades Unions ("NABTU") is a labor organization composed of fourteen national and international unions and 327 provincial, state, and local building and construction trades councils representing more than three million workers. 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
- Electricians represented by the International Brotherhood of Electrical Workers, who work at pumping and service stations along pipelines to

[1] 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.

> 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 500,000 members in the United States, Canada, and the Caribbean 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 dozens of refining, production, pipeline, maintenance, storage, and petrochemical facilities in the United States — facilities that together represent roughly two-thirds of the nation's refining capacity. 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. NABTU, USW, and their affiliates also have a strong interest in this case as potential defendants in state-court litigation. *See, e.g.*, Notice of Removal, *GFR Media v. United Steelworkers Loc. 6135*, No. 25-cv-1040 (D.P.R. Jan. 22, 2025) (notice of removal by USW affiliate); Verified Pet. for Removal, *STV Grp., Inc. v.*

Nassau Suffolk Bldg. & Constr. Trades Council, No. 15-cv-1532 (E.D.N.Y. Mar. 24, 2015) (notice of removal by NABTU affiliate).

INTRODUCTION AND SUMMARY OF ARGUMENT

For over seven decades, the Line 5 pipeline has transported energy sources through Wisconsin and Michigan and Ontario, Canada. Thousands of amici's members are responsible for maintaining the pipeline and associated industrial facilities, like Ohio's PBF Energy Toledo and Cenovus Refinery. For example, USW represents approximately 375 production and maintenance and office and technical employees at PBF Energy Toledo, and 325 process, production, and maintenance employees at the Cenovus Refinery (formerly known as the bp-Husky Toledo Refinery). And at just those two refineries, members of NABTU's affiliated unions performed 1,373,299 hours of routine and large-scale maintenance in 2024 — approximately full-time employment for nearly seven hundred workers.[2]

These are jobs with solid wages and benefits. Senior USW-represented production and maintenance employees at PBF Energy Toledo earn straight-time

---

[2] 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 687 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, short-term projects.

hourly wage rates between $41.20 and $51.55, and senior USW-represented employees at the Cenovus Refinery earn between $44.76 and $55.55 per hour. NABTU's affiliates have also negotiated robust wages and benefits for building trades workers in Lucas County (the site of the refineries). The prevailing wage, including employer contributions to benefit funds, is $83.56 per hour for pipefitters, $54.94 per hour for operating engineers (or more, depending on the type of equipment used), $53.80 for laborers, and $76.48 for electricians.[3]

Sudden closures of the Line 5 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. Yet in 2019 and 2020, Michigan's Governor and Attorney General took steps to shut down the pipeline, leading to closely parallel cases: this case, which was filed in state court and removed to federal court; *Michigan v. Enbridge*, which was filed in state court, removed, and ultimately dismissed; and *Enbridge v. Whitmer*, which was filed in federal court. Though Petitioners (together, "Enbridge") were late in removing this case, the district court held that "[i]t would be an absurd result for the Court to remand the present case and sanction a forum battle," since "[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.

---

[3] Prevailing wage rates for each craft are available at Ohio Dep't of Com., *Prevailing Wage Portal*, https://pwr.com.ohio.gov/ (last visited Sept. 2, 2025).

App. 37a.

The issue before the Court is whether district courts have the authority to equitably toll 28 U.S.C. § 1446(b)(1)'s thirty-day period for removal. Practically, that means deciding whether to allow for reasoned deliberation in these parallel cases in federal court or to sanction a forum battle that would threaten thousands of jobs and millions of dollars in family-sustaining wages and benefits.

I. When Congress writes a statute of limitations, it does so against an equitable tolling presumption. Though limitations periods are binding, they can normally be excused where strict enforcement would be unjust. There is an exception to the equitable tolling presumption for a small set of "jurisdictional" timing rules. Because jurisdictional rules go to a court's authority to hear a case, courts have no authority to excuse noncompliance with their requirements. Without an exceedingly strong *clear statement* that Congress intended a statute of limitations to be jurisdictional, however, a statute of limitations is merely procedural.

Section 1446(b)(1)'s thirty-day period is a nonjurisdictional claim-processing rule. It speaks to defendants' obligations with respect to removal, and not to a court's power to hear a removed case. Removal *jurisdiction* is granted in an entirely separate section, and there is no clear connection between compliance with the thirty-day removal deadline and the jurisdictional provisions. Therefore, Section 1446(b)(1) is presumptively subject to equitable tolling.

Congress did not rebut that presumption here. 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)(1)'s text or structure shows that Congress intended to prevent tolling of its thirty-day deadline.

Moreover, equitable tolling is consistent with the history of federal courts' removal jurisdiction (and particularly their federal-question removal jurisdiction). 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 that its purpose is 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. Equitable tolling aligns with that purpose.

II. Tolling is appropriate if a party has diligently pursued its rights and an extraordinary circumstance excuses its technically late filing. For example, a party that is tricked into letting a deadline pass would traditionally be entitled to tolling. Tolling may also be appropriate when circumstances beyond a party's control change the nature of a case.

Here, after over a year of litigating this case in state court, Michigan radically changed its strategy by attempting to revoke Enbridge's easement through the Straits of Mackinac. Next, the Government of Canada intervened and initiated international dispute resolution procedures with the United States to address Michigan's attempts to shut down the Line 5 pipeline. Finally, after agreeing to hold this case in abeyance pending a federal court's resolution of related issues, Michigan changed course again by moving to resolve this lawsuit quickly and without federal oversight.

The Court should reverse the Sixth Circuit, hold that equitable tolling applies, and remand for further proceedings in which the lower courts will consider these and other factors to determine if the facts justify equitable tolling of the thirty-day deadline in the removal statute.

ARGUMENT

I. Section 1446(b)(1)'s Thirty-Day Deadline Is Subject to Equitable Tolling.

A. Section 1446(b)(1) Is a Procedural Claim-Processing Rule Subject to the Background Equitable Tolling Presumption.

1. The text of Section 1446(b)(1) is straightforward:

> 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.

The summons and complaint in this case were served on Enbridge on July 12, 2019. J.A. 103a. Enbridge removed this case to federal court on December 15, 2021. J.A. 1a-20a, 57a; Pet. App. 7a. Enbridge's removal was unquestionably late under the plain text of Section 1446(b)(1).

But that is not the end of the analysis, since "[t]he

procedural requirements that Congress enacts to govern the litigation process are only occasionally as strict as they seem." *Harrow v. Dep't of Def.*, 601 U.S. 480, 483 (2024). That's because "Congress legislates against the backdrop of judicial doctrines creating exceptions, and typically expects those doctrines to apply." *Id.*

One of those background doctrines is equitable tolling, which courts have applied for centuries. *See McQuiggin v. Perkins*, 569 U.S. 383, 409 (2013) (Scalia, J., dissenting, with Roberts, C.J., Thomas & Alito, JJ.). Traditionally, equity has been described as "synonymous to justice." 3 William Blackstone, *Commentaries* *429. "[E]quity delighteth in equality" and seeks to restore situations to how "they ought to have been," absent an injustice or unfairness. 1 Joseph Story, *Commentaries on Equity Jurisprudence as Administered in England and America* 60-61 (12th ed. 1877) [hereinafter Story, *Commentaries on Equity Jurisprudence*].

Normally, limitations periods operate to "assure fairness," *Burnett v. N.Y. Cent. R.R.*, 380 U.S. 424, 428 (1965), by "preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared," *Order of R.R. Telegraphers v. Rwy. Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944). But "statutes of limitation are not controlling measures of equitable relief." *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946). Equity *does* "act in obedience and in analogy to the statute of limitations, in proper cases," but it may "also interfere . . . to prevent the bar of the statutes, where it would be inequitable or unjust." 2 Story, *Commentaries on Equity Jurisprudence*, *supra*, at 762.

At equity, "specific circumstances, often hard to predict in advance, could warrant special treatment." *Holland v. Florida*, 560 U.S. 631, 650 (2010). For example, equity steps in when one party fraudulently conceals facts from the other to unfairly run out the statute of limitations. *E.g.*, *Holmberg*, 327 U.S. at 396-97; *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 347-48 (1875). Similarly, when a litigant "has been pursuing [its] rights diligently" and "some extraordinary circumstance" stands in its way, *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005), equity can excuse lateness to prevent "inequitable reliance on statutes of limitations," *Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231, 233 (1959).

"Colonial legislatures would have assumed that equitable tolling would attend any statute of limitations they adopted." *McQuiggin*, 569 U.S. at 410 (Scalia, J., dissenting, with Roberts, C.J., Thomas & Alito, JJ.). In most cases, so, too, has Congress. *See Boechler, P.C. v. Comm'r*, 596 U.S. 199, 208-09 (2022). Consistent with Congress's longstanding intent, this Court presumes that equitable tolling applies to statutes of limitations. *Lozano v. Alvarez*, 572 U.S. 1, 10-11 (2014). Generally, unless there is a "good reason to believe that Congress did *not* want the equitable tolling doctrine to apply," courts may excuse violations of a statutory limitations period. *United States v. Brockamp*, 519 U.S. 347, 350 (1997).[4]

2. There is an exception to the equitable tolling presumption for "a small set of cases, where the

---

[4] Equitable *tolling* is different than equitable *exceptions* to a statute of limitations. *See McQuiggin*, 569 U.S. at 392. Amici argue only that tolling is available and take no position on whether courts could create equitable exceptions to Section 1446(b)(1).

procedural rule counts as 'jurisdictional.'" *Harrow*, 601 U.S. at 484. A rule is jurisdictional if it goes to a court's authority to hear a case. *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011). When a party fails to comply with a jurisdictional rule, the rule divests the court of its adjudicative authority. Since "courts are not able to exceed limits on their adjudicative authority, they cannot grant equitable exceptions to jurisdictional rules." *Santos-Zacaria v. Garland*, 598 U.S. 411, 416 (2023).

But without a *clear statement* "that a threshold limitation on a statute's scope shall count as jurisdictional, . . . courts should treat the restriction as nonjurisdictional." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515-16 (2006). The Court "will not categorize a provision as 'jurisdictional' unless the signal is exceedingly strong." *Riley v. Bondi*, 145 S. Ct. 2190, 2201-02 (2025). Under *Arbaugh*'s clear statement rule, most time bars are nonjurisdictional. *Wilkins v. United States*, 598 U.S. 152, 158 (2023). That's true "even when the time limit is important (most are) and even when it is framed in mandatory terms (again, most are)." *United States v. Kwai Fun Wong*, 575 U.S. 402, 410 (2015). Indeed, "since *Arbaugh*, [the Court's] cases have almost uniformly found that the provisions at issue failed to meet this very demanding test." *Riley*, 145 S. Ct. at 2202.

There is no clear statement here. "Congress must do something special, beyond setting an exception-free deadline, to tag a statute of limitations as jurisdictional and so prohibit a court from tolling it." *Kwai Fun Wong*, 575 U.S. at 410. For example, in *Riley*, the Court interpreted 8 U.S.C. § 1252(b)(1), which provides that "[t]he petition for review [of an order of removal of a non-U.S. citizen] must be filed not later

than 30 days after the date of the final order of removal." The statute tells *petitioners* what to do but "provides no directives to *courts*." 145 S. Ct. at 2202. "It makes no reference to jurisdiction and lacks any language 'demarcat[ing] a court's power.'" *Id.* (quoting *Harrow*, 601 U.S. at 484) (alteration in original). Moreover, the section containing the deadline does not concern jurisdiction — if Congress had intended to make the thirty-day deadline jurisdictional, it could have placed it in a jurisdictional statute. *Id.*

Boechler involved similar language in I.R.C. § 6330(d)(1), which provides that a "person may, within 30 days of a determination [in a collection due process hearing] under this section, petition the Tax Court for review of such determination." But Section 6330(d)(1) continues with a parenthetical: "(and the Tax Court shall have jurisdiction with respect to such matter)." However, the Court held that the jurisdiction-granting parenthetical was not clearly connected to the thirty-day deadline. 596 U.S. at 204. Proximity to jurisdictional provisions was unimportant because there was no "clear tie" between the jurisdictional and procedural language. *Id.* at 207.

Here, Section 1446(b)(1) is silent on courts' power to hear removed cases. It provides only that the notice of removal "shall be filed within 30 days." That speaks to the *defendant's* responsibility and, like the statute in *Riley*, does not speak to any responsibility of a *court*. In fact, Section 1446 is titled "*Procedure* for removal of civil actions." *Jurisdiction* over removal is granted in a separate section (Section 1441). There is no clear link between compliance with Section 1446(b)(1) and a court's jurisdiction to hear a removed case. "The propriety of removal" depends not on timely removal but "on whether the case originally

could have been filed in federal court." *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 163 (1997); *see also Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (similar).

Like its 1875 predecessor, Section 1446(b) is "modal and formal," in contrast to the separate "jurisdictional," "indispensable" section "defin[ing] the cases in which a removal may be made." *Ayers v. Watson*, 113 U.S. 594, 598 (1885). As a result, every circuit has held that Section 1446(b)'s requirements are procedural and not jurisdictional.[5] It follows that Section 1446(b)(1) is presumptively subject to equitable tolling.

B. Equitable Tolling Is Consistent with Section 1446(b)(1)'s Text and Structure.

Congress does not alter the background equitable tolling principle lightly, *Boechler*, 596 U.S. at 209, and there is no evidence that Congress intended to rebut the presumption here. The Court will not read a statute to displace courts' traditional equitable authority without the "clearest command." *Holland*, 560 U.S. at

---

[5] *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. 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).

646 (quoting *Miller v. French*, 530 U.S. 327, 340 (2000)). Whether Congress intended to rebut the equitable tolling presumption is a question of traditional statutory interpretation. *United States v. Beggerly*, 524 U.S. 38, 48 (1998).

The foundational cases are *Brockamp* and *Beggerly*. *Brockamp* involved the time limit for filing tax refund claims. The relevant statute (1) set out its time limit "'in unusually emphatic form'"; (2) used "'highly detailed' and 'technical' language" that could not be read as containing implicit exceptions; (3) "'reiterate[d] its limitations several times in several different ways'"; (4) related to nationwide tax collection, with which tolling could substantially interfere; and (5) "would, if tolled, 'require tolling . . . substantive limitations on the amount of recovery.'" *Holland*, 560 U.S. at 646 (quoting *Brockamp*, 519 U.S. at 350-52) (alteration in original). Tolling could logjam the IRS by "forcing [it] to respond to, and perhaps litigate, large numbers of late claims." *Brockamp*, 519 U.S. at 352. Therefore, Congress more likely "decided to pay the price of occasional unfairness in individual cases (penalizing a taxpayer whose claim is unavoidably delayed) in order to maintain a more workable tax enforcement system." *Id.* at 353. Tolling would have been inconsistent with congressional intent and, as a result, was unavailable.

Beggerly was a Quiet Title Act suit. Under the Quiet Title Act, the statute of limitations was "unusually generous" (twelve years), and tolling would "throw a cloud of uncertainty" over land ownership rights — rights that landowners must "know with certainty." 524 U.S. at 48-49. Equitable tolling would be "incompatible with the Act." *Id.* at 49.

The Court recently applied *Brockamp* and *Beggerly*

in *Arellano v. McDonough*, 598 U.S. 1 (2023). There, the question was whether an exception to an "effective date" of an award of disability compensation to veterans was subject to equitable tolling. Generally, the effective date can be no earlier than the day on which the Department of Veterans Affairs receives the application for benefits. However, the relevant statute contains sixteen detailed exceptions, many of which reflect equitable considerations. "That Congress accounted for equitable factors in setting effective dates strongly suggests that it did not expect an adjudicator to add a broader range of equitable factors to the mix." *Id.* at 10. The Court, therefore, held that equitable tolling applied.

Without clear commands in statutory text and structure, the Court has found that Congress did *not* rebut the equitable tolling presumption. For example, in *Boechler*, the statute contained a single exception, had a short thirty-day time limit, was not unusually emphatic or detailed, was not reiterated multiple times, and did not expressly prohibit equitable tolling. 596 U.S. at 209-10. Equitable tolling would be consistent with the statute.

And in *Holland*, the Antiterrorism and Effective Death Penalty Act's ("AEDPA") one-year limitations period was neither unusually emphatic nor reiterated several times. 560 U.S. at 647. The one-year period was not particularly long, and equitable tolling would not interfere with the substantive aspects of a claim. *Id.* "In short, AEDPA's 1-year limit reads like an ordinary, run-of-the-mill statute of limitations." *Id.* Though a separate section of the statute dealing with state collateral review proceedings referred to tolling, Congress referred to tolling only because it "had to explain" how the one-year period would apply when

collateral proceedings were pending. *Id.* at 648. That "special need for an express provision undermine[d] any temptation to invoke the interpretive maxim *inclusio unius est exclusio alterius* (to include one item . . . is to exclude other similar items . . .)." *Id.* The respondent in *Holland* also pointed to what it claimed were detailed exceptions to the limitations period, but the Court instead read those provisions as *triggers* to the running of the limitations period. *Id.* at 647. Tolling was consistent with the statute, and the Court held that it applied.

Here, the Court should "[s]tart with the text." *Arellano*, 598 U.S. at 8. Section 1446(b)(1) reads like a run-of-the-mill statute of limitations: A notice of removal "shall be filed within 30 days" of the triggering event. The thirty-day requirement is not reiterated, unusually generous, or written in unusually emphatic form or using highly detailed or technical language that would preclude equitable exceptions. Allowing tolling of the thirty-day period will not impact the substance of any claims or create administrative problems for federal or state courts.

Under Section 1446(d), the state court will still be prohibited from processing the case upon receipt of a copy of the notice of removal. *See Roman Cath. Archdiocese of San Juan v. Feliciano*, 589 U.S. 57, 63-64 (2020) (per curiam) (explaining that a state court has no jurisdiction over a removed case unless and until that case is remanded). The plaintiff will still have thirty days to move to remand the case back to state court under Section 1447(c). And state-court orders entered before a late removal will still be binding after the federal court takes up the case, since "[a]fter removal, the federal court 'takes the case up where the State court left it off.'" *Granny Goose Foods, Inc. v.*

Brotherhood of Teamsters, Loc. No. 70, 415 U.S. 423, 436 (1974) (quoting *Duncan v. Gegan*, 101 U.S. 810, 812 (1880)).

It's true that Section 1446(b)(1) is not the only provision dealing with the start of the removal period. Section 1446(b)(1) starts the clock on the sooner of "receipt by the defendant . . . of a copy of the initial pleading" or "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." Section 1446(b)(3) starts the clock for cases that are not initially removable after "receipt by the defendant . . . 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." But as in *Holland*, these are merely alternative *triggers* — not exceptions — to the running of the thirty-day period.

Section 1446 includes additional restrictions on the time for removal, but these restrictions merely respond to specific situations that Congress *had to* address. For example, Section 1446(b)(2)(C), which 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, 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 Section 1446(c)(1), which provides that a diversity case may generally not be removed "more than 1 year after commencement of the action," avoids 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).

In some contexts, Section 1446(b)(1)'s thirty-day period is superseded by other statutes. *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 those unique, special circumstances outside of the typical federal-question or diversity case. Congress did not deliberately rebut the 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).

It's also true that the removal statutes are strictly construed against removal out of respect for state sovereignty. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108 (1941). But a statute intended to be strictly construed may still be intended to be equitably tolled. For example, in *Bowen v. City of New York*, 476 U.S. 467 (1986), the Court interpreted a sixty-day limitations period in the Social Security Act. The Social Security Act waived sovereign immunity, so the Court had "no difficulty agreeing" that the statute "must be strictly construed." *Id.* at 479. Nevertheless, the Court held that Congress did not intend to preclude equitable tolling, in light of the statute's structure and purpose. *Id.* at 480. Similarly, here, nothing in Section 1446(b)(1) signals Congress's intent to overcome the equitable tolling presumption.

C. Equitable Tolling Is Consistent with the History and Purpose of Federal-Question Removal.

The statutory text and structure make clear that equitable tolling applies to Section 1446(b)(1), but to the extent competing interpretations of the statute are plausible, this Court should consider the nature of the statute's subject matter — here, removal (and particularly federal-question removal). *Arellano*, 598 U.S. at 14; *see, e.g.*, *Holland*, 560 U.S. at 648 (looking to AEDPA's "basic purposes"); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 398 (1982) (looking to Title VII's "remedial purpose" and the "particular purpose of the [statute's] filing requirement"); *Honda v. Clark*, 386 U.S. 484, 495 (1967) (looking to the "legislative purpose" of the Trading with the Enemy Act).

From the founding, it was clear that federal courts must have authority to review certain decisions of state courts. Allowing each state to have "final jurisdiction over the same causes, arising upon the same laws, is a hydra in government from which nothing but contradiction and confusion can proceed." *The Federalist No. 80*, at 476 (Alexander Hamilton) (Clinton Rossiter ed., 1961). 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 (1927).

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.*, 313 U.S. at 104. 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 to what is today Section 1446(b)(3). 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) Conf. 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).

Section 1446(b)(1)'s thirty-day period promotes fairness in the removal process, just like other statutory limitations periods. *See Burnett*, 380 U.S. at 428; *Order of R.R. Telegraphers*, 321 U.S. at 348-49. Equitably tolling Section 1446(b)(1)'s time constraints to preserve fairness to the parties when important federal questions are at stake is therefore consistent with the removal statutes' history and purpose.

II. Section 1446(b)(1)'s Thirty-Day Deadline Should Be Tolled Here.

Tolling is appropriate when (1) a party has diligently pursued its rights, and (2) "some extraordinary circumstance" excuses the party's technically late filing. *Pace*, 544 U.S. at 418. The traditional extraordinary circumstance is when one party "induce[s] or trick[s]" the other "into allowing the filing deadline to pass." *Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 96 (1990). As the Court explained when analyzing a prior version of the removal statutes, tolling would be appropriate "if the conduct of the plaintiff in a given case were merely a device to prevent a removal." *N. Pac. R.R. v. Austin*, 135 U.S. 315, 318 (1890).

Tolling is also appropriate when a party "has actively pursued [its] judicial remedies by filing a defective pleading during the statutory period." *Irwin*, 498

U.S. at 96. For example, in *Burnett*, an employee sued a railroad under the Federal Employers' Liability Act in state court. The state court dismissed the lawsuit for lack of venue, and the employee refiled in federal court — after the expiration of the law's limitations period. Because the employee "did not sleep on his rights but brought an action within the statutory period in a state court of competent jurisdiction," and because the employee's failure to timely file in federal court was "not because he was disinterested, but solely because he felt that his state action was sufficient," the Court excused the employee's noncompliance with the statute of limitations. 380 U.S. at 429.

And in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), former class members of a class action lawsuit moved to intervene as individual plaintiffs after certification of the class was denied, which was after the applicable statute of limitations had run. The defendants were on notice of the claims against them and the types of potential plaintiffs, so tolling was consistent with "policies of ensuring essential fairness to defendants and of barring a plaintiff who 'has slept on his rights.'" *Id.* at 554 (quoting *Burnett*, 380 U.S. at 428). On the other hand, allowing only those potential class members who had timely filed motions to intervene to participate "would deprive Rule 23 class actions of the efficiency and economy of litigation which is a principal purpose of the procedure." *Id.* at 553.

Tolling may also be appropriate when a party fails to timely file because of "circumstances wholly beyond [its] control." *Powers v. Chesapeake & Ohio Rwy.*, 169 U.S. 92, 100 (1898). For example, in *Holland*, a prisoner had repeatedly alerted his attorney to a filing deadline but ultimately filed after the deadline had

passed. Beyond being simply negligent, the attorney failed to file the petition after the prisoner's many letters repeatedly identifying applicable legal rules and requesting that the attorney file on time. Remanding to the lower courts, this Court held that the attorney's failure to timely file "may well [have been] an 'extraordinary' instance" justifying equitable tolling. 560 U.S. at 652.

Turning to this case: Attorney General Dana Nessel filed her complaint in June 2019 in state court, and the summons and complaint were served on Enbridge the next month. J.A. 103a. The parties moved for summary disposition, and Attorney General Nessel was awarded a temporary restraining order that briefly enjoined the operation of the pipeline. Pet. App. 3a-4a. Enbridge did not remove, and litigation continued in state court for over a year.

But before the court had a chance to rule on the motions for summary disposition, Governor Gretchen Whitmer attempted to revoke an easement that authorizes Enbridge to operate the Line 5 pipeline in the Straits of Mackinac. Pet. App. 4a. Governor Whitmer then filed a new lawsuit in state court (*Michigan v. Enbridge*). *Id.* Enbridge removed that lawsuit to federal district court, *id.*, and filed a separate lawsuit in federal court to enjoin the shutdown (*Enbridge v. Whitmer*), Pet. App. 27a.

As a result, despite over a year of orderly litigation over Line 5, Enbridge and Michigan were bound up in three separate lawsuits by the end of 2020: this case (then still in state court), *Michigan v. Enbridge*, and *Enbridge v. Whitmer*. Governor Whitmer moved to remand *Michigan v. Enbridge* back to state court. Pet. App. 5a. Because a decision in either of the cases in federal court could "address [issues that] may

potentially impact th[e state] Court's proceedings" in this case, Attorney General Nessel and Enbridge agreed to hold this case in abeyance. R. 38:9 (first alteration in original).

The federal district court denied Governor Whitmer's motion to remand *Michigan v. Enbridge* on November 16, 2021, holding that it had federal-question jurisdiction because the case required interpretation of, among other laws, the Transit Pipelines Treaty between the United States and Canada. Pet. App. 6a. Under the Transit Pipelines Treaty, "[n]o public authority in the territory of either Party shall institute any measures . . . which are intended to, or which would have the effect of, . . . interfering with in any way the transmission of hydrocarbons in transit." Agreement Concerning Transit Pipelines, Can.-U.S., art. II, § 1, Jan. 28, 1977, T.I.A.S. No. 8,720. In opposition to Governor Whitmer's remand motion, the Government of Canada had filed an amicus brief arguing that Michigan's attempts to shut down the Line 5 pipeline interfered with Line 5's operations in violation of the Transit Pipelines Treaty. R. 38:10-11. Canada subsequently notified the district court that it had invoked the treaty's dispute resolution provision with the United States. R. 38:11.

As a result of the district court's decision, Michigan "shift[ed] its legal strategy to give Michigan state courts the final say" in the Line 5 controversy. Governor Gretchen Whitmer, *Governor Whitmer Takes Action to Protect the Great Lakes* (Nov. 30, 2021).[6] Governor Whitmer voluntarily dismissed *Michigan v.*

---

[6] https://www.michigan.gov/whitmer/news/press-releases/2021/11/30/governor-whitmer-takes-action-to-protect-the-great-lakes

Enbridge, Pet. App. 6a, and Attorney General Nessel asked the state court to lift the stay in this case, R. 38:12. Rather than wait for a federal court to resolve the important federal issues in the related cases, Michigan opted to "move quickly to shut down the dual pipelines." Governor Gretchen Whitmer, *supra*. Enbridge removed this case on December 15, 2021 — within thirty days of the decision in *Michigan v. Enbridge*. J.A. 1a-20a, 57a; Pet. App. 7a.

These facts show several extraordinary circumstances justifying tolling. First, Michigan radically changed its strategy after over a year of litigating this case when it attempted to revoke Enbridge's easement. Next, Canada's intervention and initiation of international dispute resolution procedures transformed this case into "substantially a new suit." *Fletcher v. Hamlet*, 116 U.S. 408, 410 (1886). "[I]t would be impossible" for the federal government to meaningfully honor its obligations under the Transit Pipelines Treaty if state courts could "annul or disregard any of its provisions, unless they violate the Constitution of the United States." *Doe v. Braden*, 57 U.S. (16 How.) 635, 657 (1854).

It would also be contrary to the Supremacy Clause for a state to attempt to override a treaty. Under Article VI of the Constitution, "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

After Canada alerted the district court and parties that it was actively seeking to enforce its treaty rights, and after the district court denied Governor Whitmer's motion to remand the case, it was clear for

the first time that *Michigan v. Enbridge*, *Enbridge v. Whitmer*, ***and this case*** were at the center of an international controversy. That controversy involves parties — sovereign nations — and circumstances outside of Enbridge's control.

Finally, after it had agreed to hold the state-court litigation in abeyance, Michigan changed course again by moving to resolve this lawsuit "quickly" and without federal oversight. Strictly enforcing Section 1446(b)(1)'s thirty-day limitations period here would reward Michigan's efforts to evade federal-court review. This Court should reverse the decision of the court below and remand the case to the Sixth Circuit with instructions for it to rescind the remand order.

CONCLUSION

This Court should reverse the decision of the court below and remand this case for further proceedings in federal court.

Respectfully submitted,

David R. Jury
UNITED STEELWORKERS
60 Boulevard of the Allies
Room 807
Pittsburgh, PA 15222

Jonathan D. Newman
Counsel of Record
Jacob J. Demree
SHERMAN DUNN, P.C.
900 Seventh Street, N.W.
Suite 1000
Washington, D.C. 20001
newman@shermandunn.com
(202) 785-9300

September 5, 2025