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 OF *AMICI CURIAE* STATE OF WEST VIRGINIA AND 9 OTHER STATES IN SUPPORT OF PETITIONERS

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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*

Federal jurisdiction shouldn't turn on a game of "gotcha." Yes, deadlines matter. But when a case involves uniquely compelling circumstances, a court should not use procedural niceties to eject a party from a federal forum. "Timeliness is important to our jurisprudence, but chronometry must not be given absolute dominance over justice, fairness, and common sense." *United States* v. *Mendoza*, 565 F.2d 1285, 1290 (5th Cir. 1978).

Indeed, this Court has already recognized as much. It's repeatedly stressed that non-jurisdictional time limits are assumed to have some equitable flexibility baked into them. And it's recently rejected many efforts to transform more flexible non-jurisdictional provisions into inflexible jurisdictional bars to evade that presumption.

Yet the court below saw things differently. When examining the 30-day deadline for removal found in 28 U.S.C. § 1446(b)(1), the lower court at least recognized that the statute isn't jurisdictional. Pet.App.19a. But it sped past the presumption and bestowed "jurisdictional attributes" on the statute anyway. Pet.App.22a. Reversing the district court, it held that Section 1446(b)'s time limits "leave no room for equitable exceptions." Pet.24a. Wooden proceduralism won the day.

But Section 1446(b)(1) is another typical federal statute that allows for equitable tolling. None of the usual signals of a mandatory claims-processing rule can be found here. And at bottom, the lower court's decision seems driven by a hostility toward removal and the invocation of federal jurisdiction. That was wrong. "There is no presumption against federal jurisdiction in general, or removal in particular." *Back Drs. Ltd.* v. *Metro. Prop. & Cas. Ins.*

Co., 637 F.3d 827, 830 (7th Cir. 2011) (Easterbrook, J.). "In the main, federal courts are obliged to decide cases within the scope of federal jurisdiction." *Sprint Commc'ns, Inc.* v. *Jacobs*, 571 U.S. 69, 72 (2013).

Exceptional circumstances would warrant tolling the statute here. The case involves a critical piece of America's energy infrastructure—the Enbridge Line 5 pipeline. Starting and ending in Canada, the line carries more than 20 million gallons of light crude oil and natural gas liquids every day, supporting energy consumers and operations in Wisconsin, Michigan, Ohio, Pennsylvania, and beyond. Michigan wants to shut down the Line's key chokepoint, an underwater crossing at the Straits of Mackinac (where two Great Lakes meet). Though the dispute is of serious interest to Michiganders, the pain from such a shutdown would be felt far beyond a single State's—or single country's—borders. North America's interconnected energy system is threatened. Courts should be more willing to bend on a filing deadline when serious national and international interests like these are at stake.

The Court should reverse.

SUMMARY OF ARGUMENT

I. The Sixth Circuit incorrectly held that the 30-day deadline for removal is a rigid bar that's not subject to equitable concerns. The statute is not jurisdictional. Non-jurisdictional statutes are presumptively amenable to equitable tolling. That presumption isn't overcome here, considering the factors that this Court has said are relevant. And the lower court focused on the wrong factors—the statute's text does *not* contain exceptions that implicitly foreclose equitable exceptions, its context does *not* suggest that it bears jurisdictional

characteristics, and its strict construction is *not* a license to kick every case back to state court based on the clock. Past precedent from this Court confirms as much.

II. Exceptional circumstances justify equitable tolling here. In deciding whether to toll a statute, courts should consider the nature of the interest involved. If there's a decidedly national or federal interest implicated, then that's more reason to toll. And so it is here. This suit goes directly to national energy policy, a matter of supreme federal importance. The suit will affect the energy needs of an entire region. Beyond that, it will directly affect diplomatic relations with Canada, which views any shutdown of the pipeline as a breach of an important international treaty. Issues like these should stay in federal court.

ARGUMENT

I. Courts can apply equitable exceptions to the 30-day removal deadlines in Section 1446(b)(1).

Section 1446(b)(1) says that a defendant must remove a case from state court "within 30 days" after receipt of an initial pleading or summons, "whichever period is shorter." The Sixth Circuit concluded that these "time limitations are mandatory," "leav[ing] no room for equitable exceptions." Pet.App.24a. But the lower court was mistaken.

A. To start, Section 1446(b)(1) doesn't contain jurisdictional time limits, as just about every court—Sixth Circuit included, Pet.App.19a—has recognized. See *Universal Truck & Equip. Co.* v. *Southworth-Milton, Inc.*, 765 F.3d 103, 110 (1st Cir. 2014) (collecting authorities). Among other things, 28 U.S.C. § 1447(c) says that any objection to untimely removal is waived if not

raised within 30 days of removal—and jurisdictional defects can't be waived or forfeited. See *Kontrick* v. *Ryan*, 540 U.S. 443, 456 (2004). Section 1447 also says that a plaintiff must object to an untimely removal by motion; because the court can't address the issue sua sponte, that's another signal that the 30-day clock is non-jurisdictional. See *Wilkins* v. *United States*, 598 U.S. 152, 157 (2023). And perhaps most importantly, Section 1446(b)(1) itself lacks any clear statement that it's jurisdictional. *Harrow* v. *Dep't of Def.*, 601 U.S. 480, 484 (2024). So the 30-day removal time limits avoid the rule that "jurisdictional" provisions can never be excused for "equitable reasons." *Id.* That outcome makes sense, as "filing deadlines" like these are "quintessential [non-jurisdictional] claim-processing rules." *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 154 (2013).

"[N]onjurisdictional limitations periods are presumptively subject to equitable tolling." *Boechler, P.C.* v. *Commissioner*, 596 U.S. 199, 209 (2022). Congress "must be presumed to draft" time bars in light of the "background principle" from common law that time limits can usually be equitably tolled. *Young* v. *United States*, 535 U.S. 43, 49-50 (2002). And it's important that courts consistently respect such background principles, as Congress must be able to "legislate against a background of *clear* interpretive rules, so that it may know the effect of the language it adopts." *Finley* v. *United States*, 490 U.S. 545, 556 (1989) (emphasis added). So a party arguing that a non-jurisdictional provision doesn't leave room for equity "must contend with [a] high bar." *Harrow*, 601 U.S. at 489 (addressing "nonjurisdictional timing rules"). That's especially so where, as here, a time bar is short; the presumption "is stronger" when that's true. *Hedges* v. *United States*, 404 F.3d 744, 749 (3d Cir. 2005) (citing *United States* v. *Beggerly*, 524 U.S. 38, 48 (1998)).

The presumption of equitable tolling might be overcome where, for instance, a time limit is set out "in unusually emphatic form," is described in "highly detailed and technical language," reiterates the limitation in many different ways, would produce destructive "practical consequences," would affect "substantive limitations on the amount of recovery," is "unusually generous," or involves some underlying subject matter that involves a special need for certainty. *Holland* v. *Florida*, 560 U.S. 631, 646-47 (2010) (cleaned up). So in *Nutraceutical Corp.* v. *Lambert*, 586 U.S. 188, 194 (2019), for example, the Court found that a 14-day time limit for filing an interlocutory petition for permission to appeal was *not* subject to equitable tolling where the relevant rules expressly instructed courts (more than once) *not* to grant extensions. In other words, *Nutraceutical* involved at least two of the factors suggested in *Holland*: an "unusually emphatic" time bar that was also reiterated in different ways. *Holland*, 560 U.S. at 646.

But Section 1446(b)(1) checks none of *Holland*'s boxes—so the presumption can't be overcome here. The statute lacks atypically emphatic language (such as "under no circumstances" or "without exception"). While the statute says a notice of removal "shall" be filed within 30 days, the Court has found equitable tolling was a possibility even when Congress used more aggressive "shall" language in statute. See, *e.g.*, *Irwin* v. *Dep't of Veterans Affs.*, 498 U.S. 89, 95 (1990); cf. *V.L.* v. *E.L.*, 577 U.S. 404, 409 (2016) (noting how the Court has "long rejected the notion that all mandatory prescriptions … are properly typed jurisdictional"). And the statute lacks any express penalty for missing the 30-day deadline; Congress commands lower courts to remand only when "it appears that the district court lacks subject matter jurisdiction." 28 U.S.C. § 1447(c). The statute also doesn't note the 30-

day limit multiple times. Any destructive practical consequences are more likely to follow from *refusing* to consider equitable concerns. The 30-day bar doesn't affect substantive relief. It isn't unusually generous. Lastly, it doesn't call for some special consistency. Already, courts must sometimes probe the specific facts presented and determine whether extra time for removal should be afforded. See, *e.g.*, 28 U.S.C. § 1446(c)(1) (allowing for removal in a diversity case after a year when "the plaintiff has acted in bad faith in order to prevent a defendant from removing the action"). Likewise, figuring out when a "paper" first indicates that a case is removable—as Section 1446(b)(3) requires—can call for careful factual parsing, too.

And as it turns out, this Court already embraced most of these principles. In *Powers* v. *Chesapeake & Ohio Railway Co.*, 169 U.S. 92 (1898), the Court construed a predecessor removal statute. In doing so, it left no doubt that removal time limits were subject to equity. It started from the same point of agreement where the analysis here began: "the time of filing a petition for removal is not essential to the jurisdiction." *Id.* at 98. And it ended with the same result, too: "the incidental provision as to the time [for removal] must, when necessary to carry out the purpose of the statute, yield to the principal enactment as to the right." *Id.* at 101. In finding that the present-day statute can *never* yield, the Sixth Circuit forgot that century-plus-old principle.

B. Against all these cues, neither the lower court nor the Michigan Attorney General have identified anything that overcomes the presumption in favor of equity.

The text does not do the work that the Sixth Circuit thought it did. For one, the Sixth Circuit thought it was important that the statute purportedly has "exceptions."

Pet.App.21a-22a. But as relevant here, it doesn't. Section 1446(b)(2)(C), for instance, does not allow a defendant to remove after 30 days; it says only that an earlier-served defendant can join a later-served defendant's timely filed notice. It's a process provision. Section 1446(b)(3) also allows a defendant to remove within 30 days of receiving the first "paper" that shows the case is actually removable. But that doesn't extend the 30-day period, either; it only explains when the period begins to run. See *Nutraceutical*, 586 U.S. at 197 (distinguishing between "the antecedent issue of when the [time] limit begins to run" and "the availability of tolling"). It's an accrual principle, not an exception or tolling doctrine.

Anyway, the Court has refused to embrace any firm rule that a statute's written exceptions foreclose all others. See *Young*, 535 U.S. at 53 (rejecting an argument that an "express tolling provision, appearing in the same subsection as the [relevant time bar], demonstrates a statutory intent *not* to toll"). For good reason: "the *expressio unius* canon," which the Sixth Circuit was tacitly invoking, "does not apply unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it." *Marx* v. *Gen. Revenue Corp.*, 568 U.S. 371, 381 (2013) (cleaned up). Nothing suggests that here.

It also doesn't matter that Section 1446(b)(1) says the notice of removal is due within 30 days of when the initial pleading is received or 30 days of when the summons is served, "whichever period is shorter." The lower court thought this last bit of "shorter" language meant Congress wanted "strict enforcement," Pet.App.20a, but it does no such thing. When Congress added that language, it was trying "to accommodate atypical state commencement and complaint filing procedures."

Murphy Bros. v. *Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 353 (1999). Some States only required a summons to be served, while others might require just the complaint (or both). Congress wanted to make sure that *no* defendant was "in the position of having to take steps to remove a suit to Federal court before he knows what the suit is about." S. Rep. No. 81-303, at 6 (1949). And looking to the shorter period just assured that defendants in summons-only States didn't enjoy an unreasonably extra time because just because of a quirk of state law. *Murphy Bros.*, 526 U.S. at 352 n.4. None of that background points to a congressional intent to lockdown the time for removal.

The lower court also placed too much weight on the title of the part in which the 30-day removal time limit is found. The part is titled "Jurisdiction and Venue." But just using the word "jurisdiction" doesn't automatically imbue every matter found in that statutory part with "jurisdictional elements." Contra Pet.App.22a. Nor has the Court ever held that a time limit's mere adjacency to jurisdictional provisions bars equitable tolling. Cf. *Burnett* v. *N.Y. Cent. R.R. Co.*, 380 U.S. 424, 427 n.2 (1965) (explaining that a time limit's placement near the substantive right it affects "does not indicate a legislative intent as to whether or when [the limit] should be tolled"). The court should be homing in on the specific time limitations, not the "scheme as a whole." *Menominee Indian Tribe of Wisc.* v. *United States*, 614 F.3d 519, 530 (D.C. Cir. 2010).

What's more, a "heading cannot substitute for the operative text of the statute." *Fla. Dep't of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008). Again, by everyone's agreement, the text says the 30-day time limit is *not* jurisdictional—so it's hard to see how the Sixth Circuit could render it a *de facto* jurisdictional statute through the heading. If titles are important, then it also

matters that (1) removal is found in a chapter (chapter 89, titled "removal of cases from state court") that's separate from another chapter governing district courts' "jurisdiction" (chapter 85); and (2) the section is called "*procedure* for removal of civil actions." 28 U.S.C. § 1446 (emphasis added); cf. *Henderson ex rel. Henderson* v. *Shinseki*, 562 U.S. 428, 439 (2011) (finding that a provision's "placement" in a "procedure" subchapter suggested that it was not jurisdictional). But altogether, if the Court were to treat Section 1446(b)(1) as an inflexible command merely because of where it falls in the U.S. Code, that would "trivialize [federal courts'] authority under" the statute. *Loftin* v. *Rush*, 767 F.2d 800, 805 (11th Cir. 1985).

And the Sixth Circuit further erred in thinking that removal statutes are to be so "strictly construed" that exceptions can be premised on only expressly "clear" statements. Pet.App.22a-23a. Recognizing that a statute "must be strictly construed … does not answer the question whether equitable tolling can be applied" to that statute's time limitations. *Bowen* v. *City of New York*, 476 U.S. 467, 479 (1986). It's quite right that the removal provisions should be construed to respect "state sovereignty." Pet.App.22a. But that's not to say that provisions should be read in an unduly rigid manner, especially when a case concededly falls within the subject-matter jurisdiction of federal courts. (That wasn't the case in *Syngenta Crop Protection, Inc.* v. *Henson*, 537 U.S. 28 (2002), for instance, a case on which the Sixth Circuit relied, Pet.App.22a.) "Federal courts … should be equally vigilant to protect the right to proceed in the Federal court as to permit the state courts, in proper cases, to retain their own jurisdiction." *Wecker* v. *Nat'l Enameling & Stamping Co.*, 204 U.S. 176, 186 (1907).

The notion that "removal jurisdiction must be strictly construed actually means that in the context of removal, a federal court must not expand its jurisdiction beyond the precise limitations set by Congress." *Apache Nitrogen Prods., Inc.* v. *Harbor Ins. Co.*, 145 F.R.D. 674, 680 (D. Ariz. 1993). "There is clearly more reason to construe strictly removal jurisdiction than to construe strictly the 30-day removal period, which is really more akin to the time period in which to file a responsive pleading than to a statute of limitations." Robert P. Faulkner, *The Courtesy Copy Trap: Untimely Removal from State to Federal Court*, 52 MD. L. REV. 374, 382 n.45 (1993) (cleaned up). It seems unlikely "the drafters of the removal statutes would be disturbed over an untimely but otherwise nonprejudicial and appropriate removal." *Id.* So strict construction shouldn't be used to transform every jot and tittle of the jurisdictional statutes into a quasi-jurisdictional bar. After all, "the values served by the procedural rules may not be promoted by strict application of the procedural rules and, indeed, may be hindered in certain situations by their strict application." Scott Dodson, *In Search of Removal Jurisdiction*, 102 NW. U. L. REV. 55, 60 (2008). So "to be observant of these [removal] restrictions is not to indulge in formalism or sterile technicality." *N. Ill. Gas Co.* v. *Airco Indus. Gases*, 676 F.2d 270, 274 n.2 (7th Cir. 1982) (cleaned up).

Relatedly, federalism doesn't support the decision below, either. "The argument … that it is an invasion of the sovereignty of a State to withdraw from its courts into the courts of the general government" a case that presents substantial federal interests "ignores entirely the dual character of our government." *Tennessee* v. *Davis*, 100 U.S. 257, 266 (1879). The Framers "extensively balanced and weighed issues of federalism" in creating federal courts' jurisdiction in the first place. Scott R. Haiber,

Removing the Bias Against Removal, 53 CATH. U. L. REV. 609, 659 (2004). And "[t]hese same individuals also thought it was essential to create a mechanism allowing for removal to federal court." *Id.* So federalism "do[es] not provide [a] plausible ground[] for judicially created impediments to the exercise of a defendant's removal rights." *Id.* at 660; see also, *e.g.*, *In re Int'l Paper Co.*, 961 F.2d 558, 561 (5th Cir. 1992) (issuing a writ of mandamus against a district court that purported to remand a case based on the "spirit of federalism"). Ultimately, a federal court's duties "to exercise jurisdiction where it is conferred, and not to usurp it where it is not conferred, are of equal obligation." *Bank of the United States* v. *Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809) (Marshall, C.J.).

Federalism might play a role in deciding whether equity justifies an exception to the 30-day deadline in a specific case. Cf. *Steward* v. *Garrett*, 935 F. Supp. 849, 854 (E.D. La. 1996) (considering "federalism" in evaluating whether the removal deadline should be extended under 28 U.S.C. § 1441(e)). But it shouldn't justify a total bar against such exceptions in every case. And truth be told, federalism concerns are somewhat "diluted" when it comes to procedurally procedural rules like the 30-day clock. *Hanson* v. *Depot LBX, Inc.*, 756 F. Supp. 3d 56, 73 (W.D. Va. 2024). Were it otherwise, federalism might be used to slam the federal-court door on cases that uniquely belong before federal judges—and where state interests prove to be subordinate to federal ones. See Michael G. Collins, *The Unhappy History of Federal Question Removal*, 71 IOWA L. REV. 717, 759-60 (1986). As it turns out, this is one such case. More on that below.

* * *

In short, Section 1446(b)(1)'s 30-day deadlines are subject to equitable exceptions.

II. Equitable considerations justify extending Section 1446(b)(1)'s 30-day deadlines here.

To say that equity plays a role in applying Section 1446(b)(1) is not to erase the statute's deadlines entirely. Equity demands balance. "Equitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs." *Wallace* v. *Kato*, 549 U.S. 384, 396 (2007). Equitable doctrines "are to be applied sparingly." *Nat'l R.R. Passenger Corp.* v. *Morgan*, 536 U.S. 101, 113 (2002). Yet this standard should also be applied "with awareness of the fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case." *Holland*, 560 U.S. at 650; see also *Socha* v. *Boughton*, 763 F.3d 674, 684 (7th Cir. 2014) (recognizing that equitable-tolling standards impose a "high bar," but not an "impossible" one).

That's why lower courts have looked for "exceptional circumstances" before tolling Section 1446(b). *Brown* v. *Demco, Inc.*, 792 F.2d 478, 482 (5th Cir. 1986); see also *Arellano* v. *McDonough*, 598 U.S. 1, 6 (2023) (explaining that equitable tolling applies when a diligent party confronts "extraordinary circumstances"). And exceptional circumstances exist here—there's nothing common to be found in this case. Michigan's anti-energy lawsuit implicates uniquely national and international interests that should be addressed in federal court. The district court rightly refused to remand; the Sixth Circuit erred in holding otherwise.

A. This case involves national issues that uniquely demand federal treatment.

In considering whether exceptional circumstances exist that warrant tolling the 30-day deadline, courts

should consider the underlying interests involved. In other contexts, "exceptional circumstances" that might lead a federal court to decline to exercise jurisdiction can exist when "the federal interests in retaining jurisdiction over the dispute" are minimal and the "State's interests are paramount." *Quackenbush* v. *Allstate Ins. Co.*, 517 U.S. 706, 716, 728 (1996). The converse should also be true: federal courts should be more interested in *exercising* their jurisdiction when federal or national interests are particularly strong. Pet.App.31a; cf. *Walker* v. *Time Life Films, Inc.*, 784 F.2d 44, 53 (2d Cir. 1986) (explaining that "exceptional circumstances" warranted exercise of pendent jurisdiction over state-law claims after dismissal of federal claims where state claims were interrelated with federal law); *Galtieri* v. *Wainwright*, 582 F.2d 348, 354 n.13 (5th Cir. 1978) (explaining that "exceptional circumstances" can exist to warrant review of unexhausted state habeas claims where a cases "involv[es] the authority and operations of the general government").

Thus, it may be appropriate for courts to relax procedural removal requirements when allowing the litigation to proceed in federal court presents a "significant conflict with or threat to a federal interest." *Vill. of Oakwood* v. *State Bank & Tr. Co.*, 481 F.3d 364, 369 n.3 (6th Cir. 2007).

Cases involving interstate energy implicate obvious federal interests. "The production and transmission of energy is an activity particularly likely to affect more than one State, and its effect on interstate commerce is often significant enough that uncontrolled regulation by the States can patently interfere with broader national interests." *Ark. Elec. Co-op. Corp.* v. *Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983). Indeed, "[t]he energy

area is replete with federal interests," including "national security interests." Pamela J. Stephens, *Implementing Federal Energy Policy at the State and Local Levels: 'Every Power Requisite,'* 10 B.C. ENVTL. AFF. L. REV. 875, 900 (1983). And most relevant here, this Court has already recognized that transporting energy commodities like oil, natural gas, and natural gas liquids through interstate pipelines "is essentially national—not local—in character." *E. Ohio Gas Co.* v. *Tax Comm'n of Ohio*, 283 U.S. 465, 470 (1931); see also, *e.g.*, *Missouri ex rel. Barrett* v. *Kan. Nat. Gas Co.*, 265 U.S. 298, 309-10 (1924) ("The paramount interest [in interstate wholesale energy commodity markets] is not local but national, admitting of and requiring uniformity of regulation.").

Congress has often passed laws reflecting the substantial federal interest in the broader energy market. The Natural Gas Act, for instance, exercises federal control over interstate sales of natural gas because that federal control is "necessary in the public interest." 15 U.S.C. § 717(a). The Federal Power Act broadly regulates "the development, transmission, and utilization of power." 16 U.S.C. § 797(e). A series of Energy Policy Acts—extending back to the 1970s—have sought to regulate and subsidize national energy development. See, *e.g.*, Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594; Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776. The Outer Continental Shelf Lands Act broadly regulates oil and gas development on the continental shelf, recognizing the "national interest" in the "effective management" of those resources. 43 U.S.C. § 1332(4). The list goes on and on. See 23A ANNE E. MELLEY, ET AL., FEDERAL PROCEDURE, LAWYER'S EDITION Ch. 56 Summary (June 2025 Update) (cataloguing the many federal laws related to "energy regulation and development" and related fields). Laws like that statute

reflect that All this is not even to mention the many other federal statutes that, while not directed exclusively at energy, have nevertheless substantial effects on the field. (Paging the Clean Air Act.) But read together, these statutes confirm how the federal eye is focused firmly on energy.

Perhaps most relevant here, the Pipeline Safety Act expansively—and exclusively—governs safety issues related to hazardous liquids and natural gas pipelines. See 49 U.S.C. § 60101, et seq. "Congress intended to preclude states from regulating in any manner whatsoever with respect to the safety of interstate transmission facilities." *ANR Pipeline Co.* v. *Iowa State Com. Comm'n*, 828 F.2d 465, 470 (8th Cir. 1987). So a suit like Michigan's—one that attacks purported weaknesses in pipeline "safety culture," for instance—undermine Congress's objective. Compl. ¶ 50, *Nessel* v. *Enbridge Energy Ltd.*, No. 1:21-cv-01057 (W.D. Mich. Dec. 15, 2021), ECF No. 1.

The Executive has emphasized the federal nature of energy, too. More than once, President Trump has proclaimed that it is "in the national interest to unleash America's affordable and reliable energy and natural resources." Unleashing American Energy, Exec. Order 14154, 90 Fed. Reg. 8353, 8353 (Jan. 29, 2025); see also, *e.g.*, Establishing the National Energy Dominance Council, Exec. Order 14213, 90 Fed. Reg. 9945, 9945 (Feb. 14, 2025) ("We must expand all forms of reliable and affordable energy production."). The President has explained that "affordable and reliable" energy "is a fundamental requirement for the national and economic security of any nation." Declaring a National Energy Emergency, Exec. Order 14156, 90 Fed. Reg. 8433, 8433 (Jan. 29, 2025). And "American energy dominance is threatened when State and local governments seek to

regulate energy beyond their constitutional or statutory authorities." Protecting American Energy From State Overreach, Exec. Order 14260, 90 Fed. Reg. 15513 (Apr. 8, 2025). That threat can no doubt arise when a state court acts without appropriately considering the national energy interests affected by a case before it.

And the States themselves recognize that these issues are national ones, especially considering our interdependent energy system. When a critical energy system like the Line 5 pipeline goes down, that directly affects the economic welfare of other States. But it also forces them to rapidly reconfigure their own energy and environmental strategies, which might in turn have still further spillover effects on other States. Substantial investments in energy resources (like refineries) might be suddenly transformed into wasted sunk costs. Long-term planning might be dispensed in favor of a sudden emergency response. The kind of coordination that would be necessary for any of this to happen is not the sort of coordination for which local states coordinates are renowned.

Altogether, at many different times and in many different ways, just about every branch of government has expressed a federal interest in energy. So "[w]hen dealing with issues such as our national energy policy, federal courts should be the forum for settling disputes, rather than in a plethora of state courts." Taylor Meehan, *Lessons from the Price-Anderson Nuclear Industry Indemnity Act for Future Clean Energy Compensatory Models*, 18 CONN. INS. L.J. 339, 365 (2011). Otherwise, "[s]ate parochialism" that myopically focuses on "only in-state benefits" (or harms) could have a "devastating effect" on national energy needs, even producing "catastrophic [energy] shortage[s]." Richard J. Pierce,

Jr., *Environmental Regulation, Energy, and Market Entry*, 15 DUKE ENVTL. L. & POL'Y F. 167, 176, 180 (2005); see also, *e.g.*, Carole E. Goldberg-Ambrose, *The Protective Jurisdiction of the Federal Courts*, 30 UCLA L. REV. 542, 567 (1983) (explaining how a proposal to create a federal Energy Mobilization Board "reflected a concern that energy projects capable of producing national benefits at great local cost would receive disadvantageous treatment in state courts"). Worse, it would undermine the Framers' vision of "creat[ing] a cohesive natural sovereign" that could "connect[] our country through turnpikes, bridges, and roads—and more recently pipelines." *PennEast Pipeline Co., LLC* v. *New Jersey*, 594 U.S. 482, 508 (2021).

The Attorney General's lawsuit triggers this federal interest in energy, as it represents a direct effort to impair a key component of our national energy infrastructure. If the challenge to the Straits of Mackinac crossing succeeds, the whole line might well close. See, *e.g.*, *In re Enbridge Energy, Ltd.*, No. U-20763, 2023 WL 8435367, at *210 (Mich. Pub. Serv. Comm'n Dec. 1, 2023) ("[S]ubstantial evidence on the record … show[s] that if the dual pipelines [across the Straits] are … shut[]down, [then] Line 5 in Michigan may be abandoned in full or in part, which will require higher-risk and costlier alternative fuel supply sources."). And at least one federal court has already seen evidence that shutting down Line 5 would produce "increased economic volatility in the markets for light crude, NGLs and propane/butane in the Upper Midwest and Eastern Canada." *Bad River Band of Lake Superior Tribe of Chippewa Indians of Bad River Rsrv.* v. *Enbridge Energy Co., Inc.*, No. 19-CV-602-WMC, 2023 WL 4043961, at *10 (W.D. Wis. June 16, 2023).

But even this description of the harms from shutdown is something of an understatement—as many others have shown. Trade unions have already laid out the dire consequences of shutting down Line 5 before this Court. Unions.Amicus.Br.11-18 ("If Line 5 ceased operation, the refineries in Michigan, Ohio, Ontario, Quebec, and Pennsylvania that depend on the products the pipeline carries would either have to significantly reduce production or close down completely."). Business owners have said much the same. Amicus Br. of the Chambers at 2-9, *Nessel ex rel. Michigan* v. *Enbridge Energy, LP*, 104 F.4th 958 (6th Cir. 2024) (No. 23-1671), 2023 WL 8283519 ("The potential negative impact of this suit is difficult to overstate. A shutdown of Line 5 in Michigan will have effects across the Midwest and in Canada."); Amicus Br. of Am. Petroleum Inst., et al. at 16-17, *Enbridge Energy, LP* v. *Whitmer*, 135 F.4th 467 (6th Cir. 2025) (No. 24-1608), 2024 WL 4881965 (shutting down Line 5 "would shut off a large portion of the energy supply of not only Michigan itself, but other midwestern states as well as substantial portions of Canada").

Government officials are deeply worried about the energy-attacking effects of this litigation, too. Elsewhere, States have explained that "if Line 5 halts production, significant economic hardship will be thrust upon the entire region." Amicus Br. for States of Ohio, Indiana, and Louisiana at 4-9, *Nessel ex rel. Michigan* v. *Enbridge Energy, LP*, No. 19-474-CE (Mich. Cir. Ct. June 29, 2020), available at https://tinyurl.com/vukjj8db. Members of Congress have stressed that "Line 5 is essential to the lifeblood of the Midwest." Letter from 11 Members of Congress to President Joseph R. Biden (Nov. 4, 2021), https://tinyurl.com/y3veyrb. Even the Canadian government has warned that "the market could not adapt to the shutdown of Line 5 without grave harm to North

American energy security and economic prosperity." Amicus Br. of the Gov. of Canada at 10, *Enbridge Energy, LP* v. *Whitmer*, 135 F.4th 467 (6th Cir. 2025) (No. 24-1608), 2023 WL 6324405.

These many voices are right to worry about how the Attorney General's suit threatens to upend the regional and national energy markets. Closure would endanger the operations of a slew of upper Midwest refineries. Propane, which heats the homes of many through frigid Midwest winters, would be slashed; Line 5 supplies more than half the propane used in Michigan alone. Airports, industrial users, and individual drivers will find fuels harder to come by; "families and businesses across the Midwest will spend at least $23.7 billion more on gasoline and diesel over the following five years" after a shutdown. WEINSTEIN, CLOWER & ASSOCS., ENBRIDGE LINE 5 | SHUTDOWN IMPACTS ON TRANSPORTATION FUEL 3 (2022), https://tinyurl.com/4h9mwzs7. And because Line 5 is a part of a "highly integrated and interdependent North American energy market," it's hard to predict exactly how similar effects might be felt elsewhere, too. Steve Bucci, *Great Lakes Need Protection. But Shutting Down Line 5 Is Foolish*, BRIDGE MICHIGAN (Aug. 14, 2019), https://tinyurl.com/yc5cxyda; see also, *e.g.*, Amy L. Stein, *Energy Emergencies*, 115 NW. U. L. REV. 799, 853 (2020) (noting how "energy emergencies" may "have the potential to have more national impact" because "there is a higher risk of cascading effects").

In short, the federal interests here are substantial. Oil, gas, and natural gas liquids are a centerpiece of America's energy dominance, and closing Line 5 would strike a blow to that centrality. Those interests provide "exceptional circumstances" for the district court's retention of the case.

Of course, that's not to say that every lawsuit affecting energy matters belongs in federal court. But where, as here, the federal court otherwise has subject-matter jurisdiction, a case so directly relating to "the many vital considerations of national policy implicated in deciding how Americans will get their energy" should not be thrust out of federal court because of a procedural flaw. *West Virginia* v. *EPA*, 597 U.S. 697, 729 (2022). Even more so now, when complex energy issues are top of mind for governments and citizens alike.

B. This case involves international issues that uniquely demand federal treatment.

This case also has a significant international element to it, and that aspect warrants a finding of exceptional circumstances, too.

In a different context, this Court has recognized that the "international complexion" of a case can present a "uniquely compelling justification" for exercising federal jurisdiction—even where it might usually not. *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 17 (1963) (addressing interlocutory appeal from agency proceeding). Other courts in other contexts have said similar things, and vice versa. See, *e.g.*, *Ungar* v. *Palestine Liberation Org.*, 599 F.3d 79, 86 (1st Cir. 2010) (finding that "extraordinary circumstances" warranting relief from judgment might include the case's "potential effect on international relations"); *Bugliotti* v. *Republic of Argentina*, 952 F.3d 410, 414 (2d Cir. 2020) (explaining that "international comity" can provide "exceptional circumstances" warranting dismissal).

More generally, questions implicating international relations raise "uniquely federal" concerns. *Cassirer* v. *Thyssen-Bornemisza Collection Found.*, 596 U.S. 107, 116

(2022). "Governmental power over external affairs is not distributed, but is vested exclusively in the national government." *United States* v. *Belmont*, 301 U.S. 324, 330 (1937). "No State can rewrite our foreign policy to conform to its own domestic policies," including by way of "judicial decrees." *United States* v. *Pink*, 315 U.S. 203, 233 (1942). And even in state-court proceedings, States "cannot refuse to give foreign nationals their treaty rights because of fear that valid international agreements might possibly not work completely to the satisfaction of state authorities." *Kolovrat* v. *Oregon*, 366 U.S. 187, 198 (1961).

Federal courts are better positioned to engage with matters like treaties and international economic affairs. "[F]ederal courts, in contrast to the states, have independence from local political processes and, as a branch of the national government, are likely to be more sensitive to national foreign relations interests." Jack L. Goldsmith, *Federal Courts, Foreign Affairs, and Federalism*, 83 VA. L. REV. 1617, 1169 (1997). One sees that idea at work in a case like *Torres* v. *Southern Peru Copper Corp.*, 113 F.3d 540, 543 (5th Cir. 1997), where the Fifth Circuit found that a case raised "important foreign policy concerns"—and thus belonged in federal court—where the government of Peru "vigorous[ly]" opposed an action undermining its mineral interests. See also, *e.g.*, *Republic of Philippines* v. *Marcos*, 806 F.2d 344, 353 (2d Cir. 1986) (finding case was properly removed based on its "important foreign policy implications").

When it comes to Line 5, the foreign-policy concerns are front and center.

Start from the United States' perspective. Congress has declared that "[t]he development and delivery of oil and gas from Canada to the United States is in the national interest of the United States in order to secure oil

supplies to fill needs that are projected to otherwise be filled by increases in other foreign supplies." North American-Made Energy Security Act, H.R. 1938, 112th Cong. § 2(4) (2011). And chiefly because of the "enormous, integrated North American pipeline and refining systems" on the Mainline and elsewhere, the United States has indeed become "heavily dependent" on Canadian energy supplies. JOE CALMAN & RORY JOHNSON, THE CO-EVOLUTION OF THE CANADA-U.S. OIL INDUSTRY AND POSSIBLE IMPLICATIONS OF DONALD TRUMP'S RE-ELECTION 11 (2024), https://tinyurl.com/5acmt9vd. In other words, "the American standard of living depends on the oil and gas moving quietly through a web of interconnected pipelines"—Canadian ones included—"twenty-four hours a day, and seven days a week." CHERYL J. TRENCH & THOMAS O. MIESNER, THE ROLE OF ENERGY PIPELINES AND RESEARCH IN THE UNITED STATES 20 (2006), https://tinyurl.com/4rsmevjj.

More specifically, the Enbridge Mainline, of which Line 5 is a part, is one of the principal means that national interest in Canadian energy cooperation is served. And "legal woes related to the Enbridge Line 5 strain that relationship." Jeff D. Makholm & Laura T.W. Olive, *Troubles With Seven Decades of Canadian/United States Oil Trade*, NERA (June 5, 2024), https://tinyurl.com/msanym58.

Now look to the Canadian side. Then-Prime Minister Justin Trudeau highlighted how "Line 5 is a vital source of fuel for homes and businesses on both sides of the border." Debates, OPEN PARLIAMENT (Feb. 3, 2021), https://tinyurl.com/4wnzbs8m. The Canadian Minister of Natural Resources likewise underscored that "Line 5 is essential to [Canada's] energy security," so the Government has "continuously advocated for and raised

the importance of Line 5." Statement by Minister O'Regan Regarding Line 5, GOVERNMENT OF CANADA (May 11, 2021), https://tinyurl.com/we5ec59f. The *Toronto Sun* echoed these sentiments, entreating former President Biden to "demonstrate his friendship with Canada … by urging Michigan Gov. Gretchen Whitmer not to kill Enbridge's Line 5." *Stop Killing Our Pipelines, America*, TORONTO SUN (Feb. 20, 2021), https://tinyurl.com/y87sep44.

These aren't chicken-little cries from a few Canadian politicos and publishers. Among other things, "[s]hutting down Line 5 would result in a massive shortage of gas, diesel and jet fuel in both Ontario and Quebec"—not to mention end thousands of Canadian jobs. *Why a Line 5 Shutdown Just Doesn't Make Sense*, CANADA ACTION (Mar. 7, 2021), https://tinyurl.com/2hs8mztr. A special committee of the Canadian parliament even concluded that "[Line 5]'s shutdown could … reduce[] safety, [create] shortages of various energy products on both sides of the Canada–U.S[.] border, [produce] transportation bottlenecks for Alberta's crude oil, and [lead to] job losses for Canadian and American workers." CANADIAN HOUSE OF COMMONS, SPECIAL COMMITTEE ON THE ECONOMIC RELATIONSHIP BETWEEN CANADA AND THE UNITED STATES, ENBRIDGE'S LINE 5: AN INTERIM REPORT 10 (Apr. 2021), https://tinyurl.com/4yzvnsuu; see also Julio Mejía and Elmira Aliakbari, *Shutting Down Line 5—Bad for Both Sides of the Border*, FRASER INSTITUTE (Sept. 20, 2022), https://tinyurl.com/53wtk9a3 ("On the Canadian side, closing Line 5 would cause a shortage of at least 14 million gallons of gasoline per day and increase the costs of oil by roughly US$2.24 per barrel."). So if the Attorney General's lawsuit succeeds, the U.S.-Canada relationship could be seriously wounded.

And this lawsuit will do more than anger an important ally—it might also lead the United States to violate international law. Line 5 falls under 1977 treaty between the United States and Canada governing hydrocarbon transit pipelines. See Agreement Between the Government of the United States and the Government of Canada Concerning Transit Pipelines, Jan. 28, 1977, 28 U.S.T. 7449, 1977 WL 181731. The treaty prohibits any "public authority" in the United States or Canada from "institut[ing] any measures" that will "have the effect" of "interfering with in any way the transmission of hydrocarbons" in covered pipelines. *Id.* at art. II. Only temporary, emergency response measures are permitted. *Id.* at art. V(1). Seeing as how shutting down the Straits crossing would *not* be temporary and *not* be an emergency response measure, the suit appears to be asking for unlawful relief.

No wonder, then, that Michigan has already soured relations under the Treaty. Canada has been forced to invoke the dispute resolution procedures under the Treaty. See Br. of Amicus Curiae Gov. of Canada at 8-9, *Michigan* v. *Nessel*, No. 1:20-cv-01142-JTN-RSK (W.D. Mich. June 1, 2021), ECF No. 45. It is the "first time in the 44-year history of the 1977 Treaty that either Party has formally invoked its dispute resolution mechanism." Supp. Br. of Amicus Curiae Gov. of Canada at 1, *Michigan* v. *Nessel*, No. 1:20-cv-01142-JTN-RSK (W.D. Mich. Nov. 16, 2021), ECF No. 82. And even the Biden administration—no great fan of pipelines—admitted that a Line 5 shutdown could very well offend the Treaty. See Br. of the United States as Amicus Curiae Supp. Partial Reversal at 27-30, *Bad River Band of Lake Superior Tribe of Chippewa Indians of Bad River Rsrv.* v. *Enbridge Energy Co., Inc.*, Nos. 23-2309, 23-2467 (7th Cir. Apr. 10, 2024), 2024 WL 1681140.

Thus, "there is little question that an immediate shutdown of the pipeline"—what the Attorney General wants—"would have significant public policy implications on the trade relationship between the United States and Canada." *Bad River Band of Lake Superior Tribe of Chippewa Indians of Bad River Rsrv.* v. *Enbridge Energy Co., Inc.*, 626 F. Supp. 3d 1030, 1057 (2022). Yet Michigan has insisted that Michigan-based litigation over Line 5 shouldn't wait for the process to play out. Pls.' Reply Br. In Supp. Of Mot. to Remand at 20, *Michigan* v. *Nessel*, No. 1:20-cv-01142-JTN-RSK (W.D. Mich. June 2, 2021), ECF No. 51. Allowing this suit to proceed in a local trial court at the behest of a party indifferent to the international implications risks a treaty breach. That potential for an international incident presents another "exceptional circumstance" that justifies the district court's choice to keep this case.

* * *

It's undeniable: this case presents critical national and international interests. A federal court should address them. Those interests provide "exceptional circumstances" that warrant equitable tolling here.[*]

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[*] That's not to say that these are the *only* circumstances that support equitable tolling in this case. For instance, the district court found that the Attorney General and the State of Michigan were "attempt[ing] to gain an unfair advantage through the improper use of judicial machinery." Pet.App.38a-41a. Among other things, the Attorney General and the State were said to be advancing self-contradictory positions on federal-court jurisdiction while also manipulating related suits to dodge adverse decisions on federal jurisdiction. Such conduct can give rise to exceptional circumstances warranting tolling, too. Cf. *Brown*, 792 F.2d at 482 (holding that "exceptional circumstances" were presented by the plaintiff's "bad faith effort to prevent removal," which led the court to allow removal

CONCLUSION

The Court should reverse and remand with instructions to allow this case to proceed in federal court.

Respectfully submitted.

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"more than precisely thirty days after the first defendant is served"). Further, because it crosses tribal lands, Line 5 has implicated the interests of Native American tribes. See Megan Geuss, *Reviving the Transit Pipeline Treaty of 1977: How A Michigan Pipeline Could Bring the US and Canada to Arbitration*, 14 ARB. L. REV. 86 (2023). Tribal-land interests are exactly the sorts of matters that *don't* belong in state courts. Cf. *Iowa Mut. Ins. Co.* v. *LaPlante*, 480 U.S. 9, 15 (1987) ("If state-court jurisdiction over Indians or activities on Indian lands would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of federal law."). And as for other national interests, the Great Lakes themselves (and the environmental management implicated in the Attorney General's suit) likewise present matters of national and international concern. See, *e.g.*, Establishment of Great Lakes Interagency Task Force and Promotion of a Regional Collaboration of National Significance for the Great Lakes, Exec. Order 13340, 69 Fed. Reg. 29043, 29043 (May 18, 2004) (discussing the "nationally significant environmental and natural resource issues involving the Great Lakes").

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