

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

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

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Whether the 30-day removal deadline in 28 U.S.C.
§ 1446(b)(1) is subject to equitable tolling.

PARTIES TO THE PROCEEDINGS

Petitioners Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc., and Enbridge Energy Partners, L.P. (collectively, “Enbridge”) were appellees in the court below.

Respondent Dana Nessel, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan, was appellant in the court below.

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STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in an appendix to this brief. App., *infra*, 1a–12a.

INTRODUCTION

The Constitution reserves to States the power “to provide for the determination of controversies in their courts.” *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 109 (1941). Because that power “may be restricted only by the action of Congress,” federal courts must “scrupulously confine” their exercise of power over cases that began in state court “to the precise limits” defined by statute. *Id.*

The federal removal statute provides a comprehensive scheme that governs this allocation of judicial power. The basic rules are familiar: When state and federal courts have concurrent jurisdiction, the plaintiff has the initial choice of forum. If the plaintiff chooses state court, the defendant may seek removal. But because of comity concerns raised by taking a case from state court, the disruptive effect of changing forums midstream, and the risk of unfairness when removal is sought after substantial litigation (especially after adverse rulings), Congress has always—since the Judiciary Act of 1789—specified a deadline by which removal must be sought. Over the years, this Court has consistently held that when a defendant misses that deadline, the removal effort fails and the case must remain where it began.

Today, 28 U.S.C. § 1446(b)(1) supplies the deadline: A notice of removal “shall be filed within 30 days” after the defendant receives the initial pleading or summons, “whichever period is shorter.” The question presented is whether district courts may equitably toll that deadline. The answer is no.

Enbridge missed the statute’s 30-day removal deadline by more than 850 days, seeking to remove this case only after an adverse state-court ruling. Enbridge attempted to excuse its tardiness by invoking a specific statutory exception, see 28 U.S.C. § 1446(b)(3), but the court below held that this exception did not apply—a ruling Enbridge no longer contests.

The district court seized jurisdiction over the case anyway. It believed that, regardless of whether the removal statute’s requirements are met, a federal court can divest a state court of jurisdiction *at any time* upon a finding of “exceptional circumstances”—even though the removal statute does not contain a single word to that effect, and Congress alone may confer the power to remove. The Sixth Circuit reversed, holding that this judge-made exception cannot be squared with the statute’s text and structure.

Now, Enbridge advances an argument it never raised below: that a presumption of equitable tolling applies to § 1446(b)(1)’s removal deadline and that the presumption cannot be overcome. Enbridge’s argument fails twice over.

First, the presumption of equitable tolling applies only to statutes of limitations, which § 1446(b)(1) is not. The removal deadline is not triggered by the event giving rise to a cause of action, and it does not set the time for bringing an action or eliminate stale claims. See *Lozano v. Montoya Alvarez*, 572 U.S. 1, 14 (2014). Instead, it applies *after* an action has been brought, and it serves systemic aims like judicial efficiency and

prompt resolution of forum issues. Further, the deadline governs the transfer of adjudicatory power from state to federal court—a context that requires strict construction, not atextual inquiries. Without any presumption, this case is easy: A court’s job is to apply the statute as written, and § 1446(b)(1) sets a firm deadline in mandatory terms.

Second, even assuming a presumption applies, it is rebutted. Text, structure, history, and purpose show that § 1446(b)(1)’s 30-day deadline is not subject to equitable tolling. Here, statutory structure is especially probative: The removal statute repeatedly cross-references § 1446 and provides numerous express exceptions to § 1446(b)(1)’s deadline (most of which Enbridge ignores). Several of those exceptions account for equitable considerations—including provisions authorizing courts to extend the deadline “for cause shown” in specified settings—which “heightens the structural inference” against reading an implied equitable tolling exception into the statute. *Arellano v. McDonough*, 598 U.S. 1, 9 (2023).

This Court should affirm.

STATEMENT OF THE CASE

A. Statutory Framework

The law of removal is codified in 28 U.S.C. §§ 1441–1455. The general authorization appears in § 1441(a): A defendant ordinarily may remove a civil action from state to federal court if the federal courts have original jurisdiction.

Section 1446 sets the procedure and default timing for removal of a civil action. A defendant that desires removal must file a notice “containing a short and plain statement of the grounds for removal.” § 1446(a). That notice “shall be filed within 30 days” after the defendant receives the initial pleading or summons, “whichever period is shorter.” § 1446(b)(1).

In multidefendant cases, each defendant has its own 30-day window running from its receipt or service. See § 1446(b)(2)(B) (cross-referencing § 1446(b)(1)). But an earlier-served defendant may consent to a later-served defendant’s timely removal “even though that earlier-served defendant did not previously initiate or consent to removal” in time. § 1446(b)(2)(C).

Section 1446(b)(1)’s default 30-day deadline also does not control if “the case stated by the initial pleading is not removable.” § 1446(b)(3). In that circumstance, the defendant may file a notice of removal within 30 days after receiving “an amended pleading, motion, order or other paper” from which removability “may first be ascertained.” *Id.*

Congress has further specified the following timing rules to apply in particular circumstances:

- *Diversity cases.* When removal rests on diversity jurisdiction and the case was not initially removable, § 1446(c)(1) bars removal more than one year after the action's commencement, subject to an express bad-faith exception.
- *Class actions.* Under the Class Action Fairness Act, a class action "may be removed ... in accordance with section 1446," but "the 1-year limitation under section 1446(c)(1) shall not apply." § 1453(b).
- *Actions against foreign states.* In suits removable under § 1441(d), involving actions brought against a foreign state, "the time limitations of section 1446(b) ... may be enlarged at any time for cause shown." § 1441(d).
- *Multiparty, multiform accidents.* For certain mass-accident cases, § 1441(e) provides that removal is "in accordance with section 1446," but authorizes filing "within 30 days" after the defendant first becomes a party to a related federal action or "at a later time with leave of the district court." § 1441(e)(1).
- *Suits involving members of the armed forces.* Section 1442a permits removal "at any time before the trial or final hearing" of covered proceedings against members of the armed forces of the United States. § 1442a.

- *Patent, plant variety protection, and copyright cases.* Section 1454(b) provides that removal shall be “in accordance with section 1446,” but expressly allows that “the time limitations contained in section 1446(b) may be extended at any time for cause shown.” § 1454(b)(2).

Most of these provisions cross-reference § 1446 and, in defined settings, either substitute a different timing rule or authorize courts to enlarge the timing requirements for good cause.

Outside the general removal statute, Congress has also provided other, specific removal timelines. E.g., 9 U.S.C. § 205 (authorizing removal of a civil action “at any time before the trial thereof” when the action relates to an arbitration agreement or award falling under the Convention on the Recognition of Foreign Arbitral Awards); 12 U.S.C. § 1819(b)(2)(B) (authorizing the FDIC to remove “any action, suit or proceeding” within 90 days of becoming a party); 28 U.S.C. § 2679(d)(2) (authorizing removal “at any time before trial” if the Attorney General certifies that the defendant was acting within the scope of his employment with the United States).

B. Factual Background

The Straits of Mackinac lie at the center of the Great Lakes. They link Lake Michigan and Lake Huron (which together hold nearly 8% of the world’s fresh surface water) and separate Michigan’s Upper and Lower Peninsulas. J.A. 27a–28a. The Straits are a hub of tourism; recreation; commercial navigation; and

commercial, sport, and subsistence tribal fishing. J.A. 28a–29a.

When Michigan entered the Union in 1837, it acquired ownership of the lands beneath the Straits. See *Idaho v. Coeur d’Alene Tribe of Ida.*, 521 U.S. 261, 283 (1997); *Nedtweg v. Wallace*, 208 N.W. 51, 52 (Mich. 1926). Under “ancient doctrines,” these submerged lands have “a unique status in the law” and are “infused with a public trust the State itself is bound to respect.” *Coeur d’Alene*, 521 U.S. at 283–84. Michigan must hold the bottomlands in trust for public uses such as navigation, fishing, and recreation, and it may not alienate them or otherwise authorize private uses incompatible with the public’s superior rights. J.A. 29a–35a; see *Glass v. Goeckel*, 703 N.W.2d 58, 64–65 (Mich. 2005); *Ill. Cent. R.R. Co. v. Illinois*, 146 U.S. 387, 455–56 (1892).

Multiple shipping lanes converge in the Straits, funneling domestic and international traffic through a narrow corridor. J.A. 22a, 35a, 39a. Perpendicular to that traffic, two 20-inch-diameter crude-oil pipelines—installed by Enbridge’s predecessor in 1953 pursuant to an easement granted by the Michigan Conservation Commission—span roughly four miles of submerged lands. J.A. 39a–40a.¹ Most of the pipelines are exposed, resting on the lakebed or suspended in the water column. J.A. 27a. Strong currents and erosion alter

¹ These two, four-mile pipes are known as the “Straits Pipelines”; the broader 645-mile pipeline route of which they are a part is known as “Line 5.” J.A. 24a–27a. The Michigan Conservation Commission is now known as the Michigan Department of Natural Resources (DNR).

the bottom contours, and exposed sections are vulnerable to anchor strikes and other hazards. J.A. 27a, 35a–42a.

Recent events underscore those risks. In 2010, Enbridge’s Line 6B ruptured near Marshall, Michigan, discharging crude oil into the Kalamazoo River watershed and causing extensive harm to state lands, waters, wildlife, and communities. It was the most expensive onshore oil spill in U.S. history, according to the National Transportation Safety Board. J.A. 43a–44a. And in 2018, an industrial barge inadvertently dragged its 12,000-pound anchor across the Straits, severing nearby electrical cables and damaging the pipelines in three locations. J.A. 40a–41a. Although the pipelines did not rupture, the incident heightened concern about siting these exposed, aging lines across a uniquely vulnerable, ecologically sensitive, and economically vital corridor.

C. Procedural History

1. *Nessel v. Enbridge*

On June 27, 2019, Michigan Attorney General Dana Nessel filed this action on behalf of the People of the State of Michigan against Enbridge in a Michigan state court. J.A. 21a. The parties are not diverse, and the claims arise solely under state law. J.A. 23a, 29a–52a.

Count I alleges that the 1953 easement purporting to authorize the Straits Pipelines to be sited on this four-mile stretch of submerged land was void from its

inception and is subject to revocation under the state-law public trust doctrine. J.A. 29a–50a. Count II alleges that the continued operation of the Straits Pipelines at their present location constitutes a public nuisance. J.A. 50a–51a. Count III alleges a violation of Michigan’s Environmental Protection Act. J.A. 51a–52a.

On September 16, 2019, Enbridge responded to the complaint by filing a motion for summary disposition under Mich. Ct. R. 2.116(C)(8). J.A. 99a, 104a–166a. It argued, among other things, that the public trust claims were preempted by the federal Pipeline Safety Act. J.A. 145a–155a. The Attorney General filed a cross-motion for partial summary disposition on one of her claims. J.A. 100a. Amicus briefs were submitted on both sides, and a three-hour hearing was held on May 22, 2020. J.A. 85a, 170a–260a.

In advance of the hearing, the state court asked the parties to be prepared to answer questions about federal preemption. J.A. 167a–168a. Preemption issues, including Enbridge’s arguments under the Pipeline Safety Act and Submerged Lands Act, were a substantial focus of the oral argument, and the state court permitted the parties to submit supplemental briefs on those issues. J.A. 225a–236a, 244a–247a, 250a–256a, 261a–282a.

On June 18, 2020, Enbridge disclosed that it had to initiate an emergency shutdown because the Straits Pipelines had been struck and damaged by an external

object for the second time in two years. J.A. 40a–41a.² The Attorney General sought a temporary restraining order to prevent Enbridge from operating the pipelines until the incident had been investigated, information provided, and a restart approved by regulators. See *supra* note 2. Over Enbridge’s objection, the state court granted the TRO. *Id.*; J.A. 67a–68a. The court closely monitored the situation in the following weeks through a series of hearings, status reports, and stipulations, tailoring the scope of the injunction through multiple amended orders. See J.A. 60a–68a. The matter was fully resolved by stipulation on September 24, 2020, and pipeline operations resumed while the litigation continued. J.A. 60a.

2. *Michigan v. Enbridge*

On the same date the Attorney General’s lawsuit was filed, Michigan Governor Gretchen Whitmer “directed the DNR to undertake a comprehensive review of Enbridge’s compliance with the 1953 Easement.” Gov. Dkt. 1-1, Ex. 2:2.³ Following that review, the

² See Press Release, Mich. Dep’t Att’y Gen., *Judge Orders Line 5 to Cease Operations* (June 25, 2020), <https://www.michigan.gov/ag/news/press-releases/2020/06/25/judge-orders-line-5-to-cease-operations>.

³ Unless otherwise noted, “Dkt.” refers to the Sixth Circuit’s docket in the case below, 6th Cir. No. 23-1671. “Dist. Dkt.” refers to the district court’s docket in the case below, W.D. Mich. No. 1:21-cv-1057. And “Gov. Dkt.” refers the district court’s docket in *Michigan v. Enbridge*, W.D. Mich. No. 1:20-cv-01142. Page cites are to the document’s original page numbers, not the page numbers of the ECF header.

Governor⁴ determined that Enbridge had committed numerous breaches of the 1953 easement’s terms and conditions. *Id.* at 11–17. She also agreed with the Attorney General’s claims that the easement should be revoked on public-trust grounds. *Id.* at 2–9.

On November 13, 2020, the Governor issued a Notice of Revocation and Termination of Easement, which informed Enbridge that the State was revoking the easement on public-trust grounds, and, alternatively, terminating the easement for breach. *Id.* at 1–20. The Governor filed a state-court lawsuit to enforce the Notice, expecting that it would be consolidated with the Attorney General’s action, in which the same public-trust revocation issues were pending. Gov. Dkt. 1-1.

On November 24, 2020, however, Enbridge removed the Governor’s case to federal court. Gov. Dkt. 1. Enbridge also filed a separate suit in federal court asserting that the Notice of Revocation and Termination violated federal law.⁵

As grounds for removing the Governor’s case, Enbridge asserted that, although the parties were not diverse and no element of any claim turned on federal law, there was federal subject-matter jurisdiction under the doctrine of *Grable & Sons Metal Products, Inc.*

⁴ For consistency with the opinion below, this brief uses “the Governor” to refer collectively to the Governor and DNR Director; “the Governor’s case” refers to *Michigan v. Enbridge*, W.D. Mich. No. 1:20-cv-01142.

⁵ *Enbridge v. Whitmer*, No. 1:20-cv-01141, Dkt. 1 (W.D. Mich. Nov. 24, 2020).

v. *Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), because the complaint “necessarily raised” substantial questions regarding federal foreign affairs powers, the 1977 U.S.-Canada Transit Pipelines Treaty, the federal Pipeline Safety Act, and the federal Submerged Lands Act. Gov. Dkt. 1:4–12. Enbridge also alleged that there was federal jurisdiction under the federal officer removal statute. Gov. Dkt. 1:5, 12–13. Enbridge did not remove the Attorney General’s “virtually identical lawsuit,” Pet. Br. 10, at that time.

On December 12, 2020, Enbridge filed an amended notice of removal in the Governor’s case, adding more grounds for federal jurisdiction, including that the public-trust claims arose under federal common law. Gov. Dkt. 12:3–11. Enbridge did not remove this suit at that time either.

The Governor filed a motion to remand her case to state court, disputing each of the jurisdictional theories Enbridge had advanced. Gov. Dkt. 41, 42. On January 15, 2021, the state court in this case convened a status conference to address how the case should proceed given the parallel federal litigation. J.A. 59a. The parties agreed to have this state-court case held in abeyance pending a decision on the Governor’s motion to remand. *Id.*

On November 16, 2021, the district court denied the Governor’s motion. Gov. Dkt. 80. The district court held that *Grable* jurisdiction existed because resolving the Governor’s state-law claims would necessarily require interpreting the federal Pipeline Safety Act, the federal Submerged Lands Act, and the 1977 Transit

Pipelines Treaty. *Id.* at 5–15. The Governor disagreed with that ruling. But rather than challenge it or litigate overlapping claims in a different forum from the Attorney General, the Governor voluntarily dismissed her case on November 30, 2021, believing that doing so would enable the Attorney General’s earlier-filed case to resume. Gov. Dkt. 83.

The state court scheduled a status conference for January 7, 2022, to discuss whether this case should continue to be held in abeyance since the Governor’s motion had been resolved. J.A. 58a. Before that status conference could occur, Enbridge removed this case to federal court. J.A. 1a–20a.

3. Removal of *Nessel v. Enbridge* and the Attorney General’s Motion to Remand

Enbridge’s notice of removal was filed on December 15, 2021, J.A. 19a, approximately two and a half years after Enbridge was served with the complaint, and after the state court had received substantive briefing on the merits, held multiple hearings, and issued a TRO over Enbridge’s objection.

Enbridge’s grounds for removal were “the same grounds invoked when it removed the Governor’s suit,” Pet. Br. 18, more than a year earlier: *Grable*, federal common law, and the federal officer removal statute, J.A. 9a–17a. As to timeliness, Enbridge asserted that § 1446(b)(3) applied because Enbridge could not have “ascertained” that this case was removable until the district court denied the Governor’s motion to remand 29 days earlier. J.A. 8a–9a. Enbridge did not

rely on any equitable exception to the 30-day removal deadline in § 1446(b)(1).

On January 14, 2022, the Attorney General filed a timely motion to remand, arguing that Enbridge’s notice of removal was untimely under § 1446(b)(1), that § 1446(b)(3) did not apply, and that there was no federal subject-matter jurisdiction over the Attorney General’s state-law claims. Dist. Dkt. 10, 11:1–25. Enbridge responded that the notice of removal was timely under § 1446(b)(3) and that federal jurisdiction existed for the same reasons set forth in the ruling in the Governor’s case. Dist. Dkt. 20:1–25. Enbridge did not ask the district court to excuse the 30-day deadline on equitable grounds.

D. Opinions Below

1. The District Court’s Opinion

The district court denied the Attorney General’s motion to remand. Pet. App. 26a–42a. The court based its ruling on a ground that had not been briefed or argued: that § 1446(b)(1)’s 30-day removal deadline “is overcome in exceptional circumstances, where overriding federal interests or compelling equitable considerations are evidenced.” Pet. App. 31a–32a. The district court excused Enbridge’s noncompliance with the statutory removal deadline based on its view of several factors. It emphasized the importance of the federal issues in the case and the desirability of having the Attorney General’s claims heard in the same forum as Enbridge’s later-filed suit against the Governor. Pet. App. 33a, 35a, 41a–42a. The court also described the

Attorney General’s act of seeking remand as “forum manipulation,” even though the Attorney General merely sought to return the case to the forum in which it was brought over two years prior and had been litigated at length. Pet. App. 40a.

The district court refused to consider the subject-matter jurisdiction issue, relying on its ruling in the Governor’s case and holding that the Attorney General was estopped from disputing that there was federal jurisdiction in this separate case. Pet. App. 38a–42a.

The Attorney General moved the district court to certify its opinion for interlocutory appeal under 28 U.S.C. § 1292(b). Dist. Dkt. 24, 25:1–14. On February 17, 2023, after waiting approximately five months for a ruling on that motion, the Attorney General petitioned the Sixth Circuit for a writ of mandamus.⁶ The next business day, the district court granted the motion and certified three issues for appeal: (1) whether the 30-day removal period in § 1446(b)(1) is mandatory; (2) whether the district court’s order denying the Governor’s motion for remand constituted an order from which Enbridge could first ascertain that this case was removable under § 1446(b)(3); and (3) whether there is *Grable* jurisdiction over this case. Pet. App. 44a. The Attorney General then filed a request for permission to appeal, which the Sixth Circuit granted, simultaneously denying the petition for writ of mandamus as moot. Pet. App. 46a–49a.

⁶ *In re: Dana Nessel*, 6th Cir. No. 23-1148, Dkt. 1.

2. The Sixth Circuit’s Opinion

The Sixth Circuit did not reach the issue of federal subject-matter jurisdiction because it held that Enbridge’s notice of removal was untimely under § 1446(b) and that the district court could not excuse that mandatory requirement on atextual grounds. Pet. App. 7a–8a, 24a.

The Sixth Circuit first noted that “Enbridge unquestionably did not comply with § 1446(b)(1)’s initial 30-day removal deadline,” “miss[ing] that deadline by over two years.” Pet. App. 9a. The court of appeals then observed that for § 1446(b)(3)’s later removal window to apply, Enbridge had to show three things: (1) the case stated by the initial pleading was not removable; (2) something changed that “transformed this initially nonremovable case into one that was removable”; and (3) no more than 30 days before December 15, 2021—when the notice of removal was filed—Enbridge received a document from which it could first be ascertained that this case was removable. Pet. App. 10a. Enbridge’s attempt to invoke § 1446(b)(3), the Sixth Circuit held, failed on the first and third elements. Pet. App. 14a.

As to the first element, Enbridge’s argument that the case was not initially removable was belied by its “own actions,” as Enbridge “offer[ed] no explanation regarding how the Governor’s case could be removable from its outset but this case was not.” Pet. App. 12a–13a. “At oral argument, Enbridge argued (for the first time)” that the Governor’s Notice of Revocation and Termination had sparked a foreign-affairs controversy, making this case removable when it had not

been initially so. Pet. App. 13a. The problem, the Sixth Circuit explained, was that “while this unpreserved argument might explain how this case initially was not removable and then later became so,” it “clash[ed] with Enbridge’s argument about the first ‘paper’ it received that allowed it to ‘ascertain’ that this case had become removable.” J.A. 13a (brackets omitted). Enbridge filed its notice of removal within 30 days of only one document: the district court’s order denying remand in the Governor’s case. Canada’s interest in the controversy came much earlier.⁷ Thus, the Sixth Circuit held, “Enbridge missed § 1446(b)(1)’s initial window for removal, and to the extent § 1446(b)(3)’s later removal window was ever open, Enbridge missed that one too.” Pet. App. 17a.

Having found that there was no express statutory authorization to remove this case on December 15, 2021, the Sixth Circuit turned to the district court’s alternative rationale—that Enbridge could be allowed to remove the case outside of the statutory timeframe based on unwritten, equitable considerations. Pet. App. 18a–24a. The court of appeals stated that while § 1446(b)’s time limits are not jurisdictional—an issue neither party disputed—this “does not resolve the issue before us” because nonjurisdictional rules can be mandatory and unalterable when timely raised. Pet. App. 18a–19a. It was therefore necessary to determine whether § 1446(b)’s “non-jurisdictional time limits are

⁷ Enbridge’s brief refers to a committee hearing that occurred on March 4, 2021, a report issued in April 2021, a statement issued on May 6, 2021, and another statement made on October 4, 2021. Pet. Br. 11, 14–15 & nn. 6–8. All of those events occurred more than 30 days prior to December 15, 2021.

mandatory and thus immune from equitable exceptions.” J.A. 20a.

To do this, the Sixth Circuit employed the “usual tools of statutory construction ... , focusing on whether the statute as a whole allows flexibility for extra-textual exceptions.” Pet. App. 20a. The court held that it did not, reasoning:

- The statute’s text (“shall be filed within 30 days,” followed by “whichever period is shorter”) suggests “an intent for strict enforcement.” Pet. App. 20a.
- The statute’s structure (containing a default rule followed by “explicit exceptions—and carveouts from those exceptions”) meant that the district court’s approach required “adding a judicially made exception to Congress’s detailed, express scheme of exceptions and carveouts, an action the Supreme Court has cautioned against.” Pet. App. 20a–22a.
- The statutory context suggested strictness because the removal deadline is nestled near jurisdictional provisions and substantively “intertwined with questions of whether and when the defendant had grounds to argue for federal jurisdiction.” Pet. App. 22a.
- Background principles militate against creating extra-textual exceptions to the removal deadline, as “[o]verwhelming authority provides that removal statutes—such as § 1446(b)—are to be strictly construed against removal out of respect for state sovereignty.” Pet. App. 22a.

- Precedent pointed in the same direction, as courts “have consistently rejected invitations to engraft unwritten equitable exceptions into the removal statute,” and the cases Enbridge cited to the contrary were distinguishable and not persuasive. Pet. App. 24a; see also Br. in Opp. 11–15 (collecting cases).

The Sixth Circuit concluded: “§ 1446(b)’s time limitations are mandatory. When invoked in a timely motion to remand, these limitations leave no room for equitable exceptions.” Pet. App. 24a.

Enbridge petitioned for en banc rehearing on the issue of whether § 1446(b)(3) applied. Dkt. 55. The Sixth Circuit denied that petition, with no judge voting to rehear the case. Pet. App. 50a.

SUMMARY OF ARGUMENT

Federal district courts “possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (internal citations omitted). Nothing in the Constitution or any statute expressly authorizes district courts to permit the removal of a state court lawsuit after the statutory deadline has passed.

Enbridge argues that express authorization is not necessary for removal here because this Court should *presume* that district courts have *implied* authority to permit untimely removals. That argument fails for three reasons.

First, no presumption of equitable tolling applies to § 1446(b)(1). The traditional practice of equitable tolling applies only to statutes of limitations, which begin to run when a plaintiff’s cause of action accrues and prevent the plaintiff from bringing its claim after too long has passed. Such limitations periods protect defendants from stale claims and provide certainty about potential liabilities. But strictly enforcing statutes of limitations can entail harsh results, preventing claimants from seeking judicial relief solely due to the passage of time. So, courts have historically allowed equitable exceptions when necessary to further the interests of justice.

The removal deadline is not a statute of limitations. It does not begin to run when a plaintiff’s cause of action accrues, does not prevent a plaintiff from seeking judicial relief after a designated time period

has passed, and has nothing to do with protecting defendants from stale claims. Instead, it relates to a forum issue that arises only *after* a claim for relief has been brought. Enforcing the removal deadline does not bar a claimant from seeking judicial relief; it merely ensures the dispute is decided in the plaintiff's chosen forum. Because there is no traditional practice of equitably tolling such deadlines, no presumption applies.

The context of removal further supports this conclusion. This Court has been more willing to apply a presumption of equitable tolling in contexts that are uniquely protective of claimants and where laypersons rather than trained lawyers file claims. But the Court has been less likely to indulge the presumption where, as here, a deadline serves not to protect defendants from stale claims but to achieve system-related goals related to judicial efficiency and claims administration. The removal deadline arises in the context of ordinary civil litigation, and it governs the transfer of jurisdiction from one court to another. In this setting, strictness—not flexibility—should be presumed.

Relying on a presumption in this context also runs counter to federalism principles. This Court has repeatedly held that removal statutes must be strictly construed out of respect for state sovereignty. Only Congress can authorize the removal of a case from a state court of concurrent jurisdiction. Where Congress has not expressly done so, federal courts cannot assert implied authority to interfere with state proceedings.

Without the presumption on which *Enbridge* so heavily relies, this is an easy case: The removal statute

prescribes a strict time limit using mandatory language, and its express requirement should be enforced as written.

Second, even if the Court were to begin with a presumption of equitable tolling, the presumption would be rebutted. The text, structure, history, and purpose of the removal deadline foreclose adding an implied equitable tolling provision.

The text of § 1446(b)(1) creates a strict requirement. Congress used the mandatory word “shall” and designated timely removal as a “requirement.” And the statute prescribes the “shorter” of two alternative deadlines, suggesting an intent for strict enforcement.

The structure of the removal statute further establishes that Congress did not intend to permit equitable tolling of § 1446(b)(1). The statute contains at least six express exceptions to § 1446(b)(1)—§§ 1446(b)(2)(C), 1446(b)(3), 1441(d), 1441(e)(1), 1442a, and 1454(b)(2)—foreclosing additional, implied ones. In specifying these exceptions, Congress considered equitable factors (even permitting extensions “for cause shown” or “with leave of the district court” in particular situations) and limited the relief available, demonstrating that it did not want courts to toll the deadline outside those parameters.

The statutory history also shows Congress’s deliberate decision to set a fixed deadline for removal and to specify any exceptions. The current 30-day limit is the result of trial and error over the past 235 years, with Congress carefully balancing competing values and interests in our dual state-federal system.

Through several successive acts, Congress has assumed responsibility for articulating uniform rules that govern when late removal may be sought, rather than delegating that task for courts to determine on a case-by-case basis.

The purposes of § 1446(b)(1) likewise support the conclusion that it is not subject to equitable tolling. Congress intended for removal to be sought as early as possible in the proceedings—certainly not two and a half years into them—to limit forum manipulation by defendants; minimize waste of judicial resources; and achieve nationwide uniformity. Applying the removal deadline as written furthers each of these objectives.

Third, even if § 1446(b)(1)’s removal deadline were amenable to equitable tolling, this case would not remotely qualify for it. Equitable tolling applies only when a claimant diligently pursues its rights and an extraordinary circumstance prevents a timely filing. Here, nothing of the sort occurred: No extraordinary circumstance prevented Enbridge from filing a notice of removal when it first raised its federal preemption arguments in September 2019 or, at a minimum, when it removed the Governor’s “virtually identical” case in November 2020 based on the “same grounds” it invoked here. Pet. Br. 10, 18. Thus, even if the Court were to find that a presumption of equitable tolling applies and is not overcome by the statute’s text, structure, history, and purpose, tolling would still be unavailable and Enbridge’s removal untimely.

ARGUMENT

“This Court has identified three types of time limits: (1) jurisdictional deadlines; (2) mandatory claim-processing rules; and (3) time-related directives.” *McIntosh v. United States*, 601 U.S. 330, 337 (2024). The 30-day limit contained in 28 U.S.C. § 1446(b)(1) is not jurisdictional.⁸ Therefore, it need not be policed by courts *sua sponte* and is subject to forfeiture if not timely raised in a motion to remand. See *Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17, 19 (2017).

But “calling a rule nonjurisdictional does not mean that it is not mandatory or that a timely objection can be ignored.” *Gonzalez v. Thaler*, 565 U.S. 134, 146 (2012). Some nonjurisdictional rules are “mandatory,” meaning “they are ‘unalterable’ if properly raised by an opposing party.” *Nutraceutical*, 586 U.S. at 192 (quoting *Manrique v. United States*, 581 U.S. 116, 121 (2017)). When the opposing party “alerts the court to the deadline and invokes its protection,” as the Attorney General did here, “the relevant action cannot be taken after the deadline has passed.” *McIntosh*, 601 U.S. at 337.

Because the requirements for removal are statutory, “Congress sets the rules—and courts have a role

⁸ Enbridge argues this point, but it is not in dispute. The court of appeals held that § 1446(b)(1) is nonjurisdictional, Pet. App. 19a, and the Attorney General did not argue otherwise below. In any event, “[w]hether a rule precludes equitable tolling turns not on its jurisdictional character but rather on whether the text of the rule leaves room for such flexibility.” *Nutraceutical Corp. v. Lambert*, 586 U.S. 188, 192 (2019).

in creating exceptions only if Congress wants them to.” *Ross v. Blake*, 578 U.S. 632, 639 (2016). Courts “are not at liberty to create an exception where Congress has declined to do so.” *Hallstrom v. Tillamook*, 493 U.S. 20, 27 (1989). Whether § 1446(b)(1) is mandatory or subject to equitable tolling is therefore “fundamentally a question of statutory intent.” *Lozano*, 572 U.S. at 10.

As shown below, Congress intended the 30-day removal deadline to be mandatory and not subject to equitable tolling. Congress did not expressly authorize equitable tolling in § 1446(b)(1). The provision thus is not subject to equitable tolling unless a background presumption of equitable tolling applies and is not inconsistent with the statute’s text and design. But no such presumption applies here; and even if it did, the presumption is overcome.

I. No presumption of equitable tolling applies to § 1446(b)(1).

“In statutory interpretation disputes, a court’s proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself.” *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019) (citation omitted). When a statute’s text and structure are clear, “judges must stop,” *id.*, and “resist reading words ... into a statute that do not appear on its face,” *Dean v. United States*, 556 U.S. 568, 572 (2009) (cleaned up).

Enbridge advocates a different approach, beginning not with the statute’s text and structure, but with

a presumption of equitable tolling. Such a starting point works only where “a long-established feature of American jurisprudence” allows courts to presume that Congress left in place a common-law adjudicatory principle. *Lozano*, 572 U.S. at 10. It does not work here.

Equitable tolling “is a traditional feature of American jurisprudence and a background principle against which Congress drafts limitations periods.” *Arellano*, 598 U.S. at 6. Accordingly, this Court “presume[s] that federal statutes of limitations are subject to equitable tolling.” *Id.* But the Court has “only applied that presumption to statutes of limitations.” *Lozano*, 572 U.S. at 13–14; see *Hallstrom*, 493 U.S. at 27 (holding that a 60-day notice provision that did not function as a statute of limitations was not subject to equitable tolling). Because § 1446(b)(1)’s removal deadline is not a statute of limitations, no presumption of equitable tolling applies, and a court may not read an atextual exception into the statute. The removal context and federalism principles confirm that result.

A. Section 1446(b)(1)’s removal deadline is not a statute of limitations.

Whether a time limit “is a statute of limitations depends on its functional characteristics.” *Lozano*, 572 U.S. at 15 n.6. Statutes of limitations “establish the period of time within which a claimant must bring an action.” *Id.* at 14 (citation omitted); see *Young v. United States*, 535 U.S. 43, 47–48 (2002) (citation omitted) (explaining that limitations periods “prescribe[] a period within which certain rights ... may be

enforced” and “*define* a subset of claims eligible for certain remedies”). They are triggered by the event giving rise to the cause of action, *Hallstrom*, 493 U.S. at 27; “characteristically embody a policy of repose, designed to protect defendants”; and “foster the elimination of stale claims, and certainty about a plaintiff’s opportunity for recovery and a defendant’s potential liabilities,” *Lozano*, 572 U.S. at 14 (cleaned up). This Court applies a presumption of equitable tolling only “if the period in question is a statute of limitations” based on these functional traits. *Id.* at 11.⁹

Section 1446(b)(1) possesses none of these traits. The 30-day removal deadline does not apply to plaintiffs at all, let alone bar them from bringing a claim for relief after a certain period. It is not triggered by the event giving rise to the cause of action, does not protect the defendant from stale claims, and does not define a subset of claims eligible for judicial remedies. Instead, removal is a forum issue that arises only *after* a claim for relief has been brought.

Because § 1446(b)(1) does not function as a statute of limitations, the concerns that call for the availability of equitable tolling are absent. Strictly applying a

⁹ E.g., *Boechler, P.C. v. Comm’r of Internal Rev.*, 596 U.S. 199, 209–11 (2022) (deadline to seek judicial review of agency action); *Holland v. Florida*, 560 U.S. 631, 645–46 (2010) (deadline to seek habeas relief); *Young*, 535 U.S. at 47 (2002) (three-year lookback period that “serves the same ‘basic policies’” as a statute of limitations: “repose, elimination of stale claims, and certainty about a plaintiff’s opportunity for recovery” (citation omitted)); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 394 (1982) (citation omitted) (Title VII deadline adopted to “prevent[] the pressing of ‘stale’ claims, the end served by a statute of limitations”).

statute of limitations can result in “the potentially harsh consequence of barring a meritorious claim before the plaintiff has a reasonable chance to assert his legal rights.” *United States v. Kubrick*, 444 U.S. 111, 126 (1979) (Stevens, J., dissenting). But strictly enforcing the removal deadline does not have this consequence. The litigation simply remains in the plaintiff’s chosen forum—hardly the sort of severe result that warrants judicial deviation from statutory text. Arguing otherwise would be inconsistent with “a foundational principle of our federal system: State courts are adequate forums for the vindication of federal rights.” *Burt v. Titlow*, 571 U.S. 12, 19 (2013).

Moreover, this Court has been most willing to apply a presumption of equitable tolling when a statute of limitations appears in an “unusually protective” statutory scheme in which “laymen, unassisted by trained lawyers,” often “initiate the process.” *Boechler*, 596 U.S. at 209 (cleaned up) (tax filings); see also, e.g., *Holland*, 560 U.S. at 653 (habeas); *Zipes*, 455 U.S. at 397 (Title VII); *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 761 (1979) (ADEA). That makes sense because, when the potentially harsh consequence of enforcing a statute of limitations is combined with the unique equitable concerns that arise in *pro se* contexts, there are strong reasons to think Congress left some flexibility to courts. The removal deadline, by contrast, arises in the context of ordinary civil litigation, and notices of removal are “generally filed by trained lawyers who are presumed to be aware of statutory requirements.” *Hallstrom*, 493 U.S. at 28; see also *McNeil v. United States*, 508 U.S. 106, 113 (1993) (“Our rules of procedure are based on the assumption that litigation is

normally conducted by lawyers.”); *Sebelius v. Auburn Reg’l Med. Ctr.*, 568 U.S. 145, 158–60 (2013) (rejecting equitable tolling where a time limit was not a statute of limitations and the statute was not remedial).

By asking this Court to presume equitable tolling here, Enbridge invites the Court to extend the doctrine beyond its traditional confines and to deviate from the statute’s express requirements where the concerns that animated the common-law doctrine do not apply. The Court should decline that invitation.

B. The context of removal underscores that no presumption applies.

When a time limit does not “seek primarily to protect defendants against stale or unduly delayed claims,” but instead “seeks to achieve a broader system-related goal, such as facilitating the administration of claims ... or promoting judicial efficiency,” equitable tolling is likely to be inapt. *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133–34 (2008) (citations omitted). The removal deadline fits comfortably in this latter category.

“The right to remove a case from state to federal court is purely statutory, being dependent on the will of Congress.” Charles Alan Wright, *Law of Federal Courts* § 38, p. 203 (8th ed. 2017). The procedure is “quite anomalous” and was “unknown to the common law.” *Id.* Placing a time limit on the exercise of this procedural right serves institutional interests in judicial efficiency and ensures that forum issues are promptly decided. See *infra* II.C.2.

This Court has long analogized the transfer of jurisdiction from state to federal court to the transfer of jurisdiction from trial to appellate court. E.g., *Martin v. Hunter’s Lessee*, 14 U.S. 304, 349 (1816). And time prescriptions governing the transfer from one Article III court to another are jurisdictional because only Congress “can ... determine when, and under what conditions” federal courts can hear cases. *Bowles v. Russell*, 551 U.S. 205, 212–13 (2007).

The Court in past cases has strictly enforced the removal deadline, holding that “[i]t is essential to the removal of a cause that the petition, provided for by the statute, be filed ... within the time fixed by statute, unless the time be in some manner waived.” *S. Pac. Co. v. Stewart*, 245 U.S. 359, 363 (1917) (citation omitted), *vacated on other grounds*, 245 U.S. 562 (1918); see also *infra* II.D. Similar to a notice of appeal and other forms of process required to invoke a federal court’s jurisdiction, “the litigant has the right to rely upon the statute, and to insist that, in compliance with its terms, the case shall be taken from the state to the Federal court ... at the proper time.” *Mackay v. Uinta Dev. Co.*, 229 U.S. 173, 176 (1913).

If anything, *that’s* the tradition Congress had in mind when it enacted the current version of the removal statute—one of strictly enforcing the removal deadline, not equitably tolling it.

C. Federalism principles counsel against expanding § 1446(b)(1)’s removal window based on implied presumptions.

Principles of federalism also require strict construction of the removal deadline. “Out of respect for state courts, this Court has time and again declined to construe federal jurisdictional statutes more expansively than their language, most fairly read, requires.” *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 389 (2016). And it has “reiterated the need to give due regard to the rightful independence of state governments—and more particularly, to the power of the States to provide for the determination of controversies in their courts.” *Id.* (cleaned up).

This sovereign state power “may be restricted only by the action of Congress in conformity to the Judiciary Articles of the Constitution.” *Shamrock Oil*, 313 U.S. at 108–09. So “a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress.” *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002) (quoting *Great N. R. Co. v. Alexander*, 246 U.S. 276, 280 (1918)). Courts must be mindful of Congress’s role in “regulating the jurisdiction of federal courts,” *Shamrock*, 313 U.S. at 108, and “statutory procedures for removal are to be strictly construed,” *Syngenta*, 537 U.S. at 32.

Enbridge’s presumption-first approach to construing the removal statute is fundamentally at odds with this principle. As the court below correctly recognized, reading implied, equitable exceptions into the removal statute is “incompatible with a strict construction of § 1446(b).” Pet. App. 23a.

II. Even if a presumption of equitable tolling applied, the presumption would be rebutted.

If the Court starts with the statute’s text and structure, rather than a presumption, this case is straightforward: § 1446(b)(1) sets a firm deadline using mandatory language, and a court’s duty is to apply the statute as written. But even assuming *arguendo* that a presumption of equitable tolling applies, the “presumption is rebutted if ‘there [is] good reason to believe that Congress did *not* want the equitable tolling doctrine to apply.’” *Arellano*, 598 U.S. at 7 (quoting *United States v. Brockamp*, 519 U.S. 347, 350 (1997)).¹⁰ Here, there is “very good reason” to so

¹⁰ Enbridge at times suggests there exists a clear statement rule that must be met to rebut the presumption of equitable tolling. See, e.g., Pet. Br. 45. That is incorrect. While a clear statement is required to treat a procedural requirement as jurisdictional, see, e.g., *Harrow v. Dep’t of Defense*, 601 U.S. 480, 484 (2024), the standard to rebut the presumption of equitable tolling is the one that this Court applied in *Arellano* and that the Sixth Circuit applied below: whether “there [is] good reason to believe that Congress did *not* want the equitable tolling doctrine to apply.” *Arellano*, 598 U.S. at 7 (quoting *Brockamp*, 519 U.S. at 350); accord Pet. App. 20a; see also *John R. Sand & Gravel Co.*, 552 U.S. at 137–38 (explaining that the presumption of *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89 (1990) is “*rebuttable*,” “not conclusive,” and that “statutory language” can “rebut the presumption by demonstrating Congress’s intent to the contrary” (emphasis in original)). The Court answers that question using traditional tools of statutory construction. See *Arellano*, 598 U.S. at 8–12 (rejecting equitable tolling based on text and structure); *Brockamp*, 519 U.S. at 350–54 (rejecting equitable tolling based on text, structure, purpose, and history); *Auburn Reg’l*, 568 U.S. at 159 (rejecting equitable tolling based on text, context, purpose, and history). Although *Nutraceutical* spoke of “clear intent,” it used

believe. *Id.* The text, structure, history, and purpose of the statute, as well as this Court’s precedent, demonstrate that § 1446(b)(1) is mandatory and not subject to equitable tolling.

A. The text of § 1446(b)(1) creates a strict requirement.

“Start with the text.” *Arellano*, 598 U.S. at 8. Section 1446(b)(1) provides that a notice of removal “shall be filed within 30 days.” 28 U.S.C. § 1446(b)(1). “[T]he mandatory ‘shall’ normally creates an obligation impervious to judicial discretion.” *Ross*, 578 U.S. at 639 (cleaned up). Although the use of “shall” does not necessarily make a time limitation jurisdictional, *Auburn Reg’l*, 568 U.S. at 155, when Congress uses “that mandatory language” in a statutory requirement, as here, a court ordinarily “may not excuse [the requirement], even to take [special] circumstances into account,” *Ross*, 578 U.S. at 639.

The surrounding textual cues reinforce that understanding. Congress located § 1446(b)(1) under the heading “REQUIREMENTS; GENERALLY,” § 1446(b), and this heading can inform the interpretation of the provision, see *Dubin v. United States*, 599 U.S. 110, 120–21 (2023). A “requirement” means “something (as a condition or quality) required”—that is, “something wanted or needed: NECESSITY.” *Requirement*, Merriam-Webster’s Dictionary and Thesaurus 687 (2007 ed.); accord *Requirement*, Black’s Law Dictionary

that phrase to refer to a sufficient, not a necessary, condition. 586 U.S. at 192–93.

(10th ed. 2014) (“Something that must be done because of a law or rule; something legally imposed, called for, or demanded; an imperative command.”).¹¹ The operative sentence also directs courts to use the earlier of two possible events—receipt of the initial pleading or service of summons—“whichever period is shorter,” § 1446(b)(1), a phrase that suggests “an intent for strict enforcement,” Pet. App. 20a.¹²

This textual evidence indicates that Congress intended the 30-day deadline to operate as a strict requirement, or “mandatory condition[] precedent,” for removal, which “a district court may not disregard” at its discretion. *Hallstrom*, 493 U.S. at 31.

B. The structure of the removal statute precludes equitable tolling of § 1446(b)(1).

To determine whether the presumption of equitable tolling is overcome, this Court has paid special attention to the structure of the law crafted by Congress. *Arellano*, 598 U.S. at 8–11; *Brockamp*, 519 U.S. at

¹¹ The word “REQUIREMENTS” was added to 28 U.S.C. § 1446(b) by the Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758 (2011).

¹² Enbridge notes that Congress added this phrase to address “atypical state commencement and complaint filing procedures.” *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 351–53 & n.4 (1999); Pet. Br. 46. Nevertheless, as the court of appeals and Enbridge’s *amicus* point out, the phrase’s language suggests strictness, see Pet. App. 20a; Br. of Prof. Arthur R. Miller as *Amicus Curiae* in Support of Petrs. 6. Congress told courts to start the clock as soon as a defendant could seek removal—not to extend it after it expires.

351–52. Indeed, the Court has cautioned against reading statutory language in isolation, particularly where the statute’s provisions work together or cross-reference each other. *Arellano*, 598 U.S. at 12.

Here, the structure of the federal removal statute establishes that § 1446(b)(1) is not subject to equitable tolling. In 28 U.S.C. §§ 1441–1455, Congress repeatedly cross-referenced § 1446’s requirements and specified at least *six* express exceptions to § 1446(b)(1)’s default 30-day time limit (and, in places, exceptions to those exceptions). “Atextual judicial supplementation” is inappropriate where, as here, “Congress has shown that it knows how to adopt the omitted language or provision.” *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019). In addition, several of these “specific exceptions” account for equitable factors, which “heightens the structural inference” that § 1446(b)(1) may not be tolled. *Arellano*, 598 U.S. at 9.

1. The removal statute contains six express exceptions to § 1446(b)(1), foreclosing additional, implied ones.

“Where Congress explicitly enumerates certain exceptions to a general [requirement], additional exceptions are not to be implied.” *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (quoting *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616–17 (1980)); accord *Hillman v. Maretta*, 569 U.S. 483, 496 (2013). This Court has refused to read equitable exceptions into detailed statutes that reiterated basic time limits multiple times and made express exceptions in specified circumstances. See *Brockamp*, 519 U.S. at 350–52 (declining

to infer equitable tolling where a statute set forth time limits “in a highly detailed technical manner,” repeated them “several times,” and included “explicit exceptions” that omitted tolling); *Arellano*, 598 U.S. at 8 (rejecting tolling where a statute included express exceptions “and equitable tolling [wa]s not on the list”). The removal statute, which reiterates § 1446(b)’s time limits multiple times and contains a detailed scheme of exceptions and carveouts, dictates the same result.

Section 1446(b)(1) sets the default rule for removal of civil actions: a notice of removal “shall be filed within 30 days” after receipt of the initial pleading or summons. If those documents are received at different times, the relevant deadline is “whichever period is shorter.” § 1446(b)(1).

Two exceptions to that default rule appear in § 1446(b) itself. *First*, subsection (b)(2)(B), which expressly cross-references subsection (b)(1), explains that the usual 30-day deadline applies to each defendant in a multidefendant case. Subsection (b)(2)(C), however, creates an exception: “If defendants are served at different times,” an earlier-served defendant may consent to a later-served defendant’s removal, “even though that earlier-served defendant did not previously initiate or consent to removal” within its typical 30-day window.

Second, § 1446(b)(3) creates another exception to (b)(1): “[I]f the case stated by the initial pleading is not removable,” the removal period extends until “thirty days after receipt ... 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.” This exception has its own caveat, though, contained in § 1446(c)(1): “A case may not be removed under subsection (b)(3) on the basis of [diversity] jurisdiction ... more than 1 year after commencement of the action.” But that caveat does not apply if “the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.” § 1446(c)(1); see also § 1446(c)(3)(B) (“bad faith” includes “deliberately fail[ing] to disclose the actual amount in controversy to prevent removal”).¹³

Four more exceptions—exceptions three through six—appear elsewhere in the removal statute:

Third, § 1441(d) provides that for civil actions against foreign states, “the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.” This exception was added due to Congress’s “preference that actions involving foreign states be tried in federal courts.” H.R. Rep. No. 1487, 94th Cong., 2d Sess. 32 (1976).

Fourth, § 1441(e) also references § 1446, clarifying that for civil cases arising from certain mass accidents, removal “shall be made in accordance with section 1446 of this title, *except* that a notice of removal may also be filed ... within 30 days after the date on which the defendant first becomes a party to [a covered action], or at a later time with leave of the district court.” § 1441(e)(1) (emphasis added). This exception

¹³ Yet another carveout appears in § 1453, which expressly incorporates § 1446 for class action removals, “except that the 1-year limitation under section 1446(c)(1) shall not apply.” § 1453(b).

authorizes district courts to extend the removal deadline “because consolidated adjudication of mass tort cases may further important systemic interests.” H.R. Rep. No. 889, 100th Cong., 2d Sess. 42 (1988).

Fifth, § 1442a permits the removal of certain civil actions “against a member of the armed forces of the United States” “at any time before the trial or final hearing thereof.” § 1442a. Without this exception, a civil suit of this kind would be subject to the default removal deadline in § 1446(b)(1).

Sixth, § 1454(b) provides that the removal of civil actions asserting patent, plant variety protection, or copyright claims shall be “in accordance with section 1446, *except* that if the removal is based solely on this section ... the time limitations contained in section 1446(b) may be extended at any time for cause shown.” § 1454(b)(2) (emphasis added). Once more, a reiteration of the default rule, an express exception, and a clear statutory authorization for a court to extend the deadline “for cause shown.”¹⁴

¹⁴ Although not an exception to § 1446(b)(1), which applies only in civil cases, the procedure for criminal removal in § 1455 further demonstrates that Congress knows how to grant courts authority to extend removal deadlines when it wants: “A notice of removal of a criminal prosecution shall be filed not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.” § 1455(b)(1). Congress’s creation of a good-cause exception to this related removal deadline evidences its intent not to provide one in § 1446(b)(1). *Bittner v. United States*, 598 U.S. 85, 94 (2023)

This robust and “explicit listing of exceptions” indicates “that Congress did not intend courts to read other unmentioned, open-ended, ‘equitable’ exceptions into the statute that it wrote.” *Brockamp*, 519 U.S. at 352. “It would be inconsistent with this comprehensive scheme for an adjudicator to extend [the deadline] through the doctrine of equitable tolling.” *Arellano*, 598 U.S. at 7.

Enbridge contends that the statute does not contain *any* “exceptions” to the 30-day deadline but merely sets different “triggers” for removal. Pet. Br. 46–47. That argument does not withstand scrutiny.

As an initial matter, Enbridge misses exceptions three through six, which are not addressed at all in its brief. The omission is glaring because three of those exceptions—§ 1441(d), § 1441(e), and § 1454(b)—expressly cross-reference § 1446 and provide the exact sort of language Enbridge claims is missing—speaking directly to “*the court’s* authority to toll” the deadline. Contra Pet. Br. 33. And § 1441(d) and § 1454(b) do not trigger anything because they do not change when the 30-day clock begins to run.

Even for the two provisions Enbridge does acknowledge, the “mere trigger” characterization does not work. Section 1446(b)(1) is unqualified and, by its terms, applies to every civil action. Subsections (b)(2) and (b)(3) take subsets of civil actions—cases involving

(“When Congress includes particular language in one section of a statute but omits it from a neighbor, we normally understand that difference in language to convey a difference in meaning (*expressio unius est exclusio alterius*).”).

multiple defendants served at different times, and those in which “the case stated by the initial pleading is not removable”—outside of subsection (b)(1). In doing so, (b)(2) and (b)(3) make exceptions to the usual rule that a defendant desiring to remove a case must file a notice of removal within 30 days after receiving the complaint or summons.

Consider this Court’s recent analysis in *Arellano*. The statute there established a baseline timing rule, then listed multiple circumstances in which a different event (for example, the veteran’s discharge or a qualifying injury) would control the effective date of an award of disability compensation. The Court treated each such alternative operative dates as “exceptions” to the baseline. See 598 U.S. at 8–11. And the reason was straightforward: Congress’s choice to make different events the operative dates is what makes them exceptions—because those provisions displace the ordinary clock for the cases they cover. See *id.*

So too here. Section 1446(b)(1) sets the default 30-day period based on receipt of the initial pleading or summons; subsections (b)(2) and (b)(3) identify defined categories in which a different event—the later removal by a co-defendant, or receipt of the first paper showing removability—controls. Labeling those carve-outs “triggers” does not change their character under *Arellano*. They are exceptions to the baseline timing rule, and their presence forecloses adding an atextual, free-floating tolling overlay onto § 1446(b)(1).

The large number of express exceptions matters because it shows that Congress did the tailoring itself,

leaving no gap for judge-made tolling. Compare *Brockamp*, 519 U.S. at 351–52 (refusing to apply equitable tolling to a statutory filing deadline with six explicit exceptions), and *Arellano*, 598 U.S. at 8–9 (refusing to apply equitable tolling where the statute contained 16 explicit exceptions), with *Boechler*, 596 U.S. at 209–10 (noting that a limitations period “admit[ted] of a single exception,” and holding that it was subject to equitable tolling), and *Holland*, 560 U.S. at 647–48 (applying equitable tolling to a deadline with a single statutory exception).

2. Multiple exceptions account for equitable concerns, strengthening the structural inference that § 1446(b)(1) is not subject to tolling.

Multiple of the specific exceptions listed above—§ 1446(b)(3)’s ascertainability rule; § 1446(c)(1)’s “bad faith” exception; and the provisions authorizing certain late removals “for cause shown” or “with leave of the district court”—already account for equitable considerations. This “heightens the structural inference” that § 1441(b)(1) is not subject to equitable tolling because it “strongly suggests that [Congress] did not expect an adjudicator to add a broader range of equitable factors to the mix.” *Arellano*, 598 U.S. at 9–10; see *United States v. Beggerly*, 524 U.S. 38, 48–49 (1998).

Section 1446(b)(3) is the principal safety valve Congress wrote into the removal scheme. It ensures that a defendant who could not discover removability from the initial pleading may remove within 30 days after receiving “an amended pleading, motion, order or

other paper from which it may first be ascertained that the case is one which is or has become removable.” § 1446(b)(3). Thus, “by providing that the [time limit] will not begin to run until the [defendant] ‘knew or should have known of’ ” removability, the statute “has already effectively allowed for equitable tolling.” *Beggerly*, 524 U.S. at 48 (quoting *Irwin*, 498 U.S. at 96). Indeed, whenever the requirements of § 1446(b)(3) are met, the predicates for equitable tolling exist. If § 1446(b)(1) may be equitably tolled, “the express exception [in § 1446(b)(3)] would be rendered insignificant, if not wholly superfluous.” *TRW Inc.*, 534 U.S. at 31 (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

Moreover, Congress limited § 1446(b)(3) in diversity cases by placing a one-year cap in § 1446(c)(1). This is significant because “[w]hen Congress has already considered equitable concerns and *limited* the relief available, ‘additional equitable tolling would be unwarranted.’ ” *Arellano*, 598 U.S. at 10 (emphasis added) (quoting *Beggerly*, 524 U.S. at 48–49). Here, Congress included an express exception to the ordinary 30-day deadline to ensure that defendants have an opportunity to seek removal once removability can be ascertained. Congress then cabined that exception, first by § 1446(b)(3)’s plain text and second by the one-year cap in § 1446(c)(1).

Further, § 1446(c)(1)’s one-year cap has its own exception for when “the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.” That bad-faith provision is yet another example of Congress expressly incorporating equitable

concerns when it wants to. And still other provisions—extensions “for cause shown” or “with leave of the district court” in specific circumstances, §§ 1441(d), 1441(e)(1), 1454(b)(2)—can likewise account for equitable factors. In a calibrated framework that authorizes courts to extend deadlines in defined settings, there is no warrant to read in a roving equitable power to toll § 1446(b)(1).

C. Section 1446(b)(1)’s history and purpose support the conclusion that Congress did not intend equitable tolling.

The history and purpose of § 1446(b)(1) provide additional reasons to believe that Congress did not intend to delegate to courts a generalized power to extend the 30-day deadline based on case-by-case assessments of equitable factors.

1. The statutory history demonstrates Congress’s deliberate decision to set a fixed deadline for removal and to specify any exceptions.

For more than two centuries, Congress has set a definite time limit for removal. It has revisited that limit when experience warranted and spoken expressly when it wanted flexibility. For the most part, the removal deadline has been short by design. When it was not, abuses occurred, and Congress swiftly responded by reverting to a shorter deadline and thereafter making slight adjustments to establish a uniform timeframe. This history further demonstrates that

Congress did not leave any room for judicial alteration of the 30-day deadline.

The removal deadline was originally quite strict. The Judiciary Act of 1789 required that, to remove a case, the defendant had to file a petition for removal “at the time of entering his appearance.” Act of Sept. 24, 1789, § 12, 1 Stat. 79. The rationale for this rule was that “the defendant, who had a right of removal, and failed to exercise it at the earliest period possible, should be presumed to have acquiesced in the forum chosen by the plaintiff.” *Pullman Palace Car Co. v. Speck*, 113 U.S. 84, 85 (1885).

For a brief period during the Reconstruction era, Congress enlarged the rule, allowing removal petitions to be filed any time before the trial or final hearing of the case. Act of July 27, 1886, 14 Stat. 306; Act of Mar. 2, 1867, 14 Stat. 558. That did not go well. Among other things, defendants “abuse[d]” the generous deadline, “experiment[ing]” in state court until they met with difficulties or came to believe they would lose, then they would change the forum. *Speck*, 113 U.S. at 87 (cleaned up).

“To prevent the[se] abuses,” Congress deliberately re-tightened the removal deadline in 1875. *Id.* (cleaned up). The revised statute required a petition for removal to be filed “before or at the term at which [the suit] could be first tried.” Act of Mar. 3, 1875, § 3, 18 Stat. 470. The party that desired removal “[wa]s not permitted unreasonably to delay this election during all the period incident to the preparation of the case.” *Speck*, 113 U.S. at 86.

Seeing fit to narrow the removal period once more, Congress in 1887 required removal petitions to be filed when the defendant was required by state rules to answer or plead in response to the complaint. Act of Mar. 3, 1887, § 3, 24 Stat. 552. That remained the rule until 1948, when Congress again revised the removal statute to achieve national uniformity. See *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 351 (1999). Rather than allowing the deadline to vary based on state pleading requirements, Congress fixed a national time limit for removal: a petition was due 20 days after the complaint was filed or served, whichever was later. *Id.*

Congress amended the statute in 1949 to account for “atypical state commencement and complaint filing procedures,” ensuring that defendants in each state had access to the complaint for 20 days before a petition for removal was due. *Id.* at 351–53 & n.4. Then, in 1965, Congress changed the deadline to 30 days after finding that 20 days was too short to permit removal in States with substituted service laws. H.R. Rep. No. 132, 89th Cong, 1st Sess. 1 (1965).

In 1988, Congress made two important changes. First, it added § 1446(b)(3)’s one-year cap on removal in diversity cases to “reduc[e] the opportunity for removal after substantial progress has been made in state court” because “[r]emoval late in the proceedings may result in substantial delay and disruption.” H.R. Rep. No. 889, 100th Cong. 2d Sess. 72 (1988). Second, Congress required motions to remand based on nonjurisdictional defects to be filed within 30 days of removal to prevent plaintiffs from “hold[ing] the defect

in reserve as a means of forum shopping if the litigation should take an unfavorable turn.” *Id.*; see 28 U.S.C. § 1447(c).¹⁵

And in 2011, Congress made three more changes that are relevant here. First, it codified the rule of unanimity, providing that each defendant has 30 days from his or her own date of service to seek removal, while permitting earlier-served defendants to consent to a later-served defendant’s removal. § 1446(b)(2)(A)–(C); H.R. Rep. No. 10, 112th Cong., 1st Sess. 14 (2011). Congress added the exception in § 1446(b)(2)(C) to ensure “[f]airness to later-served defendants,” but noted that this did not “allow an indefinite period for removal.” H.R. Rep. No. 10 at 14. Second, addressing a circuit split over whether the one-year cap in diversity cases could be equitably tolled, Congress rejected equitable tolling and instead authorized removal beyond

¹⁵ Enbridge argues that § 1447(c)—which says a case “shall be remanded” if the federal court lacks jurisdiction—implies that remand of a case that was untimely removed is discretionary, thereby creating an opening for equitable tolling. Pet. Br. 39. But § 1447(c) merely reflects the unique status of subject-matter jurisdiction, which “can never be waived or forfeited.” *Gonzalez*, 565 U.S. at 141. Nothing in § 1447(c) indicates Congress intended to change the traditional rule that while an objection to timeliness may be waived, remand is required when a case is not timely removed and the plaintiff promptly objects. See *infra* II.D.

If anything, § 1447(c) supports the Attorney General here. Before 1988, motions for remand had to be filed only “within a reasonable time.” See *Snapper, Inc. v. Redan*, 171 F.3d 1249, 1257 n.18 (11th Cir. 1999). By creating the 30-day limit for motions to remand, Congress sought to encourage prompt resolution of forum issues and to prevent litigants from using the removal statute as a means of forum shopping by sitting on their procedural rights. H.R. Rep. No. 889 at 72.

one year only upon a finding that the plaintiff acted in bad faith to prevent removal. *Id.* at 15; see *Hoyt v. Lane Constr. Co.*, 927 F.3d 287, 294 (5th Cir. 2019) (explaining that the amendment abrogated prior cases allowing equitable tolling of § 1446(c)(1)). Third, Congress relocated criminal removal provisions to a separate section and, there, expressly permitted late filings “for good cause shown.” 28 U.S.C. § 1455(b)(1); see *supra* note 14. It did not confer comparable authority for civil removals.

This history confirms that it is Congress’s role to set and adjust the timing rules for removal, and that courts should not superimpose an atextual tolling exception on § 1446(b)(1)’s current 30-day deadline.

2. The purpose of § 1446(b)(1) is furthered by enforcing it as written.

Enbridge argues that equitable tolling is needed to further the statute’s purpose. Pet. Br. 20, 40. But “[i]t was evidently the purpose of Congress to fix an earlier and definite time [for removal], which would not permit the litigant to experiment in the State court until satisfied he would fail there, and then change his forum.” *Speck*, 113 U.S. at 87; see *Manning v. Amy*, 140 U.S. 137, 141 (1891); *Wilson v. Intercollegiate (Big Ten) Conference Athletic Ass’n*, 668 F.2d 962, 965 (7th Cir. 1982) (Posner, J.) (“The purpose of the 30-day limitation is ... to deprive the defendant of the undeserved tactical advantage that he would have if he could wait and see how he was faring in state court before deciding whether to remove the case to another court system.”).

The time limit also serves “to prevent the delay and waste of resources involved in starting a case over in a second court after significant proceedings ... have taken place in the first court,” *Wilson*, 668 F.2d at 965, by resolving the choice of forum early in the litigation, see H.R. Rep. No. 889, 100th Cong. 2d Sess. 72 (1988). And applying a fixed deadline ensures national uniformity. *Murphy*, 526 U.S. at 351.

Each of these purposes is well served by a clear and mandatory rule. A system of ad hoc exceptions, by contrast, would require case-by-case determinations of whether removal is warranted; create delay and costs to both courts and litigants; and allow enterprising defendants to seek removal after first receiving an adverse decision in state court, as occurred here.

In weighing these costs against the benefits of an extended removal deadline, Congress had “the power to choose between rules, which prioritize efficiency and predictability, and standards, which prioritize optimal results in individual cases.” *Arellano*, 598 U.S. at 11. Congress chose a rule—a notice of removal “shall be filed within 30 days,” § 1446(b)(1)—not a standard—such as “for cause shown,” except in limited contexts where there is a unique interest in a federal forum, see §§ 1441(d), 1454(b)(2), 1455(b)(1). In other words, Congress decided for itself “whether, or just where and when,” to extend the statute’s deadlines, “rather than delegate to the courts a generalized power to do so wherever a court concludes that equity so requires.” *Brockamp*, 519 U.S. at 353. That choice must be respected. See *Arellano*, 598 U.S. at 11–12 (“Congress opted for rules in this statutory scheme,

and an equitable extension ... would disrupt that choice.”).

D. This Court has long treated the removal deadline as mandatory.

Consistent with the opinion below, this Court has long treated the statutory removal deadline as a mandatory claims-processing rule.

From the start, the historical understanding was that “[t]he right to remove a suit from a State court ... is statutory, and to effect a transfer of jurisdiction all the requirements of the statute must be followed.” *Babbitt v. Clark*, 103 U.S. 606, 610 (1880); see *Hunter’s Lessee*, 14 U.S. at 349 (“The time, the process, and the manner [for removal] must be subject to ... absolute legislative control.”).

Accordingly, this Court repeatedly held that when a case is removed out of time, it must be remanded to state court, because defendants have no statutory right to remove a case after the deadline has passed. See, e.g., *Kan. City, Fort Scott & Memphis R.R. Co. v. Daughtry*, 138 U.S. 298, 306 (1891) (affirming remand order where application for removal “came too late”); *Balt. & Ohio R.R. Co. v. Burns*, 124 U.S. 165, 166 (1888) (the defendant “lost its right to the removal” by failing to timely remove); *Phx. Mut. Life Ins. Co. v. Walrath*, 117 U.S. 365, 366 (1886) (“The right to the removal of a suit ... is lost by a failure to file a petition” by the statutory deadline); *Gregory v. Hartley*, 113 U.S. 742, 746 (1885) (after the statutory deadline passed and the state court held a hearing on a motion

to dismiss “it was too late ... to ask for a removal”); *Speck*, 113 U.S. at 88 (petition was untimely and deadline could not be extended by stipulation); *Edrington v. Jefferson*, 111 U.S. 770, 775 (1884) (after the statutory deadline passed “all right of removal ... was gone”).

Moreover, the Court has historically described the removal deadline in words that, in modern parlance, identify a mandatory claims-processing rule—*i.e.*, a deadline that can be waived but must be enforced when properly invoked. E.g., *Stewart*, 245 U.S. at 363 (“It is essential to the removal of a cause that the petition, provided for by the statute, be filed ... within the time fixed by statute, unless the time be in some manner waived.”); *Mackay*, 229 U.S. at 176 (“the litigant has the right to rely upon the statute, and to insist that” removal occur “in compliance with its terms”; but noncompliance is not raised *sua sponte* and can be waived); *Martin’s Adm’r v. Balt. & Ohio R.R. Co.*, 151 U.S. 673, 687 (1894) (“As the petition for the removal of this case ... was not filed ... within the time mentioned in the act of Congress, it would follow that, if a motion to remand upon that ground had been made promptly, and denied, the judgment of the Circuit Court of the United States must have been reversed, with directions to remand the case to the state court.”); *Ayers v. Watson*, 113 U.S. 594, 598 (1885) (“Application in due time ... [is] essential if insisted on, but ... may be waived.”).

Enbridge argues to the contrary based largely on a single case: *Powers v. Chesapeake & Ohio Ry. Co.*, 169 U.S. 92 (1898). Pet. Br. 32. In *Powers*, a diverse

defendant could not remove a case within the statutory period because the plaintiff also sued nondiverse parties. 169 U.S. at 97–98. After the deadline passed, the plaintiff dismissed the resident defendants, and the action “for the first time became one in its nature removable.” *Id.* at 98. The diverse defendant then “immediately filed a second petition for removal.” *Id.* The Court held that, in a case that was not initially removable, a defendant could seek removal after the time mentioned in the act of Congress had elapsed. *Id.* at 100–01.

Enbridge reads *Powers* as “clearly adopt[ing] the principle that equitable tolling is applicable” to § 1446(b)(1). Pet. 17. That is inaccurate. The Court viewed the question as “depend[ing] on the terms and effect of the act,” not whether any traditional equitable doctrine applied. 169 U.S. at 99. The Court had no doubt that compliance with the statutory deadline was required “when the case, as stated in the plaintiff’s declaration, is a removable one.” *Id.* at 98. But it was concerned that applying this rule “when the case does not become in its nature a removable one until after the time mentioned in the act has expired,” *id.* at 98–99, “would utterly defeat all right of removal in many cases,” *id.* at 100. The Court thus construed the statute to allow a defendant to file a removal petition “as soon as the action assumes the shape of a removable case.” *Id.* at 100–01.

Nothing in *Powers* indicates that the Court thought the removal deadline could be more generally tolled outside of that narrow circumstance. And at any rate, Congress has since codified *Powers* in

§ 1446(b)(3). See H.R. Rep. No. 352, 81st Cong., 1st Sess. 14 (1949). Now that the rule exists in a statute, its scope is controlled by the statute’s text—which has been further limited by § 1446(c)(1). Enbridge cannot rely on *Powers* for broad equitable principles that Congress chose *not* to adopt, much less to establish that “federal removal from state to federal court is an ‘area of the law where equity finds a comfortable home.’” Pet. Br. 40 (quoting *Holland*, 560 U.S. at 647, which involved *pro se* habeas filings).

III. Even if § 1446(b)(1) were subject to equitable tolling, this case would not remotely qualify.

Finally, even if the removal deadline were amenable to equitable tolling, tolling would be unwarranted here. A litigant “is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Holland*, 560 U.S. at 649 (cleaned up). Enbridge cannot satisfy either factor.

No “extraordinary circumstance” stood in Enbridge’s way and prevented it from timely filing a notice of removal at the outset of this case. After all, Enbridge soon thereafter raised in state court the very Pipeline Safety Act arguments that it later asserted provided a basis for federal jurisdiction. J.A. 10a–11a; 145a–155a. Much less did any extraordinary circumstance prevent Enbridge from removing this case when it removed the Governor’s “virtually identical” one. Pet. Br. 10.

Instead, Enbridge stipulated to this state-court case being held in abeyance *after* it removed the Governor’s case. J.A. 59a. And it only later sought removal once the federal court “made rulings” that Enbridge felt “reflect[ed] its view of the merits.” Pet. Br. 15. Not only is that wait-and-see approach contrary to the very purpose of the 30-day deadline, it cannot be described as acting “diligently” for the reasons the court of appeals articulated in finding that no statutory exception to the removal deadline applied. See Pet. App. 17a (“[T]o the extent § 1446(b)(3)’s later removal window was ever open, Enbridge missed that one too.”).

The district court did not even purport to apply the traditional equitable-tolling framework recognized in *Irwin*, *Holland*, and this Court’s other cases. It instead relied on free-floating factors that were not grounded text, precedent, or tradition. Nothing indicates Congress intended such an open-ended, atextual, and ahistorical inquiry. As this Court has recognized, “[i]n the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law.” *Hallstrom*, 493 U.S. at 31 (cleaned up).

CONCLUSION

The Sixth Circuit's judgment should be affirmed.

Respectfully submitted,

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APPENDIX

**BRIEF FOR RESPONDENT
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APPENDIX — RELEVANT STATUTORY PROVISIONS

1. 28 U.S.C. § 1441 provides, in part:

Removal of civil actions

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

(b) **REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.**—(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

* * *

(d) **ACTIONS AGAINST FOREIGN STATES.**—Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action

shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) MULTIPARTY, MULTIFORUM JURISDICTION.—(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

(A) the action could have been brought in a United States district court under section 1369 of this title; or

(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

2. 28 U.S.C. § 1442a provides:

A civil or criminal prosecution in a court of a State of the United States against a member of the armed forces of the United States on account of an act done under color of his office or status, or in respect to which he claims any right, title, or authority under a law of the United States respecting the armed forces thereof, or under the law of war, may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States for the district where it is pending in the manner prescribed by law, and it shall thereupon be entered on the docket of the district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine the cause.

3. 28 U.S.C. § 1446 provides:

Procedure for removal of civil actions

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

(b) **REQUIREMENTS; GENERALLY.**—(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant,

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

(2)(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

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

(c) REQUIREMENTS; REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.—(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred

by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

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

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

(i) nonmonetary relief; or

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

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

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

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

(d) NOTICE TO ADVERSE PARTIES AND STATE COURT.—Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

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

[(f) Redesignated (e)]

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

paragraph (1) of section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

4. 28 U.S.C. § 1447 provides:

Procedure after removal generally

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

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

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

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to

the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

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

5. 28 U.S.C. § 1453 provides, in part:

Removal of class actions

* * *

(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section 1446(c)(1) shall not apply), without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.

(c) Review of Remand Orders.—

(1) IN GENERAL.—Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not more than 10 days after entry of the order.

(2) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under paragraph (3).

(3) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 60-day period described in paragraph (2) if—

(A) all parties to the proceeding agree to such extension, for any period of time; or

(B) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

* * *

6. 28 U.S.C. § 1454 provides, in part:

Patent, plant variety protection, and copyright cases

(a) IN GENERAL.—A civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights may be removed to the district court of the United States for the district and division embracing the place where the action is pending.

(b) SPECIAL RULES.—The removal of an action under this section shall be made in accordance with section 1446, except that if the removal is based solely on this section—

(1) the action may be removed by any party; and

(2) the time limitations contained in section 1446(b) may be extended at any time for cause shown.

* * *

7. 28 U.S.C. § 1455 provides, in part:

Procedure for removal of criminal prosecutions

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

(b) REQUIREMENTS.—(1) A notice of removal of a criminal prosecution shall be filed not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

* * *

8. 9 U.S.C. § 205 provides:

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before

the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

9. 12 U.S.C. § 1819 provides, in part:

* * *

(2) Federal court jurisdiction

(A) In general

Except as provided in subparagraph (D), all suits of a civil nature at common law or in equity to which the Corporation, in any capacity, is a party shall be deemed to arise under the laws of the United States.

(B) Removal

Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.

* * *

10. 28 U.S.C. § 2679 provides, in part:

* * *

(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.