

No. 24-783

IN THE
Supreme Court of the United States

ENBRIDGE ENERGY, LP, ET AL.,
Petitioners,

v.

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

**On Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit**

**BRIEF OF THE GREAT LAKES
BUSINESS NETWORK AS AMICUS CURIAE
IN SUPPORT OF RESPONDENT**

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INTEREST OF AMICUS CURIAE

Amicus curiae the Great Lakes Business Network (“Business Network”) is an unincorporated association of over 200 prominent businesses and business leaders in the Great Lakes region.¹ The Business Network advocates for “thriving ecosystems, economies, and communities” in the Great Lakes area.² The member businesses depend on the purity and quality of the Great Lakes and their reputation as healthy and scenic lakes. The Business Network includes businesses across a broad range of sectors—many of them leading enterprises in their markets—including Patagonia, Cherry Republic, Keweenaw Mountain Lodge, Bell’s Brewery and Short’s Brewing Company.

Of particular concern to the Business Network are the dual pipelines that make up Line 5 in the Straits and their high likelihood of rupture. Line 5’s owner and operator, Enbridge, was responsible for the Kalamazoo River oil spill, which pumped over 1 million gallons of oil into the Kalamazoo River over 17 hours despite alarms ringing in the Enbridge control center, contaminating 40 miles of the Kalamazoo River, and costing over \$1 billion to clean up to the

¹ Pursuant to Supreme Court Rule 37.6, amicus curiae state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

² *About GLBN*, Great Lakes Bus. Network, <https://glbusinessnetwork.com/about-us/> (last visited September 9, 2025).

extent possible.³ This disaster should never have happened. According to the National Transportation Safety Board, the federal agency which oversaw the principal investigation into the event: “[t]he rupture and prolonged release were made possible by pervasive organizational failures at Enbridge Incorporated.”⁴

As devastating as the Kalamazoo River spill was, a Line 5 rupture would be far worse. A Michigan Technical University study commissioned for the State estimated that a Line 5 spill could contaminate 1,000 miles of shoreline and 650 square miles of the open waters of Lakes Huron and Michigan.⁵ The risk of a spill is significant. In the past six years alone, ships navigating the Straits perpendicular to Line 5 have twice struck the dual lines, once denting the

³ Jeff Alexander & Beth Wallace, *Sunken Hazard*, National Wildlife Federation (Oct. 8, 2012), <https://www.nwf.org/Educational-Resources/Reports/2012/10-08-2012-Sunken-Hazard>.

⁴ National Transportation Safety Board, *Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, Marshall, Michigan, July 25, 2010*, NTSB Number: PAR-12-01, at xii (2012), <https://www.nts.gov/investigations/AccidentReports/Reports/PAR1201.pdf>.

⁵ See Mich. Tech. Inst., *Independent Risk Analysis for Straits Pipelines, Final*, 69-71 (Sept. 15, 2018), https://www.michigan.gov/psab/-/media/Project/Websites/psab/archive/media/Straits_Independent_Risk_Analysis_Final.pdf?rev=7ec49ca4abd847b4a2542fcd083674fe&hash=37C49779A2B68A3EB79B85CA42AC7B93.

pipelines⁶ and another time pulling them 10 feet across the lakebed out of alignment.⁷ It is only a matter of time before the lines are dealt a fatal blow.

Any oil spill in the Great Lakes would gravely injure the businesses and communities that depend on the water and on navigation. For that reason, the Business Network unequivocally supports the State of Michigan's efforts to protect the natural resources of the Great Lakes through the State's fulfillment of its public trust responsibilities in state court. Their businesses depend on the modes of navigation protected by the State's public trust obligations, from ferries to kayaks to freighters supplying goods—all of which would be devastated by an oil spill, and which are already being hampered by measures the U.S. Coast Guard has had to order Enbridge to take to prevent an anchor from shearing the pipeline. Their businesses also rely on the tourist recreation—such as swimming, fishing, and walking the beach—that is preserved by the public trust and would also be destroyed by an oil spill. And the businesses all depend on clean water.

The Business Network's members are not alone. In 2023, outdoor recreation in the State of Michigan accounted for 118,252 jobs, with wages totaling \$6.3

⁶ Governor Gretchen Whitmer, *Notice of Revocation and Termination of Easement*, 26 (November 13, 2020), https://content.govdelivery.com/attachments/MIEOG/2020/11/13/file_attachments/1600920/Notice%20of%20%20Revocation%20and%20Termination%20of%20%20Easement%20%2811.13.20%29.pdf.

⁷ *Id.* at 27.

billion and \$13.9 billion value added to the Michigan GDP.⁸ In 2014, “over 113 million visitors spent over \$22 billion in Michigan” visiting the Great Lakes.⁹ The craft beer industry—in which many Business Network members participate and lead—supports 66,900 jobs in Michigan and contributes more than \$9.9 billion to the State’s economy.¹⁰ All of this would be at risk from a Line 5 rupture. The Michigan Tech study concluded that such a spill could cost the State \$1.9 billion in economic damages due to lost tourism income, harm to fisheries and fishing, other recreational damage, and public health costs.¹¹ A

⁸ U.S. Bureau of Economic Analysis, *Outdoor Recreation Satellite Account* (ORSA), State Tables (embedded Excel sheet) (2023), <https://www.bea.gov/data/special-topics/outdoor-recreation>.

⁹ Mich. Sea Grant, *The Dynamic Great Lakes Economy, Employment Trends from 2009 to 2018*, (Oct. 2020), <https://www.michiganseagrant.org/wp-content/uploads/2020/10/MICHU-20-715-Great-Lakes-Jobs-Report-fact-sheet.pdf>.

¹⁰ Dave Bartkowiak, Jr., *Michigan’s Beer Industry Chugs Along: \$9.9 Billion to State’s Economy*, *CLICK ON DETROIT* (July 9, 2021), <https://www.clickondetroit.com/features/2021/07/09/michigans-beer-industry-chugs-along-99-billion-to-states-economy/#/>.

¹¹ Mich. Tech. Inst., *Independent Risk Analysis for Straits Pipelines Executive Summary*, 31, https://www.michigan.gov/psab/-/media/Project/Websites/psab/archive/media/Straits_Independent_Risk_Analysis_Final_ExecSummary.pdf?rev=359e3d18ea414c3cac53a94231122b69&hash=AD8148B951C8AA699EC68AF28F89F0C6.

Michigan State University study estimated the economic damages to be even higher, at \$5.6 billion.¹²

Enbridge and its amici in their briefs have ignored the massive economic harm that will inevitably result when Line 5 ruptures, instead constructing a false narrative of catastrophe if Line 5 shuts down. According to that narrative, jobs would be lost, energy security would be threatened, and fuel prices would increase. Naturally, if those predictions were true, the Business Network would not support the shutdown of Line 5. Our businesses depend on affordable, reliable and plentiful energy. Our revenues depend on a robust regional economy that creates and maintains jobs. But after intense and extended research on the economic impacts of a Line 5 shutdown (see *infra* at 18-21), we know that the claimed economic repercussions of Line 5 shutting down are baseless and that the narrative advanced by Enbridge and its amici is fiction.

Business Network members recognize the threat Line 5 poses to the Great Lakes, its businesses, and our own livelihoods, and we consequently support the efforts by the State of Michigan to revoke Enbridge's Easement in the Straits under the State's public trust doctrine. Our businesses have long relied on state law and its enforcement by state courts to protect the

¹² Robert B. Richardson & Nathan Brugnone, *Oil Spill Economics: Estimates of the Economic Damages of an Oil Spill in the Straits of Mackinac in Michigan*, 2 (May 2018), available at https://forloveofwater.org/wp-content/uploads/2018/05/FLOW_Report_Line-5_Final-release-1.pdf).

tourism, recreation and navigation that fuel our revenues and the state and regional economies. This case implicates serious state interests that are vital to our businesses. The vague and often inaccurate federal interests alleged by Enbridge and its amici ignore the very real and tangible interests of our members and thousands of other Michigan and regional businesses that rely on the Great Lakes for our livelihood.

The certainty of the application of paramount public trust protections has allowed our businesses to survive and thrive. That certainty is at risk if the statutory removal deadline becomes fluid. Our businesses and others will be unsure not only of where the merits of this case will be decided, but also of when that decision will occur. Federal removal of this state-law action is not only wrong on the law—it is wrong on the equities.

INTRODUCTION AND SUMMARY OF ARGUMENT

Deadlines matter – especially in statutes like the federal removal statute. They provide certainty, avoid delays, enhance efficiency, and ensure fairness between similarly situated parties. In this case, maintaining the mandatory removal deadline under 28 U.S.C. § 1446(b)(1) without amorphous equitable exceptions is particularly important and complies with the intent of Congress. As this Court has recognized, the “statutory procedures for removal are to be strictly construed”. *Syngenta Crop Prot. Inc. v. Henson*, 537 U.S. 28, 32 (2002). That strict construction is essential for the § 1446(b)(1) deadline.

We focus on three reasons that equitable tolling should not apply to (b)(1):

- (1) by enabling defendants to change forums years after engaging in state litigation, tolling would create profound uncertainty for litigants and others awaiting resolution of the legal action, as well as major inefficiencies for the judicial system;
- (2) it would encourage defendants to engage in gamesmanship by manufacturing “extraordinary circumstances” (as Enbridge has done in this case), leading to intense factual disputes over whether equitable tolling applies; and
- (3) it would conflict with the 28 U.S.C § 1446(b)(3) requirements in the removal statute by resetting the removal deadline under circumstances that § 1446(b)(3) expressly prohibits (such as the circumstances in the instant case).

We also respond briefly to the claims Enbridge has made that go beyond the scope of the question presented, claims that federal interests compel federal jurisdiction over what is quintessential state law action under Michigan’s public trust, nuisance, and state environmental protection statute. Federal interests, even when actually present, do not create federal jurisdiction. This Court has uniformly held that the preemption defenses claimed by Enbridge do not confer jurisdiction on the federal courts over state law claims. *Caterpillar Inc. v. Williams*, 482 U.S. 386,

393 (1987). And the national interests of energy economic security claimed by Enbridge and its amici are fiction—they are contradicted by Enbridge’s own experts. According to those experts (and others), virtually every barrel of oil supplied by Line 5 to refineries will be replaced by market forces within 18 months, and 87 percent of it within three months. The propane provided by Line 5’s natural gas liquids will be provided directly to consumers. The markets will provide these alternative supplies at comparable prices; gasoline prices will increase by less than a penny a gallon.

ARGUMENT

I. Allowing equitable exceptions to § 1446(b)(1)’s mandatory removal deadline would conflict with other parts of the removal statute and cause immense uncertainty

It is well established by this Court that the procedural deadlines created by 28 U.S.C. § 1446 are to be strictly construed. As the Court held in *Syngenta Crop*, 537 U.S. at 32:

The right of removal is entirely a creature of statute and “a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress.” *Great Northern R. Co. v. Alexander*, 246 U.S. 276, 280 (1918) (citing *Gold-Washing and Water Co. v. Keyes*, 96 U.S. 199, 201 (1878)). These statutory procedures for removal are to be strictly construed. See, e.g., *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-109 (1941) (noting

that policy underlying removal statutes “is one calling for the strict construction of such legislation”); *Healy v. Ratta*, 292 U.S. 263, 270 (1934) (“Due regard for the rightful independence of state governments . . . requires that [federal courts] scrupulously confine their own jurisdiction to the precise limits which the statute has defined”); *Matthews v. Rodgers*, 284 U.S. 521, 525 (1932); *Kline v. Burke Constr. Co.*, 260 U.S. 226, 233-234 (1922).

Here, strict construction can only mean that § 1446(b)(1)’s 30-day removal deadline is mandatory, not subject to equitable tolling.

The structure, purpose and language of § 1446 compel the conclusion that there can be no equitable exception to the 30-day deadline in § 1446(b)(1). Michigan’s brief and the amicus brief of the Federal Courts and Civil Procedure Scholars fully address the mandatory nature of that provision, and we do not repeat that here. We offer more detailed analysis of three reasons that the 30-day deadline cannot be extended by equitable tolling: such tolling would create significant uncertainty for litigants and others awaiting resolution of the legal action; it would spawn factual disputes over whether equitable tolling applies; and it would conflict with § 1446(b)(3)’s removal requirements.

A. Immense uncertainty

Any equitable tolling will lead to extensive uncertainty and inefficiency. Congress recognized the risks of such uncertainty and designed § 1446(b) to forestall it. In amending § 1446(b) in 1988, Congress

explained that the one-year limitation on removal on grounds of diversity jurisdiction was intended to “reduc[e] the opportunity for removal after substantial progress has been made in state court,” as “[r]emoval late in the proceedings may result in substantial delay and disruption.” H.R. Rep. No. 100-889, at 72 (1988).

Equitable tolling of the (b)(1) deadline will encourage defendants who miss the deadline to make a belated attempt at removal anyway, hoping for an equitable exception. It also will enable some defendants to vigorously pursue state court litigation until they believe the state court may not rule in their favor, and then seek to use equitable tolling to remove the matter years late to federal court, as Enbridge did in this case. Such defendants will inevitably claim extraordinary circumstances, a strong federal interest, gamesmanship or some other excuse, and plaintiffs and federal courts will have to assess and respond. That will lead to more delays in the final outcome of litigation, more uncertainty and more inefficiency. If § 1446 is no longer “strictly construed”, parties will be litigating in a liminal space, neither fully in the state court nor in federal court, even after state court litigation has substantially proceeded. This uncertainty and the attendant harm will affect both litigants and interested parties alike.

Members of the Business Network have to make critical strategic decisions with an eye to the future. Most relevant to the present dispute, this includes whether to continue operation in the Great Lakes and whether to continue marketing their businesses to evoke association with the Great Lakes. Because of

the possibility of equitable tolling, such decisions must be made while this already long-running litigation continues, as the case is yanked back and forth multiple times between state and federal court, and while the fate of Line 5, the Great Lakes, and the Member Businesses are clouded in uncertainty.

B. Encouraging factual disputes over purported gamesmanship (and gamesmanship itself)

The other rationale advanced by Enbridge for equitable tolling—so-called gamesmanship in this litigation by the State—is an inherently fact-intensive and disputed matter that will lead to uncertainty and delays and indeed, more gamesmanship. The instant case again is a good example. Despite Enbridge’s contrary claims, it is not the State but Enbridge that has engaged in extensive forum manipulation. The Court has long upheld the presumption that plaintiffs control their choice of whether to bring their action in state or federal court. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). In the instant case, the State decided to bring the case in state court and has stuck by that decision. The parties litigated the state court case extensively, in contrast to Enbridge’s characterizations to the Court. After the Attorney General filed her state law complaint in state court in June, 2019, Enbridge engaged in substantial state court litigation: filing and defending dispositive motions, engaging in oral argument, defending against a TRO motion, and participating in hearings on that motion. It is only after Enbridge lost that motion and realized that the

state court might not be as sympathetic as it wished that the company sought a federal forum. Because it could not timely remove the Attorney General's action, it did so for the then-newly filed Governor's suit, creating a forum battle and potentially inconsistent rulings. Enbridge then exacerbated that forum battle by filing its own lawsuit against the state in federal court. *See Enbridge Energy, Ltd. P'ship v. Whitmer*, No. 1:20-cv-1141 (W. D. Mich. 2024). To be clear: the grounds for Enbridge's federal court lawsuit and the removal petition were nothing more than the federal defenses Enbridge raised before the state court in the present suit, which was considering those defenses as part of the case on the merits. But notwithstanding its litigation of those issues, Enbridge eventually determined that it did not want the state court to reach a decision and so sought a federal forum. Enbridge's actions are a classic demonstration of forum manipulation.

After the Governor voluntarily dismissed her suit in order to enable the Attorney General's suit to proceed in her chosen state-court forum, Enbridge removed the Attorney General's suit—over 850 days late—hoping for a sympathetic federal district court that would overlook the statutory text and Enbridge's gamesmanship. Unfortunately, the district court mistakenly upheld the untimely and unwarranted removal.

Meanwhile, the gamesmanship accusations Enbridge and its amici levy against the State are both misleading and factually inaccurate. For example, the North American Building Trade Unions (NABU) tells this Court, "Here, after over a year of litigating this

case in state court, Michigan radically changed its strategy by attempting to revoke Enbridge's easement through the Straits of Mackinac." NABU's Br. at 6. This claim is simply false. The Attorney General's 2019 complaint, and all the litigation over the next year, sought to revoke Enbridge's easement. That was the heart of the state law claim: Enbridge's easement violated the state public trust doctrine and so must be revoked. There was no change in strategy, radical or otherwise. This criticism ignores the different constitutional roles and powers of the Attorney General and the Governor.

Enbridge and the others also attack the State for agreeing to consolidate the Attorney General's and Governor's state court suits and hold the former in abeyance until after the federal court considered the motion to remand the Governor's action. The Chamber of Commerce claims a nefarious motive by the Attorney General: "File an initial action in state court concealing a dispute's true federal nature. Then, after the removal deadline has passed, file a second action in state court and agree to hold the first in abeyance." Chamber's Br. at 19. The Chamber's account is flatly mistaken. The "true nature" of the Attorney General's initial action was not concealed; it was obvious on its face. There is no dispute that the public trust doctrine, the nuisance claim and the statutory claim are all state law claims. Nor is the Attorney General's motivation objectionable. She agreed to consolidate the actions and hold her suit in abeyance in an attempt to avoid duplicative litigation and inconsistent results. And she did not seek to revive the state court lawsuit until after the Governor dismissed her own suit—after the risk of inconsistent

and duplicative litigation between the two suits was erased. It is Enbridge who has fostered multi-jurisdiction litigation, from the beginning and now.

Removal by definition involves a defendant attempting to change the forum of a state-court filed action, and remand is the attempt to return it to its original forum. Such attempts at changing forums can often be characterized as forum manipulation by either side. As is apparent in the instant case, the entity making the accusation of forum manipulation may be the party actually engaging in it. Enabling equitable considerations to alter what until now has been a mandatory deadline would encourage more accusations of forum manipulation by both sides and require additional and sometimes in-depth inquiry by federal district courts (and reviewing appellate courts). By contrast, maintaining the 30-day removal deadline without equitable tolling avoids this additional litigation and the delay and uncertainty it creates.

C. The § 1446(b)(3) conflict

Tolling the deadline in § 1446(b)(1) would in many cases rewrite the restrictions in § 1446(b)(3). The instant case is a perfect example. The Attorney General’s complaint was filed on June 27, 2019, and the § 1446(b)(1) 30-day removal deadline was July 28, 2019—over 850 days before Enbridge actually removed the case. App. A to Pet. Cert. 7a Dkt. No. 24-783; *Nessel v. Enbridge Energy, LP*, 104 F.4th 958, 963 (6th Cir. 2024). Enbridge and its amici claim that extraordinary circumstances—specifically, Canada’s triggering of the 1977 Transit Treaty on October 4,

2021—justify this two-year-plus equitable tolling of § 1446(b)(1)’s 30-day deadline.¹³ Pet’rs’ Br. at 43; Chamber’s Br. at 17-18. But if we follow Enbridge’s logic that the Treaty invocation was the first time Enbridge knew the case was removable—a dubious claim unequivocally rejected in the Sixth Circuit’s decision, App. 17a—Canada’s new invocation of the Treaty might be at most the type of circumstance that would justify the application of § 1446(b)(3). Applying § 1446(b)(3) to the invocation of the Transit Treaty might have reset the removal clock and allowed Enbridge to remove the Attorney General’s state action within 30 days of that time. Indeed, Enbridge made just that argument before the Sixth Circuit—that the removal clock should have been reset under § 1446(b)(3) when the Treaty was invoked. The problem, as the Sixth Circuit held, is that Enbridge also failed to meet the 30-day deadline under § 1446(b)(3), and did not remove until 72 days after Canada formally invoked the Treaty. *Id.*

In the instant case, if the § 1446(b)(1) 30-day deadline were tolled for the extraordinary circumstances Enbridge claims, then the restrictions in § 1446(b)(3) would be written out of the statute. Enbridge and other defendants who fail to meet the requirements of § 1446(b)(3) could nonetheless claim

¹³ Actually, Enbridge was on notice that Canada believed the 1977 Transit Treaty applied months before that; on July 2, 2021, Enbridge informed the district court of a letter from Canada to the U.S. expressing Canada’s alleged concerns about the Treaty. *Nessel v. Enbridge Energy, Ltd. P’ship*, No. 1:20-cv-01142-JTN-RSK (W.D. Mich. 2021) Pet’r’s Mot. for Suppl. Br., ECF No. 55-1.

extraordinary circumstances under § 1446(b)(1) and still file their removals. Extraordinary circumstances would create a revival exception in conflict with the detailed and express revival requirements of § 1446(b)(3).

* * * * *

The Sixth Circuit decision should be upheld, and § 1446 construed strictly.

II. The federal interests claimed by Petitioners are exaggerated in some cases and nonexistent in others

Although such issues are outside the question presented, members of the Business Network feel obligated to respond briefly to the attempts of Enbridge and its amici to paint a misleading picture of the federal interests implicated in this lawsuit. *See, e.g.*, Pet’rs’ Br. at 44; Chamber’s Br. at 4. To begin with, federal interests do not create federal jurisdiction. This Court’s precedent over the last century uniformly holds that federal preemption, when raised as a defense, does not transform a state-law action into a federal case. It is “settled law that a case may *not* be removed to federal court on the basis of a federal defense, including the defense of preemption, even if the defense is anticipated in the plaintiff’s complaint, and even if both parties concede that the federal defense is the only question truly at issue.” *Caterpillar Inc.*, 482 U.S. at 393; *see also Grable & Sons v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005) (federal jurisdiction is limited to “a state-law claim [that] necessarily raise[s] a stated federal issue, actually disputed and substantial, which a

federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities”); *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 10 (1983) (“a federal court does not have original jurisdiction over a case in which the complaint presents a state-law cause of action, but also asserts that federal law deprives the defendant of a defense he may raise”); *Vaden v. Discover Bank*, 556 U.S. 49, 60-70 (2009) (finding no federal question jurisdiction because “[i]t does not suffice to show that a federal question lurks somewhere inside the parties’ controversy, or that a defense or counterclaim would arise under federal law”).

Here, the State’s well-pleaded complaint is based wholly on the validity of Enbridge’s easement under the state’s public-trust doctrine, state common law of nuisance, and a state statute. There are clearly no federal laws or issues that are essential to the State’s claims. Notwithstanding the contrary assumption of Enbridge and its amici, Enbridge’s federal preemption defenses cannot create federal jurisdiction. None raises an essential element embedded in the Attorney General’s well-pleaded causes of action, and none “necessarily raises” a federal question for purposes of removal.

But Enbridge goes on to postulate that the nation’s economy and energy supplies will crumble if Line 5 shuts down—even though all of Line 5’s oil and propane can be supplied by other existing infrastructure at comparable prices. Even if true, such a “national interest” would not create federal

jurisdiction over a state law-based action. But that story is pure fiction.

A. There is no federal economic and energy interest in Line 5's continued operation because all of Line 5's products can be supplied by other existing infrastructure

Enbridge and its amici manufacture claims of vast economic harm from the shutdown of Line 5: skyrocketing gasoline and other fuel prices, thousands of jobs lost, major facilities closed, and energy shortages. *See, e.g.,* Pet'rs' Br. at 6, 11; Chamber's Br. at 16-17. Such dismal predictions are based wholly on the assumptions that refineries would be deprived of oil and consumers and businesses deprived of propane.

But both assumptions have been disproven by Enbridge's own experts, other industry experts and a leading pipeline logistics company. In a case involving Line 5's trespass on tribal reservation lands without a valid easement heard in the federal district court in Wisconsin in 2023, Enbridge's economic experts and industry experts acknowledged that virtually every barrel of oil and gallon of propane supplied by Line 5's fuel transport would be replaced by existing infrastructure at comparable prices should Line 5 shut down. *See* expert reports and testimony of Neil K. Earnest, Sarah Emerson and Graham Brisben, *infra*, notes 14-18, in *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, 626 F.Supp.3d 1030 (W.D. Wis. 2022) (No. 19-CV-602-WMC) [hereinafter "*Bad River Band*"]. This testimony was

not a generalized opinion; it was highly specific and detailed. Enbridge's experts testified that because of the availability of refined product, the price of gasoline at the pump would only increase one half to one cent per gallon.¹⁴ Enbridge and industry experts further testified that virtually all of the 400,000-450,000 barrels per day supplied to refineries by Line 5 would quickly be replaced by existing infrastructure: 201,000 barrels per day by waterborne transport (from outside the Great Lakes) to refineries in Quebec, where it would be shipped to other refineries in the region;¹⁵ 100,000 barrels per day in existing excess capacity in another Michigan pipeline, Line 78, that does not transit the Straits;¹⁶ and at least 110,000 barrels per day that Enbridge can add to Line 78 simply by adding pumping capacity (without laying new pipe).¹⁷ Even more capacity

¹⁴*Bad River Band*, Earnest Expert Report at 12, ECF No. 262.

¹⁵ *Bad River Band*, Tr. of Earnest Testimony at 91:18–92:2, 130:6–11, ECF No. 610; *Bad River Band*, Emerson Expert Report at Exhibit B 23-24, 37-38, ECF No. 265-1.

¹⁶ *Bad River Band*, Tr. of Earnest Testimony at 99:11–20, ECF No. 610.

¹⁷ *Bad River Band*, Defs.' Objs. and Resps. to Pls.' Fourth Set of Interrogs. at 4, 5, ECF No. 399-4 (describing actions needed to expand each segment of Line 78); *Bad River Band*, Brisben Expert Rebuttal Report at 52-53, 62-63, ECF No. 255-1 ("The Line 78 expansion would mostly involve increasing the pressure of the pipeline by adding compression (vs. replacing with bigger pipe or twinning the pipeline).") (showing expansion of Line 78A from 570,000 bpd to 680,000 bpd of capacity would allow for full use of downstream pipelines Line 78B, Line 17, and Line 79).

exists through the expansion of rail.¹⁸

This testimony was confirmed by a 2023 report from PLG Consulting, the industry thought leader in pipeline logistics, which demonstrated that market forces would result in existing infrastructure replacing 87 percent of Line 5's oil within three months and 100 percent in 18 months, and utilization of rail and storage would provide propane at comparable quantities and prices to consumers and businesses who now receive it from Line 5.¹⁹ Because the refineries supplied by Line 5 now would receive a full complement of oil from other sources, there would be no job loss or energy security concerns. The PLG report concluded that market forces, not government planning or regulation, would ensure these shifts will occur.²⁰

* * * * *

Line 5's continued operation may be desirable for Canadian corporation Enbridge, but Enbridge's financial wellbeing is not a federal interest of the United States. The claims by Enbridge and its amici—phantom economic losses from a Line 5 shutdown—cannot compare to the concrete, real, and

¹⁸ *Bad River Band*, Emerson Expert Report at 27-28, 41-42, ECF No. 265-1.

¹⁹ See PLG Consulting, *Likely Market Responses to a Shutdown of Line 5*, 13 (October 2023), <https://plgconsulting.com/white-paper-likely-market-responses-to-a-line-5-shutdown/>. PLG was an expert for the Band in the *Bad River Band* case.

²⁰ *Id.* at 6.

massive damage that an inevitable Line 5 rupture will inflict on Business Network members and other Great Lakes businesses.

CONCLUSION

Our businesses and others throughout the Great Lakes region are relying on the state courts to make a decision on the merits of this case, including on the level of risk that Line 5 poses and on the defenses of federal preemption that Enbridge has interposed. We need the certainty that such a decision will bring so we can prepare our businesses for either eventuality—Line 5’s shutdown or continued operation. The uncertainty caused by Enbridge’s continued procedural gamesmanship is the worst of all worlds. We respectfully request that the Court not expand this uncertainty by changing a mandatory 30-day removal deadline into an equitable litigation zone.

Respectfully submitted,

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