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 FEDERAL COURTS AND CIVIL PROCEDURE SCHOLARS AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

Amici are law professors with expertise in federal courts and federal civil procedure, including the time limits for removal under 28 U.S.C. § 1446(b). Amici seek to share their expertise regarding the history of Congress's amendment of the removal statute and how that history informs the resolution of the question presented here. Drawing on years of scholarship in this area, amici also explain the distinction between situations in which the courts apply background principles of equitable tolling and, by contrast, situations governed by forum-selection rules like the removal deadline. Amici believe that applying the removal statute as written properly defers to enacted law, best ensures a fair, predictable, rule-based system, and fosters "the just, speedy, and inexpensive determination" of civil actions. *See* Fed. R. Civ. P. 1.

Amici include:[2]

- James E. Pfander, Owen L. Coon Professor of Law, Northwestern University Pritzker School of Law

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than amici curiae or their counsel made a monetary contribution intended to fund the brief's preparation or submission.

[2] Amici listed herein file in their individual capacity as scholars. Amici provide their institutional affiliation solely for purposes of identification.

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INTRODUCTION AND SUMMARY OF ARGUMENT

The right to remove a civil action from state to federal court is a creature of federal statute. The absence of any legislative provision for equitable tolling of the 30-day time limit for removal in the statute at issue here, 28 U.S.C. § 1446(b)(1), should decide this case. Section 1446 creates a detailed, rules-based system that favors early resolution of removal questions with only narrow and carefully delineated exceptions. Here, Petitioners concededly failed to comply with these rules: the complaint in question was served on Petitioners in July 2019, starting the removal clock. Pet. App. 9a. Petitioners did not remove this case until December 2021, over two years after their thirty-day removal right had ended. *Id.* 7a.

In striving to remove to federal court despite missing the statutory deadline, Petitioners seek to benefit from the equitable tolling framework that governs statutes of limitations for federal actions. This approach is misguided in several ways. First, the text and amendment history of the removal statutes confirm that when Congress has considered equitable reasons to vary the removal rules, it repeatedly has chosen to resolve those concerns by statute, either expressly adopting a rule or expressly authorizing courts to analyze the equities. It has shown no openness to courts creating their own exceptions to Congress's carefully reticulated, rules-based procedures.

Petitioners also err in likening the removal statute's forum-selection timeliness rules to statutes of limitations. True, statutes of limitations are

sometimes subject to equitable exceptions. But they are nothing like removal deadlines.

Statutes of limitations can determine the outcome of an action, potentially closing courthouse doors altogether. They are a world apart from forum-selection timing rules that determine whether a case can be removed from the state court where it presumptively should reside. Removal deadlines, unlike statutes of limitations, close only one of two available courthouse doors. Each party will still get its day in court.

In addition, removal deadlines are a lynchpin of a congressionally determined framework for determining when and how certain types of cases will be resolved by a federal court, rather than the state court in which they were filed. State courts are "presumptively competent" to resolve questions of federal law under our constitutional "system of dual sovereignty." *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990). This Court thus has often reaffirmed that the "power reserved to the states under the Constitution to provide for the determination of controversies in their courts, may be restricted only by the action of Congress in conformity to the Judiciary Articles of the Constitution." *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941). Congress has given plaintiffs first choice of forum, and the removal statute requires defendants to act expeditiously if they seek to invoke their circumscribed statutory right of removal. Nothing in this Court's precedents or the federal removal statutes supports disregarding the mandatory timelines set by Congress and leaving the removal window open for months or years, as contemplated by Petitioners.

Petitioners' proposed open-ended equitable inquiry combined with limited appellate review would upend the strict, rules-based system Congress designed. In place of Congress's rules, Petitioners would substitute a list of malleable factors with little basis in the law of equitable tolling as it has otherwise developed and little prospect of providing meaningful standards for district courts to apply. Existing limits on appellate review, fashioned by Congress to ensure speedy resolution of forum selection, confirm that Congress did not mean to invest district courts with discretion to extend the time for removal.

ARGUMENT

I. Equitable tolling is not consistent with the text and amendment history of § 1446.

A. In § 1446, Congress created a detailed, rules-based system so that removal questions would be decided promptly and uniformly.

"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.'" *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)). No such act of Congress exists here. The text, structure, and context of the removal statutes demonstrate that Congress created a rules-based structure for early determination of the proper forum so that the parties can get on with litigating the merits. Allowing courts to create equitable exceptions beyond those made by Congress would undermine that statutory scheme.

1. In § 1446 and other removal statutes, Congress set a short deadline so that removal questions normally can be decided quickly, at the outset of litigation. A 30-day deadline governs, except for express, limited exceptions.

Mandatory terms show the unyielding nature of the statute's 30-day removal deadline. The defendant "shall" file the removal notice within 30 days of a statutorily specified event. 28 U.S.C. § 1446(b)(1). Generally, "'shall' is 'mandatory' and 'normally creates an obligation impervious to judicial discretion.'" *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 172 (2016) (quoting *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998)). Here, Congress used "shall" in a subsection titled "Requirements[]," further underscoring the mandatory nature of the time requirement when no explicit statutory exception applies. 28 U.S.C. § 1446(b)(1).

Section 1446's structure underscores congressional intent that removal questions be resolved as early as possible. The 30-day time limit begins to run from service of summons or receipt of complaint, "whichever period is shorter." 28 U.S.C. § 1446(b)(1); *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-49 (1999) (holding that defendant must be served with summons or complaint for the 30-day period to start). And when a case not initially removable becomes removable, the defendant must act to remove the case "within 30 days" of receipt of the "first" paper from which it can "ascertain[]" that the case has become removable. 28 U.S.C. § 1446(b)(3). For diversity cases, Congress elected to further "'reduc[e] the opportunity for removal after

substantial progress has been made in state court'" by prohibiting removals more than one year after commencement except in cases of bad faith, even for cases that first became removable after the time had run. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 75 n.12 (1996) (quoting H.R. Rep. No. 100-889, at 72 (1988)).

Congress's "obvious concern with efficiency," *BP Pub. Ltd. Co. v. Mayor of Baltimore*, 593 U.S. 230, 245 (2021), is also evident in other procedural provisions. Remand orders are generally not subject to appellate review. 28 U.S.C. § 1447(d).[3] Except in a few specified areas, Congress preferred that erroneously remanded cases be litigated in state court rather than allowing "prolonged litigation on threshold nonmerits questions." *Powerex Corp. v. Reliant Energy Servs.,* 551 U.S. 224, 237 (2007).

2. Where Congress wanted exceptions to this general rule of speedy resolution, it carved them out expressly. In a narrow subset of circumstances, Congress provided some equitable discretion to courts by offering "for cause" exceptions to removal deadlines. Specifically, in cases relating to federal property rights like patents, copyrights, or plant variety protection, Congress expressly provided a "[s]pecial rule[]" that the "time limitations contained in section 1446(b) may be extended at any time for

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[3] As in other parts of the removal statutes, Congress explicitly provided for exceptions to this bar on appellate review where it determined they were justified. *See, e.g.*, 28 U.S.C. § 1447(d) (providing for appellate review of cases removed under 28 U.S.C. §§ 1442 and 1443); *id* § 1453(c)(1) (class actions). And certain agencies are permitted to appeal remand orders. *See, e.g.*, 12 U.S.C. § 1819(b)(2)(C) (Federal Deposit Insurance Corporation can appeal remand orders).

cause shown." 28 U.S.C. § 1454(b)(1). But Congress limited this rule to cases removed "based solely on" that section. *Id.* § 1454(b). Congress also allowed courts to extend the deadline for good cause in suits against foreign states, *id.* § 1441(d), multi-party, multi-forum litigation, *id.* § 1441(e), and criminal prosecutions, *id.* § 1455(b)(1). And, for some cases, Congress set a later deadline, *see* 12 U.S.C. § 1819(b)(2)(B), or allowed cases to be removed at any time before trial, *see, e.g.,* 9 U.S.C. § 205; 28 U.S.C. §§ 1442a, 2679(d)(1); 42 U.S.C. § 233(c).

But for the mine run of civil litigation, including this case, Congress did not embrace a "for cause" exception. Instead, Congress chose expressly to define the situations in which circumstances would justify extending the removal time and specified how much extra time should be allowed.

For example, the statute covers situations where a defendant cannot initially determine that a case is removable. It provides that if "the case stated by the initial pleading is not removable," the defendant may remove within 30 days of receiving the paper "from which it may first be ascertained that the case is" removable. 28 U.S.C. § 1446(b)(3). And in cases with multiple defendants, the statute provides that each defendant gets its own 30 days, starting when it is served the initial pleading or summons, so that the removal time for later-served defendants does not run before they are served. *Id.* § 1446(b)(2).

Congress also provided a special rule to address a litigant's bad faith. 28 U.S.C. § 1446(c)(1). If a plaintiff "acted in bad faith" to prevent removal, the one-year restriction on removal for diversity cases does not apply. *Id.* § 1446(c)(1), (3)(B).

In sum, Congress created a comprehensive statutory scheme allowing courts to extend the time for removal in a limited universe of civil cases and establishing a detailed rules-based framework to address equitable concerns in others. "It is a fundamental principle of statutory interpretation that 'absent provision[s] cannot be supplied by the courts.'" *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (quoting Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 94 (2012)) (holding that a discovery rule does not apply to the a certain statute of limitations). The cascading set of statutory exceptions and exceptions to exceptions shows that Congress well knows how to authorize courts to extend or excuse the removal deadline, *see, e.g.*, 28 U.S.C. §§ 1441(d), (e), 1455(b)(1), making "judicial supplementation" of the text "particularly inappropriate." *Rotkiske*, 589 U.S. at 14.

2. Section 1446's amendment history confirms that Congress did not intend courts to create exceptions to the statute's short, uniform time limits, beyond those Congress specified expressly. Congress has repeatedly addressed fairness concerns by adding specific rules to expressly define the narrow contours of available exceptions. And it has done so while simultaneously revising the statute to promote the speedy resolution of removal questions early in litigation. Respondent details the long history of the statute. Resp. Br. 44-48. Amici highlight a few developments here.

a. In 1948, Congress amended the statute to create a short, nationally uniform removal deadline. Before that amendment, the time for removal turned on state law. "[A] defendant could remove a case any time

before the expiration of her time to respond to the complaint under state law." *Murphy Bros.*, 526 U.S. at 351. Congress substituted a 20-day time limit (later extended to 30 days) that would "'operate uniformly throughout the Federal jurisdiction.'" *Id.* (quoting H.R. Rep. No. 80-308, at A135 (1947)).

After adoption of this uniform deadline, it soon became clear that the triggering condition for the removal time to begin to run—commencement of the action or service of process—meant that in some states a defendant would be required to remove a case even "*before* the defendant obtained access to the complaint." *Murphy Bros.*, 526 U.S. at 351. Congress did not rely on courts' equitable discretion to resolve this problem, but instead solved it with a statutory rule enacted the following year. The amendment moved the start of the removal clock to receipt of the "initial pleading setting forth the claim for relief" or service of summons. 28 U.S.C. § 1446 (1952). Congress's fix gave defendants until after they "know[] what the suit is about" to remove. *Murphy Bros*, 526 U.S. at 352 (quoting S. Rep. No. 81-303, at 6 (1949)).

b. In the most recent amendments to § 1446, in 2011, Congress considered and rejected equitable tolling, instead electing to prioritize the need for speedy, rule-based determination of the proper forum. *See* Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, § 103, 125 Stat. 758, 759-62. Congress scrapped draft statutory language that would have given courts authority to make equitable exceptions in civil cases, while at the same time adding an equitable tolling provision only for criminal cases. *See Id.*; 28 U.S.C.

§ 1455(b)(1). For civil cases, Congress again legislated express rules to govern specific situations, indicating that courts should not create additional exceptions. *See City & Cnty. of San Francisco v. EPA,* 604 U.S. 334, 349 n.12 (2025) (declining to read into statute a provision that Congress deleted).

Specifically, at the time of the 2011 amendments, there was "confusion surrounding the timing of removal when defendants are served at different times." H.R. Rep. No. 112-10, at 13 (2011). Congress reviewed an American Law Institute proposal that would have allowed the district court to extend the removal time for late-served defendants "[i]n the interest of justice." American Law Institute, *Federal Judicial Code Revision Project,* Part III, Removal, 437 (2004) (hereinafter ALI); H.R. Rep. No. 112-10, at 15 n.4 (noting that "an alternative approach was proposed by the ALI"). The ALI proposal was intended to "expressly confer[] the equitable discretion needed to avoid unfair application of the general rule." ALI, *supra*, at 455. But Congress rejected this approach and instead created an explicit rule by which each defendant has 30 days to remove beginning when that defendant is served. 28 U.S.C. § 1446(b)(2)(B). The rule also allows earlier-served defendants to consent to removal even if they previously chose not to remove. *Id.* § 1446(b)(2)(C). These provisions reflect equitable concerns—"[f]airness to later-served defendants" and "equal treatment"—but Congress chose to adopt uniform rules to address these concerns rather than allow courts to apply equitable tolling. H.R. Rep. No. 112-10, at 14.

Congress also rejected proposed amendments from the ALI that would have allowed district courts to

permit removal of diversity cases more than one year after commencement, in the "interest of justice." ALI, *supra*, at 463; H.R. Rep. No. 112-10, at 15 n.4. Again eschewing a grant of such broad equitable discretion, Congress generally kept the strict one-year time limit on removal and expressly provided for limited exceptions in situations of bad-faith interference by plaintiffs, such as hiding the true amount in controversy. 28 U.S.C. § 1446(c)(1), (3)(B); H.R. Rep. No. 112-10, at 16.

The amendment history of Section 1446 thus confirms that the removal deadline is not one that courts may freely treat as "malleable in every respect." *Nutraceutical Corp. v. Lambert*, 586 U.S. 188, 192 (2019). The removal statute requires remand when, as here, its procedural requirements have not been met and the plaintiff timely objected. 28 U.S.C. § 1447(c).

B. The background principle of equitable tolling does not apply to forum selection rules like § 1446.

Attempting to escape the plain text of the statute, (and the statutory history of Congress rejecting broad equitable discretion in favor of finality), Petitioners urge the Court to import the inapposite equitable tolling framework governing statutes of limitations. *See* Br. 33-38. Unlike statutes of limitations, however, removal deadlines do not end the litigation. They affect only the forum in which the case will be heard. In governing which forum will adjudicate a case, the removal rules create a system where plaintiffs make the initial forum choice, subject to removal only in carefully defined situations. This choice reflects that State courts are "presumptively competent[] to

adjudicate claims arising under the laws of the United States." *See Yellow Freight Sys. v. Donnelly*, 494 U.S. 820, 823 (1990) (quoting *Tafflin*, 493 U.S. at 458). And, given the strong state interests at stake, removal statutes historically have been construed narrowly, unlike statutes of limitations.[4]

1. Equitable tolling is "a background principle against which Congress drafts *limitations periods*." *Boechler, P.C. v. Comm'r*, 596 U.S. 199, 208-09 (2022) (emphasis added). It thus "applies when there is a statute of limitations." *Petrella v. MGM*, 572 U.S. 663, 681 (2014). But it does not apply to other types of time limits. *Lozano v. Alvarez*, 572 U.S. 1, 13-14 (2014). And even as to limitations periods, the Court begins with the statutory text and "if the words of a statute are unambiguous, this first step of the interpretive inquiry is [its] last." *Rotkiske*, 589 U.S. at 13 (addressing the discovery rule).

Not all time limits are limitations periods. As a general matter, "[s]tatutes of limitations establish the period of time within which a claimant must bring an action." *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 105 (2013). They "bar[] claims after a specified period," *Black's Law Dictionary* 1636 (10th ed. 2014), and they are "triggered by the violation giving rise to the action." *Hallstrom v. Tillamook*

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[4] Some have criticized this and other interpretive canons as inconsistent with textualism. *See, e.g.*, Aaron-Andrew P. Bruhl, *The Jurisdiction Canon*, 70 Vand. L. Rev. 499, 521-24 (2017). But here, the strict-construction canon and the text point in the same direction: Congress intended the 30-day limit to be mandatory, subject only to statutory—not judicial—exceptions. *See supra*, Sec. I.A. The interpretative canons confirm that Congress meant what it said in § 1446.

Cnty., 493 U.S. 20, 27 (1989) (holding that background principles of equitable tolling do not apply to a statute requiring notice to the government at least 60 days in advance of suit). Their purpose is to eliminate stale remedies or claims and provide certainty and repose to defendants. *See Lozano*, 572 U.S. at 14; *Young v. United States*, 535 U.S. 43, 47 (2002).

In determining whether a deadline is a limitations period to which background principles of equitable tolling apply, the Court has examined whether the deadline in question "serves the same 'basic policies [furthered by] all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities.'" *Young*, 535 U.S. at 47 (quoting *Rotella v. Wood*, 528 U.S. 549, 555 (2000)) (holding that a look-back period for certain IRS claims in bankruptcy was a limitations period because it extinguished a remedy previously available to the IRS).

Deadlines that extinguish remedies thus are subject to background principles of equitable tolling, but deadlines that merely make the remedy harder to obtain are not. *Young*, 535 U.S. at 47; *Lozano*, 572 U.S. at 14. For example, the one-year period to seek automatic return of a child under the Hague Convention on Child Abduction without an adjudication of the child's best interests is not a limitations period because the same relief—return of the child—is available later, albeit under a different legal standard. *Lozano*, 572 U.S. at 14. Similarly, no background principles favor tolling time limits that function as "substantive limitations on the amount of

recovery" but do not dispose of the action altogether. *Holland v. Florida,* 560 U.S. 631, 646-47 (2010) (quoting *United States v. Brockamp*, 519 U.S. 347, 350-52 (1997)).

Consistent with these principles, time limits for pursuing appeals or petitions for review may be subject to a background principle of equitable tolling if they may result in extinguishing claims and remedies. *See Harrow v. Dep't of Defense*, 601 U.S. 480, 489-90 (2024). But the deadline for seeking interlocutory appeal of an order decertifying a class was held by the Court not to be subject to equitable tolling, although the deadline plainly has a significant effect on the procedure by which the claim must be litigated. *See Nutraceutical Corp.*, 586 U.S. at 189-90, 192-94.

All of the cases that Petitioners have identified as applying background principles of equitable tolling involved deadlines that extinguished remedies or claims. Br. 33-38, 46-49. For example, *Boechler,* on which Petitioners heavily rely, involved the deadline for petitioning the Tax Court to review an IRS decision to seize taxpayer property, a limitations period that would extinguish the petitioner's claim. 596 U.S. at 202. In *Holland*, the Court equitably tolled the one-year statute of limitations for filing federal habeas claims, another limitations period that would extinguish the petitioner's claim. 560 U.S. at 634. *See also Young*, 535 U.S. at 49-50 (holding that time for the IRS to assert claims for taxes under the 3-year lookback period in bankruptcy is subject to equitable tolling); *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 91-92 (1990) (same for filing a Title VII action); *United States v. Kwai Fun Wong*, 575 U.S.

402, 405, 408 n.2 (2015) (same for time for filing an administrative claim and lawsuit under the Federal Tort Claims Act); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 387, 393 (1982) (same for time for filing a charge before the EEOC).[5]

2. The strict time period for removal (along with the set of congressionally recognized exceptions) is nothing like a limitations period. Removal deadlines do not "embody a policy of repose," "foster the elimination of stale claims," or create "certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Lozano*, 572 U.S. at 14 (internal quotation marks omitted). No claims or remedies are extinguished. Removal deadlines determine only which of two courts—both competent to decide the case—will hear plaintiff's claims. *See Tafflin*, 493 U.S. at 459.

Beyond the poor fit between the equitable tolling presumption and the removal deadline, the equitable-tolling presumption runs headlong into this Court's

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[5] The other cases that Petitioners rely on are even further afield. Petitioners cite *Reyes Mata v. Lynch*, 576 U.S. 143 (2015), but the Court there did not decide whether the time limit at issue—the period for filing a motion to re-open before the Bureau of Immigration Affairs—was the type of time limit to which background principles of equitable tolling could potentially apply. *Id.* at 149 n.3, 151. Petitioners also invoke *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974). A strong argument has been made that *American Pipe* applies federal common law, rather than the background principles of equitable tolling that Petitioners assert. Stephen B. Burbank & Tobias Barrington Wolff, *Class Actions, Statutes of Limitations and Repose, and Federal Common Law*, 167 U. Pa. L. Rev. 1 (2018). In any event, like the other cases Petitioners cite, it involved a statute of limitations and so does not advance Petitioners' cause.

counsel that "statutory procedures for removal are to be strictly construed." *Syngenta*, 537 U.S. at 32; *see* Resp. Br. 31-32. [6] Strict construction of removal statutes protects the "power reserved to the states under the Constitution to provide for the determination of controversies in their courts." *Shamrock Oil & Gas*, 313 U.S. at 108-09. The "deeply rooted presumption in favor of concurrent state court jurisdiction" has its roots in a constitutional order that gives states concurrent sovereignty with the federal government. *Tafflin*, 493 U.S. at 458. Federal courts must, therefore, "scrupulously confine their own jurisdiction to the precise limits which the statute has defined." *Healy v. Ratta*, 292 U.S. 263, 270 (1934).

Petitioners assert (Br. 50) that the strict construction of removal statutes did not survive this Court's decision in *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003). But *Breuer* merely recognized that Congress has specified by statute that cases are removable under 28 U.S.C. § 1441(a) unless another statute expressly restricts removal. *Breuer*, 538 U.S. at 697. *Breuer* did not reject the principle that state courts are competent to decide questions of federal law or question the respect for state interests on which the strict-construction presumption is

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[6] In keeping with its emphasis on text-based interpretation of removal statutes, this Court recently questioned earlier decisions that it viewed as departing from that approach. *BP*, 593 U.S. at 243 (discussing *Carlsbad Technology, Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 638 (2009); *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336, 345-346 (1976)); *see also* Michael E. Solimine, *Removal, Remands, and Reforming Federal Appellate Review*, 58 Mo. L. Rev. 287, 297-98 (1993).

based. Rather *Breuer* reinforced the principle that Congress is responsible for specifying the exceptions it wants in removal statutes and does not leave it to courts to make up their own.

Petitioners also misunderstand this Court's decision in *Powers v. Chesapeake & Ohio Railway Co.*, 169 U.S. 92 (1898), when they assert a tradition of applying equitable tolling to removal statutes. *See* Opening Br. 32. *Powers* involved statutory construction, not equitable tolling. The suit there became removable as a diversity case only when the plaintiff dropped his suit against several defendants at the time the case was "called for trial" in state court. *Powers*, 169 U.S. at 98 . The Court held that it would be "inconsistent with the words" of the then-governing removal statute for the time for removal to run before the case became removable. *See id.* at 100. And Congress subsequently amended the statute to limit *Powers* in favor of early resolution of removal questions by setting the one-year limit on removal in diversity cases. 28 U.S.C. § 1446(c)(1); *see supra* 11-12.

3. Even were this Court to conclude that background principles of equitable tolling apply to forum selection deadlines in general, the clarity of Congress's rejection of tolling forecloses its application here. Resp. Br. Sec. II. As the Court has explained, application of equitable tolling "is fundamentally a question of statutory intent." *Lozano*, 572 U.S. at 10. And the removal statute's text reveals no statutory intent to allow tolling here.

The mandatory text of the removal deadline is buttressed by Congress's decision expressly to carve out its own exceptions. *See supra* Sec. I.A. In

Brockamp, Congress's provision of "numerous" exceptions (six) counseled against allowing courts to add more. *Boechler*, 596 U.S. at 209 (discussing *Brockamp*, 519 U.S. at 350-51). So, too, the removal statute, which similarly is subject to "numerous" statutory carve-outs—more even than in *Brockamp*—should be held not to allow courts to add occasions for tolling or extension of time. *See id.*; *see also* 28 U.S.C. § 1446(b)(2)(B), (C), (b)(3), (c)(1), (c)(3)(A), (c)(3)(B); *id.* § 1441(d), (e); *id.* § 1442a; *id.* § 1455(b)(1); *id.* § 2679(d)(1); 42 U.S.C. § 233(c).

The incorporation of equitable principles in the exceptions cited above reinforces the inference that the removal statutes do not allow equitable tolling except where Congress explicitly delegated that discretion. *See United States v. Beggerly*, 524 U.S. 38, 48 (1998). Here, the exceptions legislated by Congress already "effectively allow[] for equitable tolling" in the situations where Congress deemed it appropriate. *Id.* Congress's choice of a highly detailed, rules-based scheme for all exceptions, including those sounding in equity, counsels against reading additional equitable exceptions into the statute. *See Brockamp*, 519 U.S. at 350-51.

II. Application of the statute as written protects important interests in uniformity, certainty, and efficiency.

Allowing equitable tolling would not only be inconsistent with the removal statute's text, but it would thwart the statute's goals of uniformity, certainty, and efficiency. All agree that uniformity, in particular, is crucial to the proper operation of the rules governing removal. *See Grubbs v. Gen. Elec. Credit Corp.,* 405 U.S. 699, 705 (1972) ("[T]he removal

statutes and decisions of this Court are intended to have uniform nationwide application."). As explained above, *supra* Sec. I.A, Congress has embraced a rules-based removal system that ensures nationwide uniformity. And Petitioners likewise embraced the need for uniformity in seeking certiorari. *See* Pet. 4. Yet Petitioners' proposal to authorize district courts to equitably exempt parties from the removal deadline would achieve just the opposite. Worse, it would result in extended and wasteful litigation under complicated equitable tests and would threaten to disrupt ongoing state court litigation years after its initiation.

A. Petitioners' approach would create an anything-goes environment that would result in widely varying decisions on removal timing. Three factors combine to create this result: the absence of any well-developed body of equitable principles in the removal context to guide Petitioners' proposed tolling analysis, limited appellate review of both remand orders and remand denials, and the deferential nature of any appellate review that might occur.

1. Petitioners advance a novel equitable tolling test unmoored from the historical backdrop and without any meaningful guidance to cabin district courts' decisions on when to excuse untimely removals. Petitioners assure the Court (with no evidence) that equitable relief will be granted "sparingly," Opening Br. 43 (quoting *Irwin*, 498 U.S. at 96). But a promise that equitable relief will be granted only in "exceptional circumstances" (Opening Br. 43-44) provides no assurance that one district court's "exceptional circumstances" will match another's.

With equitable tolling of statutes of limitations, there is a "long history," so "courts can easily find precedents that can guide their judgments." *Holland*, 560 U.S. at 651. But Petitioners would eschew this guidance. Although otherwise trying to analogize equitable tolling of untimely removal to equitable tolling of statutes of limitations, Petitioners do not suggest that the well-established factors that guide the statute-of-limitations inquiry—requiring a showing of both diligence and extraordinary circumstances beyond the litigant's control—apply in the untimely-removal context. *See Menominee Indian Tribe v. United States,* 577 U.S. 250, 255-57 (2016). Petitioners may be reluctant to invoke the traditional equitable tolling factors in recognition that those factors have been incorporated into the statute to the extent that Congress wanted them there, *see supra* 7-12, and no statutory exception would avail Petitioners here. *See* Br. of Tribal Nations 17-20; Br. of Great Lakes Business Network 14-16.

Petitioners' choice would leave lower courts with a vacuum of guidance. Petitioners have at best identified a smattering of lower-court cases in a four-decade span suggesting that courts may equitably excuse untimely removals. *See* Pet. 18-20. Instead of citing any criteria drawn from precedent, Petitioners simply list (Br. 43-44) the factors the district court cited here—"gamesmanship" by the other party; the need to avoid two litigation tracks; and a "substantial federal interest." Not only do these factors not map onto the traditional equitable tolling considerations, but they are not constraining. *See* Br. of Great Lakes Business Network 9-14; Br. of Tribal Nations Sec. I.B. They often could be brandished in a removal dispute.

Start with "gamesmanship" (Opening Br. 43). Petitioners marshal their case for unfair play, but so does Respondent, highlighting that the Attorney General's state case was far from dormant and the state court had issued a ruling adverse to Petitioners before they attempted to remove the case. Resp. Br. 9-15. Although the district court here found that Petitioners prevailed in what it termed a "battle of equity," Pet. App. 37a, a different court easily could have come out the other way.

As for the Petitioners' stated desire for a single forum (Opening Br. 44), it provides no guidance, because it does not help a district court determine *which* forum should be the chosen one—the state court where litigation has been proceeding or the federal forum that is generated later (by removal of another case or separate federal suit or both, as happened here). *See* Pet. App. 27a-28a. Given its non-determinativeness, the "single forum" factor is highly unlikely to produce uniform results among district court decisions.[7]

Finally, there is the question of whether a case presents "substantial federal interests." Opening Br. 43. Petitioners do not meaningfully explain what makes their asserted federal interest exceptional. If any case touching on foreign affairs qualifies, that is not an "exceptional" circumstance at all. Plus—like so many of the factors that Petitioners invoke—Congress has already decided when a federal interest is substantial enough to merit a carve-out from

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[7] Note too that the premise underlying the "single forum" argument runs headlong into this Court's presumption that a single dispute may proceed concurrently in state and federal courts. *See, e.g., Kline v. Burke Constr. Co.*, 260 U.S. 226 (1922).

removal procedures. Congress has acted in the foreign-affairs sphere, authorizing district courts to extend timelines for "good cause" in suits against foreign states. 28 U.S.C. § 1441(d). Congress also has created other statutory exceptions serving other federal interests that Congress judged substantial. *See supra* 7-8 (discussing statutes applicable to patent and copyright cases and suits against military service members and federal employees). Permitting district courts to pick and choose additional federal interests to privilege in a similar fashion will result in a patchwork of varying policy choices instead of a uniform national rule.[8]

Unbounded by any historical tradition or body of precedent, Petitioners' proposed grab bag of factors is not a coherent test that would cabin district courts' discretion. Nor should it displace the limited exceptions that Congress already allowed.

2. Appellate review would not meaningfully distill district courts' decisions into a uniform set of rules.

First, removal issues will rarely reach the courts of appeals at the outset of litigation. An order denying a motion to remand is not immediately appealable as of right. *Caterpillar*, 519 U.S. at 74. A remand denial thus would generally be reviewable only after final judgment. But if the federal court has jurisdiction at

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[8] Despite Petitioners' invocation of a substantial federal interest—which presumably requires something more than a bare claim to federal question jurisdiction—the Sixth Circuit has not endorsed Petitioners' federal question jurisdiction argument. Pet. App. 8a. It remains subject to challenge, Br. of Great Lakes Business Network 16-18; Br. of Tribal Nations 12 n.13, and would be an open question on remand if the Court were to authorize equitable tolling of the removal deadline.

the time judgment is entered, the judgment stands regardless of procedural defects in the removal. *Id.* at 75. So a district court order that grants equitable tolling to permit an untimely removal—however erroneous—may be overtaken by events by the time the issue reaches a court of appeals.[9]

As for orders denying equitable tolling, appellate courts "lack[] the power to review a district court order remanding a case to state court," with only narrow exceptions. *BP*, 593 U.S. at 235; 28 U.S.C. § 1447(d). Remand due to untimely removal, if the defect is timely raised, is "precisely the type of removal defect" to which the general appeal bar applies. *Things Remembered v. Petrarca*, 516 U.S. 124, 128 (1995). Courts of appeals thus could review district court orders declining to excuse untimely removals only in the limited categories of cases where Congress has expressly provided for appellate review. *See supra* 7 & n.3.

In addition, even when appellate review occurs, review would likely be deferential. Appellate review is deferential for decisions about equitable tolling of statutes of limitations. *See, e.g.*, *Foss v. E. States Exposition*, 149 F.4th 102, 112 (1st Cir. 2025); *Bernstein v. Maximus Fed. Servs., Inc.*, 63 F.4th 967, 969 (5th Cir. 2023); *Doe v. United States*, 76 F.4th 64, 70 (2d Cir. 2023). The same would presumably apply to decisions excusing untimely removals. Given both the infrequency of review opportunities and the deferential standard, appellate review cannot be the backstop that "ensure[s] that district courts are being

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[9] This case reached the Sixth Circuit only because the district court certified its order for interlocutory appeal and the Sixth Circuit granted permission to appeal. Pet. App. 45a-46a.

uniform," contrary to the theory of Petitioners' amici. Br. of Arthur Miller 9.

B. The substitution of district-by-district variable standards for a nationally uniform removal timeline is not the only procedural mischief threatened by Petitioners' proposed approach. Authorizing courts to equitably toll the removal deadline also would impair the certainty and efficiency that are crucial to the removal procedure. The upshot would be significant uncertainty looming over state court litigation, potentially for years, and extended wrangling over threshold issues—the very situation that the rules-based removal framework and general bar on appellate review were designed to avoid.

As the limits on appellate review exemplify, Congress prized finality and certainty and was willing therefore to trust the accuracy of most district court removal decisions—including timeliness decisions. *See BP*, 593 U.S. at 235 (noting Congress's choice to accept delay from appellate review for some removal issues but not others). This efficiency comes with a cost, in terms of accuracy, as Congress understood; even plain errors can go uncorrected. *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 642 (2006). But that is a tradeoff that Congress was willing to make in the context of this statute, where the timeliness question would typically present a straightforward inquiry applying clear statutory rules. Petitioners' approach, however, would inject messy fact-bound threshold questions, requiring district courts to balance a complex set of wholly open-ended equitable factors without guidance from either historical tradition or the removal statute itself. Congress's decision to curtail appellate review is

further proof that it did not anticipate or intend that district courts would be engaged in such complex and error-inducing inquiries.

Besides introducing complexity and raising the risk of (largely unreviewable) error, Petitioners' approach would force state cases to be litigated in the seemingly never-ending shadow of federal removal, despite Petitioners' breezy assertion (Br. 40) that the Court need not worry. This case itself illustrates the reason for concern. Whether or not their activities qualify as waiving the right to remove, Petitioners engaged in briefing and arguing dispositive motions for over a year in state court—and even received an adverse decision on a temporary restraining order—before deciding to switch forums. Pet. App. 3a-4a; Br. of Tribal Nations Sec. II.

The removal statute is designed to avoid just such late-breaking attempts to pull cases from state court. Congress has created a system that provides plaintiffs with the right to make an initial forum choice. *Royal Canin v. Wullschleger*, 604 U.S. 22, 35, 42 n.9 (2025). Defendants may remove if they satisfy carefully defined requirements—including quick action. In deciding whether to remove, defendants may consider any number of strategic considerations. These considerations include factors remarkably similar to those that Petitioners claim (Br. 40-43) justify untimely removal here: whether a federal court would be better suited (in defendants' view) to address the particular federal interest at stake and whether a plaintiff's decision to file in state court is an attempt to engage in "forum manipulation." Congress requires defendants to make that decision within 30 days when—as here—defendants' basis to remove is the same now as it was at the outset of the case. Pet. App.

12a-14a. To allow those same strategic considerations to serve as excuses for untimely removal invites defendants to sit on removal decisions until they see how the state court case is going.

At bottom, replacing a straightforward deadline with a complex and unpredictable set of equitable exceptions defeats the efficiency that is at the heart of the removal statute's design. As the Court has repeatedly emphasized, rules governing threshold issues about which forum should hear a case need to be clear and resolved quickly, so the parties can move on to litigating the merits. Otherwise, complex tests will "eat[] up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (discussing complex jurisdictional tests). Adhering to Congress's scheme achieves its goals. Essentially untethered equitable exceptions do not. Petitioners' approach would mean that threshold issues could not be considered settled at the outset; an untimely removal could pop up mid-course. And once raised, threshold questions of removal procedure cannot be resolved efficiently and predictably under open-ended and variable equitable standards. This result cannot be squared with Congress's removal statute.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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