

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 MINNESOTA, ARIZONA, COLORADO,
CONNECTICUT, DELAWARE, HAWAII, ILLINOIS,
MAINE, MARYLAND, MASSACHUSETTS, NEVADA,
NEW JERSEY, NEW MEXICO, NEW YORK,
VERMONT, WASHINGTON, AND THE DISTRICT
OF COLUMBIA AS AMICI CURIAE IN SUPPORT
OF RESPONDENT

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INTERESTS OF AMICI STATES¹

Amici States² have an interest in the state sovereignty and federalism issues that are implicated in the critical question of when a party may remove a case from a state court forum. That issue is particularly important here because the plaintiff is a state and seeks to have state courts adjudicate state-law claims.

The courts of Amici States are well equipped to handle significant cases, even when those cases touch on federal issues. State court judges invest significant resources and expertise in the cases before them. But allowing a defendant dissatisfied with substantive rulings to remove far past the 30-day removal deadline threatens to squander judicial resources and disrupt the value of case continuity and expedient access to justice. Amici States seek to preserve those resources and benefits, their choice of judicial forum, and the sovereignty and comity to state courts embedded in the Constitution.

SUMMARY OF THE ARGUMENT

I. The Sixth Circuit correctly held that equitable exceptions are not available for the strict 30-day deadline to remove cases to federal court under Section 1446(b)(1). The 30-day limitation should be understood against the backdrop of multiple

¹ No counsel for any party authored this brief, in whole or in part. No person or entity other than amici contributed monetarily to its preparation or submission.

² Amici are the States of Minnesota, Arizona, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Vermont, Washington, and the District of Columbia.

constitutional and statutory considerations that counsel against equitable exceptions. First, the Constitution, including the Eleventh Amendment, embodies respect for state courts, particularly where a state seeks to litigate state-law claims in its own state courts. Second, federal question jurisdiction did not even exist until nearly a century after the creation of the federal courts system. Instead, since the Founding, state courts have competently adjudicated both state and federal claims. Third, the limitations on removal have historically been tied to state court procedure, further demonstrating that Congress has been solicitous to state courts in limiting the availability of removal.

II. Allowing equitable exceptions to removal would negatively impact access to justice and frustrate judicial economy. While federal courts have done a commendable job of managing ever increasing caseloads, such increases have come without a commensurate increase in judgeships. In contrast, state courts often can or are statutorily required to decide cases more expediently. Moreover, allowing removal so late in the game threatens to disrupt the institutional knowledge and resources that state court judges develop in their cases, and risks incentivizing parties to game removal in the face of adverse rulings.

ARGUMENT

I. CONGRESS DID NOT INTEND FOR EQUITABLE EXCEPTIONS TO REMOVAL DEADLINES OUT OF RESPECT FOR STATE COURTS

At issue here is whether equitable tolling can allow a defendant in state court to bypass the strict

30-day deadline to remove a case to federal court under 28 U.S.C. § 1446(b)(1). As the Sixth Circuit correctly concluded, the answer is no.

Congress did not intend for equitable tolling to apply to removal under Section 1446. Congress passed Section 1446 against the backdrop of long-standing respect for state courts to adjudicate claims, including claims under federal statutory and constitutional law.

**A. The 30-Day Removal Limitation of
Section 1446 Should Be Read in the
Context of State Sovereignty
Embedded in the Constitution**

State sovereignty provides a useful backdrop against which Congress enacted Section 1446. Federal courts are courts of limited jurisdiction. *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 26 (2025). One limit on federal court jurisdiction is the Eleventh Amendment of the United States Constitution, which provides that “the Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

The Eleventh Amendment reflects not a grant of sovereign immunity to states, but a codification of state sovereignty already existing and embedded in the Constitution. *Alden v. Maine*, 527 U.S. 706, 712-13, 722 (1999) (“The text and history of the Eleventh Amendment also suggest that Congress acted not to change but to restore the original constitutional design”). “The Amendment was adopted to overturn a construction of Article III” that could result in “judgments that implied federal coercive power of the

very kind the Constitution was designed to avoid.” Bradford R. Clark, *The Eleventh Amendment and the Nature of the Union*, 123 Harvard. L. Rev. 1817, 1820 (June 2010). Accordingly, this Court “has upheld States’ assertions of sovereign immunity in various contexts falling outside the literal text of the Eleventh Amendment.” *Alden*, 527 U.S. at 727.

When interpreting the scope of federal court jurisdiction, this Court often reads the limited grant of jurisdiction to federal courts against concerns of state sovereignty. *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 32-33 (2002); *Healy v. Ratta*, 292 U.S. 263, 269-70 (1934). Those limits to federal court jurisdiction are based, in part, on the fundamental principle that state-law claims are traditionally tried in state court. *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 21 n.22 (1983). Indeed, “the claim of sovereign protection from removal arises in its most powerful form,” where, as here, the removed action is one brought by a state in state court to enforce state-law. *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 676 (9th Cir. 2012) (quotation omitted); *LG Display Co. v. Madigan*, 665 F.3d 768, 774 (7th Cir. 2011); *West Virginia ex rel. McGraw v. CVS Pharmacy*, 646 F.3d 169, 178-79 (4th Cir. 2011); *see also Younger v. Harris*, 401 U.S. 37, 43 (1971) (“Since the beginning of this country’s history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts.”).

As Justice Stone wrote nearly a century ago, “[t]he 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” Article III. *Healy*, 292 U.S. 263, 269-70 (1934) Accordingly, “[d]ue regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined.” *Id.*

It is for this concern over state sovereignty that “all doubts” for removal are resolved in favor of remand to state court. *Coyne v. Am. Tobacco Co.*, 183 F.3d 488, 493 (6th Cir. 1999). The strict policy against removal and in favor of remand protects the sovereignty of state governments and state judicial power. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-109 (1941).

Congress’s enactment of the 30-day removal limitation under Section 1446 should therefore be read in the context of state sovereignty, as reflected in the Eleventh Amendment. That is particularly true where, as here, a state has chosen its own state courts as the proper forum for state-law claims. In such cases, federal court jurisdiction should be “scrupulously confined” and not be read to allow equitable exceptions to removal where Congress has chosen not to provide such exceptions. *Healy*, 292 U.S. at 269-70.

B. State Courts Have Competently Adjudicated Federal Issues Since the Founding

That Congress did not intend for equitable exceptions to apply to removal is buttressed by the fact that state courts have been adjudicating federal issues since the Founding of our nation. Indeed,

“[d]uring most of the Nation’s first century, Congress relied on the state courts to vindicate essential rights arising under the Constitution and federal laws.” *Zwickler v. Koota*, 389 U.S. 241, 245 (1967). That remains true to this day, where state courts are “generally presumed competent to interpret and apply federal law.” *Mikulski v. Centerior Energy Corp.*, 501 F.3d 555, 560 (6th Cir. 2007)

Indeed, federal question jurisdiction was not even granted to federal courts until 1875, eighty years after ratification of the Eleventh Amendment, which suggests that Congress has long considered state courts competent to adjudicate federal issues. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 70 (1996). Federal courts “do not for that reason conclude that state courts are a less than adequate forum for resolving federal questions. A doctrine based on the inherent inadequacy of state forums would run counter to basic principles of federalism.” *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 275 (1997) (Op. of Kennedy, J.). Accordingly, even when a state law claim implicates federal issues, that claim may be properly and competently adjudicated by a state court. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning*, 578 U.S. 374, 390-92 (2016).

States frequently chose their own state courts as the forum to litigate significant state law claims. For example, in the 1990s, nearly every state sued a collective of the largest tobacco manufacturers in the country asserting state consumer protection and antitrust law violations. National Association of Attorneys General, *Master Settlement Agreement*, <https://www.naag.org/our-work/naag-center-for-tobacco-and-public-health/the-master-settlement-agreement/> [https://perma.cc/QZ3U-2DVE] (last

visited Sept. 29, 2025). States including North Dakota, Oklahoma, and Texas have similarly sued opioid manufacturers and distributors in state court under common law tort and consumer protection laws. Congressional Research Service, *Overview of the Opioid Litigation and Related Settlements and Settlement Proposals*, <https://www.congress.gov/crs-product/LSB10365> (Nov. 25, 2019); Texas Office of the Attorney General, *Global Opioid Settlement*, <https://www.texasattorneygeneral.gov/globalopioidsettlement> [<https://perma.cc/WQJ2-EWCD>] (last visited Sept. 29, 2025). States have also brought state law consumer protection claims in their own courts against defendants ranging from gun manufacturers to social media companies. *Minnesota v. Glock, Inc.*, No. 27-CV-24-18827 (Minn. Dist. Ct.); *Texas v. TikTok Inc.*, No. 24-CV-1763 (Tex. Dist. Ct.).

State courts are best equipped to adjudicate these state law issues and are competent to adjudicate federal issues that may arise. *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808-15 (1986).

C. The Limitations on Removal Have Historically Been Tied to State Court Procedure, Further Demonstrating Respect for State Courts

The legislative history of Section 1446 also demonstrates that Congress was solicitous to state courts in fixing the 30-day limit on removal. Prior to the enactment of Section 1446 in 1948,³ removal was exclusively tied to state court procedure. Namely, “a defendant could remove a case any time before the

³ The predecessor to Section 1446 was Section 72, which was renumbered to Section 1446 with the amendments in 1948.

expiration of her time to respond to the complaint under state law.”⁴ *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 351 (1999). But because states had different timing requirements for responding to a complaint, Congress enacted a uniform 20-day limit for removal in 1948. *Id.*

Some states, however, allowed for service of the complaint to precede filing. Congress thus extended the time for removal from 20 days to 30 days in 1949 to provide defendants sufficient time to review a complaint before seeking removal, while maintaining uniformity. *Id.* Still, the limit on removal has historically been tied to state court procedure and effectively cuts off a defendant’s ability to remove once they have responded to the plaintiff’s complaint in state court.

That Congress chose the 30-day limit as a proxy for answering the complaint reflects Congress’s desire that once a state court action has proceeded past an answer, federal courts would no longer be able to accept jurisdiction through removal. Instead, Congress provided that such cases proceed in state courts out of comity.

Respect for state court competency is embodied in state sovereignty under Constitution, the history of federal court jurisdiction, and the legislative history of the removal statutes. Congress’s choice to strictly

⁴ The requirement that a defendant seek removal before its answer is due has been in the removal statute since 1887. 24 Stat. 552, 554; *Shamrock Oil*, 313 U.S. at 106-07 (recognizing the change in requirement). For diversity jurisdiction, a defendant had been required to petition for removal at the time of entering its appearance since the first Judiciary Act of 1789. 1 Stat. 73, §12.

limit the time in which a case may be removed should therefore be viewed against this backdrop of federalism. The Sixth Circuit was correct when it declined to craft any equitable exceptions to removal where Congress has chosen not to provide any.

II. ALLOWING EQUITABLE EXCEPTIONS TO REMOVAL THREATENS ACCESS TO JUSTICE BY FURTHER OVERBURDENING FEDERAL COURTS, DISRUPTING INSTITUTIONAL KNOWLEDGE, AND ENCOURAGING GAMESMANSHIP

Enbridge argues that equitable tolling is available to bypass the clear limit on removal placed by Congress. But this case reflects why Enbridge's argument would harm judicial economy and access to justice. First, state courts often adjudicate cases much faster than their federal counterparts. Allowing removal so late in the game would thus delay justice to litigants. Second, allowing a case to be removed mid-stream erodes judicial economy. And third, equitable exceptions can incentivize gamesmanship by litigants.

A. State Courts Readily Provide Access to Justice

State courts are often a more expedient means to adjudicate rights. There are no federal laws that generally mandate how quickly federal courts must adjudicate civil cases or issue orders in those cases. But in many states, such requirements exist.

For example, in Minnesota, state district courts must issue orders within 90 days of the completion of briefing and argument. Minn. Stat. § 546.27. And the

Minnesota Court of Appeals must similarly issue opinions within 90 days of oral argument. Minn. Stat. § 840A.08, subd. 3.

The Minnesota Conference of Chief Judges also sets case disposition timing objectives: 90% of civil cases in Minnesota district courts should be disposed of within 12 months, and 99% within 24 months. The district courts have met or exceeded these objectives.⁵ Minnesota Judicial Branch, *Performance Measures Key Results and Measures Annual Report*, at 19-21, https://mncourts.gov/_media/migration/ciomedialibrary/documents/annual-report-2024-performance-measures.pdf [https://perma.cc/372X-GLJ5]. Likewise, the Minnesota Court of Appeals has adopted the American Bar Association case clearance standard and met or exceeded those standards in civil cases. *Id.* at 30.

Most state court systems have adopted some case disposition time standards. National Center for State Courts, *Model Time Standards*, at 13, <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1836/> [https://perma.cc/9E3H-B7FU]. Indeed, the Conference of State Court Administrators, Conference of Chief Justices, American Bar Association, and National Association for Court Management have all approved the Model Time Standards for disposition of a variety of cases. *Id.* at 1. Under these standards for civil cases, 75% should be resolved within 6 months, 90% within 24 months, and 98% within 18 months. *Id.* at 3.

In contrast, federal district courts continue to see an increase in cases filed with no commensurate increase in judgeships to handle those workloads. In

⁵ In 2024, only 2% of major civil cases in Minnesota district courts took longer than 24 months to resolve.

most district courts, annual filings exceed 500 per judge, and yet Congress has not created any new permanent judgeships since 1990. United States Courts, *Federal Judiciary Seeks New Judgeship Positions*, <https://www.uscourts.gov/data-news/judiciary-news/2023/03/14/federal-judiciary-seeks-new-judgeship-positions> [https://perma.cc/TU2B-4RF4] (Mar. 14, 2023). While the federal courts have admirably sought to address these workloads in view of limited resources, state courts (and legislatures) are better positioned to respond to state-specific needs and demands.

B. Late Removal Frustrates Judicial Economy

Judicial economy also would be disrupted if a case could be removed at any time under equitable principles. State courts that have invested the time and energy to become familiar with the details of a particular case could see it pulled away. And federal courts, with their ever increasing dockets, would need to invest significant time just to catch up. Squandering state court judicial resources in these scenarios cannot be the sort of “comity” envisioned in the Constitution. *Franchise Tax Bd.*, 463 U.S. at 21 (1983).

These judicial investments also provide valuable case continuity to litigants. State courts often lack their federal magistrate judge counterpart, and thus state district court judges can have more frequent involvement in cases through discovery disputes, status conferences, and the like. State judges accordingly develop institutional knowledge of their cases. But if a litigant can remove those cases

even years into the case, then that institutional knowledge will be lost, further delaying justice.

Indeed, it is “considerations of comity” that make federal courts particularly “reluctant to snatch cases which a State has brought from the courts of that State, unless some clear rule demands it.” *Franchise Tax Bd.*, 463 U.S. at 21 n.22. Accordingly, state-law claims brought by a state may be removed only in rare and special circumstances. *Nevada*, 672 F.3d at 676; *CVS Pharmacy*, 646 F.3d at 178-79; *LG Display*, 665 F.3d at 774; *In re Katrina Canal Litig. Breaches*, 524 F.3d 700, 706 (5th Cir. 2008).

C. Creating Novel Exceptions to Removal Encourages Gamesmanship

Allowing equitable exceptions also opens the door to litigation gamesmanship. Parties outside the 30-day window could use removal as a delay tactic, as removal instantly strips the state court of jurisdiction until remand (including any appeals) has occurred.

These concerns over improper litigation tactics are not hypothetical. Many litigants have raised meritless removal arguments that delay state court cases for months, if not years. Practice under Section 1442 illustrates this. That statute provides, in a case in state court against a federal officer or someone acting under the authority of a federal officer, the officer or delegee may remove that case to federal court. Litigants, however, have raised many meritless federal-officer arguments that delay cases. *See, e.g., Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 153-56 (2007) (rejecting argument by cigarette manufacturer that merely complying with federal regulations made them acting under a federal officer allowing for removal); *Moser v. E. Ctrl. Mo. Behavioral*

Health Servs., Inc., No. 2:25CV20 HEA, 2025 WL 2606549, at *4-5 (E.D. Mo. Sep. 9, 2025) (same, as applied to healthcare and cybersecurity); *Washington v. Monsanto Co.*, 738 Fed. Appx. 554, 555-556 (9th Cir. 2018) (same, as applied to chemicals as well as off-the-shelf purchases by the federal government); *Bd. of Cnty. Commrs. of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1250-54 (10th Cir. 2022) (rejecting argument by oil company that drilling on land leased by the federal government gave rise to federal officer removal); *City of New York v. Exxon Mobil Corp.*, –F.4th–, 2025 WL 2809778, at *7-10 (2d. Cir. 2025) (affirming fees against defendants for meritless removal argument).

Litigants have also made borderline removal arguments under the Class Action Fairness Act to delay state court cases. *Vera v. Middlesex Water Co.*, Civ. No. 22-04446 (KM) (ESK), 2023 WL 2583684, at *3-4 (D.N.J. Mar. 21, 2023) (rejecting argument that CAFA justified removal because defendant could not create the required diversity by filing a third-party claim against an out-of-state entity) (D.N.J. Mar. 21, 2023); *City of Holly Springs v. Johnson & Johnson*, 447 F.Supp.3d 547, 554-55 (N.D. Miss. 2020) (rejecting argument that CAFA justified removal because city was suing opioid manufacturer for itself and not on behalf of a class); *Minnesota ex rel. Ellison v. Am. Petroleum Inst.*, 63 F.4th 703, 714-17 (8th Cir. 2023) (same, as applied to oil manufacturer and also rejecting federal officer removal because oil company’s production of military fuel and participation in strategic petroleum infrastructure were not acting under a federal officer).

Similarly, parties who obtain adverse rulings in state court during litigation could use late removal to

improperly seek a reset. Courts have long recognized that litigants may not use procedural tactics to get “multiple bites at the apple.” *See, e.g., In re Cox Enters., Inc. Set-Top Cable Television Box Antitrust Litig.*, 790 F.3d 1112, 1117 (10th Cir. 2015) (finding waiver of right to compel arbitration where party waited until after “the district court engaged in extensive [class certification] analysis, resolved numerous motions, and adjudicated discovery disputes” before seeking arbitration).

The concern applies equally for removal. A defendant dissatisfied with a state court ruling on a motion to dismiss, discovery dispute, even summary judgment could use removal as an attempt to obtain more favorable results in the remainder of a case at the expense of state court judicial resources. *Boland v. Bank Sepah-Iran*, 614 F.Supp. 1166, 1169 n.5 (S.D.N.Y. 1985) (“It is notable that defendant did not petition for removal until after the state court denied its motions to dismiss and for summary judgment.”); *Ebeling v. Scottsdale Ins. Co.*, Civil Action No. 08-4619, 2008 WL 4974804, at *3-4 (E.D. La. Nov. 19, 2008) *Harbor Communications, LLC v. Southern Light, LLC*, Civil Action No. 14-00403-CB-B, 2015 WL 419854, at *4-5 (S.D. Al. Feb. 2, 2015) (“[R]emoval is not the appropriate method for challenging a state court’s ruling). A strict application of the 30-day limitation set by Congress in Section 1446, however, avoids these inappropriate litigation maneuvers.

Allowing for equitable exceptions would improperly add another tool in the removal toolbox to such litigants. Instead, Congress’s choice to enact explicit limits on removal should be respected.

CONCLUSION

The judgment of the United States Court of Appeals for the Sixth Circuit should be affirmed.

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Respectfully submitted,

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