PETITION APPENDIX TABLE OF CONTENTS

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1608

ENBRIDGE ENERGY, LP;
ENBRIDGE ENERGY
COMPANY, INC.;
ENBRIDGE ENERGY
PARTNERS, L.P.,

FILED
Apr 23, 2025
KELLY L.
STEPHENS,
Clerk

Plaintiffs - Appellees,

v.

GRETCHEN WHITMER,
the Governor of the State of
Michigan in her official capacity;
SCOTT BOWEN, Director
of the Michigan Department of
Natural Resources in his
official capacity,

Defendants - Appellants.

Before: MOORE, KETHLEDGE, and
BLOOMEKATZ, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the district court's order denying defendants' motion to dismiss is AFFIRMED.

ENTERED BY ORDER OF THE COURT
Kelly L. Stephens
Kelly L. Stephens, Clerk

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 25a0101p.06

UNITED STATES COURT OF APPEALS

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ENBRIDGE ENERGY, LP; ENBRIDGE ENERGY COMPANY, INC.; ENBRIDGE ENERGY PARTNERS, L.P.,
Plaintiffs-Appellees,

v.

GRETCHEN WHITMER, the Governor of the State of Michigan in her official capacity; SCOTT BOWEN, Director of the Michigan Department of Natural Resources in his official capacity,
Defendants-Appellants.

No. 24-1608

Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.
No. 1:20-cv-01141—Robert J. Jonker, District Judge.

Argued: March 18, 2025

Decided and Filed: April 23, 2025

Before: MOORE, KETHLEDGE, and BLOOMEKATZ, Circuit Judges.

COUNSEL

ARGUED: Daniel P. Bock, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellants. Mark C. Savignac, STEPTOE LLP, Washington, D.C., for Appellees. **ON BRIEF:** Daniel P. Bock, Keith D. Underkoffler, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellants. Mark C. Savignac, Alice E. Loughran, STEPTOE LLP, Washington, D.C., Phillip J. DeRosier, DICKINSON WRIGHT PLLC, Detroit, Michigan, for Appellees. James M. Olson, FOR LOVE OF WATER, Traverse City, Michigan, Andy Buchsbaum, GREAT LAKES BUSINESS NETWORK, Ann Arbor, Michigan, Oliver J. Larson, RYAN V. Petty, OFFICE OF THE MINNESOTA ATTORNEY GENERAL, St. Paul, Minnesota, David R. Jury, UNITED STEELWORKERS, Pittsburgh, Pennsylvania, Jonathan D. Newman, Jacob J. Demree, SHERMAN DUNN, P.C., Washington, D.C., Kaitlyn D. Shannon, BEVERIDGE & DIAMOND, P.C., Washington, D.C., for Amici Curiae.

OPINION

BLOOMEKATZ, Circuit Judge. Enbridge Energy owns and operates a pipeline that runs from Wisconsin, through Michigan, and into Canada. Between Michigan's Upper and Lower Peninsulas, the pipeline crosses through the bottomlands of the Straits of Mackinac, land that belongs to the State of Michigan. Enbridge's pipeline crosses the Straits pursuant to a 1953 easement between Enbridge and the State.

In recent years, the pipeline has generated multiple lawsuits and media attention. This appeal stems from a case that began in 2020, when Michigan Governor Gretchen Whitmer informed Enbridge that the State was revoking the easement. Governor Whitmer alleged that Enbridge had violated the easement by allowing its pipeline to create an unreasonable risk of a catastrophic oil spill. In response, Enbridge filed suit in federal court against Governor Whitmer and Daniel Eichinger, the Director of the Michigan Department of Natural Resources, alleging that the Michigan officials' actions violated federal law and requesting declaratory and injunctive relief prohibiting the defendants from interfering with the operation of the pipeline. This appeal concerns a narrow, threshold issue in this case: the defendants' argument that Enbridge's claims are barred by Eleventh Amendment sovereign immunity. Below, the district court rejected that argument. We do as well. We hold that Enbridge's lawsuit falls within the *Ex parte Young* exception to Eleventh Amendment sovereign immunity and accordingly affirm the district court.

BACKGROUND

I. The Pipeline and the 1953 Easement

Enbridge owns and operates the Line 5 Pipeline, which is "part of a pipeline network that transports petroleum products to refineries in the Midwest" and parts of Canada.[1] *Nessel ex rel. Michigan v. Enbridge*

[1] The plaintiffs in this case are several related companies—Enbridge Energy, LP; Enbridge Energy Company, Inc.; and

Energy, LP, 104 F.4th 958, 961 (6th Cir. 2024). The pipeline runs through State-owned land in the bottomlands of the Straits of Mackinac between Michigan's Upper and Lower Peninsulas. *Id.*

The pipeline crosses the Straits in accordance with a 1953 easement between Enbridge and the State of Michigan.[2] With that easement, the State agreed to permit Enbridge "to construct, lay, maintain, use and operate" the pipeline over a portion of the bottomlands of the Straits. 1953 Easement, R. 1-1, PageID 44. The easement states that Enbridge's permission is subject to certain express "terms and conditions," including that Enbridge exercise "due care" for the "safety and welfare of all persons and of all public and private property." *Id.* at PageID 45– 46. The easement also requires that the company comply with certain technical "minimum specifications, conditions and requirements" for the pipeline, including limitations on the pipeline's construction materials, depth, and negative buoyancy. *Id.* at PageID 46–48. Moreover, the terms allow the State to terminate the easement if, after the State notifies Enbridge in writing regarding alleged breaches of the easement, Enbridge fails to correct them. *Id.* at PageID 49.

Enbridge Energy Partners, LP. We refer to the plaintiffs collectively as "Enbridge."

[2] The State agreed to the easement with Enbridge's predecessor, the Lakehead Pipeline Company. Enbridge has all relevant benefits of the easement that Lakehead originally had. For ease, we omit references to Lakehead and treat the original easement as between the State and Enbridge.

II. Litigation Regarding the State's Attempts to Terminate the Easement

Since 2019, Michigan officials have sought to terminate the easement, contending both that the easement was void from its inception and that Enbridge breached the easement. Those efforts have generated litigation in both state and federal court. We review these actions briefly to situate this matter.

A. Concurrent Litigation

In June 2019, Michigan Attorney General Dana Nessel filed suit against Enbridge in Michigan state court. General Nessel alleged that a 2017 report commissioned by the State had concluded that Enbridge's pipeline had a one-in-sixty risk of rupturing in the next thirty-five years. That report explained that the biggest threat facing the pipeline was the risk that a ship traveling through the Straits of Mackinac would inadvertently deploy its anchor and strike the pipeline, causing it to rupture. General Nessel's complaint noted that, in April 2018, a ship's anchor had in fact struck Enbridge's pipeline in the Straits, but the pipeline had not ruptured. Based on this state of affairs, General Nessel sought to permanently enjoin the operation of the pipeline, alleging that the pipeline presented an unacceptable risk of a catastrophic oil spill and that Enbridge's operation of the pipeline violated several state laws. *See Nessel*, 104 F.4th at 961–62.

In November 2020, with the Attorney General's lawsuit pending, Michigan Governor Gretchen Whitmer issued Enbridge a formal notice of revocation and termination of the easement and filed her own

complaint in Michigan state court, in a separate lawsuit, seeking to enforce the notice and enjoin Enbridge's operation of the pipeline. *See id.* Governor Whitmer's notice of revocation and termination alleged that the easement had been void from its inception and that, even if the easement were not void, Enbridge had violated it by failing to exercise due care with respect to the operation of the pipeline and by failing to comply with the easement's technical requirements for the pipeline.

Within a month of receiving Governor Whitmer's notice of revocation, Enbridge responded by filing this suit in federal court, seeking to enjoin Governor Whitmer's revocation efforts. In addition, Enbridge timely removed Governor Whitmer's state court case to federal court. *See id.* at 962. After the federal district court held that Enbridge's removal of Governor Whitmer's state case to federal court was proper, Governor Whitmer voluntarily dismissed the case. *See id.* at 963. She did not, however, withdraw the notice of revocation.

After that voluntary dismissal, Enbridge sought to remove General Nessel's case to federal court as well. *Id.* The federal district court denied General Nessel's motion to remand the case to state court, and General Nessel appealed the district court's ruling to this court. In June 2024, we reversed and ordered that the case be remanded to state court. *See id.* at 961, 972. We explained that Enbridge had failed to timely remove General Nessel's case to federal court, *see* 28 U.S.C § 1446(b), and that no equitable exceptions to the statutory deadline for removal applied. *Nessel*, 104 F.4th at 961.

Thus, General Nessel's case now proceeds in state court while Enbridge's action to enjoin the revocation order proceeds in federal court. Enbridge's action is the subject of this appeal.[3]

B. Enbridge's Federal Case

In this lawsuit, Enbridge sued two Michigan officials, Governor Whitmer and Director Eichinger, in their official capacities, claiming that the officials' efforts to shut down the operation of the pipeline violated federal law and the Constitution. *First*, Enbridge alleged that the officials' attempts to shut down the pipeline based on Enbridge's violations of the easement's technical safety standards violated the Supremacy Clause, as state pipeline safety standards are generally preempted by the federal Pipeline Safety Act. *See* 49 U.S.C. §§ 60102, 60104(c). *Second*, Enbridge contended that because the pipeline supplied oil to refineries in several states and in Canada, the pipeline was a critical instrument of commerce,

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[3] Because Nessel's state court action is proceeding concurrently to this litigation and appears to raise similar issues to those raised by Enbridge here, we ordered supplemental briefing regarding whether abstention under *Younger v. Harris*, 401 U.S. 37 (1971), is appropriate. Having reviewed the parties' briefs, we conclude that we lack jurisdiction to consider the *Younger* issue at this juncture. In this appeal, the collateral order doctrine supplies appellate jurisdiction over the Eleventh Amendment issue. *See Lowe v. Hamilton Cnty. Dep't of Job & Fam. Servs.*, 610 F.3d 321, 323 (6th Cir. 2010). That limited appellate jurisdiction does not extend to the *Younger* issue because the issue is not "inextricably intertwined" with the sovereign immunity question. *Summers v. Leis*, 368 F.3d 881, 889 (6th Cir. 2004) (citation omitted). We accordingly leave the *Younger* question for the district court to decide in the first instance.

and the Michigan officials' attempts to shut down the pipeline violated the Interstate Commerce Clause by unreasonably burdening or discriminating against interstate commerce. *Third*, Enbridge alleged that the officials' actions violated the Foreign Commerce Clause and the related Foreign Affairs doctrine.

Enbridge requested declaratory and injunctive relief. As to declaratory relief, Enbridge sought a declaration that the defendants' attempts to shut down the pipeline violated federal law and the Constitution. Enbridge also requested an injunction "prohibiting Defendants from taking any steps to impede or prevent" the operation of the pipeline, "including the revocation or termination of the . . . Easement based on the alleged non-compliance with pipeline safety standards in the Easement." Compl., R. 1, PageID 19.

The defendants moved to dismiss, arguing that sovereign immunity under the Eleventh Amendment deprived the court of jurisdiction over Enbridge's claims. The defendants explained that because Enbridge's lawsuit was effectively against the State, the lawsuit was barred by sovereign immunity and did not fall within the *Ex parte Young* doctrine, which gives federal courts jurisdiction over claims for prospective injunctive relief against state officials.

The district court disagreed, holding that Enbridge's action fell within the *Ex parte Young* doctrine and that no limitation to the doctrine barred the suit. The defendants timely appealed the district court's ruling.

ANALYSIS

We review a district court's denial of a motion to dismiss on Eleventh Amendment immunity grounds de novo. *See Block v. Canepa*, 74 F.4th 400, 407 (6th Cir. 2023).

Under the Eleventh Amendment, states generally have sovereign immunity from suit in federal court. *See Va. Off. for Prot. & Advoc. v. Stewart* (*VOPA*), 563 U.S. 247, 253–54 (2011). In *Ex parte Young*, 209 U.S. 123 (1908), however, the Supreme Court established "an important limit on the sovereign-immunity principle," *VOPA*, 563 U.S. at 254. The *Young* doctrine "rests on the premise—less delicately called a 'fiction,'—that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes." *Id.* at 255 (citation omitted). So suits against state officials are treated differently for sovereign immunity purposes. Under the *Young* doctrine, "a suit that claims that a state official's actions violate the constitution or federal law is not deemed a suit against the state," and so is not barred by sovereign immunity, so long as the suit seeks only "equitable and prospective relief" against a named state official. *Westside Mothers v. Haveman*, 289 F.3d 852, 860 (6th Cir. 2002).

To determine whether a suit falls within the *Young* doctrine, a court ordinarily "need only conduct a 'straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002) (alteration in original) (citation

omitted). If the complaint satisfies those two requirements—an allegation of a present violation of federal law and a request for prospective relief—we ordinarily conclude that *Young* applies. Yet, the *Young* doctrine does not allow a federal action to proceed "in every case where prospective declaratory and injunctive relief is sought against an officer." *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 270 (1997). However a plaintiff's complaint is framed, if the suit "is in fact against the sovereign" rather than a named official, Eleventh Amendment immunity still applies. *VOPA*, 563 U.S. at 256 (citation omitted). That's not an easy distinction to make because *Young*, as mentioned, is premised on the "fiction" that an officer suit is really against the officer and not against the state. To distinguish between the two—a *Young* officer suit and a suit that is "in fact against the sovereign"—the Supreme Court instructs us to examine "the *effect* of the relief sought," *id.* (citation omitted), and it has carved out several narrow categories of officer suits that it says lie outside *Young*'s fiction, *see, e.g., Coeur d'Alene*, 521 U.S. at 287–88; *Edelman v. Jordan*, 415 U.S. 651, 666–67 (1974); *In re Ayers*, 123 U.S. 443, 502–03 (1887).

A review of Enbridge's complaint demonstrates that, on its face, it meets the formal *Ex parte Young* requirements—that is, Enbridge seeks prospective injunctive relief against the named state officials for allegedly violating federal law. The defendants do not dispute as much. They contend, however, that the suit is nonetheless barred by the Eleventh Amendment because a careful examination of the effect of the relief sought demonstrates that the suit is in fact against the State. *First*, relying on *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, the defendants argue that the

suit is barred because it is the functional equivalent of a quiet title action against the State and would unduly infringe on the State's sovereignty interests in its submerged bottomlands. *Second*, the defendants argue that the suit is barred because it effectively seeks "an order for specific performance of a State's contract." *VOPA*, 563 U.S. at 257. For both reasons, they contend, Enbridge's suit does not fall within the *Young* doctrine, so it's barred by sovereign immunity.

We turn to each of these arguments, concluding that neither is persuasive. We accordingly affirm the district court and hold that Enbridge's claims fall within the *Young* doctrine.

I. Coeur d'Alene

We turn first to the defendants' argument that Enbridge's action falls within the exception to the *Young* doctrine articulated by the Supreme Court in *Coeur d'Alene*. In that case, the Coeur d'Alene Tribe sued state officials in federal court, alleging that it owned the "submerged lands" of Lake Coeur d'Alene in Idaho. 52 U.S. at 264–65. Along with seeking title to the submerged lands, the Tribe sought a declaration establishing its entitlement to the "exclusive use and occupancy and the right to quiet enjoyment" of the lands and a "declaration of the invalidity of all Idaho statutes, ordinances, regulations, customs, or usages which purport[ed] to regulate, authorize, use, or affect in any way" the lands. *Id.* at 265. The Tribe also sought injunctive relief "prohibiting defendants from regulating, permitting, or taking any action in violation of the Tribe's rights of exclusive use and occupancy, quiet

enjoyment, and other ownership interest in the submerged lands." *Id.*

The Supreme Court held that the suit was barred by the Eleventh Amendment. The Court acknowledged that, at first glance, the Tribe's complaint fit within the requirements of the *Young* doctrine because it sought prospective injunctive and declaratory relief against state officials. *Id.* at 281. But, the Court explained, the "real interests served by the Eleventh Amendment are not to be sacrificed to elementary mechanics of captions and pleading." *Id.* at 270. So the Court examined the Tribe's claims more closely, with an eye to the "realities of the relief the Tribe demand[ed]." *Id.* at 282. The Court acknowledged that the parties agreed that the Tribe could not maintain a quiet title suit against the State in federal court, "absent the State's consent." *Id.* at 281. Despite that prohibition, the relief the Tribe sought was "close to the functional equivalent of quiet title in that substantially all benefits of ownership and control would shift from the State to the Tribe." *Id.* at 282. The Court emphasized that the Tribe sought "farreaching and invasive relief"—a "determination that the lands in question are not even within the regulatory jurisdiction of the State," and injunctive relief that would "bar the State's principal officers from exercising their governmental powers and authority over the disputed lands and waters." *Id.* In effect, then, the suit would "diminish, even extinguish, the State's control" over the disputed lands. *Id.*

The Court further explained that the threatened degree of intrusion into the State's sovereignty was particularly troubling because the case concerned

"submerged lands," which "uniquely implicate sovereign interests." *Id.* at 283–84. Those lands, the Court elaborated, have a "unique status in the law" and are "infused with a public trust the State itself is bound to respect." *Id.* at 283. Because the Tribe's suit was the "functional equivalent of a quiet title action which implicates special sovereignty interests," the Court concluded that, considering the "particular and special circumstances" presented by the case, the Tribe's lawsuit was too intrusive into Idaho's state sovereignty to truly be considered a suit against a state officer—as *Young* pretends—as opposed to against the state itself. *Id.* at 281, 287. Therefore, sovereign immunity deprived the Court of jurisdiction over the Tribe's suit.

The defendants contend that Enbridge's lawsuit is "virtually identical" to *Coeur d'Alene*. Appellants Br. at 22. We disagree. To be sure, as even Enbridge acknowledges, this case implicates the State of Michigan's "special sovereignty interests" in the submerged bottomlands of the Straits of Mackinac. *Coeur d'Alene*, 521 U.S. at 281, 283. But Enbridge seeks only declaratory and injunctive relief requiring the defendants not to interfere with the operation of the pipeline. The effect of that requested relief would not deprive the state of "substantially all benefits of ownership and control" over the State's submerged lands. *Id.* at 282. Nor would it remove the lands from the State's "regulatory jurisdiction" or prevent the State's officers from "exercising their governmental powers and authority" over the lands. *Id.* The requested relief is accordingly not nearly as intrusive into state sovereignty as the Tribe's requested relief in *Coeur d'Alene*.

To see why, start with the property interest at stake in Enbridge's action. Enbridge's claims pertain only to its ongoing easement on State-owned land—Enbridge does not seek to divest the State of full and exclusive ownership of, or jurisdiction over, the land. Indeed, even if a court granted all the relief Enbridge has requested, the State would still retain title to and ownership over the land. Enbridge's requested relief, in other words, would not deprive the State of all the sticks in the so-called bundle of sticks representing the State's property rights. The State seemingly could, for example, sell the disputed parcel subject to an encumbrance (that is, Enbridge's easement). And the State would still retain the right to exclude entities and individuals other than Enbridge from the parcel. Thus, unlike in *Coeur d'Alene*, Enbridge's requested relief would not result in "substantially all benefits of ownership and control" shifting from the State to Enbridge. *Id.*

The defendants appear to recognize that Enbridge's claims would not divest the State of ownership of or jurisdiction over the disputed land entirely. In fact, at oral argument, the defendants acknowledged that Enbridge's lawsuit would not cause the State to lose "every single stick in the bundle" of sticks that represents property rights. Oral Arg. Rec. at 9:22–9:35. Instead, they argue that *Coeur d'Alene* extends to actions that operate to "quiet title" even when a plaintiff seeks less than "substantially all benefits of ownership and control" over a property. 521 U.S. at 282. They explain that quiet title actions are brought under state law, and under Michigan state law, an action seeking a property interest less than fee simple ownership is still a claim to quiet title. Thus, in the

defendants' view, because Enbridge's claims pertain to Enbridge's easement and an easement claim would be termed "quiet title" under Michigan law, *Coeur d'Alene* bars the suit.

We do not think the holding of *Coeur d'Alene* sweeps so broadly as to encompass any claim implicating a state's property interest. For starters, the defendants' emphasis on the Michigan state law definition of "quiet title" is misplaced. In *Coeur d'Alene*, the Supreme Court looked not to the technical definition of quiet title, whether under state law or otherwise, but to the degree of intrusion into state sovereignty threatened by the Tribe's requested relief.[4] And the Court took pains to emphasize that the Tribe's case fell outside the bounds of the *Young* doctrine because of the "particular and special circumstances" present there—the Tribe's requested relief was unusually "far-reaching and invasive" in that it would have resulted in the State having virtually *no* control over the disputed lands. *Id.* at 282, 287. The defendants do not persuade us that Enbridge's relief, which would not deprive the State of "substantially all benefits of ownership and control" over the land, falls within the

[4] The defendants' related emphasis on the fact that Enbridge has "claimed that it owns a prescriptive easement over" the land in the Attorney General's state court litigation is likewise unpersuasive. Appellants Br. at 32. As we have noted, the state law definition of "quiet title" does not control the sovereign immunity inquiry. And, in any event, any defenses that Enbridge has asserted in the state court proceeding are irrelevant to the determinative question here: whether Enbridge's federal court claims are so intrusive into the State's sovereignty that the claims are in fact against the State. *See VOPA*, 563 U.S. at 256.

Coeur d'Alene limitation on the *Young* doctrine. *Id.* at 282.

Our prior cases also reflect our unwillingness to accept a state's invocation of *Coeur d'Alene* unless the plaintiff's claims implicate a near-total property interest. In *Arnett v. Myers*, 281 F.3d 552 (6th Cir. 2002), for example, a family sued state officials, asserting ownership over duck blinds on a lake and seeking declaratory and injunctive relief protecting their riparian rights. *Id.* at 557–59. We held that *Coeur d'Alene* did not bar the family's suit. *Id.* at 567–68. We reasoned that the suit was not "in the nature of a quiet title action" because the family did not assert "sovereign ownership" over or claim "entitlement to the exclusive use and occupancy of" the lake. *Id.* at 568. And we emphasized that we did "not read the ruling of *Coeur d'Alene* to extend to every situation where a state property interest is implicated." *Id.* Conversely, we held that *Coeur d'Alene* barred a couple's lawsuit regarding property rights over a right-of-way providing access to Lake Michigan in *MacDonald v. Village of Northport*, 164 F.3d 964 (6th Cir. 1999), because the couple sought a declaration that part of the "right-of-way was the 'lawful property of Plaintiffs.'" *Id.* at 972.

Emphasizing that courts must examine the "*effect* of the relief sought" by plaintiffs, the defendants also argue that Enbridge's claims severely impact the State's ability to exercise its regulatory and police powers over the disputed land. *VOPA*, 563 U.S. at 256 (citation omitted). True enough: Enbridge requests injunctive relief prohibiting the defendants from "taking any steps to impede" the operation of the pipeline, and that relief would no doubt have an impact on the

State's ability to exercise its regulatory authority. Compl., R. 1, PageID 19. But even still, unlike in *Coeur d'Alene*, Enbridge does not seek to extinguish the State's ability to exercise its regulatory and sovereign authority over the disputed lands entirely. *See* 521 U.S. at 289 (O'Connor, J., concurring in part and concurring in the judgment) (emphasizing that the Tribe's lawsuit sought to "eliminate altogether the State's regulatory power over the submerged lands"). Enbridge seeks only to bring the State's regulatory activities into compliance with federal law and the Constitution. Accordingly, even if Enbridge received its requested relief, the State would retain the ability to regulate the submerged lands so long as its regulation did not violate federal law. *See Hamilton v. Myers*, 281 F.3d 520, 528 (6th Cir. 2002) (reasoning that the fact that the requested relief would require the state "to tailor its regulatory scheme to respect the [plaintiffs'] constitutionally protected [property] rights" does not bring a case within *Coeur d'Alene*'s limitation); *Arnett*, 281 F.3d at 568 (reasoning that *Coeur d'Alene* did not bar a suit in part because, even if the plaintiffs prevailed, the property would "remain within the sovereign control of the State of Tennessee" and would "continue to be subject to Tennessee's regulatory authority"). Enbridge assures us that its requested injunction would not prohibit state regulation that has an "incidental" effect on the operation of the pipeline. Oral Arg. Rec. at 25:35–25:59. So the State could, for example, impose land use regulations on the disputed land, so long as those regulations did not impede the operation of the pipeline or otherwise violate federal law.

At bottom, this case does not present the "particular and special circumstances" the Court confronted in

Coeur d'Alene: Enbridge's requested relief would not divest the State of full ownership and would not eliminate the State's regulatory power over the land. 521 U.S. at 287. We accordingly hold that Enbridge's case does not satisfy the high bar set forth in *Coeur d'Alene* for depriving federal courts of jurisdiction over suits that could otherwise proceed under *Ex parte Young*.

II. Specific Performance of a Contract

The defendants also argue that Enbridge's lawsuit falls outside of the *Young* doctrine because it seeks "an order for specific performance of a State's contract." *VOPA*, 563 U.S. at 256–57. The easement is a contract in which the State agreed to allow Enbridge to operate the pipeline. So, the defendants argue, by seeking an injunction preventing the defendants from interfering with the pipeline, Enbridge is attempting to compel the defendants to continue fulfilling their side of that contract. Because that amounts to a request for specific performance of the State's contractual obligations under the easement, the defendants contend that the *Young* doctrine does not apply and sovereign immunity bars Enbridge's suit.

This argument fails because it ignores the legal basis of Enbridge's claims. Enbridge does not advance a contract claim at all: Enbridge's lawsuit is not premised on allegations that the State has breached or failed to perform its obligations under the easement, and Enbridge does not request relief requiring the State to perform under the contract. Rather, Enbridge contends that the efforts of the defendants (individual state officers) to stop the operation of the pipeline violate federal law and the Constitution. And Enbridge

requests a quintessential *Young* injunction prohibiting the defendants from violating federal law.

The defendants do not persuade us that Enbridge's suit is nonetheless impermissible simply because Enbridge's requested injunction would also have the effect of keeping the State in compliance with the easement. Under the defendants' logic, if a state official is violating federal law, the fact that an existing contract also obligates the state to take the same or similar action would effectively immunize the state official from being subject to an *Ex parte Young* suit. State contracts could thereby deprive plaintiffs of a means to vindicate their rights under the Constitution and federal statutes. We reject this expansive view of when specific performance blocks an *Ex parte Young* action.

The defendants' proffered precedents do not convince us otherwise. If anything, they reinforce our view that, to invoke this limitation on *Ex parte Young*, a plaintiff's action must turn on breach of a state contract, not on compliance with federal laws that create state obligations irrespective of contractual terms. The defendants rely primarily on two cases decided before *Ex parte Young* itself, *In re Ayers*, 123 U.S. 443 (1887), and *Hagood v. Southern*, 117 U.S. 52 (1886), where the Supreme Court held that sovereign immunity barred the plaintiffs' suits because they sought specific performance of a contract. *Ayers* and *Hagood* involved quite similar facts. In both cases, the petitioners held state-issued bonds or coupons, and the state then rendered the bonds and coupons essentially worthless. *See Ayers*, 123 U.S. at 446–48, 492–94; *Hagood*, 117 U.S. at 63–67. The petitioners filed suit against state officials, contending that a state law rendering the

bonds and coupons ineffective had impaired a contract in violation of the Contract Clause of the Constitution. *See Ayers*, 123 U.S. at 492–93; *Hagood*, 117 U.S. at 67. The plaintiffs sought injunctive relief to enforce their contract with the state. *See Ayers*, 123 U.S. at 445–49 (plaintiffs seeking to enjoin state officials from bringing tax collection suits against individuals who had paid their taxes with the coupons); *Hagood*, 117 U.S. at 65, 68 (plaintiffs seeking to compel state officials to levy a tax to fund the now-worthless bonds). In holding that the cases could not proceed because of sovereign immunity, the *Hagood* Court explained that its prior precedents had drawn a "line" between two types of cases. 117 U.S. at 70. One, cases in which the requested relief required the defendants to perform, through "affirmative official action," an "obligation" that "belongs to the state in its political capacity" — that is, a contractual commitment the state decided to assume. *Id.* And two, cases against defendants who allegedly violated the plaintiffs' federal rights while "claiming to act as officers of the state"—that is, *Ex parte Young* actions. *Id.*

Contrary to the defendants' arguments, this case does not fall on the specific performance side of that line. Unlike in *Hagood* and *Ayers*, the thrust of Enbridge's claims is not that the state has breached a contract and that injunctive relief against a state officer is required to prevent that breach from continuing. So Enbridge's requested relief would not require the defendants to take any "affirmative official action" to perform an "obligation" that "belongs to the state in its political capacity." *Id.* The defendants themselves would be required only to *cease* conduct that allegedly violates federal law. Enbridge's suit is not, therefore,

"in fact against the sovereign." *VOPA*, 563 U.S. at 256 (citation omitted).

That conclusion is reinforced by the Supreme Court's treatment of *Ayers* and *Hagood* in *Ex parte Young* itself. There, the Court distinguished *Ayers* and *Hagood* from cases that seek to restrain a state official from violating federal law, explaining that the relief sought by the plaintiffs in both cases amounted to an "attempt to make the state itself, through its officers, perform its alleged contract." *Young*, 209 U.S. at 151. The Court emphasized that, in *Ayers*, the plaintiffs had requested an injunction against officers "on the ground that," if the officers were not enjoined, their actions "would be a breach of a contract with the state." *Id.* at 152. Accordingly, the Court characterized *Ayers* and *Hagood* as reflecting the principle that when the ground for a suit is breach of a state contract, the suit is in effect against the state, and therefore barred by the Eleventh Amendment. The Court did not characterize those cases as holding that lawsuits that would otherwise permissibly seek prospective injunctive relief against state officers are barred whenever such suits would also have the effect of keeping a state in compliance with a contract.

Thus, we understand that the *Young* doctrine does not apply where the basis of the lawsuit is a state's breach of a contract and the requested relief amounts to an order requiring the state to comply with its contractual obligations. *See Ga. R.R. & Banking Co. v. Redwine*, 342 U.S. 299, 304 (1952) (rejecting an argument that a suit impermissibly sought specific performance of a state contract and emphasizing that the plaintiff's complaint was "not framed as a suit for

specific performance"). But that does not describe this case. We accordingly conclude that Enbridge's suit does not impermissibly seek specific performance of a state contract.

The defendants' reliance on the Third Circuit's decision in *Waterfront Commission of New York Harbor v. Murphy*, 961 F.3d 234 (3rd Cir. 2020), *cert. denied*, 142 S. Ct. 561 (2021), does not alter our conclusion. In that case, the New Jersey legislature passed a statute seeking to withdraw from an interstate compact between New Jersey and New York that gave the Waterfront Commission of New York Harbor powers over the harbor's business operations. *See id.* at 236–37. The statute required the New Jersey Governor to give notice regarding New Jersey's intention to withdraw. *Id.* at 237. The Waterfront Commission sued the Governor, requesting a declaration that the statute violated the Compact and Supremacy Clauses of the Constitution and an injunction against enforcement of the statute. *Id.* The Third Circuit held that the Commission's suit was barred by the Eleventh Amendment because it sought specific performance of a contract. *Id.* at 241.

Waterfront Commission is quite unlike this case. In *Waterfront Commission*, the only federal law that the Commission argued that the Governor was violating was effectively the contract itself: the Commission argued that the compact had become federal law once Congress had approved it, so violating the compact also meant violating federal law. *See* Compl. at 18–20, *Waterfront Comm'n of N. Y. Harbor v. Murphy*, 429 F. Supp. 3d 1 (D.N.J. 2018) (No. 18-650), ECF No. 1. In that sense, the Commission's contract claim and its federal claim—that is, the basis for its *Ex parte Young*

suit—were one and the same. At bottom, the Commission sought to force the state to abide by its obligations under the compact. That is a distinct situation from here, where none of Enbridge's claims depend on the terms of the easement itself, but on wholly separate federal laws and the Constitution. We accordingly hold that Enbridge's suit does not seek specific performance of a state contract and falls within the bounds of *Ex parte Young*.

CONCLUSION

We hold that Enbridge's lawsuit is not barred by sovereign immunity and affirm the district court's order denying the defendants' motion to dismiss.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ENBRIDGE ENERGY, LIMITED PARTNERSHIP, et al.,
Plaintiffs, Case No. 1:20-cv-1141

v. HON. ROBERT J. JONKER

GRETCHEN WHITMER, et al.,
Defendants.
_____/

OPINION AND ORDER

The Governor of Michigan and the Director of the Michigan Department of Natural Resources issued an order to Enbridge directing shut down of its Line 5 pipeline. Enbridge filed this action seeking declaratory and injunctive relief against the shutdown order as a violation of federal statutory and constitutional law. Defendants ask this Court to dismiss the complaint on sovereign immunity grounds. (ECF No. 62.) For the reasons stated below, Defendants' Motion to Dismiss is denied.

I. BACKGROUND

A. Factual Background

Line 5 is a pipeline owned and operated by Enbridge. The pipeline has been transporting crude oil and natural gas liquids through Wisconsin and Michigan to Canada for over 65 years. A small segment of the pipeline, referred to as the Straits Pipeline, crosses the Straits of Mackinac under an Easement granted in 1953.

On November 13, 2020, Defendants issued a Notice of Revocation and Termination of Easement to Enbridge that directed Enbridge to cease operating the Straits Pipeline and decommission it within 180 days. (ECF No. 1-1.) The Notice purported to revoke the 1953 Easement because (1) it was allegedly not a valid conveyance; (2) the continued use of the Straits Pipeline allegedly violates the public trust doctrine; and (3) Enbridge allegedly breached the Easement's terms. Enbridge filed this action eleven days after the Notice and has continued to operate the pipeline during the pendency of this case.[1]

B. Procedural Background

On November 24, 2020, Enbridge filed this three-count complaint seeking declaratory and injunctive relief against Defendants in their official capacities based on three federal law theories. (ECF No. 1.) First, Enbridge alleges that Defendants' shutdown would violate the Supremacy Clause because the federal Pipeline Safety Act expressly preempts state regulation of pipeline safety. Second, Enbridge alleges that

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[1] The Court refers to this case as *Enbridge I*. There are two other related cases. One is *Nessel, Attorney General of the State of Michigan v. Enbridge Energy Limited Partnership, et al.*, Case No. 1:21-cv-1057 (*Enbridge III*). Defendants removed that action from the state court, and the Sixth Circuit Court of Appeals recently issued its Opinion directing remand of the matter to the state court. *Enbridge III*, ECF No. 39. The mandate has not yet issued. The second is *State of Michigan, et al., v. Enbridge Energy Limited Partnership, et al.,* Case No. 1:20-cv-1142 (*Enbridge II*). *Enbridge II* also began in state court, but after the Defendants removed the case here, Plaintiffs voluntarily dismissed the action. *Enbridge II*, ECF No. 83. All three cases were recently reassigned to the undersigned. *Enbridge I*, ECF No. 89.

Defendants' shutdown would violate the Interstate Commerce Clause as an unreasonable and discriminatory burden on interstate commerce. Third, Enbridge alleges that Defendants' shutdown would violate the Foreign Commerce Clause and Foreign Affairs Doctrine because it intrudes on the federal government's exclusive right to conduct foreign relations and interferes with treaty obligations of the United States. The Enbridge Request for Relief does not explicitly seek enforcement of the 1953 Easement, but it does seek relief under these federal law theories that would prevent Defendants from revoking the 1953 Easement based on any theory rooted in perceived state law safety concerns, the state's public trust doctrine or any other similar state law theory.

Defendants filed a Motion to Dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) based on sovereign immunity. (ECF No. 62.) At the same time, Enbridge filed a Motion for Summary Judgment on Counts I and III. (ECF No. 65.) Both motions are fully briefed[2] and ready for decision. This Opinion will address only the Motion to Dismiss. The Court will set a hearing on Enbridge's Motion for Summary Judgment on Counts I and III.

II. LEGAL STANDARDS

Federal Rule of Civil Procedure 12(b)(1) allows for dismissal of an action for lack of subject-matter

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[2] The briefing includes several amicus briefs and supplemental briefs.

jurisdiction. A Rule 12(b)(1) motion asserting a facial challenge to subject matter jurisdiction asks the Court to find that even if the allegations in the complaint are true, the pleadings are not sufficient to establish subject matter jurisdiction. *Ohio Nat. Life Ins. Co. v. United States*, 922 F.2d 320, 324 (6th Cir. 1990). The Sixth Circuit has found that a Rule 12(b)(1) motion is an appropriate way for a state to raise sovereign immunity. *See Nair v. Oakland County Cmty. Mental Health Auth.,* 443 F.3d 469, 476 (6th Cir. 2006). Unlike a traditional motion to dismiss for lack of subject-matter jurisdiction, "the entity asserting Eleventh Amendment immunity has the burden to show that it is entitled to immunity." *Id.* at 474.

Federal Rule of Civil Procedure 12(b)(6) allows for dismissal of an action for failure to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. In determining whether a claim has facial plausibility a court must construe the complaint in the light most favorable to the plaintiff, accept the factual allegations as true, and draw all reasonable inferences in favor of the plaintiff. *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008).

III. ANALYSIS

"Sovereign immunity protects states, as well as state officials sued in their official capacity for money damages, from suit in federal court." *Boler v. Earley*, 865 F.3d 391, 409-10 (6th Cir. 2017). "There are three exceptions to sovereign immunity: (1) when the state has waived immunity by consenting to the suit; (2) when Congress has expressly abrogated the states' sovereign immunity, and (3) when the doctrine set forth in *Ex parte Young*, 209 U.S. 123 (1908) applies." *Id.* at 410. Michigan has not waived immunity and Congress has not abrogated immunity in this case. Thus, *Ex parte Young* is the only relevant exception.

"Under the *Ex parte Young* exception, a federal court can issue prospective injunctive and declaratory relief compelling a state official to comply with federal law." *S & M Brands, Inc. v. Cooper,* 527 F.3d 500, 507 (6th Cir. 2008). "It is beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights." *Shaw v. Delta Air Lines, Inc.,* 463 U.S. 85, 96 n.14 (1983) (citing *Ex parte Young*, 209 U.S. at 160-62). The doctrine is premised on the concept that "when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes." *Virginia Off. for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 254-55 (2011). "In determining whether the *Ex parte Young* doctrine avoids an Eleventh Amendment bar to suit, a court need only conduct a 'straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Verizon Md. Inc. v. Public Serv. Comm'n*

of Md., 535 U.S. 635, 645 (2002) (quoting *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296, 298-99 (1997)). "The inquiry into whether suit lies under *Ex parte Young* does not include an analysis of the merits of the claim." *Id.* at 646.

Here, Enbridge seeks prospective injunctive and declaratory relief to stop state officials from shutting down the Line 5 pipeline in violation of federal constitutional and statutory law. This is a straightforward *Ex parte Young* case. Enbridge "alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Id.* at 645.

Defendants argue that *Ex parte Young* does not apply for two reasons. First, Defendants contend this action falls squarely within the *Coeur d'Alene* limitation because Enbridge seeks relief that would interfere with Michigan's special sovereignty interests in its submerged bottomlands. Second, Defendants argue that Enbridge seeks relief that would operate against Michigan by effectively compelling Michigan's specific performance with a contract. Both arguments fail.

A. *Coeur d'Alene* Limitation

In *Coeur d'Alene*, the Supreme Court held that a Native American Tribe's suit against Idaho was barred by the Eleventh Amendment because it amounted to the "functional equivalent of a quiet title action which implicates special sovereignty interests." 521 U.S. at 281. The Tribe claimed, "ownership in the submerged lands and bed of Lake Coeur d'Alene and of the various navigable rivers and streams that form part of its water system" and "sought a declaratory

judgment to establish its entitlement to the exclusive use and occupancy and the right to quiet enjoyment of the submerged lands as well as a declaration of the invalidity of all Idaho statutes, ordinances, regulations, customs, or usages which purport to regulate, authorize, use, or affect in any way the submerged lands." *Id.* at 264-65. The Tribe also sought "a preliminary and permanent injunction prohibiting defendants from regulating, permitting, or taking any action in violation of the Tribe's rights of exclusive use and occupancy, quiet enjoyment, and other ownership interest in the submerged lands together with an award for costs and attorney's fees and such other relief as the court deemed appropriate." *Id.* at 265. In holding that the Tribe's suit was barred by sovereign immunity, the Court found the requested relief was "far-reaching and invasive," and the "functional equivalent of quiet title in that substantially all benefits of ownership and control would shift from the State to the Tribe." *Id.* at 282. "[U]nder these particular and special circumstances," the Court held that the *Ex parte Young* exception did not apply. *Id.* at 287.

Coeur d'Alene is a narrow decision and this case does not involve allegations remotely close to it. The Sixth Circuit has reiterated that *Coeur d'Alene* bars suits only when the action is "a functional equivalent of a quiet title action implicating special sovereignty interests." *Arnett v. Myers,* 281 F.3d 552, 567 (6th Cir. 2002); *see also Stevens v. Michigan State Court Admin. Off.*, No. 21-1727, 2022 WL 3500193, at *5 (6th Cir. Aug. 18, 2022) ("We will not break from this tradition of reading *Coeur d'Alene* narrowly."). Enbridge's complaint is not the functional equivalent of a quiet title action or even close to it. It asserts no title rights of

any kind, whether to bottomlands in the Straits or to any other property in which Michigan claims title. It does not seek exclusive use of the bottomlands of the Straits or any other property Michigan claims to own. Nor does it seek any kind of sweeping relief invalidating all Michigan "statutes, ordinances, regulations, customs, or usages which purport to regulate, authorize, use, or affect in any way the submerged lands." *Coeur d'Alene*, 521 U.S. at 265. To the contrary, rather than seek the sweeping relief of a claimed owner of the bottomlands, Enbridge requests relief that would preclude state officials from shutting down ongoing operations of a pipeline that has been functioning under easement for the past 65 years. And the bases for that requested declaratory and injunctive relief are rooted in alleged violations of federal law, a paradigm *Ex parte Young* scenario.

Similarly, Defendants' reliance on *MacDonald v. Village of Northport*, 164 F.3d 964 (6th Cir. 1999), is misplaced. *MacDonald* involved a property owner's claim that a platted street along their property in Northern Michigan provided public right of way to Grand Traverse Bay, and that the public used the platted street in a way that interfered with the enjoyment of their private property. *Id.* at 966-67. The plaintiffs sought entry of an order vacating the publicly platted street and amending the plat, all of which would have impaired the ability of the public to access the navigable waters of Grand Traverse Bay. *Id.* This risk brought state officers into the case as defendants. The holding on which all three *MacDonald* judges agreed was that the district court properly applied *Buford* abstention. *Id.* at 970. That holding was sufficient to resolve the case, but two of the three judges also

concluded, without agreement by the third,[3] that *Coeur d'Alene* meant the claim was barred by the Eleventh Amendment in any event. The rationale of the plurality was that Michigan's "great interest in maintaining public access to the Great Lakes" was at issue in the case and implicated "special sovereignty interests" akin to those at issue in *Coeur d'Alene*. *Id.* at 972. But there is no similar interest at issue here. Enbridge does not claim sovereign ownership or any entitlement to the exclusive use and occupancy of the submerged lands. It is not attempting to block anyone else's access to the bottomlands, or to any other part of the Great Lakes system. It is simply seeking relief that would prevent state officials from allegedly violating provisions of federal law by stopping the continued operation of a pipeline that has been operating for many years over a bottomlands easement.

Because this is not the functional equivalent of a quiet title action, the *Coeur d'Alene* limitation does not apply.

B. Specific Performance of a State Contract

"As in most areas of the law, the difference between the type of relief barred by the Eleventh Amendment and that permitted under *Ex parte Young* will not in many instances be that between day and night."

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[3] Both the plurality and concurring opinions recognized that neither the district court nor the parties had actually addressed the issue of *Ex parte Young* and *Coeur d'Alene*. *Id.* at 970, 973. Judge Ryan concluded that this meant the Eleventh Amendment issue needed "more thorough vetting than it has been given on this appeal" and that the case should be affirmed on abstention grounds alone. *Id.* at 973.

Edelman v. Jordan, 415 U.S. 651, 667 (1974). This is a fitting prelude to the analysis of Defendants' argument that the Eleventh Amendment bars this case because the relief requested is essentially seeking specific performance of a State contract. It is true that "*Ex parte Young* cannot be used to obtain an order for specific performance of a State's contract." *Stewart*, 563 U.S. at 257 (cleaned up); *see also Edelman*, 415 U.S. at 666-67. But it is also true that *Ex parte Young* does permit suits seeking injunctive relief against a state officer's enforcement of a state law that allegedly violates federal law even if the prospective relief would vindicate contractual rights. *See Georgia Railroad & Banking Co. v. Redwine,* 342 U.S. 299, 300-301 (1952). Indeed, the Supreme Court has rejected Eleventh Amendment immunity even in a case involving a dispute between two different agencies of the same state when the disagreement involved conditions imposed by the federal government on federal funding accepted by the state. *Stewart*, *supra*. The critical question is whether "'the state is the real, substantial party in interest.'" *Stewart,* 563 U.S. at 255 (quoting *Pennhurst State Sch. and Hospital v. Halderman*, 465 U.S. 89, 105 (1984)).

Redwine is on point and demonstrates that the state is not the real party in interest here, and that that *Ex parte Young* properly applies. In *Redwine*, a railroad sued to enjoin the enforcement of a new state law that purported to remove the railroads contractually based exemption from state taxation. 342 U.S. at 300-01. The district court described the case "as one to enforce an alleged contract with the State of Georgia" and dismissed it for lack of jurisdiction. *Id.* at 304. The Supreme Court disagreed and held that the suit fell

within the *Ex parte Young* exception even though the threatened taxation would "impair the obligation of contract." *Id.* at 304-05. The Court reasoned that the "complaint is not framed as a suit for specific performance," rather it seeks to "enjoin [a state official] from collecting taxes in violation of [the plaintiff's] rights under the Federal Constitution." *Id.* at 304. The Court also noted that the railroad "merely seeks the cessation of [the state official's] allegedly unconstitutional conduct and does not request affirmative action by the State." *Id.* at 304 n.15. In sum: "This Court has long held that a suit to restrain unconstitutional action threatened by an individual who is a state officer is not a suit against the State." *Id.* at 304.

Like the relief sought in *Redwine*, the relief sought here does not request Michigan's specific performance of the 1953 Easement. In fact, it does not request any affirmative action of any kind by the State of Michigan. Enbridge seeks only an order prohibiting Defendants' actions of shutting down the Line 5 pipeline in alleged violation of federal statutory and constitutional law. This relief, if granted, certainly protects continued operation of the 1953 Easement against termination based on violations of federal law. But that does not take the case outside the ambit of *Ex parte Young*. To the contrary, that fits the paradigm case *for Ex parte Young*: prospective relief against a state officer's alleged violation of federal law.

Defendants invoke *Waterfront Comm'n of New York Harbor v. Governor of New Jersey*, 961 F.3d 234 (3d Cir. 2020). The Waterfront Commission of New York Harbor was a creature of an interstate compact between the states of New York and New Jersey. *Id.*

at 236. As container shipping with large liners developed, the deeper water ports of New Jersey became more popular than those of New York. *Id.* New Jersey decided to renounce the Compact and start operating its side of the water on its own, thereby generating more revenue for itself at the expense of the Commission. *Id.* New Jersey implemented the decision by repealing the state legislation authorizing the Commission. *Id.* at 237. The Commission sued the Governor of New Jersey seeking a declaration that the repealer legislation violated not only the compact but also the Supremacy Clause of the Constitution because the Constitution requires congressional approval of interstate compacts. *Id.* The Third Circuit held that the *Ex parte Young* exception did not apply because the relief sought "would compel New Jersey to continue to abide by the terms of an agreement it has decided to renounce. Such relief tantamount to specific performance would operate against the State itself, demonstrating that New Jersey is the real, substantial party in interest." *Id.* at 241. The court also noted that the relief sought would "have an adverse impact on the State of New Jersey's treasury and compel the State to perform" *id.* at 241, and that the case was a "fact-specific holding." *Id.* at 241 n.11.

Waterfront Comm'n is not binding on this Court, and does not consider *Redwine*. It is also distinguishable. The relief sought by Enbridge is not tantamount to specific performance of a contract. Nor does it pose any threat to the Michigan treasury. Moreover, in *Waterfront Comm'n*, the only real relief requested was a declaration that New Jersey was in breach of the compact by repealing the authorizing legislation. The claimed basis for *Ex parte Young* treatment was not

any alleged ongoing violation of federal law by a state officer but rather a claim that the Constitution's Interstate Compact Clause somehow transformed the particular terms of the compact to the status of supreme federal law. But here Enbridge is not seeking any such declaration regarding the terms of the 1953 Easement, or any other relief for an alleged breach of contract. Rather, it is simply seeking a prospective injunction that prevents state officers from allegedly breaching federal law by stopping the ongoing operation of a pipeline. That brings this case squarely within *Ex parte Young*.

IV. CONCLUSION

In sum, Enbridge seeks an order prohibiting state officials from shutting down the Line 5 pipeline in violation of federal statutory and constitutional law. Enbridge is neither asserting ownership over state lands nor seeking to compel performance of a state contract. This case falls squarely under the *Ex parte Young* exception to sovereign immunity. Accordingly, Defendants' Motion to Dismiss (ECF No. 62) is denied.

Dated: July 5, 2024

/s/ Robert J. Jonker
ROBERT J. JONKER
United States District Judge

No. 24-1608

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 16, 2025
KELLY L. STEPHENS, Clerk

ENBRIDGE ENERGY, LP; ENBRIDGE ENERGY COMPANY, INC.; ENBRIDGE ENERGY PARTNERS, L.P., Plaintiffs-Appellees,	)	
v.	)	ORDER
GRETCHEN WHITMER, the Governor of the State of Michigan in her official capacity; SCOTT BOWEN, Director of the Michigan Department of Natural Resources in his official capacity, Defendants-Appellants.	)	

BEFORE: MOORE, KETHLEDGE, and BLOOMEKATZ, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was

circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT
Kelly L. Stephens
Kelly L. Stephens, Clerk