No. 25-582

IN THE

Supreme Court of the United States

GRETCHEN WHITMER, GOVERNOR OF MICHIGAN, ET AL., PETITIONERS,

v.

ENBRIDGE ENERGY, LP, ET AL., RESPONDENTS.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The petition for certiorari frames the question presented as follows:

> Whether a State is the real party in interest, and therefore entitled to sovereign immunity, where a private plaintiff sues state officials in federal court for relief that would diminish, but not necessarily extinguish, the State's ownership and control of its sovereign lands.

For the reasons explained below, there is no disagreement among the lower courts on this question, and it is not presented here.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners (Defendants-Appellants below) are Gretchen Whitmer, Governor of the State of Michigan, in her official capacity; and Scott Bowen, Director of the Michigan Department of Natural Resources, in his official capacity.

Respondent (Plaintiffs-Appellees below) are Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc., and Enbridge Energy Partners, L.P.

Respondents Enbridge Energy, Limited Partnership, Enbridge Energy Company, Inc., and Enbridge Energy Partners, L.P., are each indirect subsidiaries of Enbridge, Inc., a publicly traded company. No publicly held corporation owns 10% or more of Enbridge, Inc.'s stock.

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The opinion of the Sixth Circuit is reported at 104 F.4th 958 and reprinted at Pet. App. 3a–25a. The Sixth Circuit's order denying rehearing en banc is unreported but reprinted at Pet. App. 39a–40a. The opinions of the U.S. District Court for the Western District of Michigan are also unreported but reprinted at Pet. App. 26a–38a.

JURISDICTION

The Sixth Circuit entered judgment on April 23, 2025, and denied Petitioners' petition for rehearing en banc on June 16, 2025. On September 3, 2025, Justice Kavanaugh extended the time within which to file a petition for writ of certiorari until November 13, 2025. Petitioners filed a petition for certiorari on November 13, 2025. This Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Eleventh Amendment to the United States Constitution provides: "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."

INTRODUCTION

Enbridge filed this action against two state officials to enjoin their ongoing violations of federal law governing pipeline operations. As the district court explained, this is a "straightforward *Ex parte Young* case." Pet. App. 31a. The state officials tried to circumvent that result by saying this case fell within a narrow exception for suits that are the "functional equivalent of a quiet title action" against a state. *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 281 (1997). A unanimous Sixth Circuit rejected that argument and ruled that the Eleventh Amendment did not bar Enbridge's suit.

The petition does not satisfy the Court's criteria for plenary review. The Sixth Circuit's decision is not in conflict with any decision of this Court or another court of appeals. Petitioners raise several arguments in their petition. None have merit.

Petitioners' primary argument is that the lower courts are divided on whether Eleventh Amendment applies when the lawsuit "diminish[es]" but does "not completely extinguish … a State's ownership and control over its sovereign lands." Pet. 17. But there is no split on this question. In all of the published decisions cited in the petition, the plaintiffs claimed to be owners of the land at issue and thus sought to extinguish state sovereign ownership and control. As the district court observed, this case is "not … remotely" similar. Pet. App. 32a. Enbridge does not claim to be the owner of the bottomlands. Pet. App. 16a ("State would still retain title to and ownership over the land").

Petitioners try to manufacture a conflict by claiming that Enbridge seeks a court order "reinstating" a 1953 easement without the State's consent. Pet. 2, 16, 21, 24. Not so. The 1953 Easement sets out specific terms for any termination, and no state official purported to follow those express terms here. As the court of appeals explained, this dispute pertains to Enbridge's "*ongoing* easement" on the bottomlands. Pet. App. 16a (emphasis added). Enbridge thus did *not* ask for any order to "reinstate" the easement or raise a contract claim at all. Pet. App. 20a, 25a. The court of appeals ruled: "none of Enbridge's claims depend on the terms of the easement itself, but on wholly separate federal laws and the Constitution." Pet. App. 25a. Instead, it was *Petitioners* who injected the easement into the case, not Enbridge. Pet. App. 20a. Enbridge "seeks only to bring the State's regulatory activities into compliance with federal law and the Constitution." Pet. App. 19a. This is a paradigm *Ex parte Young* action. Pet. App. 33a. There is no conflict to resolve.

This case is also a poor vehicle for resolving the question presented. Enbridge's pipeline has been operating on a small part of the bottomlands for over 70 years. Petitioners have never claimed that those operations interfered with the *current* use and enjoyment of the bottomlands or the waters in the Straits of Mackinac. Instead, Petitioners sought to shut down Enbridge's pipeline because, in their view, those operations presented an "inherent and unreasonable" risk of a release sometime in the

future. Dist. Dkt. 1-1 at 10.[1] Petitioners' shutdown order violates the preemptive federal scheme. Enbridge thus does not seek "to diminish … the State's ownership or control" over the bottomlands, as phrased in the question presented. Pet. i, 8. Instead, Enbridge merely seeks to bring state regulatory activities into compliance with federal law governing pipeline operations. Pet. App. 19a, 25a.

The Sixth Circuit's narrow decision is correct. The panel properly identified the legal framework set forth in *Coeur d'Alene* and thoroughly addressed each argument raised by the state officials. The panel made no sweeping rulings and created no conflicts. Petitioners do not identify any specific legal error in the Sixth Circuit's opinion. While Petitioners claim the material facts are undisputed (Pet. 3), their recounting of those facts in the petition *is* disputed. Further review of the Sixth Circuit's split-less resolution of this dispute is not warranted. Certiorari should be denied.

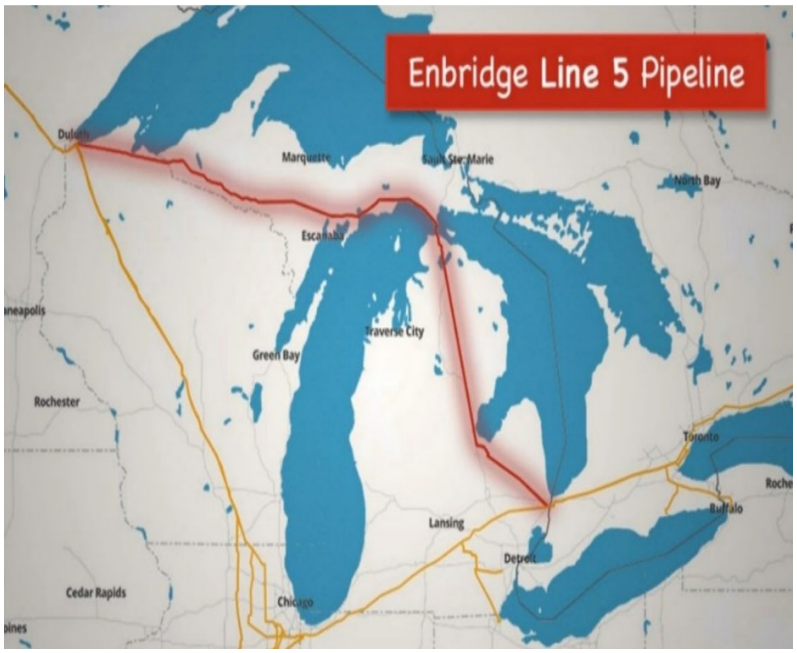
STATEMENT OF THE CASE

A. Background facts

Enbridge owns and operates Line 5. Pet. App. 4a, 26a. Built in 1953, Line 5 extends over 645 miles, traversing Wisconsin and Michigan before crossing into Ontario, Canada. Pet. App. 6a. This route—

[1] Unless otherwise noted, references to the district court's CM/ECF docket in No. 1:20-cv-01141 are indicated by "Dist. Dkt." Page cites are to the page numbers listed in the ECF header.

shown in the map below—has not changed since Line 5's construction in 1953.



A small segment of Line 5 crosses the Straits of Mackinac bottomlands pursuant to a perpetual easement issued by the State of Michigan in 1953. Pet. App. 26a.

Under the Federal Submerged Lands Act, the federal government reserves its paramount authority over the bottomlands for the purpose of commerce and international affairs. 43 U.S.C. 1311(b), 1314(a). In the 1953 Easement, the State "conveyed and quit claimed" its bottomland interests to construct, maintain, and operate a dual pipeline for transporting petroleum and other products. Dist. Dkt. 1-1 at 23–24; Pet. App. 6a & n.2. The dual pipelines are each 20

inches in diameter, and they traverse the bottomlands for about 4 miles. Dist. Dkt. 1-1 at 24.

The easement has no termination date. Dist. Dkt. 1-1 at 33–34. While the State can terminate the easement under certain circumstances, it must give Enbridge advance notice of any specified breach of easement terms and a period of 90 days to correct such breach. *Id*. at 39.

For over 70 years, Line 5 has been a vital piece of a massive network on which millions of Americans and Canadians depend to satisfy their energy needs. Dist. Dkt. 1 at ¶¶ 1, 28-31, 54–58. Line 5 transports up to 540,000 barrels per day of light crude oil and natural gas liquids. *Id*. at ¶ 28. It serves ten refineries in the United States and Canada. *Id*. at ¶¶ 29–30, 54–57. Most of the output of those refineries is propane, gasoline, jet fuel, and diesel. *Id*. at ¶ 55.

In the seven decades of the pipeline's operation, there have been no release of Line 5 product in the Straits and no prior efforts by any prior State administration to force closure of this Line 5 segment. *Id*. at ¶¶ 1, 26, 34.

B. Procedural history

In November 2020, Michigan's Governor and Director of the Michigan Department of Natural Resources (collectively, the Governor) notified Enbridge that it should "cease operation" of Line 5 in the Straits within 180 days. Pet. App. 27a; Dist. Dkt. 1-1. The Governor did not purport to follow the easement's express terms for lawfully terminating the 1953 Easement. In fact, her notice was based in part

on the theory that the 1953 Easement was invalid "from its inception." Pet. App. 8a; *see also* Pet. 4 (saying that the State "purported" to grant an easement to Enbridge's predecessor in 1953).

In her notice to Enbridge, the Governor said the 1953 Easement was "being revoked for violation of the [state] public trust doctrine" due to the "inherent risks of pipeline operations" and potential "anchor strikes" from shipping traffic. Dist. Dkt. 1-1 at 2, 7. The Governor also said that the 1953 Easement was being "terminated" based on Enbridge's alleged violation of certain safety terms in the 1953 Easement. *Id*. at 2, 13–18. The Governor acknowledged that the Easement's terms required advance notice and a 90-day opportunity to cure any term breaches. Dist. Dkt. 1-1 at 13. But she made the unilateral decision that the express terms did not have to be followed here and thus no advance notice would be given. *Id*.

The same day of the Notice's publication, the State of Michigan sued Enbridge in state court seeking a declaration that the Notice's shutdown grounds were valid—i.e., the 1953 Easement was void from its inception and that Enbridge had allegedly breached its safety terms. Pet. App. 8a. As the Governor later said, this lawsuit was filed to "enforce" the Notice. Pet. App. 8a; Dist. Dkt. 39-1 at 3. Enbridge removed the State's action to federal court. Pet. App. 8a.

In federal court, the parties negotiated a briefing schedule that extended beyond the Governor's purported shutdown date. Dist. Dkt. 16. In the first status hearing, Enbridge asked for assurances that the State would not take any steps to shut down Line 5 while the matter was being litigated. Dist. Dkt. 17

at 35–36. The federal court urged the same. *Id*. at 36. Counsel for the State represented that the State would not ask the federal court to exercise jurisdiction over the underlying dispute. *Id.* at 35.

After the federal court sustained Enbridge's removal, the State voluntarily dismissed its lawsuit. Pet. App. 8a. The Governor explained in a press release that she disagreed with the federal court's decision to keep the case. Dist. Dkt. 39-1 at 3. She was dismissing her lawsuit, she explained, so that her efforts to shut down Line 5 could be litigated in a related action that the Michigan Attorney General had filed and that was pending in state court at that time. Dist. Dkt. 39-1 at 3; Pet. App. 9a.

In the meantime, Enbridge had filed this *Ex parte Young* action in federal court against the Governor. Pet. App. 9a. As amended, Enbridge's complaint contains two counts. Pet. App. 9a; Dist. Dkt. 158.

In one count, Enbridge alleges that the Governor's shutdown order is preempted by the federal Pipeline Safety Act. Pet. App. 9a. The Governor's shutdown order is based on state safety standards—specifically, that Line 5's operations in the Straits are at risk of release and thus are unsafe under state law. *Id.*

In the other count, Enbridge alleges that the Governor's shutdown order violates the Foreign Affairs Doctrine. Pet. App. 10a. Line 5 is protected by a treaty between the United States and Canada guaranteeing the uninterrupted flow of hydrocarbons between the two countries. Dist. Dkt. 158 at 15. That treaty is self-executing and reflects the shared foreign policy position that neither country will do anything

to impede the flow of oil through Line 5 between the two countries. *Id.*

Enbridge sought declaratory and injunctive relief that (1) the Pipeline Safety Act preempts Petitioners from shutting down Line 5 based on state safety standards, and (2) the Foreign Affairs doctrine independently preempts Petitioners from shutting down Line 5. Dist. Dkt. 158 at 15–16. Enbridge did not seek any specific performance of the easement or seek any relief against the State itself. Pet. App. 25a, 36a.

C. Lower court decisions

The Governor moved to dismiss Enbridge's complaint based on the Eleventh Amendment. Pet. App. 31a. She argued in relevant part that this case fell within the narrow *Coeur d'Alene* exception to the *Ex parte Young* doctrine. Pet. App. 15a, 32a.

The district court denied the Governor's motion to dismiss. Pet. App. 26a. The court ruled Enbridge's case "does not involve allegations remotely close to" *Coeur d'Alene*. Pet. App. 32a. In *Coeur d'Alene*, the tribe claimed fee ownership in the submerged lands and sought exclusive use and occupancy of those submerged lands. Pet. App. 32a–33a. By contrast here, Enbridge "asserts no title rights of any kind, whether to bottomlands in the Straits or to any other property in which Michigan claims title." Pet. App. 33a. Nor does Enbridge "seek exclusive use of the bottomlands of the Straits or any other property Michigan claims to own …." *Id.* In fact, Enbridge does not seek any relief against the State of Michigan. Pet. App. 36a. Instead, Enbridge seeks to prevent state officials from shutting down an interstate and

international pipeline that has been operating for decades. Pet. App. 33a. Enbridge's claims are "rooted in alleged violations of federal law, a paradigm *Ex parte Young* scenario." *Id*.

A unanimous Sixth Circuit affirmed. The panel explained in detail the *Coeur d'Alene* opinion, then addressed each argument raised by the state officials. Pet. App. 13a–20a. "The defendants do not persuade us that Enbridge's relief … falls within the *Coeur d'Alene* limitation on the *Young* decision." Pet. App. 17a–18a.

The panel gave detailed reasons for this conclusion. *Coeur d'Alene* "looked not to the technical definition of quiet title … but to the degree of intrusion into state sovereignty threatened by the Tribe's requested relief." Pet. App. 17a. In this case, the requested relief was "not nearly as intrusive into state sovereignty as the Tribe's requested relief in *Coeur d'Alene*." Pet. App. 15a.

Unlike in *Coeur d'Alene*, the State would retain "substantially all benefits of ownership and control" of the bottomlands even if Enbridge obtained all of its requested relief. Pet. App. 16a. Specifically, the State would retain:

- "title to and ownership over the land;"
- "the right to exclude entities and individuals other than Enbridge from the parcel;"
- "the ability to regulate the submerged lands so long as its regulation did not violate federal law."

Pet. App. 16a, 19a.

Petitioners complained that they could not directly regulate the safety of Line 5's operations, but this was the result of preemptive federal law. As the panel explained, "Enbridge seeks only to bring the State's regulatory activities into compliance with federal law and the Constitution." *Id*. at 19a.

Further, the panel explained that Enbridge does not advance *any* claim under the 1953 Easement. Pet. App. 20a, 26a. "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." Pet. App. 20a.

The panel concluded 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*." Pet. App. 20a.

The state officials sought rehearing but not a single *en banc* judge requested a vote on the rehearing petition. Pet. App. 40a.

REASONS FOR DENYING THE PETITION

I. The petition does not satisfy the Court's criteria for review.

The Sixth Circuit's unanimous decision is not in conflict with any decision of this Court or another court of appeals. This Court's review is not warranted.

1. Petitioners emphasize that *Coeur d'Alene* was a "fractured" opinion. Pet. 3, 12. As Petitioners explain, the *Coeur d'Alene* majority was comprised of separate

opinions written by Justice Kennedy and Justice O'Connor. Pet. 12. The opinion authored by Justice Kennedy, and joined by Chief Justice Rehnquist, found the presence of "special sovereignty interests" significant and urged a "case-by-case balancing approach" to the application of *Ex parte Young*. *Coeur d'Alene*, 521 U.S. at 270–80. The concurring opinion authored by Justice O'Connor, and joined by Justice Scalia and Justice Thomas, rejected a case-by-case balancing approach and pressed instead the "straightforward inquiry" of whether the complaint alleges an ongoing violation of federal law and seeks prospective relief. Pet. 13; *Coeur d'Alene*, 521 U.S. at 296.

The Court has *already* addressed and resolved this key disagreement in those separate opinions. *See Verizon Md., Inc.* v. *Pub. Serv. Comm'n of Md.*, 535 U.S. 645 (2002). In *Verizon*, the Fourth Circuit, relying on Justice Kennedy's *Coeur d'Alene* opinion, held that the plaintiffs could not bring an *Ex parte Young* suit against members of the Maryland Public Service Commission. *Id.* at 645. This Court rejected that analysis and adopted the "straightforward inquiry" set out in Justice O'Connor's *Coeur d'Alene* concurrence. *Id.* The Court concluded that the Fourth Circuit erred in holding that "special sovereignty interests" could justify barring plaintiffs' suit, even though it otherwise satisfied the requirements of *Ex parte Young*. *Id.* at 645–48; *Hill* v. *Kemp*, 478 F.3d 1236, 1259 (10th Cir. 2007) (Gorsuch, J.) (explaining that *Verizon* resolved the different formulations and gave "definitive" guidance).

Petitioners cite *Verizon* on a different point (Pet. 24), but do not acknowledge that *Verizon* addressed the disagreement in the separate *Coeur d'Alene* majority opinions.

Petitioners make a perfunctory argument that the Sixth Circuit's decision "conflict[s] with *Coeur d'Alene*" but make no effort to establish how that is so. Pet. 20. As the panel below explained, the tribe's suit in *Coeur d'Alene* differed from a typical *Ex parte Young* action in that the tribe sought the invalidity of *all* state statutes and regulations governing that land. Pet. App. 13a–14a. The tribe also sought fee title and "exclusive" use and control of the lands. Pet. App. 13a; *accord Virginia Office for Protection and Advocacy* v. *Stewart*, 563 U.S. 247, 257 (2011).

In stark contrast here, Enbridge seeks no such relief. Pet. App. 16a–19a. Enbridge's requested relief "would not deprive the state of '*substantially all* benefits of ownership and control' over the State's submerged lands." Pet. App. 15a. Petitioners do not address or specifically dispute this finding in their petition. There is no conflict to resolve between the decision below and *Coeur d'Alene.*

2. Petitioners' main argument is that the courts of appeals are divided over whether *Coeur d'Alene* applies to different facts: when the plaintiff seeks to "diminish, but not necessarily, extinguish" the State's ownership and control of state-owned lands. Pet. 16–20. Here, too, Petitioners fail to show a conflict.

Petitioners cite published decisions where the plaintiffs claimed to be the owners of the land at issue. Accordingly, the plaintiffs sought to extinguish—not merely diminish—the state's ownership and

sovereign control over lands. As the courts ruled in each of these cases, the facts were indistinguishable from those in *Coeur d'Alene*.

For example, in *Western Mohegan Tribe & Nation* v. *Orange County*, an Indian tribe sued the Governor of New York, claiming exclusive ownership and control over state-owned lands in ten different counties. 395 F.3d 18, 20 (2d Cir. 2004). The tribe tried to distinguish *Coeur d'Alene* by claiming it was seeking something less: so-called "Indian title." *Id*. at 22. The panel rejected this argument, explaining that Indian title was not merely the right to use the land. *Id*. Indian title, both as alleged and as a matter of law, enabled the tribe to own and "*exclude all others*, including holders of fee simple title, through state law possessory actions such as ejectment and trespass." *Id*. (emphasis in original). The tribe also sought a declaration that the state lands were "subject to" the tribe's ownership and thus not even within the state's regulatory jurisdiction. *Id*. at 23. Thus, the tribe's suit sought to *extinguish* the State's ownership and control of those lands. The Second Circuit ruled that "the action is squarely governed by *Coeur d'Alene* …." *Id*.

Similarly, in *Ysleta Del Sur Pueblo* v. *Laney*, the tribe claimed that a state highway maintenance facility was located on aboriginal tribal land and sued state officials for trespass and ejectment. 199 F.3d 281, 283–84 (5th Cir. 2000). "By seeking to eject [the state officials], the tribe is asking this court to determine that the state has no title to the property because title rests with the [tribe]." *Id*. at 290. The tribe argued in part that the Eleventh Amendment

did not apply because the land at issue was "ordinary land," not submerged lands. *Id.* The Fifth Circuit rejected this argument and ruled that *Coeur d'Alene* controlled. *Id.*

In *Lacano Investments, LLC* v. *Balash*, the plaintiffs sought to retroactively invalidate the state's title to the beds underlying certain waterways within the State of Alaska. 765 F.3d 1068, 1070–71, 1073 (9th Cir. 2014). The plaintiffs claimed they were "fee simple owners" of those beds. *Id.* at 1073. They sought to extinguish state ownership and control by prohibiting state officials—and ultimately the State—from claiming title to those beds. *Id.* at 1071. They also asked that the court "return full use and enjoyment of their property." *Id.* at 1073 (citation modified). The plaintiffs tried to distinguish *Coeur d'Alene* by saying that the State of Alaska could lawfully regulate the privately-owned beds, just as they do for other privately-owned property. *Id.* at 1075. The Ninth Circuit rejected this argument, ruling that the lawsuit would *divest* the state of its ownership and *sovereign* control over the beds. *Id.* at 1075–76. "This case presents the same issues as *Coeur d'Alene*." *Id.* at 1074.

Petitioners cite two other published decisions, but both are *consistent* with the decision below. *See* Pet. 18 n.7, citing *Silva* v. *Farrish*, 47 F.4th 78 (2d Cir. 2022) and *Ukechaug Indian Nation* v. *Seggos*, 126 F.4th 822 (2d Cir. 2025). In both *Silva* and *Ukechaung*, the tribes sought a declaration that they had the federal right to fish in state waters without being fined by state officials. *Silva*, 47 F.4th at 85; *Ukechaung*, 126 F.4th 830. The tribe did not seek

"exclusive" use of the land or the right to exclude others. *Silva*, 47 F.4th at 85. In each case, the Second Circuit ruled that the narrow *Coeur d'Alene* exception did not apply in those facts. *Silva*, 47 F.4th at 85; *Ukechaung*, 126 F.4th at 830.

The same is true here: Enbridge does not seek ownership or the right to exclude others from the bottomlands but rather seeks to bring state regulatory activities into compliance with federal law. The unanimous Sixth Circuit decision is thus consistent with all published decisions cited in the petition. There is no conflict to resolve.

Finally, Petitioners cite one unpublished decision, but that decision has no precedential value and is easily distinguishable. Pet. 18, citing *Baker Farms Inc.* v. *Hulse*, 54 F. App'x 404, 2002 WL 31687704 (5th Cir. Oct. 23, 2002) (unpublished). The Fifth Circuit did not detail any of the underlying facts in its opinion but the district court did. *See Baker Farms Inc.* v. *Hulse*, 5:01-cv-00315-C, ECF No. 12 (N.D. Tex. Apr. 11, 2002).

As the district court explained, the plaintiffs in *Baker Farms* claimed "prescriptive" easement rights to a water well on state-owned property but there was *no* record of any such easements. *Id.* at 2. And no court had ever recognized plaintiffs' alleged easements. *See id.* After state officials refused to recognize the alleged easements, the plaintiffs filed a Section 1983 action for damages alleging they had been unlawfully deprived of "a property interest." *Id.* at 4. The court explained: "If no easements exist, Plaintiff lacks any property interest of which Defendants could have been deprived." *Id.* at 6. The

district court ruled, and the Fifth Circuit agreed, that plaintiffs were seeking a prescriptive easement from the State without naming the State as a defendant. *Id*. at 6; *Baker Farms*, 54 F. App'x 404.

By contrast here, the existence of the easement is undisputed. Pet. App. 6a. In fact, Petitioners admitted in their answer that Michigan had granted Enbridge's predecessor an Easement on April 23, 1953 to operate Line 5 on the bottomlands. Dist. Dkt. 110 at 9, citing the Easement attached to Enbridge's complaint. As the panel below explained, "Enbridge's claims pertain only to its *ongoing* easement on state-owned land …." Pet. App. 16a (emphasis added). Unlike in *Baker Farms*, Enbridge does not seek damages or property interests but only prospective relief to prevent Petitioners from violating federal law. Pet. App. 15a.

3. Petitioners try to manufacture a conflict with *Baker Farms* by saying that the State of Michigan here "invoked the easement's express termination clause" and the termination became effective on May 12, 2021. Pet. 2, 16. The petition further states: "There has been no restraining order or injunction preventing that occurrence." Pet. 24. But this new portrayal of the facts is not consistent with the district court record or Petitioners' own position below.

The State did not purport to follow the easement's express termination clause in the Notice of Revocation and Termination. Dist. Dkt. 1-1 at 5, 13. Instead, upon issuing the Notice, the State filed its own lawsuit against Enbridge seeking a declaration that the Notice was valid and enforceable—i.e., that the 1953 Easement was void from its inception and that

Enbridge had breached the Easement's safety terms. Pet. App. 8a; Dist. Dkt. 39-1 at 3. But the State later *voluntarily dismissed* its own complaint and said that it would pursue a shutdown of Line 5 through the Attorney General's pending action. Dist. Dkt. 39-1 at 3. Further, Enbridge did not seek any restraining order or injunction of the May 12 date because the State's counsel expressly represented on the record that the State would take no steps to enforce the Notice while the case was in federal court litigation. Dist. Dkt. 17 at 35–36.

In any event, sovereign immunity must be determined by reference to "the complaint" brought by Enbridge. *Verizon*, 535 U.S. at 645. Petitioners say that Enbridge's complaint "asks a federal court to set aside the State's completed action and to restore an easement that no longer exists." Pet. 24; *see id.* at 2, 16 (asserting that Enbridge seeks an order "to reinstate" the easement). Again, this is not what the complaint says.

Enbridge did not seek *any* relief under the 1953 Easement, much less seek to restore or reinstate that easement. Pet. App. 20a, 25a; Dist. Dkt. 158 at 15–16. Instead, as the courts below found, *Petitioners* injected the Easement into this case by claiming that enforcement of federal law would violate the easement terms. Pet. App. 21a, 36a. The panel rejected this argument: "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." Pet. App. 21a. As this Court recognized, a state

official cannot claim sovereign immunity by saying the act they want to perform that violates federal law also violates the State's contract. *Georgia R.R. & Banking Co.* v. *Redwine*, 342 U.S. 299 (1952).

In short, Enbridge does not seek any property right or other relief against the State of Michigan. Enbridge instead seeks merely to bring state regulatory activities into compliance with federal law. There is no split of authority for this Court to resolve and no reason to grant certiorari.

II. The case is a poor vehicle.

This case is a poor vehicle. First, the facts of this case do not even fit the Question Presented, which asks whether the Eleventh Amendment applies when the complaint seeks to "diminish, but not necessarily extinguish, the State's ownership and control" over the bottomlands. Pet. i. As explained, Enbridge does not seek ownership in the Straits bottomlands. And as the panel below concluded, the State has the right to sell its land subject to the Easement. Pet. App. 16a.

Nor does Enbridge seek *to diminish* state sovereign control over the Straits bottomlands. Enbridge seeks to bring the state regulatory activities into compliance with federal law. Pet. App. 15a. As alleged in Enbridge's complaint, States have no authority to directly regulate the safety of Line 5's operations. Dist. Dkt. 1 at ¶ 12; 49 U.S.C. 60104(c) ("A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation."). Enbridge's Line 5 thus remains subject to state regulatory control provided that such regulatory activities do not violate federal law. Pet. App. 15a. As the panel below held,

the effect of Enbridge's relief would not remove the bottomlands from the State's regulatory jurisdiction or prevent state officers from exercising their governmental powers and authority over the land. Pet. App. 15a. Hence, Petitioners premise their entire petition on an issue that does not reflect the record in this case.

Second, this case is also a poor vehicle because Line 5 is not interfering with the State's use and enjoyment of the Straits bottomlands. Enbridge's dual pipelines were installed on the bottomlands over 70 years ago. Pet. App. 6a. This case is not like *Baker Farms* where the plaintiffs wanted to excavate state lands in order "to lay new electric line to the well." *Baker Farms*, 5:01-cv-00315-C, ECF No. 12 at 3. Nor is Enbridge's suit anything like the other cases cited in the petition where the plaintiffs sought to extinguish the state's control over a vast reach of state lands and waters. *Coeur d'Alene*, 521 U.S. at 265; *Western Mohegan,* 395 F.3d at 22; *Ysleta Del Sur Pueblo,* 199 F.3d at 290.

Here, the analysis is even further afield. Enbridge's dual pipelines are each 20 inches in diameter and traverse the Straits bottomlands for about 4 miles. The products run through the pipes. In the 70-plus years of Line 5's operations on the Straits, Petitioners have never claimed that Line 5 is somehow interfering with any use and enjoyment of the bottomlands. Instead, Petitioners sought to shut down Line 5 based on their belief that those operations present "an inherent and unreasonable risk" of release sometime in the future. Dist. Dkt. 1-1 at 10. Petitioners' shutdown order violates the

preemptive federal scheme governing pipeline operations. The federal appellate courts are consistent on express preemption of state law in this area. *E.g.*, *Couser* v. *Shelby County, Iowa*, 139 F.4th 664 (8th Cir.), *cert denied*, 2026 WL 79941 (2026); *Olympic Pipe* v. *City of Seattle*, 437 F.3d 872 (9th Cir. 2006).

Finally, this case is a poor vehicle because of factual disputes raised in the petition. Petitioners repeatedly claim that Enbridge seeks "to reinstate" an easement lawfully terminated by the State. Pet. 2, 16, 23, 24. They also claim Enbridge seeks a declaration that essential terms and conditions in the 1953 easement are enforceable. Pet. 21. But the courts below correctly found the opposite: Enbridge seeks no relief under the 1953 Easement, and it was *Petitioners* who were injecting the 1953 Easement into the case, not Enbridge. Pet. App. 20a–21a, 36a. As the Sixth Circuit said, "none of Enbridge's claims depend on the terms of the easement itself, but on wholly separate federal laws and the Constitution." Pet. App. 25a. While Petitioners now seem to challenge these findings, the very existence of a factual dispute makes this case an even less appropriate vehicle to resolve the question presented. Pet. 24 (asserting, incorrectly, that the material facts are undisputed). For this reason too, the petition should be denied.

III. The Sixth Circuit's unanimous decision is correct.

Unable to identify any split, Petitioners say the decision below is wrong. Pet. 20–24. But they fail to show any legal error in that unanimous decision. The

Sixth Circuit thoroughly analyzed the governing precedent and followed it here.

As the courts have repeatedly explained, *Coeur d'Alene* is a narrow and rarely invoked exception to the *Ex parte Young* rule. *E.g.*, *Locano Investments*, 765 F.3d at 1074; *Musogee (Creek) Nation* v. *Rollin*, 119 F.4th 881, 890 (11th Cir. 2024). The *Ex parte Young* doctrine rests on the recognition that "[r]emedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law." *Green* v. *Mansour*, 474 U.S. 64, 68 (1985). In *Coeur d'Alene*, rather than seeking "to bring the State's regulatory scheme into compliance with federal law," the tribe's suit sought to divest the State of all regulatory authority to regulate the disputed lands and divest the State of its ownership. 521 U.S. at 289, 291.

As the panel explained here, Enbridge's requested relief is "not nearly as intrusive into state sovereignty as the Tribe's requested relief in *Coeur d'Alene*." Pet. App. 15a. It "would not deprive the state of 'substantially all benefits of ownership and control' over the State's submerged lands." *Id.*, quoting *Coeur d'Alene*, 521 U.S. at 282. This ruling is fully consistent with *Coeur d'Alene* and the decisions cited in the petition. There is no error to correct.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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