

No. _____

In the Supreme Court of the United States

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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, APPLICANTS

V.

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

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR
A WRIT OF CERTIORARI TO U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT**

**To the Honorable Brett M. Kavanaugh,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Sixth Circuit**

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Dated: August 28, 2025

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

Pursuant to Rules 13.5, 22, 30.2, and 30.3 of the Rules of this Court, applicants Gretchen Whitmer, Governor of the State of Michigan, and Scott Bowen, Director of the Michigan Department of Natural Resources (the Michigan Officials), respectfully request a 60-day extension of time, to and including November 13, 2025, within which to file a petition for a writ of certiorari in this case. The Sixth Circuit issued its opinion and order on April 23, 2025, and denied rehearing on June 16, 2025. (Appendix to this Application, App’x 1–18.) Absent an extension of time, the petition for writ of certiorari would be due on September 15, 2025. This application is timely because it has been filed more than 10 days prior to that date. See S. Ct. R. 13.5. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1254(1).

In support of this request, the Michigan Officials state as follows:

1. This dispute centers on when the Eleventh Amendment bars a plaintiff from suing state officials in federal court to establish a right to permanently use and occupy state-owned submerged bottomlands.

2. Upon its admission to the union in 1837, the State of Michigan acquired title to the bottomlands of the Straits of Mackinac, which run between Michigan’s Upper and Lower Peninsulas. See *Utah Div. of State Lands v. United States*, 482 U.S. 193, 195–96 (1987). These submerged bottomlands have “a unique status in the law” and are “infused with a public trust the State itself is bound to respect.” *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 281 (1997). Accordingly, this Court has held that a suit for injunctive and declaratory relief against state officials cannot proceed in

federal court when it is “the functional equivalent of a quiet title action which implicates [the State’s] special sovereignty interests” in such lands. *Id.*

3. In November 2020, Michigan revoked and terminated an easement that purported to authorize Respondents to use and occupy an approximately four-mile stretch of the submerged bottomlands of the Straits of Mackinac for the purpose of operating a pipeline. (App’x 4.) The revocation was based on violations of the public trust doctrine; the termination was based on breaches of the easement’s terms and an express termination clause that reserved the State’s right to terminate the easement in the event of breach. (See *id.*)

4. Respondents sued the Michigan Officials in their official capacities in the U.S. District Court for the Western District of Michigan, seeking declaratory and injunctive relief. (*Id.*) Respondents alleged that any action that would interfere with their continued use and occupation of the State’s submerged lands, including revocation or termination of the easement, violated federal law. (App’x 5.)

5. The Michigan Officials moved for dismissal based on Eleventh Amendment sovereign immunity from suit in federal court.

6. The District Court denied the motion, and the Sixth Circuit affirmed. (App’x 1–17.) In doing so, the Sixth Circuit held that *Coeur d’Alene* applies only where a plaintiff seeks to “extinguish the State’s ability to exercise its regulatory and sovereign authority over the disputed lands entirely,” not where a plaintiff seeks to permanently use and occupy state-owned submerged lands. (App’x 11.) Other circuits have not read the decision so narrowly. See *Western Mohegan Tribe and Nation v.*

Orange County, 395 F.3d 18, 22–23 (2d Cir. 2004) (relying on *Coeur d’Alene* to bar an action seeking use and occupation of State-owned submerged lands); *Baker Farms Inc. v. Hulse*, 54 F. App’x 404 (5th Cir. 2002) (relying on *Coeur d’Alene* to bar an action claiming a prescriptive easement over state-owned land).

7. The Michigan Officials have not yet made a final determination whether to file a petition for a writ of certiorari in this case. The additional time sought in this application is needed to continue consultation within Michigan’s government and to assess the legal and practical impact of the court of appeals’ ruling. If the Michigan Officials decide to file a petition, additional time is also needed to allow for its preparation and printing.

8. Good cause exists for an extension of time in this case. The court of appeals’ decision implicates complex and important issues of state sovereignty and the scope of the Eleventh Amendment, which require careful consideration and coordination amongst multiple state agencies. Additionally, both counsel of record, Michigan Solicitor General Ann Sherman and Assistant Attorney General Keith Underkoffler, have numerous deadlines before and after September 15, 2025, including merits briefing in a related case before this Court, *Enbridge Energy, LP, et al. v. Nessel*, No. 24-783, which will commence this week. Counsel need time to thoroughly research and prepare arguments for this Court’s consideration.

9. This case presents issues of great importance to the People of Michigan, and no meaningful prejudice would arise from the granting of the requested extension.

WHEREFORE, the Michigan Officials respectfully request a 60-day extension of time, to and including November 13, 2025, within which to file a petition for a writ of certiorari.

Respectfully submitted,

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