No. 24-783

In the Supreme Court of the United States

ENBRIDGE ENERGY, LP, ET AL.,

Petitioners,

v.

DANA NESSEL, ATTORNEY GENERAL OF MICHIGAN, ON BEHALF OF THE PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC. AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

STEPHANIE A. MALONEY
JONATHAN D. URICK
U.S. CHAMBER LITIGATION CENTER
1615 H St., NW
Washington, DC 20062

Counsel for the Chamber of Commerce of the United States of America

MARY ELIZABETH MILLER
SHANNON G. DENMARK
Counsel of Record
LEHOTSKY KELLER COHN LLP
200 Massachusetts Ave., NW
Suite 700
Washington, DC 20001
(512) 693-8350
shannon@lkcfirm.com

Counsel for Amici Curiae

(additional counsel listed on inside cover)

ELIZABETH MILITO
ROB SMITH
NFIB SMALL BUSINESS LEGAL
CENTER, INC.
555 12th St., NW
Suite 1001
Washington, DC 20004

Counsel for National Federation of Independent Business Small Business Legal Center, Inc.

TABLE OF CONTENTS

Table of Authorities ii

Interest of *Amici Curiae* 1

Introduction and Summary of Argument 3

Argument 5

I. This Court Should Interpret Section 1446(b)(1) to Allow for a Limited Equitable Exception to Safeguard Federal Jurisdiction Against Procedural Gamesmanship. 5

A. The removal right is critically important for defendants and federal courts. 5

B. Courts have long guarded their federal jurisdiction against gamesmanship. 8

C. A limited equitable exception to Section 1446(b)(1) protects federal jurisdiction from procedural gamesmanship. 13

D. This case exemplifies the need for such a limited equitable exception. 15

II. This Court Should Not Apply a Presumption Against Removal 20

Conclusion 23

TABLE OF AUTHORITIES

Page(s)

Cases

Abramski v. United States,
573 U.S. 169 (2014) 21

Ala. Great S. Ry. Co. v. Thompson,
200 U.S. 206 (1906) 9

Ardoin v. Stine Lumber Co.,
298 F. Supp. 2d 422 (W.D. La. 2003) 9

Back Doctors Ltd. v. Metro. Prop. & Cas. Ins. Co.,
637 F.3d 827 (7th Cir. 2011) 21

Breuer v. Jim's Concrete of Brevard, Inc.,
538 U.S. 691 (2003) 21

Caterpillar Inc. v. Williams,
482 U.S. 386 (1987) 5

Chesapeake & O.R. Co. v. Cockrell,
232 U.S. 146 (1914) 8

Colt Indus. Operating Corp. v. Index-Werke K.G.,
739 F.2d 622 (Fed. Cir. 1984) 19

Dart Cherokee Basin Operating Co. v. Owens,
574 U.S. 81 (2014) 20, 21

Dufrene v. Petco Animal Supplies Stores, Inc.,
934 F. Supp. 2d 864 (M.D. La. 2012) 11

England v. La. State Bd. of Med. Examiners,
375 U.S. 411 (1964) 14

Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.,
545 U.S. 308 (2005) 7, 20

Gunn v. Minton,
568 U.S. 251 (2013) 20

Kucana v. Holder,
558 U.S. 233 (2010) 21

Lexmark Int'l, Inc. v. Static Control Components, Inc.,
572 U.S. 118 (2014) 3

Lincoln Prop. Co. v. Roche,
546 U.S. 81 (2005) 6

Martin v. Hunter's Lessee,
14 U.S. (1 Wheat.) 304 (1816) 5, 6

Mata v. Lynch,
576 U.S. 143 (2015) 7

McKinney v. Bd. of Trs. of Mayland Cmty. Coll.,
955 F.2d 924 (4th Cir. 1992) 15

Michigan v. Enbridge Energy, Ltd. P'ship,
571 F. Supp. 3d 851 (W.D. Mich. 2021) 4, 15, 18

Murphy Bros. v. Michetti Pipe Stringing, Inc.,
526 U.S. 344 (1999) 20

Negonsott v. Samuels,
507 U.S. 99 (1993) 21

Nessel v. Enbridge Energy, LP,
104 F.4th 958 (6th Cir. 2024) 13, 20, 21

Nessel v. Enbridge Energy Ltd. P'ship,
2022 WL 19005621 (W.D. Mich. Aug. 18, 2022) 15, 19

Plymouth Consol. Gold Mining Co. v. Amador & Sacramento Canal Co.,
118 U.S. 264 (1886) 8

Powers v. Chesapeake & O. Ry. Co.,
169 U.S. 92 (1898) 9

Pretka v. Kolter City Plaza II, Inc.,
608 F.3d 744 (11th Cir. 2010) 15

Reece v. Bank of N.Y. Mellon,
760 F.3d 771 (8th Cir. 2014) 11

Royal Canin U.S.A., Inc. v. Wullschleger,
145 S. Ct. 41 (2025) 10

Shamrock Oil & Gas Corp. v. Sheets,
313 U.S. 100 (1941) 21

Sprint Commc'ns, Inc. v. Jacobs,
571 U.S. 69 (2013) 8

St. Paul Mercury Indem. Co. v. Red Cab Co.,
303 U.S. 283 (1938) 10, 14

Staples v. Joseph Morton Co.,
444 F. Supp. 1312 (E.D.N.Y. 1978)..... 12

Susan B. Anthony List v. Driehaus,
573 U.S. 149 (2014) 7

Syngenta Crop Prot., Inc. v. Henson,
537 U.S. 28 (2002) 21

Tedford v. Warner-Lambert Co.,
327 F.3d 423 (5th Cir. 2003) 9

Tennessee v. Davis,
100 U.S. 257 (1879) 5, 8

Wecker v. Nat'l Enameling & Stamping Co.,
204 U.S. 176 (1907) 8

White v. White,
32 F. Supp. 2d 890 (W.D. La. 1998)..... 12

Williams v. Costco Wholesale Corp.,
471 F.3d 975 (9th Cir. 2006) 10

Statutes & Treaties

28 U.S.C. § 1331 ..... 7, 13, 16

28 U.S.C. § 1332 ..... 7, 13, 16

28 U.S.C. § 1446 .... 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 20

28 U.S.C. § 1453 11

Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758 ..... 10, 12

Judiciary Act of 1789, ch. 20, § 12, 1 Stat. 73 5

Agreement Between the Government of the United States and the Government of Canada Concerning Transit Pipelines, Jan. 28, 1977, 28 U.S.T. 7449 17

Other Authorities

About Line 5, Enbridge, https://perma.cc/6ZWA-MNSW 16

Kevin M. Clermont & Theodore Eisenberg, *Do Case Outcomes Really Reveal Anything About the Legal System? Win Rates and Removal Jurisdiction*, 83 Cornell L. Rev. 581 (1998) 6

Enbridge, *Line 5 Wisconsin Segment Relocation Project* (Aug. 2020), https://perma.cc/C2KJ-WVD5 17

House of Commons, Special Comm. on the Econ. Relationship Between Canada and the U.S., *Enbridge's Line 5: An Interim Report* (Apr. 2021), https://perma.cc/E4V2-E4ZN 17

Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 Am. U. L. Rev. 369 (1992) 6

Press Release, Gov. Gretchen Whitmer, *Governor Whitmer Takes Action to Protect the Great Lakes* (Nov. 30, 2021), https://perma.cc/B4R7-CZ2B 18

S. Rep. No. 109-14 (2005) 14

James M. Underwood, *From Proxy to Principle: Fraudulent Joinder Reconsidered*, 69 Alb. L. Rev. 1013 (2006) 6

U.S. Chamber of Commerce, Inst. for Legal Reform, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* (May 2024), https://perma.cc/WCW2-TXJA..... 6

Bernard L. Weinstein & Terry L. Clower, *Consumer Energy Alliance, Enbridge Line 5: Shutdown Impacts on Transportation Fuel* (Feb. 2022), https://perma.cc/442E-GDBV..... 16

Charles Alan Wright et al., *Federal Practice & Procedure* (4th ed. 2025) 7

INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The National Federation of Independent Business Small Business Legal Center, Inc. ("NFIB Legal Center") is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. ("NFIB"), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members.

---

[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Amici curiae have a strong interest in ensuring that federal courts' removal jurisdiction remains protected in the narrow circumstance where it is threatened by procedural gamesmanship. Members of *amici curiae* are frequently defendants in litigation filed by plaintiffs in state court, and they often seek to exercise their statutory right to remove such cases to federal court where appropriate to do so. In such cases, plaintiffs sometimes attempt to defeat federal jurisdiction through tactics like those deployed by the State of Michigan here.[2] *Amici curiae* thus have an interest in ensuring a correct understanding of the procedures for federal removal, as well as in manageable rules that enable federal courts to protect their jurisdiction in the face of forum manipulation.

[2] Unless otherwise noted, this brief uses the term "the State" to encompass the State of Michigan and its officers acting on its behalf—including the Attorney General in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case involves the generally applicable procedural time limit for removal in Section 1446(b)(1). Under that provision, a notice of removal in a civil action generally "shall be filed within 30 days after the receipt by the defendant … of a copy of the initial pleading." 28 U.S.C. § 1446(b)(1). Like other procedural time limits, this 30-day time limit in Section 1446(b)(1) ordinarily controls. But in certain limited circumstances, federal courts should recognize an equitable exception to safeguard their jurisdiction against procedural gamesmanship.

Since the beginning of our Republic, federal law has afforded defendants the right to remove a case from state to federal court where federal jurisdiction exists. That removal right is obviously important to the defendants who seek a federal forum for their dispute. But it is also critically important for federal courts, which have a "virtually unflagging" "obligation to hear and decide cases within [their] jurisdiction." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014) (citation and internal quotation marks omitted). In carrying out this obligation, courts regularly reject plaintiffs' attempts to defeat federal jurisdiction in a variety of contexts—including removal.

Courts should do the same when it comes to Section 1446(b)(1). Plaintiffs should not be permitted to manipulate Section 1446(b)(1)'s procedural time limit to escape a federal forum afforded by federal law. To allow plaintiffs to thwart the removal right in such a way would impede the judicial duty to exercise

federal jurisdiction. It would also pervert the design of Section 1446(b), in which Congress sought to curb forum manipulation of this kind.

This case proves the point: A federal court has already held that it is an "appropriate forum for deciding the[] disputed and substantial federal issues" at play in this dispute over the Line 5 international oil-and-gas pipeline. *Michigan v. Enbridge Energy, Ltd. P'ship*, 571 F. Supp. 3d 851, 862 (W.D. Mich. 2021). The claims at issue implicate important federal interests in, among other things, foreign relations and treaty obligations.

But because of the State's crafty maneuvers, the Sixth Circuit held that a federal forum is no longer available. At a high level, the State ran out the clock for removal in this case by filing a parallel case, fighting over removal in that case for a year, agreeing to hold this case in abeyance during that fight, and then dismissing the parallel case once federal jurisdiction was determined to exist. According to the Sixth Circuit, this case is stuck in state court despite Congress's conferral of federal jurisdiction over the important federal questions involved. And the parties (and district court) have wasted years' worth of time and resources only to end up right where they started.

In sum, while Section 1446(b)(1)'s generally applicable procedural time limit should ordinarily be enforced, this Court should recognize a limited equitable exception to protect federal jurisdiction against procedural gamesmanship.

ARGUMENT

I. This Court Should Interpret Section 1446(b)(1) to Allow for a Limited Equitable Exception to Safeguard Federal Jurisdiction Against Procedural Gamesmanship.

A. The removal right is critically important for defendants and federal courts.

The federal removal right was introduced with the Judiciary Act of 1789, ch. 20, § 12, 1 Stat. 73, 79, and "has been in constant use ever since," *Tennessee v. Davis*, 100 U.S. 257, 265 (1879). This removal right is critically important both to the defendants seeking to invoke federal jurisdiction and to the courts obligated to exercise it.

1. The removal right is important to defendants. That right gives effect to the notion that the federal judicial power "was not to be exercised exclusively for the benefit of parties who might be plaintiffs, [who] … elect the national forum, but also for the protection of defendants who might be entitled to try their rights, or assert their privil[e]ges, before the same forum." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 348 (1816).

To be sure, a plaintiff is "the master of the claim." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). A plaintiff generally may choose whom to sue, what to sue about, and—as relevant here—where to sue. If a plaintiff is entitled to a federal forum, it usually may design its complaint to invoke that forum or not. But the federal removal statutes in turn give defendants

"a corresponding opportunity" to invoke a federal forum if they are so entitled and if they so wish. *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005); *see also Martin*, 14 U.S. (1 Wheat.) at 349 (explaining that the federal removal statutes provide defendants with "equal rights" to a federal forum).

The removal right is particularly important for business defendants. Plaintiffs' attorneys often sue business defendants in state court because of the perception that those courts are more likely to favor nonbusiness parties. *See* U.S. Chamber of Commerce, Inst. for Legal Reform, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* at 13-14 (May 2024), https://perma.cc/WCW2-TXJA ("Personal injury lawyers have long preferred to try cases in state courts—which they often perceive as having more plaintiff-friendly judges, jurors, and court rules—than more neutral, federal courts with lifetime-appointed judges."); *cf.* Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 Am. U. L. Rev. 369, 412-13, 424 (1992) ("Defense attorneys' forum preference for federal court is based on expectations of lesser hostility there toward business litigants (80% to 85% of defendants are businesses).").[3] The statutory

[3] This is not a hypothetical risk, particularly for business defendants. *See, e.g.*, James M. Underwood, *From Proxy to Principle: Fraudulent Joinder Reconsidered*, 69 Alb. L. Rev. 1013, 1014 (2006) ("[A] plaintiff's ability to avoid removal ... could mean the difference between winning and losing." (citation omitted)); Kevin M. Clermont & Theodore Eisenberg, *Do Case Outcomes*

removal right ensures that business defendants are not subject to "the local prejudices of state courts" when federal issues are in play. 14C Charles Alan Wright et al., *Federal Practice & Procedure* § 3721 (4th ed. 2025).

2. The removal right also enables federal courts to exercise their jurisdiction. Plaintiffs regularly bring lawsuits in state court that properly belong in federal court and over which federal courts have statutorily guaranteed jurisdiction. Those suits may, for example, involve diverse parties and a sufficiently high amount in controversy. *See* 28 U.S.C. § 1332(a). Or—as here—they may involve important federal questions, *see id.* § 1331, over which Congress has sought to guarantee "the experience, solicitude, and hope of uniformity that a federal forum offers," *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005).

If federal jurisdiction exists and is invoked, federal courts have a duty to protect and exercise it. "[W]hen a federal court has jurisdiction, it also has a 'virtually unflagging obligation … to exercise' that authority." *Mata v. Lynch*, 576 U.S. 143, 150 (2015) (citation omitted); *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) ("'[A] federal court's obligation to hear and decide' cases within its jurisdiction 'is virtually unflagging.'" (citation

---

Really Reveal Anything About the Legal System? Win Rates and Removal Jurisdiction, 83 Cornell L. Rev. 581, 581 (1998) ("Plaintiffs' win rates in removed cases are very low, compared … to state cases.").

omitted)). Courts have "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (citation omitted).

This judicial duty is particularly salient in cases, like this one, presenting important federal questions. As this Court has recognized, federal question jurisdiction is crucial to ensuring the supremacy of federal law, as well as its "uniform and consistent administration." *Tennessee*, 100 U.S. at 265-66. When a federal court's jurisdiction over federal questions is evaded, the federal "judicial power is, at least, temporarily silenced, instead of being at all times supreme." *Id.* at 266.

B. Courts have long guarded their federal jurisdiction against gamesmanship.

As this Court instructed more than a century ago, "[f]ederal courts should not sanction devices intended to prevent a removal to a Federal court where [a defendant] has that right." *Wecker v. Nat'l Enameling & Stamping Co.*, 204 U.S. 176, 186 (1907). Courts have since followed that directive, protecting their federal jurisdiction against gamesmanship in a variety of contexts.

1. ***Fraudulent Joinder.*** This Court has recognized that the "right of removal cannot be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy." *Chesapeake & O.R. Co. v. Cockrell*, 232 U.S. 146, 152 (1914); *see also Plymouth Consol. Gold Mining Co. v. Amador & Sacramento Canal Co.,* 118

U.S. 264, 270 (1886) (noting concerns over "sham defendants"). This principle guards against gamesmanship by preventing plaintiffs' "attempts to wrongfully deprive parties entitled to sue in the Federal courts of the protection of their rights in those tribunals." *Ala. Great S. Ry. Co. v. Thompson*, 200 U.S. 206, 218 (1906).

Courts have accordingly foreclosed plaintiffs from using the parties to an action to weaponize procedural time limits and defeat federal jurisdiction. *See, e.g.*, *Powers v. Chesapeake & O. Ry. Co.*, 169 U.S. 92, 98-102 (1898) (allowing equitable exception to removal statute where plaintiff "discontinued" action against nondiverse defendants after procedural time limit for removal had lapsed); *Tedford v. Warner-Lambert Co.*, 327 F.3d 423, 425, 427-28 (5th Cir. 2003) (allowing equitable exception to Section 1446's one-year time limit where plaintiff engaged in "forum manipulation" through "eleventh-hour joinder and then nonsuit" of a nondiverse defendant); *Ardoin v. Stine Lumber Co.*, 298 F. Supp. 2d 422, 428 (W.D. La. 2003) (permitting equitable extension to Section 1446's one-year time limit where "plaintiffs attempted to manipulate the statutory rules for determining federal removal jurisdiction" by dismissing nondiverse defendants after one year had lapsed).[4]

---

[4] Prior to 2011, Section 1446 provided simply that "a case may not be removed on the basis of [diversity jurisdiction] more than 1 year after commencement of the action." *See* 28 U.S.C. § 1446(b) (2010). Plaintiffs sought to circumvent that provision by avoiding triggering federal jurisdiction until the one-year mark. In 2011,

2. *Claim Substance.* This Court has also guarded federal jurisdiction against a plaintiff's manipulation of the value of his claims to "defeat [the removal right] and bring the cause back to the state court at his election." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 294 (1938). If a plaintiff could "reduce the amount of his demand to defeat federal jurisdiction[,] the defendant's supposed statutory right of removal would be subject to the plaintiff's caprice." *Id.*[5]

Other courts have similarly rejected plaintiffs' efforts to manipulate the substance of their claims to defeat federal jurisdiction. *See, e.g.*, *Williams v. Costco Wholesale Corp.*, 471 F.3d 975, 976 (9th Cir. 2006) (per curiam) (holding that a second removal notice

---

Congress therefore amended Section 1446 to provide that the one-year time limit does not apply if "the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action." 28 U.S.C. § 1446(c)(1); *see* Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758, 760. This amendment demonstrates Congress's understanding that the procedural time limits in Section 1446(c)(1)—like those in Section 1446(b)—are amenable to jurisdiction-protecting exceptions.

[5] This Court's recent decision in *Royal Canin U.S.A., Inc. v. Wullschleger*, 145 S. Ct. 41 (2025), cannot be read as an endorsement of crafty procedural tactics to avoid federal jurisdiction. That case involved a plaintiff's efforts to "amend[] her complaint" to "eliminate[] claims." *Id.* at 30. And, of course, a plaintiff "gets to determine which substantive claims to bring." *Id.* at 35; *see supra* p.5. The State here is not seeking to modify its substantive claims in any way; it is instead manipulating procedure with an eye to defeating federal jurisdiction. *See infra* pp.15-20.

expressly invoking diversity jurisdiction was not required because diversity jurisdiction existed at the time of removal, even though the only basis for removal articulated at the time of removal was federal question jurisdiction and the federal claim had since been eliminated); *Dufrene v. Petco Animal Supplies Stores, Inc.*, 934 F. Supp. 2d 864, 866 (M.D. La. 2012) (allowing equitable tolling under Section 1446's one-year time limit where plaintiff engaged in "forum manipulation by concealing the true value of her claim for over a year").

3. *Class Actions.* Courts likewise prevent plaintiffs from manipulating class actions to defeat federal jurisdiction. In *Reece v. Bank of New York Mellon*, for example, the Eighth Circuit held that the one-year time limit in Section 1446(c)(1) did not apply to class actions. 760 F.3d 771, 775-76 (8th Cir. 2014). In doing so, the court relied on another removal statute providing that "the 1-year limitation under section 1446(c)(1) shall not apply" when a "class action [is] removed to a district court of the United States in accordance with section 1446." *Id.* (quoting 28 U.S.C. § 1453(b)). As that court explained, any other reading of the statutes "would thwart clear congressional intent by permitting plaintiffs to evade federal jurisdiction through clever gamesmanship: filing an individual complaint in state court, waiting a year, then transforming the original complaint into a class action by amendment, when it would be too late for a defendant, now facing a class action, to file a notice of removal." *Id.* at 776.

4. *Delay.* Courts have likewise rejected plaintiffs' efforts to delay development of their case to avoid removal. Prior to the amendment of Section 1446(b), courts allowed equitable exceptions to Section 1446's time limits when plaintiffs delayed service to run out the clock.[6] *See, e.g.*, *White v. White*, 32 F. Supp. 2d 890, 893 (W.D. La. 1998) (allowing equitable exception to Section 1446's one-year time limit where plaintiff set a "removal trap" by "first serving an unsophisticated defendant who is the least likely to attempt removal" and waiting "until 30 days has elapsed" to "serv[e] the more sophisticated defendants who are likely to attempt removal"). And courts have also allowed equitable exceptions when plaintiffs used deceit to achieve delay. *See, e.g.*, *Staples v. Joseph Morton Co.*, 444 F. Supp. 1312, 1313-14 (E.D.N.Y. 1978) (allowing equitable tolling under Section 1446's 30-day limit where defendant, "relying upon plaintiff's agreement to discontinue the action," did not remove the action within 30 days).

---

[6] Prior to 2011, Section 1446(b) did not clearly explain which defendant's receipt of the complaint triggered the 30-day time limit—the *first* defendant or *any* defendant. *See* 28 U.S.C. § 1446(b) (2010). Plaintiffs sought to exploit that ambiguity by delaying service to some defendants until after the removal deadline had passed. In 2012, Congress therefore amended Section 1446(b) to provide that "*[e]ach defendant* shall have 30 days after receipt by or service on that defendant of the initial pleading or summons … to file the notice of removal." 28 U.S.C. § 1446(b)(2)(B) (emphasis added); *see* 125 Stat. at 760. This amendment, too, demonstrates Congress's desire to insulate Section 1446(b)'s time limits from procedural gamesmanship.

In each of these contexts, courts have rejected efforts to avoid federal jurisdiction through procedural gamesmanship.

C. A limited equitable exception to Section 1446(b)(1) protects federal jurisdiction from procedural gamesmanship.

The Sixth Circuit in this case held that "there are *no* equitable exceptions to [Section 1446(b)'s] deadlines for removal," which it deemed "mandatory." *Nessel v. Enbridge Energy, LP*, 104 F.4th 958, 961, 971 (6th Cir. 2024). *Amici curiae* agree that Section 1446(b)(1)'s 30-day time limit is generally mandatory. But the long judicial tradition of protecting federal jurisdiction counsels against reading Section 1446(b)(1) as the Sixth Circuit did here. As Petitioners ably explain, courts presumptively have the authority to recognize equitable exceptions to procedural time limits. *See* Petrs.' Br. 32-33. This Court should recognize a limited equitable exception to Section 1446(b)(1) that safeguards federal jurisdiction and discourages forum manipulation.

1. Procedural gamesmanship cannot be permitted to thwart the fundamental judicial duty to protect and exercise federal jurisdiction. As noted, where federal jurisdiction exists and has been invoked, courts have a duty to exercise and protect it. *See supra* pp.7-8.

Congress has given federal courts jurisdiction over certain cases and controversies. *See, e.g.*, 28 U.S.C. § 1331 (federal question jurisdiction); *id.* § 1332(a) (diversity jurisdiction). And it has given defendants the right to invoke that federal jurisdiction

where it exists. *See, e.g.*, *id.* § 1441 (civil action removal); *id.* § 1442(a)(1) (federal officer removal).

To allow a plaintiff's procedural gamesmanship to defeat federal jurisdiction when a defendant has invoked it would be "at war with the unqualified terms in which Congress, pursuant to constitutional authorization, has conferred specific categories of jurisdiction upon the federal courts." *England v. La. State Bd. of Med. Examiners*, 375 U.S. 411, 415 (1964). And it would also cede the federal judicial duty to exercise that jurisdiction "to the plaintiff's caprice." *St. Paul*, 303 U.S. at 294. That is particularly true where, as here, a federal court has already determined that federal jurisdiction exists. *See infra* p.18.

2. Such a limited jurisdiction-protecting exception would also be of a piece with the limited jurisdiction-protecting exceptions contained in Section 1446's text. Section 1446(b)(3), for example, allows for removal more than 30 days after receipt of the complaint when it is only later "ascertained that the case is one which is … removable." 28 U.S.C. § 1446(b)(3). And although a defendant generally may not remove under Section 1446(b)(3) on the basis of diversity jurisdiction more than one year after an action begins, that time limit does not apply when "the plaintiff has acted in bad faith in order to prevent a defendant from removing the action." *Id.* § 1446(c)(1).

These textual provisions reveal Congress's intent to protect federal jurisdiction against a plaintiff's efforts to conceal the federal nature of the action. *See* S. Rep. No. 109-14 at 9 (2005) (explaining that Section 1446(b) was carefully designed "to prevent plaintiffs

from evading federal jurisdiction by hiding the true nature of their case"). Congress plainly did not "create[] the removal process … with one hand, and with the other give plaintiffs a bag of tricks to overcome" removal. *McKinney v. Bd. of Trs. of Mayland Cmty. Coll.*, 955 F.2d 924, 928 (4th Cir. 1992) (citation omitted).

D. This case exemplifies the need for such a limited equitable exception.

This case demonstrates the need for a limited equitable exception to Section 1446(b)(1) designed to protect federal jurisdiction against procedural gamesmanship. A federal court has already determined that federal court is an "appropriate forum for deciding the[] disputed and substantial federal issues" in the Line 5 controversy. *Michigan*, 571 F. Supp. 3d at 862. The only reason this dispute is not in federal court is because of the State's "attempt to gain an unfair advantage through the improper use of judicial machinery." *Nessel v. Enbridge Energy Ltd. P'ship*, 2022 WL 19005621, at *6 (W.D. Mich. Aug. 18, 2022), *rev'd and remanded*, 104 F.4th 958 (6th Cir. 2024). "To force a defendant to tarry in state court" like this when it has already "establish[ed] [its] right to be in federal court … cannot be what Congress had in mind when it enacted § 1446." *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 767 (11th Cir. 2010).

1. This case is the first of two virtually identical cases filed by the State seeking to shut down the Line 5 pipeline. The Michigan Attorney General filed this action in state court seeking declaratory and injunctive relief to prevent Enbridge from operating

Line 5. The complaint did not name completely diverse parties, *see* 28 U.S.C. § 1332(a), and did not allege any federal claims, *see id.* § 1331. Enbridge did not remove the nondiverse, state-law complaint to federal court.

The State of Michigan, its Governor, and its Department of Natural Resources later filed a second case in state court. Like this case, the State's second case sought declaratory and injunctive relief to prevent Enbridge from operating Line 5. But unlike this case, the State brought its second case after the Governor issued a notice of revocation and termination of the easement that allowed Line 5 to run through the Straits of Mackinac on November 13, 2020.

The negative consequences of that revocation and termination cannot be overstated. Up to 540,000 barrels of crude oil and natural gas liquids pass through Line 5 daily.[7] Those resources "heat homes and businesses, fuel vehicles, and power industry."[8] Residents and businesses in multiple midwestern States depend on the resources transported through Line 5—including Indiana, Michigan, Ohio, Pennsylvania, and Wisconsin.[9] So too do residents and

---

[7] *About Line 5*, Enbridge, https://perma.cc/6ZWA-MNSW.

[8] *Id.*

[9] *See, e.g.*, Bernard L. Weinstein & Terry L. Clower, *Consumer Energy Alliance, Enbridge Line 5: Shutdown Impacts on Transportation Fuel* at 3 (Feb. 2022), https://perma.cc/442E-GDBV ("If Line 5 shuts down, families and businesses across the Midwest will spend at least $23.7 billion more on gasoline and diesel over the following five years due to the resulting loss of

businesses in Canada. "Line 5 supplies four refineries in Ontario and two in Quebec."[10] And Line 5 is "the only pipeline that supplies propane to southern Ontario."[11]

Unsurprisingly, the Governor's notice of revocation and termination caught the attention of Canada. As the Government of Canada later explained, a Line 5 shutdown would "pose[] grave concerns" regarding "Canada's energy security and economic prosperity" as well as "Canada's ability to rely on bilateral treaties that are at the heart of the U.S.-Canada relationship."[12] In particular, Canada invoked the Agreement Between the Government of the United States and the Government of Canada Concerning Transit Pipelines, Jan. 28, 1977, 28 U.S.T. 7449. Pursuant to that treaty, the United States and Canada agreed not to interfere with each other's pipelines and to use specific out-of-court procedures for pipeline-related dispute resolution.[13]

---

production at area refineries."); Enbridge, *Line 5 Wisconsin Segment Relocation Project* at 2 (Aug. 2020), https://perma.cc/C2KJ-WVD5 ("Line 5 is a critical conduit for refineries in the region, delivering essential feedstock that is refined into propane, gas, diesel, jet fuel, and other products.").

[10] House of Commons, Special Comm. on the Econ. Relationship Between Canada and the U.S., *Enbridge's Line 5: An Interim Report* at 5, 7 (Apr. 2021), https://perma.cc/E4V2-E4ZN.

[11] *Id.* at 6-7.

[12] ECF 45 at 1-2, *Michigan v. Enbridge Energy, Ltd. P'ship*, No. 1:20-cv-01142-JTN-RSK (W.D. Mich. June 1, 2021).

[13] *Id.* at 8-10.

Given the significant foreign affairs concerns now put in play by the State's actions, Enbridge removed the second case to federal court. After it did so, the State agreed to hold this case in abeyance while the second suit was resolved. Months later, the State sought to remand the second case, but the federal court refused. As that court explained, "the scope of the property rights the State Parties assert necessarily turns on the interpretation of federal law that burdens those rights," including the 1977 treaty. *Michigan*, 571 F. Supp. 3d at 862. Federal court was therefore an "appropriate forum for deciding the[] disputed and substantial federal issues" presented by the Line 5 controversy. *Id.*

Seeking to avoid federal jurisdiction at all costs, the State promptly dismissed the second case. The Governor candidly admitted that the State was "shifting its legal strategy" because she "believe[d] the people of Michigan, and our state courts, should have the final say."[14]

The State sought to achieve that final say through this case, which it had agreed should be held in abeyance pending the outcome in federal court of the now-dismissed second case. But recall that this case involves the same pipeline dispute and seeks the same relief. *See supra* pp.15-16. If the State's second case raised federal issues appropriate for adjudication in a federal forum, then it stands to reason that this case

---

[14] Press Release, Gov. Gretchen Whitmer, *Governor Whitmer Takes Action to Protect the Great Lakes* (Nov. 30, 2021), https://perma.cc/B4R7-CZ2B.

does too. Enbridge thus removed this case on similar grounds, and the district court once again determined that, "as in the earlier case, a federal forum is a proper place to decide this controversy." *Nessel*, 2022 WL 19005621, at *4. As that court observed, "[i]t is apparent that [the State] seeks to avoid this federal forum" by "engag[ing] in procedural fencing and forum manipulation." *Id.* at *3, *6.

The Sixth Circuit, however, was unbothered by the State's tactics, and the State's gambit paid off. The blueprint for future plaintiffs seeking to pull off the same feat is plain: File an initial action in state court concealing a dispute's true federal nature. Then, after the removal deadline has passed, file a second action in state court and agree to hold the first in abeyance. If the second action is not successfully removed, mission accomplished. If the second action is successfully removed, dismiss it and proceed with the first (which is now unremovable)—and mission still accomplished.

2. This case demonstrates not only the lengths a plaintiff will go to in order to avoid federal jurisdiction, but also the steep costs such obfuscation can impose on defendants and courts. *See Colt Indus. Operating Corp. v. Index-Werke K.G.*, 739 F.2d 622, 623-24 (Fed. Cir. 1984) (recognizing that "procedural and semantic gamesmanship" can be "abusive of the judicial process and wasteful of resources of the parties and the court").

The present removal fight began nearly four years ago when Enbridge removed this case to federal court in December 2021. Since then, substantial party and

judicial resources have been expended in a dispute already deemed appropriate for adjudication in a federal forum. *See supra* pp.15-19. Those costs are compounded by the resources wasted on the first removal fight in a case the State voluntarily dismissed upon losing its remand motion. *See supra* p.18. Were it not for the State's tactics, these significant delays could have been avoided and party and judicial resources could have been saved.

* * *

Put simply, there can be no doubt that this case is of great importance "to the federal system as a whole." *Gunn v. Minton*, 568 U.S. 251, 260 (2013). A plaintiff's gamesmanship should not rob the federal system of "the experience, solicitude, and hope of uniformity that a federal forum [would] offer[] on [these] federal issues." *Grable*, 545 U.S. at 312.

II. This Court Should Not Apply a Presumption Against Removal.

In reading Section 1446(b)(1) to prohibit any equitable exception whatsoever, the Sixth Circuit reasoned "that removal statutes—such as § 1446(b)—are to be strictly construed against removal out of respect for state sovereignty." *Nessel*, 104 F.4th at 970. But this so-called "presumption against removal" finds no support in this Court's precedents. In fact, this Court has expressly refused to "decide whether such a presumption is proper." *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014); *cf. Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 357 (1999) (Rehnquist, C.J., dissenting)

(criticizing the majority for "depart[ing] from this Court's practice of strictly construing removal and similar jurisdictional statutes").[15]

Basic principles of statutory interpretation dictate that a presumption against removal would be improper. As this Court has explained, "[a] statute affecting federal jurisdiction must be construed both with precision and with fidelity to the terms by which Congress has expressed its wishes." *Kucana v. Holder*, 558 U.S. 233, 252 (2010) (citation omitted). Removal statutes—like all other statutes—should be interpreted according to their "text, structure, and purpose." *Abramski v. United States*, 573 U.S. 169, 185 (2014). In Judge Easterbrook's words, "[t]here is no presumption against federal jurisdiction in general, or removal in particular." *Back Doctors Ltd. v. Metro. Prop. & Cas. Ins. Co.*, 637 F.3d 827, 830 (7th Cir. 2011).

Rather than placing a thumb on the scale against removal, courts should read the removal statutes to "give effect to the will of Congress." *Negonsott v. Samuels*, 507 U.S. 99, 104 (1993) (citation omitted). And, as explained above, one of the chief congressional

---

[15] The Sixth Circuit cited two cases from this Court, both of which predate *Dart*. *See Nessel*, 104 F.4th at 970-71 (citing *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002), and *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108 (1941)). As this Court has recognized, "whatever apparent force" a presumption against removal "might [once] have claimed" no longer exists. *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691, 697 (2003).

goals underlying the federal removal statutes is the protection of federal jurisdiction. *See supra* pp.7-8.

CONCLUSION

The judgment of the Sixth Circuit should be reversed.

Respectfully submitted.

STEPHANIE A. MALONEY
JONATHAN D. URICK
U.S. CHAMBER LITIGATION CENTER
1615 H St., NW
Washington, DC 20062

Counsel for the Chamber of Commerce of the United States of America

MARY ELIZABETH MILLER
SHANNON G. DENMARK
Counsel of Record
LEHOTSKY KELLER COHN LLP
200 Massachusetts Ave., NW
Suite 700
Washington, DC 20001
(512) 693-8350
shannon@lkcfirm.com

Counsel for Amici Curiae

ELIZABETH MILITO
ROB SMITH
NFIB SMALL BUSINESS LEGAL CENTER, INC.
555 12th St., NW
Suite 1001
Washington, DC 20004

Counsel for National Federation of Independent Business Small Business Legal Center, Inc.

SEPTEMBER 2025