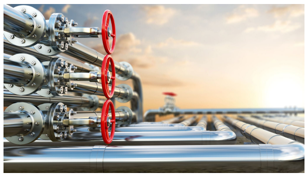

Sorry, No Extensions: Supreme Court's Strict Construction of the Civil Removal Statute Under 28 U.S.C. § 1446(b)(1)

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***Enbridge Energy, LP v. Nessel*, 608 U.S. ___ (April 22, 2026)**

In *Enbridge Energy, LP v. Nessel*, the U.S. Supreme Court unanimously held that the 30-day deadline for removal of a civil case from state to federal court under 28 U.S.C. § 1446(b)(1) is not subject to the doctrine of equitable tolling. Justice Sotomayor wrote for the court, concluding that Section 1446(b)(1)'s text and structure demonstrate Congress's clear intent for courts to have no discretion to extend the removal deadline even on equitable grounds.

This unanimous decision resolves a split among the federal circuits. The decision also affirms the U.S. Court of Appeals for the Sixth Circuit's ruling that a pipeline operator's removal of a Michigan state court case filed 887 days after the operator received the complaint was untimely and that remand to Michigan state court was required. Under 28 U.S.C. § 1446(b)(1), a defendant sued in state court must file a notice of removal within 30 days of being served with either the initial complaint or summons, whichever is earlier. However, if a case is not initially removable or the 30-day deadline has passed, Section 1446(b)(3) provides a secondary window by which a defendant may remove a case to federal court after receiving a document from which it can first be "ascertained" that the case has become removable.

The question that had split the federal courts of appeals was whether this 30-day deadline is subject to equitable tolling. In other words, the question was whether a court may excuse a defendant's late notice of removal filing based on fairness or extraordinary circumstances and reasons. The Eleventh Circuit in *Loftin v. Rush*, 767 F.2d 800 (1985), and the Fifth Circuit in *Gillis v. Louisiana*, 294

F.3d 755 (2002), had previously held that equitable tolling was available under Section 1446(b)(1). But the Sixth Circuit reached the opposite conclusion.

Background

The underlying issue in this case involved Enbridge Energy, LP, which owns and operates Line 5, a 645-mile petroleum pipeline that runs from Wisconsin through Michigan and into Canada. A four-mile segment of Line 5 travels through the Straits of Mackinac under an easement granted by the State of Michigan in 1953. In June 2019, however, the attorney general of Michigan filed suit in state court seeking to cease Enbridge's operations. The attorney general alleged the 1953 easement was void and that Enbridge's operations violated Michigan laws against risks of oil spills. Enbridge was served with the attorney general's state court complaint on July 12, 2019.

Rather than removing the case to federal court, Enbridge litigated the case in Michigan state court for months, including filing cross-motions for summary disposition. In November 2020, a year after the removal deadline passed, Michigan's governor issued a formal notice revoking the 1953 easement and filed a separate lawsuit in state court, in addition to the already existing lawsuit by the attorney general. This time, Enbridge filed a notice of removal to federal court within the 30-day deadline, while the attorney general's case was held in abeyance. After the district court denied the governor's motion to remand, having found federal-question jurisdiction, the governor voluntarily dismissed her suit. Only then — on December 15, 2021, 887 days after receiving the attorney general's complaint —did Enbridge file a notice of removal to federal court.

Predictably, the Michigan attorney general moved to remand, arguing that Enbridge filed its notice of removal well after the 30-day deadline. However, the district court denied this motion and held that equitable principles justified excusing the late filing and certified the order for interlocutory appeal. The Sixth Circuit reversed the district court's order and ruled that while Section 1446(b)(1)'s deadline is non-jurisdictional, several features of the provision and the overall removal scheme rebutted any presumption of equitable tolling. The U.S. Supreme Court granted certiorari to resolve this circuit split.

Supreme Court's Decision

The Supreme Court affirmed the Sixth Circuit's ruling and held that U.S.C. § 1446(b)(1)'s 30-day deadline could not be equitably tolled based on the text, structure, and context of the removal statute. The Court noted that Section 1446(b)(1)'s language speaks in "strict, mandatory terms," and requires that a notice of removal be filed "within 30 days." Even more decisive was the statute's structure, specifically that the "explicit listing of exceptions, set forth in a detailed manner, strongly indicates that Congress did not intend courts to read other unmentioned, open-ended, equitable exceptions into the statute." Several available exceptions include Section 1446(b)(3)'s commonly used "ascertainment" provision, Section 1446(c)(1)'s "bad faith" exception to the one-year cap on diversity removals, certain intellectual-property disputes under Section 1454(b)(2), and mass-fatality accidents under Section 1441(e)(1).

Finally, the Supreme Court noted that the "nature of the subject matter" reinforced its decision in that the federal removal statute reflects an "obvious concern with efficiency" and a "general interest in avoiding prolonged litigation on threshold nonmerits questions." To the unanimous court, allowing equitable tolling for the 30-day deadline would undermine Congress's interest in resolving removal questions "early and conclusively."

Key Takeaways

- **The 30-day removal deadline is strict and not extendable.** *Enbridge Energy, LP* concretely establishes that Section 1446(b)(1)'s 30-day removal deadline from state to federal court cannot be equitably tolled. Defendants that miss this deadline cannot use excuses like fairness, extraordinary circumstances, or other equitable considerations. This ruling abrogates prior holdings of the Fifth Circuit in *Gillis v.*

Louisiana and the Eleventh Circuit in *Loftin v. Rush*.

- **Defendants must act quickly or lose the right to remove to federal court.** For defendants wishing to litigate in federal court, *Enbridge Energy, LP* highlights how critical it is to evaluate removal options immediately upon receiving a complaint or summons. This is because the Supreme Court's ruling bars any argument that equitable considerations — such as related litigation pending in federal court, strategic abeyance agreements, or a plaintiff's alleged gamesmanship — can excuse a late-filed notice of removal. Even though the Supreme Court noted other equitable doctrines might offer relief, defendants ought to treat the 30-day window as an absolute bar to be safe.
- **The "ascertainment" option remains available under Section 1446(b)(3).** While the equitable tolling avenue closed, the Supreme Court still left a window open under Section 1446(b)(3), where a case not initially removable can become so later. Thus, defendants should carefully monitor the status of their case for changed circumstances, such as new pleadings, motions, or orders that might reveal a new basis for removal. In any event, defendants should not count on this option, and they should still promptly file a notice of removal after receiving the complaint or summons and conducting a thorough evaluation of their case.

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