



# WEIL'S SCOTUS TERM IN REVIEW

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## Supreme Court Holds No Equitable Tolling for Defendant's Delayed Removal to Federal Court

By Josh Wesneski and Julia Deutsch

Today, in [\*Enbridge Energy, LP v. Nessel\*](#), the Supreme Court unanimously held that the 30-day deadline for removing a civil action from state court to federal court under 28 U.S.C. § 1446(b)(1) cannot be equitably tolled. The decision resolves a circuit split and sends a clear message to defendants: Absent a statutory exception, missing the 30-day removal deadline is generally fatal.

A party seeking to remove a case from state court to federal court on the grounds of diversity or federal question typically has only 30 days after service of the complaint to do so. 28 U.S.C. § 1446(b)(1). This case arose from Michigan's challenge to Enbridge's operation of a 645-mile pipeline transporting petroleum products across the Midwest and parts of Canada. In June 2019, Michigan Attorney General Dana Nessel sued Enbridge in Michigan state court, alleging that Enbridge's operation of the pipeline violated state law. Enbridge did not remove that action and instead litigated in state court. In November 2020, Governor Gretchen Whitmer filed a separate but substantially similar case, which Enbridge timely removed to federal court on several grounds, including federal preemption. The district court agreed that removal was proper, and Enbridge thereafter removed the Attorney General's case for the same reason—887 days after being served with the case. The Sixth Circuit denied Enbridge's request for equitable tolling of the 30-day deadline.

The Supreme Court ruled that there is no equitable tolling of the 30-day removal deadline and held that the case must be remanded to state court. Although the Court acknowledged that the 30-day removal window is not jurisdictional, it concluded that the statute's "text, structure, and context" make clear that "Congress did not want §1446(b)(1) to be equitably tolled." Op. at 1, 7. Most critically, the Court reasoned, Congress already built narrow, express exceptions into the removal scheme for specific circumstances in which tolling may be appropriate. See 28 U.S.C. §§ 1446(b)(3), 1441(d), 1441(e)(1), 1454(b)(2).

In the Court's view, those targeted exceptions would make little sense if equitable tolling were broadly available in civil cases. As the Court put it, there is no "sensible reason why Congress would have adopted so many express, specific equitable exceptions to § 1446(b)(1) if equitable tolling was already available for belated removals across the board." Op. at 13.

The Court also emphasized the statute's mandatory language. Section 1446(b)(1) provides that a notice of removal *shall* be filed within 30 days after the defendant receives notice. And the broader removal framework reflects Congress's interest in resolving forum

disputes quickly and conclusively. Allowing open-ended equitable tolling, the Court reasoned, would create uncertainty and invite wasteful litigation in one forum before a belated removal to another.

The case confirms that parties sued in state court should move quickly in determining whether the case may be removed to federal court, and if removal is available, parties should promptly file for removal. The exceptions for the 30-day removal requirement are narrow, and courts generally are reluctant to invoke them. An untimely filed removal is subject to immediate remand, regardless of the merits of removal.

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