

In the Supreme Court of the United States

ENBRIDGE ENERGY, LIMITED PARTNERSHIP; ENBRIDGE ENERGY COMPANY, INC.; AND ENBRIDGE ENERGY PARTNERS, L.P., APPLICANTS

v.

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

RESPONSE IN OPPOSITION TO APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF CERTIORARI

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

INTRODUCTION

Pursuant to Supreme Court Rules 13.5, 21.4, 22, and 30, Respondent Dana Nessel, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan respectfully opposes the Application for Extension of Time to File a Petition for a Writ of Certiorari filed by Enbridge Energy, L.P., Enbridge Energy Co., Inc., and Enbridge Energy Partners, L.P. (collectively, Enbridge), stating as follows:

ARGUMENT

Supreme Court Rule 13.5 provides that applications to extend the time to file a petition for a writ of certiorari are “not favored,” that they may only be granted “[f]or good cause,” and that any extension may not exceed 60 days. Here, Enbridge seeks the maximum allowable extension—60 days—even though the litigation is

ongoing and it has not even decided whether to file a petition. The State of Michigan generally does not oppose applications for extensions, but it does so here because granting Enbridge's application and prolonging these interlocutory proceedings would be prejudicial to the State. (Contra Appl. ¶ 8.)

This action was filed in a Michigan state court, under state law, on June 27, 2019. *Nessel ex rel. Michigan v. Enbridge Energy, LP*, 104 F.4th 958, 961 (6th Cir. 2024). Enbridge litigated the case in state court for more than two years, but removed it to federal court on December 15, 2021, after receiving an adverse ruling from the state court. *Id.* at 962–63. Since then, the parties have been mired in litigation over the propriety of Enbridge's notice of removal, and no progress has been made in the underlying litigation. See 28 U.S.C. § 1446(d).

The Sixth Circuit decided the removal issue on June 17, 2024, in a unanimous, straightforward opinion. The federal removal statute says any notice of removal “shall be filed within 30 days” after receipt of the complaint. 28 U.S.C. § 1446(b). “Enbridge missed that deadline by over two years.” *Nessel*, 104 F.4th at 964. No exception to the 30-day deadline applied, so Enbridge's removal was untimely, and the case had to be remanded. *Id.* at 968, 971–72. As the court explained, this decision is required by the statutory text, supported by its context, and consistent with the “overwhelming weight of authority.” *Id.* at 966–71. No judge requested a vote on Enbridge's petition for rehearing en banc. *Nessel ex rel. Michigan v. Enbridge Energy, LP*, No. 23-1671, 2024 WL 4128208 (6th Cir. Aug. 16, 2024).

Now, Enbridge indicates that it *may* file a petition for a writ of certiorari but wants additional time to make up its mind. (Appl. ¶ 3.) Enbridge states that the Attorney General will not be prejudiced by this delay. (Appl. ¶ 8.) The Attorney General disagrees. Although the mandate has issued and the state-court litigation is now able to resume after a three-year hiatus, the possibility that Enbridge may seek reversal of the Sixth Circuit's opinion creates a risk of the state-court litigation once again being disrupted. To minimize such disruptions, interlocutory appeals should ordinarily be resolved quickly. See 6th Cir. I.O.P. 28(c) (interlocutory appeals under 28 U.S.C. § 1292(b), like this one, are expedited in the Sixth Circuit). If there is any chance that this case may again be removed from the state court, against the State's wishes, the Attorney General has a strong interest in having that issue promptly decided. Any undue delay is prejudicial.

CONCLUSION

For the foregoing reasons, the Attorney General respectfully requests that Enbridge's Application for Extension of Time to File a Petition for a Writ of Certiorari be denied or, alternatively, limited in duration to no more than 30 days.

Respectfully submitted,

Ann M. Sherman 10/28/2024

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Dated: October 28, 2024