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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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KIRCHER ET AL. v. PUTNAM FUNDS TRUST ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 05-409. Argued April 24, 2006—Decided June 15, 2006

The Securities Litigation Uniform Standards Act of 1998 (Act) specifies that private state-law "covered" class actions alleging untruth or manipulation "in connection with the purchase or sale" of a "covered" security may not "be maintained in any State or Federal court," 15 U. S. C. §77p(b), and authorizes removal to federal district court of "[a]ny covered class action brought in any State court involving a covered security, as set forth in subsection (b)," §77p(c). "A 'covered class action' is a lawsuit in which damages are sought on behalf of more than 50 people. A 'covered security' is one traded nationally and listed on a regulated national exchange." Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U. S. ____, ___.

Petitioners, mutual fund investors, filed separate state-court actions, each seeking to assert state-law claims on behalf of a class of investors allegedly injured by devaluation of their holdings by respondent mutual funds. The funds filed notices of removal in each case stating, among other things, that the actions were removable under and precluded by the Act. Once removed, however, the Federal District Court remanded each case to state court on the ground that it lacked subject-matter jurisdiction on removal because the Act did not preclude the investors' claims. Since they were said to have been injured as "holders" of mutual fund shares, not purchasers or sellers, the court reasoned, their claims did not satisfy §77p(b)'s "in connection with the purchase or sale" requirement, and the claims could therefore proceed in state court. The Seventh Circuit acknowledged that 28 U.S.C. §1447(d) bars review of district court orders remanding removed cases for lack of subject-matter jurisdiction, but decided that the District Court had the last word neither on the characterization of its decision as jurisdictional nor on the correctness of its con-

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clusion that remand was required. The appeals court considered all covered class actions involving covered securities, whether precluded or not, to be removable under the Act, and therefore thought the preclusion issue distinct from the jurisdictional issue whether the case belonged in federal court at all. It held that orders remanding "properly removed" suits as not precluded are substantive and unaffected by \$1447(d), and therefore reviewable. Proposing that the Act reserves to the Federal Judiciary the exclusive authority to make the preclusion decision, the court said that treating remand orders in this context as immunized from appeal by \$1447(d) would mean that a major substantive issue would escape review, since it would not be open to resolution in the state court subject to review by this Court. The Seventh Circuit subsequently consolidated the funds' appeals and decided, on the merits, that the Act precludes the investors' claims.

Held: Orders remanding for want of preclusion under the Act are subject to §1447(d) and its general rule of nonappealability. Pp. 5–14.

(a) Section 1447(d), which states that an "order remanding a case to the State court from which it was removed is not reviewable on appeal," applies to all remands based on the grounds specified in §1447(c), including lack of subject-matter jurisdiction. Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336, 343-345. It applies equally to cases removed under the general removal statute, §1441, and to those removed under other provisions, see Things Remembered, Inc. v. Petrarca, 516 U.S. 124, 128, and its force is not subject to any statutory exception that might cover this case. The District Court said that it was remanding for lack of jurisdiction, an unreviewable ground. Where a remand order is based on one of §1447(c)'s grounds, review is unavailable no matter how plain the legal error in ordering the remand. Briscoe v. Bell, 432 U.S. 404, 413, n. 13. The Seventh Circuit did not overlook cases like Briscoe, but relied instead on cases such as Kontrick v. Ryan, 540 U.S. 443, which observed that some rulings loosely called jurisdictional are patently not jurisdictional in the strict sense. Viewing this as such a case, the appeals court understood the District Court's preclusion decision to be substantive, not jurisdictional, and consequently subject to review. But the District Court was correct in understanding its remand order to be dictated by a finding that it lacked removal jurisdiction. Section 77p(c)'s authorization for removal, on which district-court jurisdiction depends, is confined to cases "set forth in subsection (b)," i.e., those with claims of untruth or manipulation. That phrase immediately follows the §77p(c) language describing removable cases as covered class actions involving covered securities, and the language has no apparent function unless it limits removal to covered class actions involving claims like untruth or deception. Legislative history tends to show

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that this was just what Congress understood. The preclusion determination is jurisdictional, as is the order implementing it. Pp. 5–11.

(b) The Seventh Circuit's reading was in part motivated by the court's erroneous assumption that the Act gives federal courts exclusive jurisdiction to decide the preclusion issue. A covered action is removable if it is precluded, and a defendant can enlist the Federal Judiciary to decide preclusion, but he can elect to leave the case where the plaintiff filed it and trust the state court to make the preclusion determination. What a state court could do in the first place it may also do on remand; here, the funds can ask for dismissal on preclusion grounds when they return to state court. Collateral estoppel should be no bar to such a revisitation, given that §1447(d) prevents the funds from appealing the District Court's decision. While the state court cannot review the decision to remand in an appellate way, it is free to reject the remanding court's reasoning. Id., at 583. There is no reason to doubt that the state court in this litigation will duly apply Dabit's holding that holder claims are embraced by §77p(b), but this Court can review any claim of error on that point. Pp. 11–14.

403 F. 3d 478, vacated and remanded.

SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, THOMAS, GINSBURG, BREYER, and ALITO, JJ., joined, and in which SCALIA, J., joined as to Parts I, III, and IV. SCALIA, J., filed an opinion concurring in part and concurring in the judgment.