

Syllabus

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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**WISCONSIN DEPARTMENT OF CORRECTIONS ET AL.  
v. SCHACHT**

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

No. 97–461. Argued April 20, 1998– Decided June 22, 1998

Respondent Schacht filed a state-court suit against the defendants (petitioners here), the Wisconsin Department of Corrections and several of its employees, both in their “personal” and in their “official” capacity, alleging that his dismissal from his prison guard position violated the Federal Constitution and federal civil rights laws. The defendants removed the case to federal court and then filed an answer raising the “defense” that the Eleventh Amendment doctrine of sovereign immunity barred the claims against the Department and its employees in their official capacity. The District Court granted the individual defendants summary judgment on the “personal capacity” claims and dismissed the claims against the Department and the individual defendants in their “official capacity.” On appeal, Schacht challenged only the disposition of the “personal capacity” claims, but the Seventh Circuit determined that the removal had been improper because the presence of even one claim subject to an Eleventh Amendment bar deprives the federal courts of removal jurisdiction over the entire case.

*Held:* The presence in an otherwise removable case of an Eleventh Amendment barred claim does not destroy removal jurisdiction that would otherwise exist. A federal court can proceed to hear the remaining claims, and the District Court did not err in doing so in this case. Pp. 4–11.

(a) Title 28 U. S. C. §1441(a), which allows a defendant to remove “any civil action brought in a State court of which the [federal] district courts . . . have original jurisdiction,” obviously permits the removal of a case containing only claims that “arise under” federal law, since federal courts have original jurisdiction over such claims, see

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§1331. There are several parts to respondent's argument that removal jurisdiction is destroyed if one of those federal claims is subject to an Eleventh Amendment bar. First, the argument distinguishes cases with both federal-law and state-law claims from cases with federal-law claims that include one or more Eleventh Amendment claims. In the former cases the state-law claims fall within the federal courts' supplemental jurisdiction. In the latter cases the comparable claims are ones that the Eleventh Amendment prohibits the federal courts from deciding. Second, the argument emphasizes the "jurisdictional" nature of the difference, since neither the law permitting supplemental jurisdiction, nor any other law, gives the federal court the power to decide an Eleventh Amendment barred claim. Third, the argument looks to removal based upon "diversity jurisdiction" for analogical authority leading to its conclusion that the "jurisdictional" problem is so serious that the presence of even one Eleventh Amendment barred claim destroys removal jurisdiction with respect to all claims, *i.e.*, the "case." The analogy is unconvincing, for this case differs significantly from diversity cases with respect to original jurisdiction. The presence of a nondiverse party automatically destroys such jurisdiction: No party need assert the defect. No party can waive the defect, or consent to jurisdiction. No court can ignore the defect; rather a court, noticing the defect, must raise the matter on its own. In contrast, the Eleventh Amendment does not automatically destroy original jurisdiction. It grants the State a legal power to assert a sovereign immunity defense. The State can waive the defense, and a court may ignore the defect unless it is raised by the State. Since a federal court would have original jurisdiction to hear this case had Schacht originally filed it there, the defendants may remove the case from state to federal courts. Other conditions—*e.g.*, the fact that removal jurisdiction is determined as of the time a case was filed in state court, which was before the defendants filed their answer in federal court—further undermine the analogy. Pp. 4–9.

(b) Schacht's one further argument— that, after the State asserted its Eleventh Amendment defense, the federal court lacked subject matter jurisdiction over the entire case and thus had to remand it to state court under §1447(c)— is rejected. An ordinary reading of §1447(c) indicates that it refers to an instance in which a federal court "lacks subject matter jurisdiction" over a "case," not simply over one claim within the case. Moreover, §1447(c)'s objective— to specify the procedures that a federal court must follow in remanding a case after removal— is irrelevant to the question presented here. Pp. 9–11.

116 F. 3d 1151, vacated and remanded.

Cite as: \_\_\_\_ U. S. \_\_\_\_ (1998)

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BREYER, J., delivered the opinion for a unanimous Court. KENNEDY, J., filed a concurring opinion.