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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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BREUER v. JIM'S CONCRETE OF BREVARD, INC.**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT**

No. 02–337. Argued April 2, 2003—Decided May 19, 2003

Petitioner Breuer sued respondent, his former employer, Jim's Concrete of Brevard, Inc., in a Florida state court for unpaid wages, liquidated damages, prejudgment interest, and attorney's fees under the Fair Labor Standards Act of 1938 (FLSA), which provides, *inter alia*, that “[a]n action to recover . . . may be maintained . . . in any Federal or State court of competent jurisdiction,” 29 U. S. C. §216(b). Jim's Concrete removed the case to the Federal District Court under 28 U. S. C. §1441(a), which reads: “Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the [federal] district courts . . . have original jurisdiction, may be removed by the defendant . . . to the [appropriate federal] district court.” Breuer sought an order remanding the case to state court, arguing that removal was improper because §216(b)'s provision that an action “may be maintained” in state court put forward an express exception to §1441(a)'s general removal authorization. Though the District Court denied Breuer's motion, it certified the issue for interlocutory appeal. The Eleventh Circuit affirmed, saying that although Congress had expressly barred removal in direct, unequivocal language in other statutes, §216(b) was not comparably prohibitory.

Held: Section §216(b) does not bar removal of a suit from state to federal court. Breuer's case was properly removed under §1441. Pp. 2–8.

(a) Breuer unquestionably could have begun his action in the District Court under §216(b), as well as under 28 U. S. C. §§1331 and §1337(a). Removal of FLSA actions is thus prohibited under §1441(a) only if Congress expressly provided as much. Nothing on the face of §216(b) looks like an express prohibition of removal, there being no mention of removal, let alone of prohibition. While §216(b) provides

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that an action “may be maintained . . . in any . . . State court of competent jurisdiction,” the word “maintain” enjoys a breadth of meaning that leaves its bearing on removal ambiguous at best. “Maintain” in reference to a legal action is often read as “bring” or “file,” but “to maintain an action” may also mean “to continue” to litigate, as opposed to “commence” an action. If an ambiguous term like “maintain” qualified as an express provision for §1441(a) purposes, then the requirement of an “expres[s] provi[sion]” would call for nothing more than a “provision,” pure and simple, leaving the word “expressly” without any consequence whatever. The need to take the express exception requirement seriously is underscored by examples of indisputable prohibitions of removal in a number of other statutes, e.g., §1445, which demonstrate that, when Congress wishes to give plaintiffs an absolute choice of forum, it is capable of doing so in unmistakable terms. Pp. 2–5.

(b) None of Breuer’s refinements on his basic argument from the term “maintain” puts him in a stronger position. The Court rejects his argument that “may be maintained” shows up as sufficiently prohibitory once it is coupled with a federal policy of construing removal jurisdiction narrowly, as set forth in *Shamrock Oil & Gas Corp. v. Sheets*, 313 U. S. 100, 108–109. Whatever apparent force this argument might have claimed when *Shamrock* was handed down has been qualified by the later amendment of §1441 into its present form, requiring any exception to the general removability rule to be express. Nor does it avail Breuer to emphasize the sense of “maintain” as implying continuation of an action to final judgment, so as to give a plaintiff who began an action the statutory right under §216(b) to see it through. The right to maintain an action may indeed be a right to fight to the finish, but removal does nothing to defeat that right; far from concluding a case before final judgment, removal just transfers it from one forum to another. Moreover, if “an action . . . may be maintained” meant that a plaintiff could insist on keeping an FLSA case wherever he filed it in the first place, it would seem that an FLSA case brought in a federal district court could never be transferred to a different one over the plaintiff’s objection, a result that would plainly clash with the provision for change of venue, §1404(a). Finally, although Breuer may be right that many FLSA claims are for such small amounts that removal to a sometimes distant federal court, often increasing the cost of litigation, may make it difficult for many employees to vindicate their rights effectively, the implications of that assertion keep this Court from going Breuer’s way. Because a number of other statutes incorporate or use the same language as 29 U. S. C. §216(b), see, e.g., §626(b), there cannot be an FLSA removal exception without wholesale exceptions for other statutory actions, to

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the point that it is just too hard to believe that a right to “maintain” an action was ever meant to displace the right to remove. Pp. 5–8.
292 F. 3d 1308, affirmed.

SOUTER, J., delivered the opinion for a unanimous Court.