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

Syllabus

POWEREX CORP. *v.* RELIANT ENERGY SERVICES, INC., ET AL.

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

No. 05–85. Argued April 16, 2007—Decided June 18, 2007

Plaintiffs-respondents filed state-court suits alleging that various companies in California's energy market had conspired to fix prices in violation of state law. Some of the defendants filed cross-claims seeking indemnity from, *inter alios,* two United States Government agencies (BPA and WAPA); a Canadian corporation (BC Hydro) wholly owned by British Columbia and thus a "foreign state" under the Foreign Sovereign Immunities Act of 1976 (FSIA); and petitioner Powerex, a wholly owned subsidiary of BC Hydro. The cross-defendants removed the entire case to federal court, with BC Hydro and petitioner relying on the FSIA. Plaintiffs-respondents moved to remand, arguing that petitioner was not a foreign state and that the cross-claims against BPA, WAPA, and BC Hydro were barred by sovereign immunity. The District Court agreed and remanded. As relevant here, petitioner appealed, arguing that it was a foreign sovereign under the FSIA, but plaintiffs-respondents rejoined that the appeal was jurisdictionally barred by 28 U. S. C. §1447(d), which provides that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." The Ninth Circuit held that §1447(d) did not preclude it from reviewing substantive issues of law that preceded the remand order, but affirmed the holding as to petitioner's foreign-state status.

Held: Section 1447(d) bars appellate consideration of petitioner's claim that it is a foreign state for FSIA purposes. Pp. 3–14.

(a) Appellate courts' authority to review district-court orders remanding removed cases to state court is substantially limited by statute. Section 1447(d) is read *in pari materia* with §1447(c), so that only remands based on the grounds specified in the latter are

shielded by the review bar mandated by the former. *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336, 345–346. For purposes of this case, it is assumed that the grounds specified in §1447(c) are lack of subject-matter jurisdiction and defects in removal procedure. Cf. *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 711–712. Given the proceedings below, review of the remand order is barred only if it was based on lack of subject-matter jurisdiction. Pp. 3–5.

(b) Nothing in §1447(c)'s text supports the claim that a case cannot be remanded for lack of subject-matter jurisdiction within the meaning of that provision if the case was properly removed in the first instance. Indeed, statutory history conclusively refutes the argument that §1447(c) is implicitly limited in such a manner. When a district court remands a properly removed case because it nonetheless lacks subject-matter jurisdiction, the remand is covered by §1447(c) and shielded from review by §1447(d). Pp. 5–7.

(c) The District Court relied upon a ground that is colorably characterized as subject-matter jurisdiction and so §1447(d) bars appellate review. As an initial matter, it is clear from the record that the court was purporting to remand for lack of subject-matter jurisdiction. Even assuming that §1447(d) permits appellate courts to look behind a district court's characterization of the basis for the remand, such review is hereby limited to ascertaining whether the characterization was colorable. In this case, the only plausible explanation of the District Court's remand was that it believed that it lacked the power to adjudicate the claims against petitioner once it had determined that petitioner was not a foreign state and that the other cross-defendants had sovereign immunity. It is unnecessary to determine whether that belief was correct; it was at least debatable. Petitioner contends instead that the District Court was actually remanding based on *Carnegie-Mellon Univ.* v. *Cohill*, 484 U. S. 343, 357, which authorizes remand when a district court declines to exercise supplemental jurisdiction. This is implausible. The District Court never mentioned the possibility of supplemental jurisdiction, and petitioner does not appear to have argued that the claims against it could be retained based on supplemental jurisdiction. Pp. 7–10.

(d) The Ninth Circuit held that §1447(d) does not preclude reviewing a district court's substantive determinations that precede a remand order, a holding that appears to be premised on *Waco* v. *United States Fidelity & Guaranty Co.*, 293 U. S. 140. *Waco*, however, does not permit an appeal when, as here, there is no order separate from the unreviewable remand order. Pp. 10–11.

(e) Petitioner's contention that Congress did not intend §1447(d) to govern suits removed under the FSIA is flatly refuted by this Court's longstanding precedent that "[a]bsent a clear statutory command to

the contrary, [the Court] assume[s] that Congress is 'aware of the universality of th[e] practice' of denying appellate review of remand orders when Congress creates a new ground for removal." *Things Remembered, Inc.* v. *Petrarca*, 516 U. S. 124, 128. Pp. 12–13.

391 F. 3d 1011, vacated in part and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, SOUTER, THOMAS, GINSBURG, and ALITO, JJ., joined. KENNEDY, J., filed a concurring opinion, in which ALITO, J., joined. BREYER, J., filed a dissenting opinion, in which STEVENS, J., joined.