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

EL PASO NATURAL GAS CO. ET AL. *v.* NEZTSOSIE ET AL.

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

No. 98–6. Argued March 2, 1999– Decided May 3, 1999

As relevant here, the Price-Anderson Act provides certain federal licensees with limited liability for claims of "public liability" arising out of or resulting from a nuclear incident, converts such actions into federal claims, grants federal district courts removal jurisdiction over such actions, and provides the mechanics for consolidating the actions and for managing them once consolidated. Respondents filed separate lawsuits in Navajo Tribal Courts, claiming damages for injuries suffered as a result of uranium mining operations. Petitioners, defendants in those suits, each filed suit in Federal District Court, seeking to enjoin respondents from pursuing their tribal court claims. Citing the tribal court exhaustion doctrine of *National Farmers Union Ins. Cos.* v. *Crow Tribe,* 471 U. S. 845, the District Court denied preliminary injunctions except to the extent that respondents sought relief in the Tribal Courts under the Price-Anderson Act. The practical consequences of the injunctions were left in the air, however, since the District Court left the determinations whether the Act applied to respondents' claims to the Tribal Courts. On petitioners' consolidated appeals, the Ninth Circuit affirmed the District Court's decisions not to enjoin respondents from pursuing non-Price-Anderson Act claims and to allow the Tribal Courts to decide whether respondents' claims fell under that Act. Although respondents had not appealed the partial injunctions, the Ninth Circuit, citing important comity considerations, *sua sponte* reversed them.

Held:

1. Because the partial injunctions were not properly before the Court of Appeals, it erred in addressing them. Absent a cross-appeal, an appellee may urge in support of a decree any matter appearing in

the record, but may not attack the decree with a view either to enlarging his own rights thereunder or lessening his adversary's rights. *United States* v. *American Railway Express Co.*, 265 U. S. 425, 435. The Ninth Circuit acknowledged the rule, but took up the unappealed portions of the orders *sua sponte* because it believed that the prohibition on modifying judgments in favor of a nonappealing party is a "rule of practice" subject to exceptions rather than an unqualified bound on the jurisdiction of appellate courts. This Court need not decide the theoretical status of the rule, for even if it is not strictly jurisdictional, the "comity considerations" the Ninth Circuit invoked are clearly inadequate to defeat the institutional interests the rule advances. Indeed, not a single one of this Court's holdings has ever recognized an exception to the rule. Respondents misconceive the nature of the cross-appeal requirement when they argue that they should not be penalized for failing to cross-appeal from preliminary injunctions because they could raise the same issue on appeal from the final judgment. The requirement is meant not to penalize parties who fail to assert their rights, but to protect institutional interests in the orderly functioning of the judicial system by putting opposing parties and appellate courts on notice of the issues to be litigated and encouraging repose of those that are not. Fairness of notice does not turn on the interlocutory character of the orders at issue here, and the interest in repose, though somewhat diminished when a final appeal may yet raise the issue, is still considerable owing to the indefinite duration of the injunctions. Pp. 4–7.

2. The doctrine of tribal court exhaustion does not apply in this case, which if brought in a state court would be subject to removal. Pp. 8–13.

(a) This case differs markedly from those in which tribal court exhaustion is appropriate. By the Price-Anderson Act's unusual preemption provision, 42 U. S. C. §2014(hh), Congress expressed an unmistakable preference for a federal forum, at the behest of the defending party, both for litigating a Price-Anderson claim on the merits and for determining whether a claim falls under the Act when removal is contested. Petitioners seek the benefit of what is in effect the same scheme of preference for a federal forum when they ask for an injunction against further litigation in the tribal courts. The issue, then, is whether Congress would have chosen to postpone federal resolution of the enjoinable character of this tribal court litigation, when it would not have postponed federal resolution of the functionally identical issue pending in a state court. Pp. 8–11.

(b) The apparent reasons for the congressional policy of immediate access to federal forums are as much applicable to tribal- as to state-court litigation. The Act provides clear indications of the con-

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gressional aims of speed and efficiency in the provisions addressing consolidation and management of cases, *e.g.*, 42 U. S. C. §2210(n)(3)(A). The Act's terms are underscored by its legislative history, which expressly refers to the multitude of separate cases brought in the aftermath of the Three Mile Island accident and adverts to the expectation that the consolidation provisions would avoid inefficiencies resulting from duplicative determinations of similar issues in multiple jurisdictions. Applying tribal exhaustion would invite precisely the mischief of duplicative determinations and consequent inefficiencies that the Act sought to avoid, and the force of the congressional concerns deprives arguable justifications for applying tribal exhaustion of any plausibility in these circumstances. Pp. 11–13.

136 F. 3d 610, vacated and remanded.

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