SUPREME COURT OF THE UNITED STATES

No. 97–461

WISCONSIN DEPARTMENT OF CORRECTIONS, ET AL., PETITIONERS *v.* KEITH D. SCHACHT

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

[June 22, 1998]

JUSTICE BREYER delivered the opinion of the Court.

The question before us is whether defendants in a case filed in a state court, with claims "arising under" federal law, can remove that case to federal court– where some claims, made against a State, are subject to an Eleventh Amendment bar. We conclude that the defendants can remove the case to a federal court and that the court can decide the nonbarred claims.

I

In 1993, the Wisconsin Department of Corrections dismissed Keith Schacht, a prison guard, for stealing items from the Oakhill Correctional Institution, a state prison. In January 1996, Schacht filed a complaint in state court against the Department and several of its employees, both in their "personal" and in their "official" capacity. The complaint, in several different claims, alleged that the Department and its employees had deprived Schacht of "liberty" and "property" without "due process of law," thereby violating the Federal Constitution and civil rights laws. U. S. Const., Amdt. 14, §1; Rev. Stat. §1979, 42

U. S. C. §1983. The defendants immediately removed the case to federal court.

The defendants' answer, filed in federal court, in part raised as a "defense" that the "eleventh amendment to the United States Constitution, and the doctrine of sovereign immunity, bars any claim under 42 U. S. C. §1983 against" the State itself, namely, the "defendant Wisconsin Department of Corrections [and] against any of the named defendants in their official capacities." Answer and Defenses, App. 14–15. See *Kentucky* v. *Graham*, 473 U. S. 159, 165–167, and n. 14 (1985) (suit for damages against state officer in official capacity is barred by the Eleventh Amendment); *Alabama* v. *Pugh*, 438 U. S. 781, 782 (1978) (suit against state agency is barred by the Eleventh Amendment).

After further proceedings, the Federal District Court considered those claims that were not against the State, that is, the claims against the individual defendants in their "personal capacity." It concluded as to those claims that, even if Schacht's factual allegations were true, Schacht had received the process that was his "due," and his dismissal did not violate the Fourteenth Amendment. *Schacht* v. *Wisconsin Dept. of Corrections*, No. 96–C–122–S (WD Wis., Sept. 13, 1996), App. 31–34. It therefore granted the defendants' motion for summary judgment with respect to those claims. *Id*., at 34.

The federal court also considered the defendants' motion to dismiss those claims filed against the State, *i.e.*, the claims against the Department of Corrections and its employees in their "official capacity." The District Court granted the motion, stating:

> "Plaintiff agrees his claims for money damages are barred [by the Eleventh Amendment] but pursues his claims for injunctive relief. Plaintiff does not, however, request injunctive relief in his complaint . . . . Defendants' motion to dismiss plaintiff's

> claims against the Wisconsin Department of Corrections and the individual defendants in their official capacities will be granted." *Id*., at 30.

Schacht appealed. He did not assert that the District Court was wrong to have dismissed the claims against the State. He argued only that the court's disposition of the "personal capacity" claims, *i.e.*, the grant of summary judgment, was legally erroneous. During the appeal, the Court of Appeals for the Seventh Circuit itself raised the question whether the removal from state to federal court had been legally permissible. See 116 F. 3d 1151, 1153 (1997). After supplemental briefing, the Court of Appeals concluded that removal had been improper and the federal courts lacked jurisdiction over Schacht's case. *Ibid*.

The Court of Appeals pointed out that Schacht's original state court complaint, while presenting only claims arising under federal law, asserted some of those claims against the State. *Id*., at 1152. The court added that the Eleventh Amendment, as interpreted by this Court, prohibited the assertion of those claims in federal court. *Ibid*. (citing U. S. Const., Amdt. 11; *Hans* v. *Louisiana*, 134 U. S 1, 10 (1890)). The Court of Appeals concluded that the presence of even one such claim in an otherwise removable case deprived the federal courts of removal jurisdiction over the entire case. 116 F. 3d, at 1152–1153 (relying on *Frances J*. v. *Wright*, 19 F. 3d 337, 341 (CA7 1994)). Hence, it held, the District Court's judgment must be vacated and the entire case returned to the state court for the litigation to begin all over again. 116 F. 3d, at 1153–1154.

We granted certiorari to review the Seventh Circuit's view of the matter, and the similar views taken in several earlier cases upon which that court relied, see, *e.g.*, *Frances J*., *supra*; *McKay* v. *Boyd Constr. Co*., 769 F. 2d 1084 (CA5 1985). Those decisions conflict with the decisions of other Courts of Appeals. See, *e.g.*, *Kruse* v. *Hawai'i*, 68 F. 3d 331 (CA9 1995); *Henry* v. *Metropolitan Sewer Dist.*,

922 F. 2d 332 (CA6 1990); see also *Silver* v. *Baggiano*, 804 F. 2d 1211 (CA11 1986). We now conclude, contrary to the Seventh Circuit, that the presence in an otherwise removable case of a claim that the Eleventh Amendment may bar does not destroy removal jurisdiction that would otherwise exist.

II

The governing provision of the federal removal statute authorizes a defendant to remove "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." 28 U. S. C. §1441(a). See also Judiciary Act of 1789, §12, 1 Stat. 79–80 (original removal statute); Act of Mar. 3 1887, 24 Stat. 552, corrected by Act of Aug. 13, 1888, 25 Stat. 433 (setting forth removal power in terms roughly similar to present law). The language of this section obviously permits the removal of a case that contains only claims that "arise under" federal law. That is because a federal statute explicitly grants the federal courts "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States," 28 U. S. C. §1331. This case, however, requires us to consider what happens if one, or more, of those claims is subject to an Eleventh Amendment bar. Does that circumstance destroy removal jurisdiction that would otherwise exist?

The primary argument that it does destroy removal jurisdiction has several parts. First, the argument distinguishes a case with federal-law claims that include one or more Eleventh Amendment claims, from a case with both federal-law claims and state-law claims. See 116 F. 3d, at 1152. We have suggested that the presence of even one claim "arising under" federal law is sufficient to satisfy the requirement that the case be within the original jurisdiction of the district court for removal. See *Chicago* v. *International College of Surgeons*, 522 U. S. ___, ___ (1997) (slip

op., at 7–9). In *Chicago*, for example, we wrote:

> "[The] federal claims suffice to make the actions 'civil actions' within the 'original jurisdiction' of the district courts for purposes of removal. . . . Nothing in the jurisdictional statutes suggests that the presence of related state law claims somehow alters the fact that [the] complaints, by virtue of their federal claims, were 'civil actions' within the federal courts' 'original jurisdiction.'" *Id.*, at ___ (slip op., at 9) (citation omitted).

See also *Metropolitan Life Ins. Co.* v. *Taylor*, 481 U. S. 58 (1987); *Franchise Tax Bd. of Cal.* v. *Construction Laborers Vacation Trust for Southern Cal.*, 463 U. S. 1, 7–12 (1983).

This statement, however, and others like it, appear in the context of cases involving both federal-law and state-law claims. And the Seventh Circuit found a significant difference between such cases and cases in which the Eleventh Amendment applies to some of the federal-law claims. See 116 F. 3d, at 1152. In the former cases the state-law claims fall within the supplemental jurisdiction of the federal courts. Supplemental jurisdiction allows federal courts to hear and decide state-law claims along with federal-law claims when they "are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." 28 U. S. C. §1367(a); see *Chicago*, *supra*, at ___ (slip op. at 7–9). Cf. §1441(c) (explicitly providing discretionary removal jurisdiction over entire case where federal claim is accompanied by a "separate and independent" state-law claim). In the latter cases, the comparable claims do not fall within the federal courts "pendent" jurisdiction, but rather, it is argued, are claims that the Eleventh Amendment prohibits the federal courts from deciding.

Second, the argument emphasizes the "jurisdictional" nature of this difference. The Seventh Circuit, for exam-

ple, said, "Claims barred by sovereign immunity stand on different footing than other claims that are not independently removable, because of the affirmative limitation on jurisdiction imposed by the sovereign immunity doctrines." 116 F. 3d, at 1152 (citing *Frances J.*, 19 F. 3d, at 340–341, and n. 4). That is to say, according to the Court of Appeals, neither the law permitting supplemental jurisdiction, nor any other law, see, *e.g.*, §1441(c), gives the federal court the power to decide a claim barred by the Eleventh Amendment. See *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89, 121 (1984); *Frances J.*, *supra*, at 341.

Third, the argument looks to removal based upon "diversity jurisdiction," 28 U. S. C. §1332, for analogical authority that leads to its conclusion, namely, that this "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 entire "case"). See, *e.g.*, 116 F. 3d, at 1152 (citing *Frances J.*, 19 F. 3d, at 341); *ibid.*; *McKay* v. *Boyd Constr. Co.*, 769 F. 2d, at 1086–1087 (discussing analogy to removal based on diversity jurisdiction). A case falls within the federal district court's "original" diversity "jurisdiction" only if diversity of citizenship among the parties is complete, *i.e.*, only if there is no plaintiff and no defendant who are citizens of the same State. See *Carden* v. *Arkoma Associates*, 494 U. S. 185, 187 (1990); *Strawbridge* v. *Curtiss*, 3 Cranch 267 (1806). But cf. Fed. Rule Civ. Proc. 21; *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U. S. 826, 832–838 (1989) (Rule 21 authorizes courts to dismiss nondiverse defendants in order to cure jurisdictional defects, instead of the entire case). Consequently, this Court has indicated that a defendant cannot remove a case that contains some claims against "diverse" defendants as long as there is one claim brought against a "nondiverse" defendant. See *Caterpillar Inc.* v. *Lewis*, 519 U. S. 61, 68–69 (1996). If the analogy is appropriate, then, an Eleventh

Amendment bar with respect to one claim would prevent removal of a case that contains some "arising under" claims, which, had they stood alone, would have permitted removal. *Frances J.*, *supra*, at 341; *McKay*, *supra*, at 1087.

We find the analogy unconvincing. This case differs significantly from a diversity case with respect to a federal district court's *original* jurisdiction. The presence of the nondiverse party automatically destroys original jurisdiction: No party need assert the defect. No party can waive the defect, or consent to jurisdiction. *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U. S. 694, 702 (1982); *People's Bank* v. *Calhoun*, 102 U. S. 256, 260–261 (1880). No court can ignore the defect; rather a court, noticing the defect, must raise the matter on its own. *Insurance Corp. of Ireland*, *supra*, at 702; *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U.S. 379, 382 (1884).

The Eleventh Amendment, however, does not automatically destroy original jurisdiction. Rather, the Eleventh Amendment grants the State a legal power to assert a sovereign immunity defense should it choose to do so. The State can waive the defense. *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 241 (1985); *Clark* v. *Barnard*, 108 U. S. 436, 447 (1883). Nor need a court raise the defect on its own. Unless the State raises the matter, a court can ignore it. See *Patsy* v. *Board of Regents of Fla.*, 457 U. S. 496, 515, n.19 (1982).

These differences help to explain why governing authority has treated the defects differently for purposes of original jurisdiction. Where original jurisdiction rests upon Congress' statutory grant of "diversity jurisdiction," this Court has held that one claim against one nondiverse defendant destroys that original jurisdiction. See, *e.g.*, *Newman-Green, Inc.*, *supra*, at 829 ("When a plaintiff sues more than one defendant in a diversity action, the plaintiff must meet the requirements of the diversity statute for

each defendant or face dismissal"). But, where original jurisdiction rests upon the Statute's grant of "arising under" jurisdiction, the Court has assumed that the presence of a potential Eleventh Amendment bar with respect to one claim, has not destroyed original jurisdiction over the case. *E.g.*, *Pugh*, 438 U. S., at 782; *Papasan* v. *Allain*, 478 U. S. 265 (1986). See also *Henry*, 922 F. 2d, at 338–339; *Roberts* v. *College of the Desert*, 870 F. 2d 1411, 1415 (CA9 1988). Cf. *Pennhurst*, *supra*, at 121 (suggesting that courts must analyze the applicability of the Eleventh Amendment to each claim rather than case as whole). 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. See §1441(a).

Other considerations further undermine the analogy. For example, for purposes of removal jurisdiction, we are to look at the case as of the time it was filed in state court – prior to the time the defendants filed their answer in federal court. See, *e.g.*, *St. Paul Mercury Indemnity Co.* v. *Red Cab Co.*, 303 U. S. 283, 291 (1938) ("[T]he status of the case as disclosed by the plaintiff's complaint is controlling in the case of a removal, since the defendant must file his petition before the time for answer or forever lose his right to remove"). As of that time, a case that involved "incomplete diversity" automatically would have fallen outside the federal courts' "original jurisdiction." By contrast, as of that time, the State's participation as a defendant would not automatically have placed the case outside the federal courts' jurisdictional authority. That is because the underlying relevant condition (the federal courts' effort to assert jurisdiction over an objecting State) could not have existed prior to removal, see, *e.g.*, *Maine* v. *Thiboutot*, 448 U. S. 1, 9, n. 7 (1980), and because the State might not have asserted the defense in federal court, but could have decided instead to defend on the merits.

(Here, for example, the State, while not waiving its Eleventh Amendment defense, has asserted in the alternative that Schacht could not state a §1983 claim against the State. See *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 64 (1989)).

These differences between "diversity" and "Eleventh Amendment" cases with respect to original and removal jurisdiction are sufficient to destroy the analogy upon which the lower court opinions rest. A case such as this one is more closely analogous to cases in which a *later* event, say the change in the citizenship of a party or a subsequent reduction of the amount at issue below jurisdictional levels, destroys previously existing jurisdiction. In such cases, a federal court will *keep* a removed case. See *St. Paul Mercury Indemnity Co.*, *supra*, at 293–295; *Phelps* v. *Oaks*, 117 U. S. 236, 240–241 (1886); *Kanouse* v. *Martin*, 15 How. 198, 207–210 (1854). See also *Carnegie-Mellon Univ.* v. *Cohill*, 484 U. S. 343, 350, and n.7 (1988) (federal court may exercise jurisdiction over remaining state-law claims under supplemental jurisdiction, if all federal-law claims are eliminated before trial). Here, too, at the time of removal, this case fell within the "original jurisdiction" of the federal courts. The State's later invocation of the Eleventh Amendment placed the particular *claim* beyond the power of the federal courts to decide, but it did not destroy removal jurisdiction over the entire case.

III

We must consider one further argument that respondent has made. That argument is not based upon an analogy but upon the specific language of a particular statutory provision, 28 U. S. C. §1447(c). The provision says: "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." *Ibid.* Respondent argues that, at least after the State asserted its Eleventh Amendment defense, the

federal court "lacked subject matter jurisdiction." Brief for Respondent 19. He points out that the statute says that the entire "*case* shall be remanded" to the state court. That is to say, he contends that, if the "district court lacks subject matter jurisdiction" over *any* claim, then *every* claim, *i.e.*, the entire "case," must be "remanded" to the state court.

Even making the assumption that Eleventh Amendment immunity is a matter of subject matter jurisdiction— a question we have not decided— we reject respondent's argument because we do not read the statute in this way. An ordinary reading of the language indicates that the statute refers to an instance in which a federal court "lacks subject matter jurisdiction" over a "case," and not simply over one claim within a case. Cf. §1441(c) (permitting "the entire case" to be removed or remanded, when one or more "non-removable claims or causes of action" is joined with a federal question "claim or cause of action"). Conceivably, one might also read the statute's reference to "case," to include a claim within a case as well as the entire case. But neither reading helps Schacht. The former reading would make the provision inapplicable here; the latter would make it applicable, but requires remand only of the relevant claims, and not the entire case as Schacht contends.

Nor does the statute's purpose favor Schacht's interpretation. The statutory section that contains the provision deals, not with the question of what is removable, but with the procedures that a federal court is to follow after removal occurs. It is entitled: "Procedure after removal generally." §1447. In substance, the section differentiates between removals that are defective because of lack of subject matter jurisdiction and removals that are defective for some other reason, *e.g.*, because the removal took place after relevant time limits had expired. For the latter kind of case, there must be a motion to remand filed no later

than 30 days after the filing of the removal notice. §1447(c). For the former kind of case, remand may take place without such a motion and at any time. *Ibid.* The provision, then, helps to specify a procedural difference that flows from a difference in the kinds of reasons that could lead to a remand. That objective is irrelevant to the kind of problem presented in this case.

We repeat our conclusion: A State's proper assertion of an Eleventh Amendment bar after removal means that the federal court cannot hear the barred claim. But that circumstance does not destroy removal jurisdiction over the remaining claims in the case before us. A federal court can proceed to hear those other claims, and the District Court did not err in doing so.

For these reasons, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.