SUPREME COURT OF THE UNITED STATES

No. 07–1437

CARLSBAD TECHNOLOGY, INC., PETITIONER *v.* HIF BIO, INC., ET AL.

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

[May 4, 2009]

JUSTICE SCALIA, concurring.

The Court today does nothing more than accurately apply to the facts of this case our holding in *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336 (1976). *Ante,* at 3–6.* As the Court notes, neither party has asked us to reconsider *Thermtron*, and we thus have no occasion to revisit that decision here, see *ante,* at 3, n.

I write separately, though, to note that our decision in *Thermtron* was questionable in its day and is ripe for reconsideration in the appropriate case. Title 28 U. S. C. §1447(d) states that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." The statute provides a single exception—not remotely implicated in this case—for certain civil rights cases removed under §1443. See §1447(d). As then-Justice Rehnquist understatingly observed in his *Thermtron* dissent, it would not be "unreasonabl[e] [to] believ[e] that 28 U. S. C. §1447(d) means what it says," 423 U. S., at 354; and what it says is no appellate review

*Contrary to JUSTICE BREYER's suggestion, this case does not involve reading another "exceptio[n]" into 28 U. S. C. §1447(d)'s language. See *post*, at 2 (concurring opinion). Not, that is, if you think *Thermtron* was rightly decided. Unlike *Osborn* v. *Haley*, 549 U. S. 225 (2007), this case simply involves applying *Thermtron*'s *in pari materia* reading of §1447(d) to the facts of this case.

of remand orders. See also *Osborn* v. *Haley*, 549 U. S. 225, 263 (2007) (SCALIA, J., dissenting). Since the District Court's order in this case "remand[ed] a case to the State court from which it was removed," it should be—in the words of §1447(d)—"not reviewable on appeal or otherwise." Q. E. D.

Over the years, the Court has replaced the statute's clear bar on appellate review with a hodgepodge of jurisdictional rules that have no evident basis even in common sense. Under our decisions, there is no appellate jurisdiction to review remands for lack of subject-matter jurisdiction, see *Powerex Corp.* v. *Reliant Energy Services, Inc.*, 551 U. S. 224, 232 (2007), though with exception, see *Osborn* v. *Haley*, *supra*, at 243–244; there is jurisdiction to review remands of supplemental state-law claims, and other remands based on abstention, see *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 711–712 (1996), though presumably no jurisdiction to review remands based on the "defects" referenced in §1447(c). See also *post,* at 2 (BREYER, J., concurring) (discussing similar anomalies). If this muddle represents a *welcome* departure from the literal text, see *ante*, at 2 (STEVENS, J., concurring), the world is mad.

This mess—entirely of our own making—does not in my view require expert reexamination of this area of the law, see *post,* at 2 (BREYER, J., concurring). It requires only the reconsideration of our decision in *Thermtron*—and a welcome *return* to the Court's focus on congressionally enacted text.