No. 22-105

IN THE

Supreme Court of the United States

COINBASE, INC.,
Petitioner,

v.

ABRAHAM BIELSKI,
Respondent.

COINBASE, INC.,
Petitioner,

v.

DAVID SUSKI, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

OPPOSITION TO PETITIONER'S MOTION TO EXPEDITE

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Cases before this Court, the final arbiter of federal law, should proceed in a reasonable manner allowing ample time to ensure that briefing and argument are as complete, comprehensive, and clear as possible. Expedited review short-circuits parties' and amici's ability to fully develop their arguments and present the most complete possible picture to the Court. It vaults the expedited case ahead in the line of other cases presenting the most important issues imaginable, such as federal constitutional rights, prison sentences, the right to live in this country, or even life and death. And it signals to courts, litigants, and the nation that the Court believes the expedited case is more deserving of priority than the many other weighty cases presented to the Court. As such, expedited review should be an option of last resort, reserved for only the most extraordinary cases in which a standard procedural schedule would result in devastating and irreparable consequences. This is not one of those cases.

Coinbase, Inc. has filed a petition asking this Court to grant certiorari and decide whether a district court may proceed with a case while an appeals court reviews its decision on the arbitrability of the dispute, or whether the case is stayed automatically. It has also asked the Court to expedite its review of the case if the Court grants certiorari. But Coinbase has not established that its petition presents issues that justify an extraordinary departure from this Court's already expeditious procedure or warrants placing Coinbase's interests ahead of the many important cases on this Court's crowded docket.

Coinbase's only basis for expedited review is its speculation that the case might become moot if the Ninth Circuit acts on Coinbase's parallel appeals before this Court concludes its review. But Coinbase can take other actions to assuage mootness concerns without disrupting this Court's process. Specifically, it can ask the Ninth Circuit to hold its appeals in abeyance pending this Court's review. Appeals courts do this all the time, and this procedural mechanism is far more equitable than expedited review here.

Of course, Coinbase would have to show that the circumstances favor such an action under the applicable test for staying an appeal, but that is what all parties have to do in every other case. The concern at the heart of Coinbase's petition for certiorari—incurring some additional litigation expenses while a court of appeals reviews the arbitrability of a dispute in the district court—is not the type of grave interest that warrants preferential treatment in this Court or elsewhere. This Court should deny the motion to expedite.

STATEMENT OF THE CASE

1. Coinbase's certiorari petition seeks joint review of Ninth Circuit orders in two cases—*Coinbase, Inc. v. Bielski* and *Coinbase, Inc. v. Suski*—denying Coinbase's motions to stay the district court proceedings pending its appeals of district court rulings on the arbitrability of the two disputes. Specifically, Coinbase seeks to challenge the Ninth Circuit's application in both cases of longstanding precedent holding that district court proceedings are not automatically stayed

pending the denial of a motion to compel arbitration. *See Britton v. Co-op Banking Grp.*, 916 F.2d 1405 (9th Cir. 1990).

The challenged Ninth Circuit precedent turned on application of this Court's decision in *Griggs v. Provident Consumer Discount Co.*, which holds that an appeal "divests the district court of its control over those aspects of the case involved in the appeal," 459 U.S. 56, 58 (1982) (per curiam); *see Britton*, 916 F.2d at 1411 (discussing *Griggs*). In that regard, the Ninth Circuit held that "[s]ince the issue of arbitrability was the only substantive issue presented in this appeal, the district court was not divested of jurisdiction to proceed with the case on the merits." *Britton*, 916 F.2d at 1412.

The Ninth Circuit's application of *Griggs* comports with that of the Second and Fifth Circuits, but it differs from the approach employed in the Third, Fourth, Seventh, Tenth, Eleventh, and D.C. Circuits. Those courts hold that arbitrability is inseparable from the merits of a case, and therefore that *Griggs* requires proceedings to be automatically stayed in the district court pending a non-frivolous appeal of the denial of a motion to compel arbitration because such an appeal divests the district court of jurisdiction over the whole case.

Thus, the issue Coinbase seeks discretionary review of here involves an application of *Griggs* to one particularized procedural scenario—when a district court has denied a motion to compel arbitration. The operative question is whether the arbitrability of a dispute and the merits of the dispute are separate "aspects of the

case." *Id.* If they are, the district court has jurisdiction over the merits phase of the case during the arbitrability appeal. If they are not, it doesn't.

2. Coinbase's motion to expedite asks this Court, in the event certiorari is granted, to throw out the Court's standard briefing and argument schedule and allow Coinbase to cut in line ahead of all the other cases on this Court's docket. Coinbase's sole ground for such an extraordinary departure from the norm is that if the Ninth Circuit issues its merits rulings in *Bielski* and *Suski* before this Court were to rule, it could moot the issue presented here. Mot. 1-3.

ARGUMENT

In its motion to expedite, Coinbase argues that "[t]he issue presented by Coinbase's joint petition for certiorari will become moot once the Ninth Circuit issues its decisions on Coinbase's underlying arbitrability appeals in *Bielski* and *Suski*," and so Coinbase requests that this Court "grant certiorari and decide the question presented expeditiously, before the Ninth Circuit has resolved both appeals." Mot. 2, 3. But for multiple reasons, Coinbase's requested relief is unnecessary, would be improvident, and should be denied.

1. Coinbase has identified no circumstances that would justify allowing it to cut in line in this Court and effect an extraordinary departure from this Court's already expeditious procedures. Coinbase's only claimed ground for expediting this Court's review is that the issue raised in its petition will become moot if the Ninth

Circuit decides its parallel appeals of the district courts' rulings on arbitrability.[1] But if this Court were to grant certiorari, Coinbase could ask the Ninth Circuit to hold *Bielski* and *Suski* in abeyance until this Court rules.

This commonplace measure is far less prejudicial to the parties than rushing a case through this Court on a truncated schedule and giving Coinbase preference over other nationally important cases. Circuit courts, including the Ninth Circuit, routinely hold cases in abeyance to allow this Court to complete its review and issue a decision. *See, e.g.*, 2/27/15 Order, *Hamby v. Walker*, No. 14-35856, Dkt. 20 (9th Cir.) (holding appeal in abeyance pending this Court's decision in case granted certiorari review); *In re Embry*, 831 F.3d 377, 382 (6th Cir. 2016); *Does v. Williams*, No. 01-7162, 2002 WL 1298752, at *1 (D.C. Cir. June 12, 2002); *Williams v. Virginia Emp. Comm'n*, 542 F.2d 1170 (4th Cir. 1976). Of course, Coinbase would have to show that such relief was warranted—*see Nken v. Holder*, 556 U.S. 418, 433-34 (2009)—but so does every other litigant in the same situation. Coinbase has made no showing that the issue it raises entitles it to special treatment to which no other litigant is entitled without establishing the presence of truly extraordinary circumstances.

[1] Coinbase also argues in its petition for certiorari that expedited review is required because "the question presented by this petition is particularly susceptible to mootness," and that "[a]t least two certiorari petitions filed last year raised the same question as this case but were mooted before this Court had an opportunity to consider the petitions." Pet. 27. Coinbase appears to be asserting that the issue here is capable of petition yet evading review. But if that were the case (Respondent does not agree that it is), then expedited review would not be necessary because Ninth Circuit rulings in *Bielski* and *Suski* would not moot this case. *See Davis v. Federal Election Comm'n*, 554 U.S. 724, 735 (2008) (exception to general mootness principles "applies where (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again"). Coinbase cannot have this issue both ways.

2. Even if the Ninth Circuit were to deny a request to hold *Bielski* and *Suski* in abeyance and then decide those cases, and this Court were to hold that those decisions mooted the issue here, the only harm Coinbase might suffer would be the aforementioned litigation expenses. That sort of speculative harm is not a valid basis for truncating this Court's review process and placing Coinbase's interests ahead of every other issue on this Court's docket. *Cf. F.T.C. v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980) ("Socal also contends that it will be irreparably harmed unless the issuance of the complaint is judicially reviewed immediately. Socal argues that the expense and disruption of defending itself in protracted adjudicatory proceedings constitutes irreparable harm. . . . But the expense and annoyance of litigation is part of the social burden of living under government.") (internal quotation marks omitted).

This case is nothing like *Nken*, which this Court agreed to consider on an expedited schedule. In that case, the petitioner, an asylum seeker, sought a stay pending an appeal of the Board of Immigration Appeals' denial of his asylum application because he faced deportation at any moment. *See* Emergency Motion for a Stay of Removal Pending Adjudication of the Petition for Review, *Nken v. Holder*, No. 08-681 (filed Nov. 7, 2008). Moreover, a circuit split made the standard for obtaining such a stay unclear, and the standard the appellate court applied to his stay application below was "demanding," all but eliminating any chance he might have at obtaining a stay, no matter the irreparable harm he would suffer and his likelihood of success on the merits. *Nken*, 556 U.S. at 423, 433. Thus, his right to live in this country, and perhaps even his personal safety, depended on the legal standard

the appellate court was to apply to his stay request. Under those extraordinary circumstances, expedited review in this Court was justified. This case presents no such circumstances.

The Court has expedited its standard procedures to consider challenges to actions that would have the direst consequences under a normal schedule, such as the submission of a report to Congress that would alter the results of a once-per-decade census and reapportionment of congressional districts, 9/30/20 Order, *Trump v. New York*, 141 S. Ct. 530 (No. 20-366), compliance with a district court injunction that would have forced the Executive Branch to negotiate with a foreign country to implement an immigration program that the government had twice determined to be against the nation's best interests, 2/18/22 Order, *Biden v. Texas*, 142 S. Ct. 2528 (No. 21-10806), and the termination of an immigration program that would change the lives of 700,000 people, 1/23/18 Order, *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 138 S. Ct. 1182 (No. 17-1003).

Conversely, this Court has denied motions to expedite in cases presenting issues of great importance, including a full year of uncertainty concerning the validity of the Affordable Care Act, 1/21/20 Order, *California v. Texas*, 141 S. Ct. 2104 (No. 19-840), the right to run advertisements encouraging constituents to weigh in on an upcoming Senate vote, 5/15/06 Order, *Christian Civic League of Maine, Inc. v. Fed. Election Comm'n*, 549 U.S. 801 (No. 06-0614), and the right of news media to broadcast accounts of testimony given at a murder trial that garnered national attention, *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 546 (1976) (trial ended before

this Court's ruling due to denial of motion to expedite). These denials demonstrate the extraordinary nature of expediting review in this Court, and that Coinbase's petition falls far short of deserving such expedited review.

This Court should deny the motion to expedite.

Respectfully submitted,

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