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

RESPONDENTS' JOINT AND UNOPPOSED MOTION TO DIVIDE ORAL ARGUMENT TIME

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INTRODUCTION

Pursuant to Rules 21 and 28.4, Respondent Abraham Bielski and Respondents David Suski, Jaimee Martin, Jonas Calsbeek, and Thomas Maher ("*Suski* Respondents") jointly move for divided oral argument in these consolidated cases. Bielski and the *Suski* Respondents jointly request an even division between them of the thirty minutes allotted to Respondents, with Bielski presenting the first fifteen minutes of argument and the *Suski* Respondents presenting the second fifteen minutes. Petitioner Coinbase, Inc. has informed all Respondents that it takes no position on this motion.

Equal division will provide the Court the benefit of each Respondent's distinct perspectives and arguments and ensure the full and adequate representation of each Respondent's interests. Because *Bielski* and *Suski* arise from different backgrounds and advance some distinct legal arguments, requiring one attorney to represent all Respondents in a single argument could prejudice at least one set of Respondents and may lead to unnecessary confusion. The Court has granted divided argument in other consolidated cases presenting similar situations and should follow the same approach here.

BACKGROUND

In *Bielski*, Respondent is a Coinbase user who alleges that shortly after creating a Coinbase account in 2021, a scammer fraudulently accessed his account and stole more than $30,000 from him. He alleges Coinbase violated state and federal laws in failing to offer him assistance in returning his funds.

Coinbase moved to compel his claims to arbitration, which the District Court denied after applying California unconscionability law. Coinbase appealed that denial to the Ninth Circuit under Section 16(a) of the Federal Arbitration Act ("FAA"). The Ninth Circuit held oral argument on February 14, 2023, but it withheld submission of the case pending this Court's resolution of the question presented.

In *Suski*, the Respondents are four former Coinbase users who participated in a cryptocurrency "sweepstakes," which they contend was illegally operated by Coinbase and its sweepstakes vendor, Marden-Kane, Inc ("Marden-Kane"). The *Suski* Respondents filed a putative class action against Coinbase and Marden-Kane, seeking to recover their and other entrants' financial losses from the sweepstakes. Through multiple rounds of motion practice, Coinbase moved to compel arbitration twice, and Marden-Kane moved to compel arbitration once. Upon the District Court's respective denials of all three motions to compel arbitration, Coinbase and Marden-Kane separately filed three unconsolidated, interlocutory appeals. On December 16, 2022, the Ninth Circuit affirmed the District Court's denial of Coinbase's first motion to compel arbitration. As of the date of this motion, Coinbase's and Marden-Kane's other, unconsolidated interlocutory appeals remain pending in the Ninth Circuit.

REASONS FOR RELIEF

This case concerns whether a stay of all district court proceedings is mandatory or discretionary pending a non-frivolous interlocutory appeal under Section 16(a) of the FAA. Bielski and the *Suski* Respondents have advanced distinct theories in answering the question presented. By way of example only, Bielski argues that arbitrability appeals are distinct from constitutional-right appeals regarding sovereign immunity or double jeopardy, and that arbitration clauses confer only procedural (not substantive) rights on contracting parties. Meanwhile, the *Suski* Respondents argue that their own controversies and contracts with Coinbase are completely outside the FAA's purview, and that extension of the *Griggs* rule alone could create disparate arbitrability procedures in federal versus state courts.

Further, in *Suski*, there are multiple parties and claims which *Suski* Respondents contend were undisputedly not subject to arbitration at the time of Coinbase's first interlocutory appeal. The *Suski* Respondents say that a general, jurisdictional divestiture rule in cases involving multiple parties is unworkable. And in *Bielski*, the Ninth Circuit's decision on Coinbase's Section 16(a) appeal remains pending. Yet in *Suski*, Respondents have already prevailed on the arbitrability question a second time in the appellate court. Bielski and the *Suski* Respondents have also taken opposing positions before this Court (outside their respective merits briefs) regarding the potential mootness of the question presented. *Suski* Respondents have generally agreed

with Petitioner Coinbase on questions of mootness, while Bielski has opposed Coinbase's and *Suski* Respondents' mootness arguments.

This illustrative list of differences highlights the benefits of dividing argument equally between Bielski and the *Suski* Respondents. Divided argument will allow the unrelated Respondents here to develop distinct lines of argument appropriate to the factual and procedural histories of their respective cases. Moreover, Bielski and the *Suski* Respondents each desire to be represented by the same counsel who has represented them in the trial and appellate courts below. It is thus necessary to grant divided argument to ensure that each Respondent is fully represented by the counsel of their own choice.

This Court has often granted divided argument in consolidated cases such as this one, where parties advanced different legal theories or emphasized different arguments in support of the same basic legal proposition. *E.g.*, *Fulton v. City of Philadelphia*, 141 S. Ct. 230 (2020) (mem.); *Kelly v. United States*, 140 S. Ct. 661 (2019) (mem.); *Rucho v. Common Cause*, 139 S. Ct. 1316 (2019) (mem.); *McDonald v. City of Chicago*, 559 U.S. 902 (2010) (mem.). Divided argument is similarly appropriate here.

Additionally, the Court frequently grants divided argument in consolidated cases where different facts and lower-court records pertain to different parties on the same side of a case. *E.g.*, *Rosen v. Dai*, 141 S. Ct. 1234; (2021) (mem.) (granting divided argument in consolidated cases presenting

different evidentiary records in removal proceedings); *Abbott v. Perez*, 138 S. Ct. 1544 (2018) (mem.) (granting divided argument in consolidated cases presenting different claims of racial gerrymandering); *Turner v. United States*, 137 S. Ct. 1248 (2017) (mem.) (granting divided argument in consolidated cases presenting distinct *Brady* claims); *Ziglar v. Abbasi*, 137 S. Ct. 615 (2017) (mem.) (granting divided argument in consolidated cases presenting distinct *Bivens* claims); *Kansas v. Gleason*, 135 S. Ct. 2917 (2015) (mem.) (granting divided argument in consolidated cases presenting different sentencing issues); *Davis v. Washington*, 546 U.S. 1213 (2006) (mem.) (granting divided argument in consolidated cases presenting distinct Confrontation Clause claims); *Rapanos v. United States*, 546 U.S. 1000 (2005) (mem.) (granting divided argument in consolidated cases presenting factually distinct positions concerning application of the Clean Water Act).

Dividing argument between distinct parties who have different interests or positions is a useful, practical, and widely accepted approach. *See* Stephen M. Shapiro, et al., *Supreme Court Practice* 777 (10th ed. 2013) ("Having more than one lawyer argue on a side is justifiable . . . when they represent different parties with different interests or positions.").

CONCLUSION

For all of the foregoing reasons, Bielski and the *Suski* Respondents jointly request that the Court grant their unopposed motion and divide Respondents' thirty minutes of oral argument time equally between them.

Respectfully submitted,

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