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

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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16 Charles A. Wright et al., *Federal Practice & Procedure* (5th ed. Apr. 2022 Update) 9, 10

INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring meaningful access to the courts and thus has an interest in ensuring that statutory provisions are treated as jurisdictional only when Congress clearly requires that result.

INTRODUCTION AND SUMMARY OF ARGUMENT

Coinbase is a cryptocurrency exchange platform that facilitates online transactions of cryptocurrency and profits from fees assessed on those transactions. Respondents are Coinbase accountholders who seek to hold the company accountable for false advertising, unfair competition, and failing to investigate electronic fraud under the Electronic Funds Transfer Act, 15 U.S.C. §§ 1693 *et seq*. ("EFTA"), and therefore brought suit against Coinbase.

Rather than respond to Respondents' claims on the merits, Coinbase moved to compel arbitration based on an arbitration clause in the company's User Agreement that, Coinbase alleges, demonstrates that Respondents agreed to arbitrate their disputes. When the district courts denied the motions to compel

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[1] Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

arbitration, Coinbase appealed. *See Bielski v. Coinbase, Inc.*, No. 21-cv-07478 (N.D. Cal. Jan. 13, 2022), Dkt. No. 43; J.A. 716. Soon after, Coinbase filed motions in the court below to stay the district court proceedings pending appeal in both cases, and the court below denied both motions. *See* J.A. 178; *id.* at 728.

Coinbase now argues that the court below was wrong to deny the motions because the district courts lacked authority to proceed with litigation while the appeals were pending. According to Coinbase, Section 16(a) of the Federal Arbitration Act (FAA), which does nothing more than provide that an interlocutory appeal "may be taken from" certain orders refusing arbitration, 9 U.S.C. § 16(a), strips a district court of authority over a case after an appeal has been noticed pursuant to that provision. This is wrong.

As an initial matter, Section 16(a) itself is clearly not jurisdictional. In accordance with its efforts to "ward off profligate use of the term 'jurisdictional,'" *Sebelius v. Auburn Regional Medical Center*, 568 U.S. 145, 153 (2013), this Court requires a clear statement before it regards a statutory provision as jurisdictional, *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 21 n.9 (2017); *see also Fort Bend Cnty., Texas v. Davis*, 139 S. Ct. 1843, 1849 (2019) ("[When Congress does not rank a prescription as jurisdictional, courts should treat the restriction as nonjurisdictional in character."). There is no such clear statement here.

Nor does this Court's decision in *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56 (1982) (per curiam), which held that an appeal "divests the district court of its control over those aspects of the case involved in the appeal," *id.* at 58, set out a jurisdictional rule. Although *Griggs* referred to the filing of a notice of appeal as an event of "jurisdictional significance,"

id., this Court has since made clear that "[o]nly Congress may determine a lower federal court's subject-matter jurisdiction," *Hamer*, 138 S. Ct. at 17. Thus, as courts of appeals have repeatedly recognized, *Griggs* is not a jurisdictional rule, but a prudential rule of judicial economy. *See, e.g.*, *United States v. Carpenter*, 941 F.3d 1, 6 (1st Cir. 2019); *Matter of Jones*, 768 F.2d 923, 931 (7th Cir. 1985) (Posner, J., concurring).

The "judge-made rule," *id.*, that *Griggs* articulated is "designed to promote judicial economy and avoid the confusion and inefficiency that might flow from putting the same issue before two courts at the same time," 20 James Wm. Moore et al., *Moore's Federal Practice* ¶ 303.32[1] (3d ed. 2019). Under this rule, district courts cannot address "aspects of the case [that] are involved in the appeal" while the appeal is pending, but may move forward with other components of the case. *Id.*

Coinbase in effect asks this Court to jettison this rule, arguing that district courts can under no circumstances continue to address any aspect of a case after an appeal of a motion to compel arbitration has been noticed. According to Coinbase, Congress established a mandatory, automatic stay of district court proceedings when it enacted Section 16(a). There is simply no basis for that argument in the text, history, or purpose of Section 16(a).

To start, there is no evidence supporting Coinbase's position in the text of Section 16(a), which does nothing more than authorize the taking of interlocutory appeals from certain orders. Perhaps recognizing the absence of textual support for its position, Coinbase focuses on *Griggs* and other cases that, it argues, support the inference that Congress intended to impose a mandatory, automatic stay rule. But none of those

cases provide reason for this Court to ignore the plain language of Section 16(a).

In support of its request for an automatic stay rule, Coinbase also points to the "purpose" of the FAA generally and Section 16(a) in particular. *See* Pet'r Br. 31-34. But even if the Court could "replace the [FAA's] actual text with speculation as to Congress' intent," *Magwood v. Patterson*, 561 U.S. 320, 334 (2010), that too is contrary to Coinbase's argument. As this Court has explained, the FAA was passed to "require[] courts to enforce private arbitration agreements," *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 536 (2019); *see Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 423 (1967) ("The avowed purpose of the Act was to place arbitration agreements 'upon the same footing as other contracts.'" (quoting H.R. Rep. No. 68-96, at 1-2 (1924))); *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) (FAA is "at bottom a policy guaranteeing the enforcement of private contractual arrangements"), and it "does not require parties to arbitrate when they have not agreed to do so," *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989). There is no indication that Congress intended to provide parties invoking the FAA with a stay of proceedings while appellate courts review decisions concerning the *existence* of an agreement to arbitrate. Moreover, an automatic stay rule of the sort Coinbase now requests is not necessary to effectuate the goal of Section 16(a), which, as Coinbase acknowledges, was simply to authorize interlocutory appeals from certain specified orders.

In sum, there is simply no support for Coinbase's argument that Congress established a mandatory automatic stay rule that displaces courts' authority to determine whether continued district court proceedings would put "the same issue before two courts at the

same time," 20 Moore, *supra*, ¶ 303.32[1], or whether a stay is otherwise appropriate. This Court should reject Coinbase's request that it establish one now.

ARGUMENT

I. Despite Coinbase's Suggestions to the Contrary, District Courts Clearly Retain Jurisdiction When Arbitrability Appeals Are Filed.

Coinbase repeatedly argues that the filing of an arbitrability appeal "oust[s] a district court's jurisdiction to proceed with litigation pending appeal," Pet'r Br. i; *id.* at 2 ("Allowing district court proceedings to march on . . . improperly permits the district court to retain jurisdiction over the core issues on appeal."); *id.* at 26 (noting that that the text of Section 16(a) "divests the district court of authority to press ahead with the merits during the appeal"); *id.* at 3, 19. To the extent that Coinbase is suggesting that district courts lose subject-matter jurisdiction when an arbitrability appeal is filed, it is wrong.

A. Section 16(a) Is Not a Jurisdictional Provision.

As this Court has explained, the term "jurisdictional" is "generally reserved for prescriptions delineating the classes of cases a court may entertain (subject-matter jurisdiction) and the persons over whom the court may exercise adjudicatory authority (personal jurisdiction)," *Fort Bend County*, 139 S. Ct. at 1848, and "only Congress may determine a lower federal court's subject-matter jurisdiction," *Kontrick v. Ryan*, 540 U.S. 443, 452 (2004) (citing U.S. const. art. III, § 1).

Because the consequences of attaching the jurisdictional label are significant, *Henderson v. Shinseki*, 562

U.S. 428, 434 (2011) ("[b]randing a rule as going to a court's subject-matter jurisdiction alters the normal operation of our adversarial system"); *Hamer*, 138 S. Ct. at 17 (lack of jurisdiction "necessitate[es] dismissal—a 'drastic' result" (quoting *Henderson*, 562 U.S. at 435)), and courts "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party," *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006), this Court has repeatedly admonished that rules should not be labeled jurisdictional unless Congress "clearly states" an intention to imbue a particular rule with those severe consequences, *id.* at 515; *see Auburn Regional Med. Ctr.*, 568 U.S. at 153 (noting the need to "ward off profligate use of the term 'jurisdictional'").

This Court's approach to determining whether Congress has "clearly state[d]" an intent to make a rule jurisdictional is not complicated. "To satisfy the clear-statement rule, the jurisdictional condition must be just that: clear." *Boechler, P.C. v. Comm'r of Internal Revenue*, 142 S. Ct. 1493, 1499 (2022). In other words, this Court has made clear that "[a] rule is jurisdictional '[i]f the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional.'" *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012) (quoting *Arbaugh*, 546 U.S. at 515).

Even when a statutory provision "govern[s] the transfer of adjudicatory authority from one Article III court to another," *Hamer*, 138 S. Ct. at 20, rather than "empower[ing] federal courts to adjudicate" certain actions, *Arbaugh*, 546 U.S. at 503, this Court has cautioned against "mischaracterizing claim-processing rules . . . as jurisdictional limitations," *Hamer*, 138 S. Ct. at 17.

In *Hamer*, this Court evaluated a Federal Rule of Appellate Procedure providing that "[n]o extension [of

time for filing a notice of appeal] may exceed 30 days after the prescribed time." *Id.* at 19 (citing FRAP(4)(a)(5)(C)). Although there was no statute specifically limiting extensions of the appeals deadline, the respondents in *Hamer* argued that the federal rule had a "statutory basis" and was therefore jurisdictional. *Id.* at 20. The Court rejected this argument. It held that the federal rule was a mandatory claim-processing rule, not a "jurisdictional" deadline, because "a provision governing the time to appeal in a civil action qualifies as jurisdictional only if *Congress sets the time*." *Id.* at 17 (emphasis added, citations and internal quotation marks omitted).

Like the respondents in *Hamer*, Coinbase seems to argue that Section 16 is "jurisdictional" by reference to a procedural rule—here, the judge-made rule in *Griggs*, *see* Pet'r Br. 25-36, rather than a federal rule of procedure—that does not appear in any statute. And as *Hamer* makes clear, a procedural rule cannot make a provision "jurisdictional" when it is "absent from the U.S. Code." *Hamer*, 138 S. Ct. at 21; *see Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 714 (2019) ("Because Rule 23(f)'s time limitation [for permitting an appeal from an order granting or denying class-action certification] is found in a procedural rule, not a statute, it is properly classified as a nonjurisdictional claim-processing rule.").

Significantly, Section 16(a), which provides that "[a]n appeal may be taken from" various specified orders, provides no indication—let alone a clear one—that Congress intended the authorization of these appeals to be jurisdictional. It "does not speak in jurisdictional terms or refer in any way to the jurisdiction of [district] courts." *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 394 (1982). Indeed, its text "says nothing about whether [the district court retains]

subject-matter jurisdiction." *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 164 (2010). It simply authorizes the taking of an interlocutory appeal without suggesting, at all, that there is jurisdictional significance to noticing an appeal.

B. *Griggs* Is Not a Jurisdictional Rule.

Although *Griggs* referred to the "[t]he filing of a notice of appeal" as an "event of jurisdictional significance," 459 U.S. at 58, this Court has since made clear that "[o]nly Congress may determine a lower federal court's subject-matter jurisdiction," *Hamer*, 138 S. Ct. at 17; *see id.* at 21 (noting that the Court has not always been "meticulous" in its use of the term "jurisdictional"). *Griggs* is thus a prudential rule and cannot support an argument that the filing of an arbitrability appeal divests district courts of jurisdiction over the case.

In *Griggs*, the respondent filed a motion to amend a district court's final decision seven days after the district court entered final judgment. *Griggs*, 459 U.S. at 57. While the motion to amend was pending, the respondent filed a notice of appeal of the final judgment. *Id.* The court of appeals accepted the appeal, even though, as it acknowledged, the appeal was technically premature because of the pending motion to amend. *Id.* at 57-58. This Court reversed, concluding that the court of appeals did not have jurisdiction over the premature appeal under a newly enacted rule of civil procedure. *Id.* at 61. In so doing, the Court observed that "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests

the district court of its control over those aspects of the case involved in the appeal." *Id.* at 58.

Although the Court used "jurisdictional" language, *Griggs* itself made clear that district courts did not lose subject-matter jurisdiction over the entirety of the case, but rather retained authority to address matters not at issue in the appeal. *Id.* at 59 (describing cases in which the district court retained jurisdiction when there was "little danger a district court and a court of appeals would be simultaneously analyzing the same judgment"); *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985) (noting that the "proposition [in *Griggs*] . . . does not imply that an [interlocutory appeal] transfers jurisdiction over *the entire case* to the court of appeals" (emphasis added)). Indeed, because "[t]he purpose of the rule is to keep the district court and the court of appeals out of each other's hair," *Jones*, 768 F.2d at 931, the rule only "suspends the power of the district court to modify the order subject to appeal, but does not oust district-court jurisdiction to continue with proceedings that do not threaten either the appeal's orderly disposition or its raison d'etre," 16A Charles A. Wright, et al., *Federal Practice & Procedure* § 3949.1 (5th ed. Apr. 2022 Update). In other words, under *Griggs*, while the district court "may not finally adjudicate substantial rights directly involved in the appeal," *Newton v. Consol. Gas Co. of New York*, 258 U.S. 165, 177 (1922), it is "is free to continue to adjudicate matters separate from or collateral to the appeal," Allan Ides, *The Authority of A Federal District Court to Proceed After A Notice of Appeal Has Been Filed*, 143 F.R.D. 307, 308-09 (1992).

Thus, as prominent treatises have recognized, the divestiture rule this Court articulated in *Griggs* "is not derived from the jurisdictional statutes or from the

rules," but rather "is a judge-made doctrine, designed to promote judicial economy and avoid the confusion and inefficiency that might flow from putting the same issue before two courts at the same time." 20 Moore, *supra*, ¶ 303.32[1]; Wright et al., *supra*, § 3949.1 ("[T]he rule . . . is a judge-made doctrine designed to implement a commonsensical division of labor between the district court and the court of appeals.").

Indeed, this is how courts of appeals have repeatedly described *Griggs*'s divestiture rule. *See, e.g.*, *Carpenter*, 941 F.3d at 6 ("The divestiture rule is . . . not jurisdictional. Rather, the divestiture rule is rooted in concerns of judicial economy, crafted by courts to avoid the confusion and inefficiency that would inevitably result if two courts at the same time handled the same issues in the same case." (quotations omitted)); *Rodriguez v. Cnty. of Los Angeles*, 891 F.3d 776, 790 (9th Cir. 2018) (observing that the divestiture rule is therefore more akin to "'mandatory claim-processing rules' that may be applied in a 'less stern' manner than true jurisdictional rules" (quoting *Hamer*, 138 S. Ct. at 17)). These courts make clear that the divestiture principle is a "judge-made rule" that aims to "prevent[] the confusion and inefficiency which would of necessity result were two courts to be considering the same issue or issues simultaneously." *Venen v. Sweet*, 758 F.2d 117, 121 (3d Cir. 1985); *see United States v. Madrid*, 633 F.3d 1222, 1226 (10th Cir. 2011) ("This rule 'is a judge-made doctrine'" (quoting 20 Moore, *supra*, § 303.32)); *Jones*, 768 F.2d at 931 ("This is a judge-made rule, and naturally there are exceptions to it."). Thus, the administration of the divestiture rule is "sensitive" and "requires a delicate touch" that is attuned to the rule's purpose—to

prevent the "risk of an intramural collision." *United States v. Brooks*, 145 F.3d 446, 456 (1st Cir. 1998).

* * *

In short, there is no basis for concluding that districts courts are divested of subject-matter jurisdiction by the filing of an arbitrability appeal. Nor is there any basis for concluding that Congress, in passing Section 16(a), stripped courts of the discretion to determine whether a stay is appropriate, as the next Section discusses.

II. Section 16(a) Does Not Deprive Courts of the Discretion to Determine Whether a Stay Is Appropriate.

Under *Griggs*, courts must determine whether the issues the district court is continuing to address are at issue in the appeal. If they are not, the district court can continue to address those issues, unless it determines that a stay is warranted under the traditional four-part stay test. Coinbase asks this Court to take the discretion to make those determinations away from courts and to conclude that Section 16(a) requires an automatic and mandatory stay whenever an arbitrability appeal is filed. *See, e.g.*, Pet'r Br. 17-19. There is simply no basis for that request in the text, history, or purpose of the FAA.

A. This Court has repeatedly refused to "displace courts' traditional equitable authority" absent the "clearest command" from Congress. *Miller v. French*, 530 U.S. 327, 340-41 (2000) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979)); *cf. Nken v. Holder*, 556 U.S. 418, 433 (2009) ("[W]e are loath to conclude that Congress would, without clearly expressing such a purpose, deprive the Court . . . of its customary power to stay orders under review." (internal quotation

marks omitted)). It thus bears noting that Coinbase makes virtually no argument about the text of Section 16(a). How could it? By its terms, Section 16(a) simply authorizes interlocutory appeals.

B. Perhaps recognizing that the text itself provides no support for its argument, Coinbase argues instead that this Court should infer a congressional intent to strip courts of the discretion to determine whether a stay is appropriate because of case law that existed at the time Section 16(a) was passed. "In enacting this text," Coinbase argues, "Congress legislated against the backdrop of the divestiture rule, which provides that district courts are divested of authority to proceed with matters implicated by the appeal." Pet'r Br. 20.

But, as previously discussed, *Griggs* is not a jurisdictional rule—it is a rule of judicial economy designed to avoid continued district court litigation over "those aspects of the case involved in the appeal." Nothing about *Griggs* suggests that Congress, in passing Section 16(a), intended to take that discretion away from courts and impose instead a mandatory and automatic stay. If anything, the existence of the *Griggs* backdrop suggests that Congress would have understood the need to be clear had it intended to disrupt that status quo.

Coinbase also points to cases applying *Griggs*'s divestiture rule in the immunity context that, it argues, support its reading of Section 16(a). According to Coinbase, "[t]he Congress that amended the FAA to allow interlocutory appeals in 1988 was legislating against the backdrop of appellate precedent making clear that nonfrivolous interlocutory appeals from denials of immunity deprived district courts of authority to proceed." Pet'r Br. 40 (referencing *United States v. Dunbar*, 611 F.2d 985, 988 (5th Cir. 1980) (en banc)).

Even accepting Coinbase's analogy between the rights of parties invoking the FAA and those protected by this Court's immunity cases, these cases do not support Coinbase's argument. In 1988, as today, courts regularly acknowledged that "the district court may still proceed with matters not involved in the appeal" pending the appeal of an immunity defense, and that "[h]ow broadly a court defines the aspects of the case on appeal depends on the nature of the appeal." *Alice L. v. Dusek*, 492 F.3d 563, 564-65 (5th Cir. 2007) (quoting *Taylor v. Sterrett*, 640 F.2d 663, 667-68 (5th Cir. 1981)); *Johnson v. 3M Co.*, 55 F.4th 1304, 1309 (11th Cir. 2022) (pending appeal of an immunity defense, the district court retained jurisdiction to accept amended complaint, because the "notice of appeal divested the district court of jurisdiction over only one claim in a single count" of the original complaint). For example, around the time of the FAA's amendment, district courts regularly retained discretion to permit discovery on issues not related to the appealed immunity order. *See, e.g.*, *Graham v. Gray*, 827 F.2d 679, 682 (10th Cir. 1987) (stay was unnecessary when "the scope of discovery permitted by the district court appears to be neither oppressive nor unnecessary, and equally appropriate if sought from a nonparty"); *Lugo v. Alvarado*, 819 F.2d 5, 6-7 (1st Cir. 1987) (denying stay when discovery proceedings were "not directed solely at damage issues related to the qualified immunity defense"); *see generally In re Flint Water Cases*, 960 F.3d 820, 828 n.2 (6th Cir. 2020) (citing cases).

Similarly, district courts often denied motions to stay during appeals of immunity-related orders when doing so would "seriously curtail a civil rights plaintiff's opportunity to present an adequate opposition . . . [or] gather and present evidence." *Lugo*, 819 F.2d at 5 (quoting district court order); *see also McSurely v.*

McClellan, 697 F.2d 309, 317 (D.C. Cir. 1982) (observing that a stay was inappropriate when "[t]he interests of the public and of the McSurelys in avoiding further delay are substantial"); *see generally In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170-71 (2d Cir. 2007) (denying stay due to the "public interest in . . . hastening the trial that might result in compensation for at least some Plaintiffs during their lifetimes, even though that course will impose upon the Defendants the burdens of pretrial discovery"). Indeed, as courts had observed prior to the passage of Section 16(a), district courts can use their authority pending appeal to minimize "the opportunity for abusive delay inherent in the protections afforded by the doctrines of absolute and qualified immunity" through "diligent administration of pretrial proceedings," *Kennedy v. City of Cleveland*, 797 F.2d 297, 301 (6th Cir. 1986); *see generally Martin v. Malhoyt*, 830 F.2d 237, 246 (D.C. Cir. 1987) (describing district court's discretion to "refuse[] to postpone discovery, but stay[] trial pending appeal"), and careful assessment of the "unique circumstances of each case," *McSurely*, 697 F.2d at 317.

Again, Coinbase offers no reason to think that Congress intended, *sub silentio*, to disturb this settled practice and to impose instead a mandatory and automatic rule that leaves courts without discretion to determine when some matters can still be litigated while the appeal is pending.

C. Coinbase also argues that its proposed divestiture rule should be adopted because it comports with the FAA's "central purpose." Pet'r Br. 31-34. Because the statute's purpose is to "facilitate streamlined proceedings" and avoid "costs and delay through litigation," Coinbase argues, Section 16 must contain an unstated divestiture requirement. *Id.* at 32 (citations omitted).

As an initial matter, this Court "cannot replace the [FAA's] actual text with speculation as to Congress' intent," *Magwood*, 561 U.S. at 334, and nothing in that text supports the rule that Coinbase requests. The court cannot "presume . . . that any result consistent with [Coinbase's] account of the statute's overarching goal must be the law." *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017). It must "presume more modestly instead 'that [the] legislature says . . . what it means and means . . . what it says.'" *Id.* (quoting *Dodd v. United States*, 545 U.S. 353, 357 (2005)).

Furthermore, nothing about the purpose of the FAA in general or of Section 16(a) in particular requires that district courts be stripped of all authority in the case when an arbitrability appeal is filed. As this Court has recognized, the FAA was passed to "place[] arbitration agreements on an equal footing with other contracts and requires courts to enforce them according to their terms." *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010). Like any agreement, arbitration agreements are not "unassailable," *id.* at 71, nor "immunize[d] from judicial challenge," *Prima Paint*, 388 U.S. at 404 n.12.

Indeed, Section 2 of the FAA provides that written arbitration agreements shall be enforceable "save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. This "saving clause" indicates that "the purpose of Congress in 1925 was to make arbitration agreements as enforceable as other contracts, but not more so." *Prima Paint*, 388 U.S. at 404 n.12; *Rent-A-Ctr.*, 561 U.S. at 68 ("If a party challenges the validity . . . the precise agreement to arbitrate at issue, the federal court must consider the challenge before ordering compliance with that agreement.").

By requesting an automatic stay rule, Coinbase effectively seeks to elevate arbitration agreements above other contracts, so that parties invoking the FAA can enjoy the benefits of arbitration before a court has even determined that an agreement to arbitrate exists. This undermines "Congress' principal purpose of ensuring that private arbitration agreements are enforced according to their terms," *Volt*, 489 U.S. at 478, and creates a special rule for arbitration agreements that finds no support in the FAA.

Furthermore, there is no reason to think that Coinbase's automatic stay rule is necessary to achieve the purposes of Section 16. Coinbase may well be right that Section 16(a) was passed to resolve a circuit split about whether "threshold arbitrability orders are immediately appealable," Pet'r Br. 31; *see also* Bielski Br. 14-16, but Section 16(a) does exactly that by specifying when interlocutory appeals may be taken, making the mandatory and automatic stay rule that Coinbase requests wholly unnecessary. Indeed, given that cases dating from the time of Section 16(a)'s enactment allowed for district courts to continue to adjudicate "those aspects of the case [not] involved in the appeal," *Griggs*, 459 U.S. at 58, there is every reason to think Congress would have been explicit had it intended to disrupt that background rule. Yet there is nothing in the text of the law that suggests that was its intent.

* * *

As this Court has long recognized, a district court has significant "power . . . to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants," *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936) (Cardozo, J.), and the "broad discretion to stay proceedings [is] an incident to its power to control its own docket,"

Clinton v. Jones, 520 U.S. 681, 683 (1997). Similarly, even when an interlocutory appeal is pending, district courts retain the discretion to "proceed with matters not involved in the appeal." *Alice L.*, 492 F.3d at 564-65; *Griggs*, 459 U.S. at 58.

Coinbase argues that Section 16(a) silently disrupts this state of affairs, automatically divesting the district court of authority to continue proceedings while an appeal is pending. But the "comprehensiveness of [a district court's] equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). And nothing in the FAA's text, history, or purpose provides that command.

CONCLUSION

For the foregoing reasons, the decision of the court below should be affirmed.

Respectfully submitted,

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