

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**

**SUPPLEMENTAL BRIEF OF RESPONDENTS
DAVID SUSKI, JAIMEE MARTIN,
JONAS CALSBEEK, AND THOMAS MAHER**

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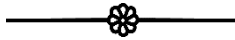
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INTRODUCTION

Pursuant to Supreme Court Rule 15.8, Respondents David Suski, Jaimee Martin, Jonas Calsbeek, and Thomas Maher (“*Suski* Respondents”) respectfully submit this supplemental brief concerning recent developments in the *Suski* District Court. Respondent Abraham Bielski’s Supplemental Brief, dated November 29, 2022, necessitates this Supplemental Brief from the *Suski* Respondents, because Respondent Bielski’s Supplemental Brief paints a materially incomplete picture of the lower court proceedings in this case.

Specifically, Respondent Bielski argues that there is no longer a “live controversy” between Coinbase and *Suski* Respondents (*Bielski* Supp. Br. at 4), but that argument is unsupported by the record below.



ARGUMENT

On November 10, 2022, the *Suski* Respondents (via the undersigned) filed a stipulation in the District Court, seeking to stay fact discovery and certain case deadlines pending one of the three arbitrability appeals before the Ninth Circuit in *Suski*. Supp. App. 1a-5a. This limited stipulation did not and does not extinguish the live controversy between Coinbase and the *Suski* Respondents over the question presented.

The *Suski* Respondents originally waived their right to respond to Coinbase’s Joint Petition here. Subsequently, however, the Court requested that they substantively respond to the Joint Petition. The *Suski*

Respondents did so on October 31, 2022, arguing that the Court should grant certiorari to affirm the Ninth Circuit.

Shortly after submitting their Response Brief here, *Suski* Respondents conferred with Coinbase regarding the statuses of: (i) all proceedings in the District Court, (ii) the proceedings in three separate arbitrability appeals now pending in *Suski*, and (iii) the proceedings pending before this Court. Given the extensive litigation activities that were and are ongoing in all three levels of the courts simultaneously, the parties here agreed to stay their District Court activities, pending one of the three arbitrability appeals in *Suski*.

The purpose of the parties' limited stipulation in this regard was not to extinguish their controversy over the question presented (which stands today), but rather, to ensure that they can dedicate sufficient resources to litigating the numerous questions presented before the Ninth Circuit and this Court. For the *Suski* Respondents to attempt to conduct fact discovery, prepare for class certification and merits proceedings, defend three separate arbitrability appeals, and zealously advocate before this Court—all at once—would have been to diminish the quality of representation before this Court as well as the lower courts. The parties' limited, stipulated stay has nothing to do with this Court's resolution of the question presented, and everything to do with the myriad appellate demands being imposed on *Suski* Respondents by both Coinbase and Marden-Kane.

Indeed, it is precisely because the question presented here remains unresolved by the lower courts that the *Suski* Respondents have had their hard-earned, District Court proceedings derailed by not

one, not two, but three simultaneous interlocutory appeals, as well as multiple proceedings before this Court: all over “written provision[s]” in a “contract” that does not even mention “arbitration.” 9 U.S.C. § 2. The fact that *Suski* Respondents were effectively forced into an unwanted albeit stipulated stay here only further illustrates why certiorari should be granted, not denied. *Suski* is an ideal vehicle for this Court to address the extensive, expensive appellate gamesmanship in which civil defendants routinely engage for stay-seeking purposes, and not for arbitration purposes.

Contrary to Respondent Bielski’s Supplemental Brief, nothing about the parties’ original controversy has been extinguished. This is true for the reasons articulated in Coinbase’s Supplemental Brief. This is also true because the District Court ordered its stipulated stay pending just one of the *three* separate arbitrability appeals in *Suski*. After the Ninth Circuit resolves that one appeal, Coinbase and Marden-Kane will continue to seek an automatic stay of all District Court proceedings pending their other arbitrability appeals. The *Suski* Respondents will continue to oppose any such stays. Meanwhile, both the District Court and the Ninth Circuit have made quite clear where they stand on the question presented. They have categorically refused to impose any disputed stay here.

Moreover, even if the Ninth Circuit somehow resolves all three arbitrability appeals in *Suski* before this Court resolves the question presented (unlikely), such an outcome would not deprive this Court of jurisdiction to resolve the question. As Respondent Bielski suggested in opposing Coinbase’s Motion to Expedite,

lower courts' denials of stays pending arbitrability appeals are judicial actions "capable of repetition, yet evading review." See Bielski's Opposition to Coinbase's Motion to Expedite at 5, n.1 (citing *Davis v. Federal Election Comm'n*, 554 U.S. 724, 735 (2008)). This case thus presents an established "exception to general mootness principles." *Id.*

Indeed, now that the *Bielski* District Court has invalidated the arbitration provisions in Coinbase's millions of User Agreements, Coinbase is reasonably likely to be subjected to the same stay denials again and again within the Ninth Circuit, without this Court ever having time to resolve the inter-Circuit conflict over the question presented. There is simply no colorable argument that the parties' limited, stipulated stay in *Suski* somehow extinguishes the controversy between the parties here. Moreover, the particulars of the *Suski* litigation make it an ideal vehicle for this Court to address the question presented, and put a decisive end to civil defendants' nationwide, appellate gamesmanship under the false guise of the FAA.



CONCLUSION

For all of the foregoing reasons, the *Suski* Respondents respectfully request that the Court grant Coinbase's Joint Petition, and afford them an opportunity to be heard on the question presented.

Respectfully submitted,

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