

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**

**RESPONSE TO RESPONDENT ABRAHAM
BIELSKI'S SUGGESTION OF MOOTNESS IN
*COINBASE v. SUSKI***

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This Court has jurisdiction to decide the question on which this Court granted certiorari. When the Ninth Circuit held oral argument in *Bielski* last month, the panel stated it would hold submission of the appeal until this Court rules. Accordingly, “*Bielski* is a clean avenue for reviewing the question presented.” Suggestion of Mootness at 6. *Suski* also is not moot. The important and recurring question presented in *Suski* is capable of repetition, yet evading review, as exemplified by the fact that the Ninth Circuit resolved the appeal in *Suski* prior to this Court’s resolution of the matter. In any event, the Court need not immediately resolve *Suski*’s status. Rather the Court can either resolve the question presented in *Bielski* and dismiss *Suski* as improvidently granted, or it can resolve the question presented in both cases because *Bielski* is undisputedly live and *Suski* is not moot.

1. Any debate over *Suski*’s mootness is academic and need not be resolved by the Court. That is so because the question presented in *Suski* is undisputedly live before the Court in *Bielski*. As *Bielski* concedes, regardless of *Suski*’s alleged mootness, the Court can and should “address the identical question * * * in *Bielski*.” *Id.* at 7. Thus, the Court could decide the question presented in *Bielski*, and dismiss *Suski* as improvidently granted. The Court also could decide whether *Suski* meets the capable of repetition, yet evading review exception to mootness, and proceed to resolve the question presented as to both cases. Regardless, *Suski*’s potential mootness is simply not a pressing concern requiring pre-argument resolution.

2. If the Court does reach the question of mootness, as Coinbase has explained, *Suski* “fall[s] within the

category of cases ‘that are not moot because the underlying dispute is capable of repetition, yet evading review.’” Coinbase Letter at 2 (Jan. 24, 2023) (quoting *Turner v. Rogers*, 564 U.S. 431, 440 (2011)). For a dispute to be “capable of repetition, yet evading review,” two factors must be present: (1) “the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration,” and (2) “there is a reasonable expectation that the same complaining party will be subjected to the same action again.” *Turner*, 564 at 439-440 (cleaned up).

Both conditions are satisfied here. *First*, the dispute over whether district court proceedings should be stayed pending an arbitrability appeal lasts only until the appellate court decides the arbitrability appeal. In *Suski*, that duration was approximately ten months. Pet. App. 45a (district court denied stay pending appeal on April 19, 2022); *Suski v. Coinbase, Inc.*, 55 F.4th 1227 (9th Cir. 2022) (decision in arbitrability appeal dated December 16, 2022); *Suski* 9th Cir. Dkt. 62 (denial of Coinbase’s rehearing petition dated February 23, 2023). That is shorter than several actions this Court has found too ephemeral to be fully litigated. *See, e.g., Turner*, 564 U.S. at 440 (explaining that “precedent makes clear that * * * 12 months” is too short); *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 774 (1978) (18 months too short); *Southern Pac. Terminal Co. v. ICC*, 219 U.S. 498, 514-516 (1911) (2 years too short); *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 169-170 (2016) (same).

Nor does the timeline in *Bielski* mean the mootness exception cannot apply to *Suski*. *Contra* Suggestion of Mootness at 4. The Ninth Circuit panel deciding *Bielski* stated that it is holding submission of the appeal

pending this Court’s review of the stay issue. *Id.* In contrast, the *Suski* panel issued its decision in the arbitrability appeal one week after this Court granted review of the stay question. Were the panel’s timing in *Suski* sufficient to moot this Court’s review, an appeals court could always fast track an arbitrability decision and leave this Court unable to decide the issue in the question presented.

Second, unless and until this Court resolves the question presented, it is reasonably likely that Coinbase will again be denied a stay pending an arbitrability appeal. When disputes with its users arise, Coinbase seeks to enforce the arbitration agreement in its User Agreement. Many of these user disputes have been, and will likely continue to be, filed in the Ninth Circuit. It is thus likely that Coinbase will again face the question presented—and potential mootness—in additional cases. *See, e.g., Turner*, 564 U.S. at 440 (finding it “more than reasonable” that a party would “again be subjected to the same action” because that party had already “been the subject of several * * * proceedings” concerning that same action (quotation marks omitted)).

The question presented is also capable of repetition yet evading review because a plaintiff can consent to a stay pending appeal after a defendant petitions for certiorari, as happened in two recent cases that sought review on the exact issue presented here. In those two cases, the plaintiffs agreed to stay proceedings below in an effort to moot the dispute before this Court could consider the petitions. *See PeopleConnect, Inc. v. Callahan*, No. 21-885 (petition voluntarily dismissed); *PeopleConnect, Inc. v. Knapke*, No. 21-725 (same).

That the district court in *Suski sua sponte* stayed proceedings pending appeal after this Court's grant of certiorari is not a basis for dismissing the petition as Bielski argues, *see* Suggestion of Mootness at 5-6 & n.1. Rather, it is yet more evidence that the dispute in *Suski* is capable of repetition yet evading review and therefore not moot. In short, this is a recurring problem that only this Court can resolve.

CONCLUSION

The Court need not resolve whether *Suski* is moot because *Bielski* is an undisputedly live vehicle for the Court to resolve the question on which it granted certiorari. The Court can decide the question presented as to *Bielski* and dismiss *Suski*, or it can decide the issue as to both cases because *Suski* is not moot.

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