

No. 25-327

IN THE
Supreme Court of the United States

EXPRESS SCRIPTS, INC., ET AL.,

Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

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

**BRIEF OF THE CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

Jennifer B. Dickey
Audrey Dos Santos
U.S. CHAMBER LITIGATION
CENTER
1615 H Street, NW
Washington, DC 20062
(202) 463-5337

Benjamin W. Snyder
Counsel of Record
PAUL HASTINGS LLP
2050 M Street, NW
Washington, DC 20036
(202) 551-1700
bensnyder@paulhastings.com

Kaylen E. Strench
PAUL HASTINGS LLP
200 Park Avenue
New York, NY 10166

TABLE OF CONTENTS

	<u>Page</u>
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT	4
A. Congress Authorized Federal Officer Removal To Protect Federal Officers And Those Acting Under Them Against Burdensome State-Court Litigation	4
1. Early Federal Officer Removal Statutes	4
2. Modern Federal Officer Removal Statutes	6
B. The Ninth Circuit’s Decision Disregards The Federal Officer Removal Statute’s History, Purpose, And Context.....	9
C. The Ninth Circuit’s Rule Exposes Federal Officers And Those Acting Under Them To Burdensome State Discovery And Thwarts Federal Government Interests	13
CONCLUSION	20

TABLE OF AUTHORITIES

	<u>Page(s)</u>
CASES	
<i>Coinbase, Inc. v. Bielski</i> , 599 U.S. 736 (2023).....	2, 4, 9, 10, 11, 12, 18
<i>Egelhoff v. Egelhoff ex rel. Breiner</i> , 532 U.S. 141 (2001).....	7
<i>Filarsky v. Delia</i> , 566 U.S. 377 (2012).....	18
<i>Gay v. Ruff</i> , 292 U.S. 25 (1934).....	1, 13
<i>Griggs v. Provident Consumer Disc. Co.</i> , 459 U.S. 56 (1982).....	2
<i>Latiolais v. Huntington Ingalls, Inc.</i> , 951 F.3d 286 (5th Cir. 2020).....	15
<i>Martinsville v. Express Scripts, Inc.</i> , 128 F.4th 265 (2025).....	2, 19
<i>Nken v. Holder</i> , 556 U.S. 418 (2009).....	2, 10
<i>Papp v. Fore-Kast Sales Co.</i> , 842 F.3d 805 (3d Cir. 2016)	15
<i>People v. Express Scripts, Inc.</i> , No. 23-ST-CV-20886 (Cal. Super. Ct.).....	3
<i>People v. OptumRx, Inc.</i> , No. B343828, 2025 WL 2542288 (Cal. Ct. App. Sept. 4, 2025).....	3
<i>Price v. Johnson</i> , 600 F.3d 460 (5th Cir. 2010).....	6, 8, 12

<i>Price v. Johnson</i> , No. 3:09-cv-476, 2009 WL 10704853 (N.D. Tex. Apr. 10, 2009)	8
<i>Ruppel v. A.O. Smith Corp.</i> , No. 12-L-218 (Ill. Cir. Ct.)	13, 14
<i>Ruppel v. CBS Corp.</i> , 701 F.3d 1176 (7th Cir. 2012)	13, 14
<i>St. Charles Surgical Hosp., LLC v.</i> <i>La. Health Serv. & Indem. Co.</i> , 935 F.3d 352 (5th Cir. 2019)	15
<i>Watson v. Philip Morris Cos.</i> , 551 U.S. 142 (2007)	5, 6, 11
<i>Willingham v. Morgan</i> , 395 U.S. 402 (1969)	1, 4, 6
STATUTES	
9 U.S.C. § 16	2
28 U.S.C. § 1442	1, 3, 6, 7, 8, 12
28 U.S.C. § 1447	2, 7
Act of July 13, 1866, ch. 184, 14 Stat. 98	6
Act of June 25, 1948, ch. 646, 62 Stat. 869	6
Act of Mar. 3, 1863, ch. 81, 12 Stat. 755	5
Cal. Civ. Proc. Code § 2025.210	16
Cal. Civ. Proc. Code § 2030.020	16
Cal. Civ. Proc. Code § 2033.02	16
Customs Act of 1815, ch. 31, 3 Stat. 195	5
Ga. Code § 9-11-26	16
Ga. Code § 9-11-33	16, 17

Ga. Code § 9-11-34	16
Removal Clarification Act of 2011, Pub. L. No. 112-51, 125 Stat. 545	3, 6, 7, 12

RULES

231 Pa. Code R. 4003.8	16
Fla. R. Civ. P. 1.280	16
Fla. R. Civ. P. 1.320	16
Fla. R. Civ. P. 1.390	16
Ill. Sup. Ct. R. 201.....	16
Ill. Sup. Ct. R. 206.....	16
Ohio Civ. R. 26.....	16
Ohio Civ. R. 33.....	16
Ohio Civ. R. 34.....	16
Tenn. R. Civ. P. 26.01	16
Tenn. R. Civ. P. 30.02	16
Tenn. R. Civ. P. 33.01	16, 17
Tenn. R. Civ. P. 34.02	16
Tex. R. Civ. P. 202.1.....	8, 16

LEGISLATIVE AUTHORITIES

157 Cong. Rec. 1371 (daily ed. Feb. 28, 2011).....	8, 9, 12
H.R. Rep. No. 112-17, pt. 1 (2011).....	6, 7, 8, 9, 12

LAW REVIEW ARTICLES

Diego A. Zambrano, <i>Federal Expansion and the Decay of State Courts</i> , 86 U. Chi. L. Rev. 2101 (2019)	15, 17
---	--------

Elizabeth M. Johnson, Note, <i>Removal of Suits Against Federal Officers: Does the Malfeasant Mailman Merit A Federal Forum?</i> , 88 Colum. L. Rev. 1098 (1988)	5
Kevin M. Clermont & Theodore Eisenberg, <i>Do Case Outcomes Really Reveal Anything About the Legal System? Win Rates and Removal Jurisdiction</i> , 83 Cornell L. Rev. 581 (1998)	17
Neal Miller, <i>An Empirical Study of Forum Choices in Removal Cases under Diversity and Federal Question Jurisdiction</i> , 41 Am. U. L. Rev. 369 (1992)	17
Victor Marrero, <i>The Cost of Rules, the Rule of Costs</i> , 37 Cardozo L. Rev. 1599 (2016)	19
OTHER AUTHORITIES	
Administrative Office of the U.S. Courts, <i>U.S. Courts of Appeals—Decisions in Cases Terminated on the Merits, by Nature of Proceeding</i> (June 30, 2025), https://perma.cc/2PXR-7THX	14
Administrative Office of the U.S. Courts, <i>U.S. Courts of Appeals Federal Court Management Statistics</i> (June 30, 2025), https://perma.cc/S8M6-FNXY	15
Government Accountability Office, <i>A Snapshot of Government-Wide Contracting for FY 2024</i> (June 24, 2025), https://perma.cc/C5KS-3EWW	18
Nicholas C. Lucas, <i>The Hidden Costs of Lawsuits Continue to Grow</i> , U.S. Chamber of Commerce (Nov. 20, 2024), https://perma.cc/XET5-A36V	19

Richard H. Fallon Jr. et al., <i>Hart and Wechsler's The Federal Courts and the Federal System</i> (6th ed. 2009)	5
U.S. Amicus Br., <i>GEO Grp., Inc. v. Menocal</i> , No. 24-758 (filed Sept. 22, 2025)	19

INTEREST OF *AMICUS CURIAE*¹

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

INTRODUCTION AND SUMMARY OF ARGUMENT

The federal officer removal statute, 28 U.S.C. § 1442, is the latest iteration of a long line of provisions adopted “to protect federal officers from interference by hostile state courts.” *Willingham v. Morgan*, 395 U.S. 402, 405 (1969). Since 1812, Congress has recognized that forcing federal officers and agents to defend official conduct in state court risks “paralysis of operations of the federal government.” *Gay v. Ruff*, 292 U.S. 25, 32 (1934). And because experience has shown that such paralysis can result from state-court litigation itself, not merely state-court judgments, Congress has authorized defendants who remove cases to federal court under Section 1442 to appeal any remand immediately, rather than requiring

¹ Pursuant to this Court's Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part, and no person or entity, aside from *amicus*, its members, or its counsel, made any monetary contribution intended to fund this brief's preparation or submission. Counsel of record received timely notice of *amicus*'s intent to file this brief under this Court's Rule 37.2.

them to wait until the state-court litigation has ended to seek review about the appropriate forum. *See* 28 U.S.C. § 1447(d).

This case presents the important question whether the interlocutory appeal Congress authorized in Section 1447(d) carries with it an automatic stay. This Court's decision in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), dictates that the answer is yes. In *Coinbase*, the Court considered the same issue in the context of appeals of denials of motions to compel arbitration under 9 U.S.C. § 16(a). It explained that under *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982), an appeal “divests the district court of its control over those aspects of the case involved in the appeal.” 599 U.S. at 740 (quoting *Griggs*, 459 U.S. at 58). Because an appeal under Section 16(a) concerns the “entire case,” an automatic stay is required while the Section 16(a) appeal proceeds. *Id.* at 741.

The same thing is true here. As the Fourth Circuit recognized in *Martinsville v. Express Scripts, Inc.*, 128 F.4th 265 (2025), “the *Griggs* principle applies just as forcefully [to Section 1447(d) appeals] as it did in *Coinbase* itself.” *Id.* at 270. “[I]n both situations,” the disputed question is: “Which forum will hear the case?” *Id.* And an appeal focused on that question “[n]ecessarily” involves “essentially the whole case,” triggering an automatic stay under *Griggs*. *Id.*

In the decision below, however, the Ninth Circuit reached the opposite conclusion. *See* Pet. App. 6a–16a. Choosing to “limit[] the *Coinbase* holding to the arbitration context,” the panel held that in the federal officer removal context, a district court has discretion as to whether to grant a stay of its decision pending appeal under the multi-factor balancing test of *Nken v. Holder*, 556 U.S. 418 (2009). Pet. App. 7a. In doing so, the panel

condoned the district court’s decision to greenlight a year and a half of burdensome—and potentially unnecessary—state-court proceedings. *See People v. Express Scripts, Inc.*, No. 23-ST-CV-20886 (Cal. Super. Ct.); *People v. OptumRx, Inc.*, No. B343828, 2025 WL 2542288 (Cal. Ct. App. Sept. 4, 2025).

The Ninth Circuit’s decision creates an important circuit split undermining the uniform application of federal law. It is also wrong. The panel’s holding rests on the flawed premise that forcing federal officers and those acting under them to defend federal actions in state court does not frustrate Congress’s purposes so long as they can “later hav[e] their immunity defenses decided in federal court.” Pet. App. 13a–14a n.6. That reasoning fundamentally misunderstands Section 1442’s history and purpose. Congress has long recognized that litigants can thwart federal interests merely by haling federal officers into state court. Indeed, Congress amended Section 1442 in 2011 specifically to encompass “any [state-court] proceeding”—even pre-suit discovery. 28 U.S.C. § 1442(d); Removal Clarification Act of 2011, Pub. L. No. 112-51, § 2(a), 125 Stat. 545, 545.

Absent a stay, federal officers and those assisting them will irretrievably lose many of the very protections that Section 1442 was enacted to provide. Faced with expensive, intrusive discovery in a potentially hostile forum, some defendants will be forced to settle before the propriety of removal is resolved, nullifying the appeal right altogether. And for those who choose to stick it out, the ongoing state-court litigation will distract from their federal mission and impose increased costs that are likely to be passed along to federal taxpayers. No sound basis exists to conclude that Congress—having chosen to authorize immediate appeal of the remand issue—would have intended that disruptive result. As this Court

recognized in *Coinbase*, “it makes no sense for trial to go forward while the court of appeals cogitates on whether there should be one.” 599 U.S. at 741 (internal quotation marks and citation omitted). The Court should grant certiorari to reaffirm that principle here.

ARGUMENT

A. Congress Authorized Federal Officer Removal To Protect Federal Officers And Those Acting Under Them Against Burdensome State-Court Litigation

Understanding Section 1442’s historical context reveals key flaws in the Ninth Circuit’s reasoning. While Congress enacted Section 1442’s predecessor in the 1940s, federal officer removal statutes have existed since the mid-nineteenth century. *See Willingham v. Morgan*, 395 U.S. 402, 405 (1969). As this Court has acknowledged, the federal government “can act only through its officers and agents, and they must act within the States.” *Id.* at 406 (quoting *Tennessee v. Davis*, 100 U.S. 257, 263 (1880)). Absent the statutory right to a federal forum, “the operations of the general government may at any time be arrested at the will of one of its members.” *Id.* Accordingly, Congress has gradually expanded the availability of removal to protect federal officers and those acting under them against not just the state-court trials and judgments on which the Ninth Circuit focused but also the burdensome state-court litigation that precedes them.

1. Early Federal Officer Removal Statutes

The first federal officer removal statutes emerged during periods of sharp conflict between the federal government and the States over the enforcement of particular federal laws. Reflecting that impetus, those removal statutes focused relatively narrowly on claims arising out of the disputed enforcement efforts. During

the War of 1812, for example, New England shipowners retaliated against an unpopular customs law by filing vexatious lawsuits against federal officers. *Watson v. Philip Morris Cos.*, 551 U.S. 142, 147–48 (2007) (citing William M. Wiecek, *The Reconstruction of Federal Judicial Power, 1863-1875*, 13 Am. J. Legal Hist. 333, 337 (1969)). Congress enacted the first federal officer removal statute to combat those tactics—a temporary provision authorizing removal of suits or prosecutions against officers attempting to enforce the Act (or “any other person” who assisted them). Customs Act of 1815, ch. 31, § 8, 3 Stat. 195, 198.

Two decades later, Congress enacted a similar provision in response to South Carolina’s purported nullification of a federal tariff law. See Elizabeth M. Johnson, Note, *Removal of Suits Against Federal Officers: Does the Malfeasant Mailman Merit A Federal Forum?*, 88 Colum. L. Rev. 1098, 1102 (1988). Like its predecessor, that new provision authorized removal of suits against federal officers “or other person[s]” for enforcing federal customs laws. *Watson*, 551 U.S. at 148 (emphasis omitted) (quoting Act of Mar. 2, 1833, ch. 57, § 3, 4 Stat. 632, 633).

The Civil War spurred the enactment of additional, and somewhat broader, removal statutes. *Id.* In 1863, Congress temporarily authorized “removal of cases brought against federal officers or others for acts committed during the rebellion and justified under the authority of the President or Congress.” Richard H. Fallon Jr. et al., *Hart and Wechsler’s The Federal Courts and the Federal System* 817 (6th ed. 2009); see Act of Mar. 3, 1863, ch. 81, § 5, 12 Stat. 755, 756–57. Three years later, Congress passed another statute permitting removal of any suit against any revenue officer “on account of any act done under color of his office,” as well as suits against “any

person acting under or by authority of any such officer.” Act of July 13, 1866, ch. 184, § 67, 14 Stat. 98, 171–72.

2. Modern Federal Officer Removal Statutes

Building on those historical examples, Congress substantially expanded the federal officer removal right during the twentieth century. In 1948, Congress enacted the first permanent federal officer removal statute—Section 1442’s predecessor—which covered “all federal officers” as well as “[a]ny . . . person acting under” such officers. *Willingham*, 395 U.S. at 406; Act of June 25, 1948, ch. 646, § 1442(a), 62 Stat. 869, 938.

This Court has consistently recognized that Section 1442 should be interpreted expansively in light of Congress’s longstanding protective purposes. In *Willingham*, for example, the Court emphasized that Congress’s intent to provide expansive federal removal “should not be frustrated by a narrow, grudging interpretation of § 1442(a)(1).” 395 U.S. at 407. Rather, the federal officer removal statute should be “liberally construed.” *Watson*, 551 U.S. at 147 (citation omitted).

Notwithstanding this Court’s instructions, however, the lower courts have sometimes given Section 1442 an unduly narrow interpretation—and Congress has stepped in with correction. Of particular relevance here, Congress enacted the Removal Clarification Act of 2011, Pub. L. No. 112-51, 125 Stat. 545, in part to address a handful of decisions that had concluded that state “pre-suit discovery” procedures did not trigger a right to removal. *See* H.R. Rep. No. 112-17, pt. 1, at 4 (2011) (explaining inter- and intra-circuit splits prompted Congress’s decision to revise Section 1442). The Act endeavored to provide clearer guidance and “broaden the universe of acts that enable Federal officers to remove to Federal court.” *Id.* at 6; *see also id.* at 3–4 (referring to *Price v. Johnson*, 600 F.3d 460 (5th Cir. 2010)). Its primary objective was to

“ensure that any individual drawn into a State legal proceeding based on that individual’s” federal work “has the right to remove the proceeding to a U.S. district court.” *Id.* at 1.

To that end, the Removal Clarification Act enacted several interlocking statutory amendments. First, Congress revised the definition of “civil action” and “criminal prosecution” in 28 U.S.C. § 1442(d)(1) to specify that those terms “include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued.” *Id.*; Pub. L. No. 112-51, § 2(a)(2), 125 Stat. at 545.

Second, Congress changed Section 1442’s language permitting federal officers and those acting under them to remove any civil action for “any act under color of [federal] office,” broadening it to allow removal of civil actions “for *or relating to*” any such official act. H.R. Rep. No. 112-17, pt. 1, at 6; Pub. L. No. 112-51, § 2(b)(1)–(2), 125 Stat. at 545. Congress did so against a backdrop of precedent characterizing the phrase “relat[ing] to” as “broadly worded” and “expansive.” *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 146 (2001) (citation omitted).

Third, Congress struck a reference to officers “sued” under the Act “to deemphasize the current need for a suit to be brought in advance of a motion to remove.” H.R. Rep. No. 112-17, pt. 1, at 6; Pub. L. No. 112-51, § 2(b)(1), 125 Stat. at 545.

Finally, and most relevant here, Congress amended 28 U.S.C. § 1447(d) to authorize an interlocutory appeal of orders remanding cases removed under Section 1442. H.R. Rep. No. 112-17, pt. 1, at 8; Pub. L. No. 112-51, § 2(d), 125 Stat. at 546.

Read in tandem, those amendments provide several important insights. First, Congress’s decision to further expand the federal officer removal statute’s scope reaffirms its intent for courts to construe Section 1442 liberally, in favor of removal. *See Willingham*, 395 U.S., at 406–07. And second, the amendments make clear that *all* state-court proceedings can implicate Section 1442’s concerns, not merely trials—or even full-blown suits.

The Removal Clarification Act’s legislative history strongly supports that understanding. Both the House Report and Congressional Record evince Congress’s particular concern with decisions by lower courts refusing to authorize removal in the context of pre-suit discovery. H.R. Rep. No. 112-17, pt. 1, at 3–4; 157 Cong. Rec. 1371–72 (daily ed. Feb. 28, 2011). Chief among them was *Johnson*, which involved a pre-suit deposition of United States Representative Eddie Bernice Johnson under Texas Rule of Civil Procedure 202.1. 600 F.3d at 461; *see* H.R. Rep. No. 112-17, pt. 1, at 3–4 (citing *Price*, 600 F.3d at 461). Representative Johnson removed the case to federal court under Section 1442 and moved to dismiss the petition on several grounds, including immunity under the Federal Tort Claims Act. *See Johnson*, 600 F.3d at 461. The Northern District of Texas granted a motion to remand the case before resolving Representative Johnson’s motion to dismiss. *Price v. Johnson*, No. 3:09-cv-476, 2009 WL 10704853, at *1–2 (N.D. Tex. Apr. 10, 2009). The district court denied her motion to stay the remand, forcing her to continue litigating in Texas state court while she appealed to the Fifth Circuit. *Price v. Johnson*, No. 3:09-cv-476, ECF No. 9 (N.D. Tex. Apr. 17, 2009). The Fifth Circuit later dismissed her appeal, ruling that a Texas Rule 202.1 proceeding was not a “civil action” under 28 U.S.C. § 1442. 600 F.3d at 464–65. Because the district court lacked subject matter jurisdiction, the Fifth

Circuit concluded it also lacked jurisdiction to review the corresponding remand order. *Id.*

The House Report laments that “the matter involving Rep. Johnson is just the most recent high-profile case that illustrates the problem” with some lower courts’ restrictive interpretation of Section 1442. H.R. Rep. No. 112-17, pt. 1, at 4. And it explains that the Removal Clarification Act’s amendments “clarify that Federal officers should be able to remove a proceeding to Federal court any time a legal demand is made for a Federal official’s testimony or documents if the officer’s exercise of his or her official responsibilities was at issue.” 157 Cong. Rec. 1371–72.

Finally, that legislative history demonstrates that Congress intended for Section 1447(d) to reinforce the aims of the other amendments. Congress emphasized that the problem presented by *Johnson* was “compounded” by the fact that federal officers facing burdensome state-court proceedings “cannot find their way back to Federal court, a result that conflicts with the history of the Federal removal and remand statutes.” *Id.* Amending Section 1447(d) to authorize interlocutory appeals of remand orders obviated that issue by providing an escape valve when federal officers entitled to a federal forum face an improper remand.

B. The Ninth Circuit’s Decision Disregards The Federal Officer Removal Statute’s History, Purpose, And Context

In holding that Section 1447(d) appeals do not require an automatic stay, the Ninth Circuit completely disregarded the preceding history, purpose, and context of the federal officer removal statute.

As discussed above, the Ninth Circuit declined to apply *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), outside

of the arbitration context, holding that “in this Circuit, the discretionary stay factors outlined in *Nken v. Holder*, 556 U.S. 418, 434 (2009) still control district courts and motions panels reviewing motions to stay litigation in the federal officer removal context.” Pet. App. 3a–4a. In doing so, the Ninth Circuit discounted *Coinbase’s* significance by characterizing it as a “carveout to the normal discretionary stay powers in the arbitration context.” Pet. App. 8a. But as Petitioners observe (at 21), this Court’s rationale in *Coinbase* precludes that characterization: The Court made clear that it was simply applying the “same stay principles that courts apply in other analogous contexts where an interlocutory appeal is authorized, including qualified immunity and double jeopardy.” 599 U.S. at 746. Indeed, even the dissent in *Coinbase* acknowledged that the majority’s rationale could “arguably” apply to “any appeal over the proper forum for a dispute.” *Id.* at 760 (Jackson, J., dissenting).

Perhaps recognizing as much, the Ninth Circuit sought to distinguish *Coinbase* on two additional grounds specific to federal officer removal. *See* Pet. App. 8a–13a. In light of the history, purpose, and context of Section 1442 discussed above, however, neither of those purported distinctions has merit.

First, the Ninth Circuit reasoned that “requiring an automatic stay in the federal officer removal context would implicate federalism concerns not at issue where parties seek to compel arbitration.” Pet. App. 8a. In particular, the panel concluded that “an automatic stay pending appeal of a federal officer removal remand order would run afoul of the delicate balance of federalism” by infringing on district courts’ discretion and state courts’ sovereignty. *Id.* at 10a.

But that logic ignores the history and purpose of the federal officer removal provision. As discussed, Congress

amended Section 1447(d) to protect federal interests from state-court encroachment; permitting defendants to avoid state court is the entire point. *See Watson*, 551 U.S. at 148 (observing that Section 1442 exists to shield federal defendants from “interference by hostile state courts” (citation omitted)). As Part A explains, Congress legislated in response to vexatious state-court litigation that threatened to undermine federal law. *See supra* Part A.1–2. Forcing federal officers to endure unnecessary litigation in state court based on principles of comity would fundamentally obstruct Congress’s purpose rather than preserve it.

Moreover, courts applying the *Nken* stay factors fail to afford adequate weight to the irreparable harm posed by denials of a stay during Section 1447(d) appeals. In this case, for example, the district court never mentioned the potential detriment of forcing Petitioners to litigate in a state forum or the resulting threat to federal interests. *See* Pet. App. 31a. That accords with the trend this Court identified in *Coinbase*—courts applying the *Nken* factors often fail to “consider litigation-related burdens” in their irreparable harm analyses. 599 U.S. at 746. Accordingly, in this context, the discretionary stay factors do not adequately protect the parties’ (or the federal government’s) rights and interests.²

Second, and critically, the Ninth Circuit concluded that unlike failing to stay arbitration proceedings during a Section 16(a) appeal, denying a stay of a federal officer

² As Petitioners observe (at 19–20), an automatic stay also avoids burdening state courts with litigation that will ultimately end up back in federal court. In that way, adhering to the *Coinbase* rule in the federal officer removal context furthers federalism interests, too, notwithstanding the panel’s contrary suggestion. *See* Pet. App. 8a–10a.

remand order risks no “irretrievabl[e] los[s].” Pet. App. 12a (quoting *Coinbase*, 599 U.S. at 743). In a footnote, the panel asserted that this Court “has historically understood the federal officer removal statute as intending to shield federal officers from biased *trials* in state court” and that this Court’s precedent “does not discuss the right to avoid pretrial discovery in state court.” Pet. App. 13a n.6.

Again, that reasoning ignores Congress’s intent as reflected in Section 1442’s straightforward text. As explained above, the unequivocal aim of the Removal Clarification Act—including codification of the interlocutory appeal right—was to ensure that the federal officer removal statute extends to *all* aspects of state-court litigation. *See* H.R. Rep. No. 112-17, pt. 1, at 4; 157 Cong. Rec. 1371–72. Congress made that aim explicit by expanding the definitions of “civil action” and “criminal prosecution” in 28 U.S.C. § 1442(d)(1) to “include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued.” *Id.*; Pub. L. No. 112-51, § 2(a)(2), 125 Stat. at 545. And it did so in response to court of appeals decisions that had limited Section 1442 to a “cause of action.” H.R. Rep. No. 112-17, pt. 1, at 3–4 (referencing *Johnson*, 600 F.3d 460).

Those amendments reflect Congress’s unmistakable view that the harm Section 1442 aims to remedy results from state-court proceedings themselves, not merely adverse judgments. Accordingly, denial of a stay *does* result in “irretrievabl[e] los[s].” Pet. App. 12a (quoting *Coinbase*, 599 U.S. at 743). In fact, the harm in this context is arguably more significant than it would be for a Section 16(a) appeal—here, permitting litigation in the improper forum not only injures individual defendants, but also

potentially imperils the operations of the federal government itself. *See Gay v. Ruff*, 292 U.S. 25, 32 (1934).

C. The Ninth Circuit’s Rule Exposes Federal Officers And Those Acting Under Them To Burdensome State Discovery And Thwarts Federal Government Interests

The Ninth Circuit’s patent misreading of *Coinbase* and Section 1442’s statutory purpose provides ample justification for this Court’s intervention. But the disturbing practical ramifications of the panel’s decision are also worth highlighting. Under the Ninth Circuit’s approach, federal officers will be forced to endure months or years of unnecessary and potentially hostile state-court proceedings, depriving them of the very benefits removal is intended to provide.

Ruppel v. CBS Corp., 701 F.3d 1176 (7th Cir. 2012), provides an illustrative example. *Ruppel* involved a suit against a military contractor based on allegations that its predecessor-in-interest had exposed the plaintiff to asbestos during construction of a Navy vessel, and that the exposure eventually caused mesothelioma. *Id.* at 1178. The plaintiff sued in Illinois state court, and the defendant removed the suit to the Southern District of Illinois under Section 1442. *Id.* The district court granted the plaintiff’s motion to remand without even providing the defendant time to respond. *Id.* at 1179. The defendant appealed under Section 1447(d), but both the district court and the state court denied its motion to stay proceedings in the interim. *Id.*; Minute Order, *Ruppel v. A.O. Smith Corp.*, No. 12-L-218 (Ill. Cir. Ct. Nov. 13, 2012).

Seven months later, the Seventh Circuit reversed the district court’s remand order, holding that the defendant was entitled to removal under Section 1442 because (1) its “relationship with [the plaintiff] arises solely out of [its] duties to the Navy,” and (2) it “has a colorable argument

for the government contractor defense.” *Ruppel*, 701 F.3d at 1178. In the interim, however, the defendant endured extensive, demanding state-court proceedings. Indeed, just two weeks after the district court entered its remand order, the state trial court granted a motion by the plaintiff to expedite the trial date. Order, *Ruppel v. A.O. Smith Corp.*, No. 12-L-218 (Ill. Cir. Ct. May 11, 2012). That spurred a months-long flurry of activity, including extensive motion practice, discovery, hearings, and summary-judgment briefing. *See generally Ruppel v. A.O. Smith Corp.*, No. 12-L-218 (Ill. Cir. Ct. 2012). By the time the Seventh Circuit reversed the remand order and directed that the case proceed instead in federal court, the parties had nearly completed their preparation for the state-court trial—a costly endeavor that turned out to be entirely unnecessary under a correct view of Section 1442.

Ruppel is no anomaly, either. Federal officer remand orders are reversed at a rate significantly higher than other types of orders. A survey of Ninth Circuit decisions, for example, found that remands of Section 1442 removals were reversed 32% of the time, roughly four times higher than the Ninth Circuit’s average reversal rate across all appeals.³ *See* Administrative Office of the U.S. Courts, *U.S. Courts of Appeals—Decisions in Cases Terminated on the Merits, by Nature of Proceeding*, Table B.5 (June 30, 2025), <https://perma.cc/2PXR-7THX> (reporting that

³ Counsel for *amicus* calculated the Ninth Circuit’s rate of reversals in Section 1442 cases by performing a Westlaw search for <“motion for remand” AND “federal officer removal”>, then excluding a small number of cases that were either duplicative (e.g., with multiple Ninth Circuit orders in the same case) or irrelevant (e.g., decisions arising at a different stage of proceedings that merely referred to a remand motion that had been previously denied).

the Ninth Circuit reversed in 7.5% of its decisions on the merits in FY 2025).

By the time a court of appeals issues a decision on the merits, however, defendants have often been required to litigate in state court for more than a year. *See* Administrative Office of the U.S. Courts, *U.S. Courts of Appeals Federal Court Management Statistics* (June 30, 2025), <https://perma.cc/S8M6-FNXY> (reporting a national median time of 12.2 months from filing of notice of appeal to disposition); *see also, e.g., Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 298 (5th Cir. 2020) (en banc) (reversing remand order nearly two years after remand); *St. Charles Surgical Hosp., LLC v. La. Health Serv. & Indem. Co.*, 935 F.3d 352, 358 (5th Cir. 2019) (reversing remand order two years after remand); *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 815 (3d Cir. 2016) (reversing remand order two years after remand).

Lax discovery rules in state courts can render the proceedings that occur in the interim between the district court’s remand order and the appellate court’s reversal extremely burdensome. While federal courts have adopted protective procedures over the past several decades to address abuses of the discovery process designed to force settlement (or simply inflict economic pain on litigation opponents), state courts largely have not followed suit. *See* Diego A. Zambrano, *Federal Expansion and the Decay of State Courts*, 86 U. Chi. L. Rev. 2101, 2164 (2019) (describing a “growing procedural gulf” between federal- and state-court rules).

For example, nineteen States continue to allow plaintiffs to obtain discovery based on notice pleading alone, without any need to establish that the allegations in the complaint plausibly allege a violation of law. *See id.* at 2165. Relatedly, many States (including California) also allow plaintiffs to commence discovery immediately upon

serving the complaint, without waiting for (or even requiring) any initial meeting between counsel or with the court akin to a Rule 26(f) conference.⁴ And as Congress recognized when amending Section 1442 in 2011, many States even permit pre-suit discovery. *See, e.g.*, Tex. R. Civ. P. 202.1 (permitting pre-suit depositions); 231 Pa. Code R. 4003.8 (authorizing pre-complaint discovery).

In addition to lacking guardrails around when discovery may *start*, state rules also often lack the protections that federal courts have adopted to ensure that discovery, once started, does not become unduly expansive and expensive. For example, while Federal Rules of Civil Procedure 30(a)(2)(A) and 30(d) limit parties to ten depositions, with each under seven hours, many States have no limit on the number or duration of depositions. *See, e.g.*, Cal. Civ. Proc. § 2025.010 *et seq.*; Fla. R. Civ. P. 1.320, 1.390(b) (providing no limit on the number or duration of depositions); Ill. Sup. Ct. R. 206 (providing no limit on the number of depositions); Ohio Civ. R. 26(B)(6) (providing no limit on the number of depositions); Tenn. R. Civ. P. 30.02 (providing no limit on number or duration of

⁴ *See* Cal. Civ. Proc. Code §§ 2025.210(a), 2030.020(a), 2031.020(a), 2033.02(a); *see also* Fla. R. Civ. P. 1.280(f)(1)–(2), 1.320 (authorizing discovery “in any sequence” after initial disclosures are served and depositions at any time “[a]fter commencement of the action”); Ill. Sup. Ct. R. 201(d), (e) (permitting discovery “in any sequence” after “all defendants have appeared or are required to appear”); Ohio Civ. R. 26(D), 33(A), 34(B) (authorizing discovery “after commencement of the action and upon any other party after service of the summons and complaint upon that party,” “in any sequence”); Tenn. R. Civ. P. 26.01, 33.01, 34.02 (authorizing service of discovery “after commencement of the action and upon any other party with or after service of the summons and complaint upon that party”); Ga. Code §§ 9-11-26(d), 9-11-33(a)(1), 9-11-34(b)(1) (authorizing discovery in any sequence “after commencement of the action and upon any other party with or after service of the summons and complaint upon that party”).

depositions). Similarly, while Federal Rule of Civil Procedure 33(a)(1) limits parties to 25 interrogatories each, some States allow up to fifty interrogatories per party—or impose no limit at all. *See* Ga. Code § 9-11-33(a) (adopting 50-interrogatory limit); Tenn. R. Civ. P. 33.01 (setting no limit on number of interrogatories).

Amplifying these formal differences between state and federal rules is a broader, well-documented perception that state courts also enforce their rules in a manner that favors plaintiffs. Zambrano, *supra*, at 2162–63 (collecting studies showing that “the general thrust of existing empirical studies supports the idea that plaintiffs’ attorneys prefer state court”); *see* Neal Miller, *An Empirical Study of Forum Choices in Removal Cases under Diversity and Federal Question Jurisdiction*, 41 Am. U. L. Rev. 369, 408, 424 (1992) (explaining that in study of removal cases, plaintiffs’ attorneys reported a “favorable bias . . . with respect to their clients in state court” and defense attorneys preferred “federal court . . . based on expectations of lesser hostility there toward business litigants”). And while most state-court judges no doubt seek to decide the questions before them in an evenhanded way, studies consistently show that plaintiffs are more likely to win in state court than in federal court. *See* Kevin M. Clermont & Theodore Eisenberg, *Do Case Outcomes Really Reveal Anything About the Legal System? Win Rates and Removal Jurisdiction*, 83 Cornell L. Rev. 581, 593 (1998) (concluding that defendants who successfully remove have a significantly higher chance of prevailing on the merits). Moreover, the use of elected judiciaries in many States—and the prominent role of local plaintiffs’ bars in helping to fund judicial election campaigns—has led scholars to recognize that plaintiffs’ bars tend to have an outsized influence on procedural issues in state judicial systems. *See* Zambrano, *supra*, at 2158–60 (explaining that various factors have meant that “[p]laintiff-side firms

may . . . begin to control state litigation in unexpected ways” and noting potential for “state judiciaries to drift toward the preferences” of plaintiffs’ firms).

Collectively, those trends increase the likelihood that federal officers and agents who are denied a stay of a remand order will face a rapid barrage of intrusive discovery in an unfavorable state forum while their federal appeal pends. As this Court recognized in *Coinbase*, such burdens may cause parties to settle before the removal issue is even resolved, nullifying the very purpose of an interlocutory appeal. 599 U.S. at 743 (“Absent a stay, parties also could be forced to settle to avoid the district court proceedings (including discovery and trial) that they contracted to avoid through arbitration.”).

Even if defendants are not forced to settle, the costs to the United States of requiring them to proceed simultaneously in state and federal court can be significant. Compelling government officials to testify in depositions and respond to burdensome discovery always risks “distraction” from their “government duties.” *Filarsky v. Delia*, 566 U.S. 377, 391 (2012). But as Congress recognized in the Removal Clarification Act, allowing such discovery to proceed in state courts that lack many of the basic safeguards discussed above—and that may be actively hostile to the “government duties” in question, *id.*—substantially magnifies that risk.

Those burdens may cause additional, downstream impacts on federal interests and the public at large. The federal government increasingly relies on federal contractors to perform work that is either impracticable or impossible for the federal government to do itself. *See* Government Accountability Office, *A Snapshot of Government-Wide Contracting for FY 2024* (June 24, 2025), <https://perma.cc/C5KS-3EWW>. Given the exorbitant and rising costs of litigation, threats of

unnecessary state-court proceedings may make those private entities more hesitant to undertake federal projects. See Nicholas C. Lucas, *The Hidden Costs of Lawsuits Continue to Grow*, U.S. Chamber of Commerce (Nov. 20, 2024), <https://perma.cc/XET5-A36V> (explaining “the costs of lawsuits will continue to skyrocket, with overall tort costs rising to over \$900 billion by 2030”); see also Victor Marrero, *The Cost of Rules, the Rule of Costs*, 37 Cardozo L. Rev. 1599, 1665 (2016) (explaining that based on a “2010 survey of attorneys conducted by the Federal Judicial Center, summary judgment motion practice increases the costs of litigation by between twenty-two and twenty-four percent”). And even where contractors remain willing to perform critical work for the federal government, the Solicitor General has warned that the additional costs they incur in litigation “ultimately are likely to be passed on to the government (and thus the taxpayers).” U.S. *Amicus* Br. at 31, *GEO Grp., Inc. v. Menocal*, No. 24-758 (filed Sept. 22, 2025).

Such distractions and costs for federal officers and those working under them are exactly what Congress sought to avoid in its most recent amendments to the federal officer removal statute. As the Fourth Circuit correctly recognized in *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265 (2025), federal officers and agents should not have to endure wasteful and harassing state-court proceedings while they pursue the interlocutory appeal that Congress specifically authorized in Section 1447(d). The Ninth Circuit’s contrary conclusion warrants this Court’s review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Jennifer B. Dickey
Audrey Dos Santos
U.S. CHAMBER
LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062
(202) 463-5337

Respectfully submitted,

Benjamin W. Snyder
Counsel of Record
PAUL HASTINGS LLP
2050 M Street, NW
Washington, DC 20036
(202) 551-1700

Kaylen E. Strench
PAUL HASTINGS LLP
200 Park Avenue
New York, NY 10166

October 20, 2025