

In the
Supreme Court of the United States

STATE OF LOUISIANA, ET AL.,
Applicants,

v.

DEVON ENERGY PRODUCTION COMPANY, L.P.,
Respondent.

APPLICATION TO VACATE THE FIFTH CIRCUIT’S OCTOBER 5 ORDER

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants each represent that they do not have any parent entities and do not issue stock.

PARTIES TO THE PROCEEDING

Applicants are the State of Louisiana and Cameron Parish; they are, respectively, the intervenor-plaintiff and plaintiff below. Respondent is Devon Energy Production Company, L.P.; it is the defendant below.

RELATED PROCEEDINGS

Parish of Cameron v. Devon Energy Prod. Co., L.P., No. 26-30505 (5th Cir.). Stay order entered October 5, 2026.

Parish of Cameron v. Burlington Res. Oil & Gas Co. L.P., No. 26-cv-1335 (W.D. La.). Remand judgment entered Aug. 21, 2026. Order denying stay entered Sept. 2, 2026.

Parish of Cameron v. Alpine Exploration Co., Inc., No. 26-cv-1337 (W.D. La.). Order containing reasons for remand in No. 26-cv-1335 entered on Aug. 19, 2026.

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TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

INTRODUCTION

In *Coinbase, Inc. v. Bielski*, 499 U.S. 736 (2023), the Court located “a clear background principle prescribed by this Court’s precedents: An appeal, including an interlocutory appeal, ‘divests the district court of its control over those aspects of the case involved in the appeal.’” *Id.* at 740 (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)). Four Justices disputed whether there was any such “background mandatory-general-stay rule.” *Id.* at 752 (Jackson, J., dissenting). But all Justices agreed that an automatic stay under *Griggs* at least prevents a district court and an appellate court from “exercising control over the same order or judgment simultaneously.” *Id.* at 754. Where that risk arises, “a district court must stay its proceedings while the interlocutory appeal ... is ongoing.” *Id.* at 740 (maj. op.).

In the published stay order below, *Par. of Cameron v. Devon Energy Prod. Co., L.P.*, __ F.4th __, 2026 WL 3002118 (5th Cir. Oct. 5, 2026) (reproduced at App.1a–14a), the Fifth Circuit created a 2-1 circuit split (if not a 2-2 split) over whether *Griggs* can be used to “stay” both non-existent *federal* district court proceedings and *state*-court proceedings while a federal appeal is ongoing.

This split arises in the context of the federal-officer removal statute. *See* 28 U.S.C. § 1442(a)(1). Although orders remanding cases to state court generally are unappealable, Congress has authorized appeals of remand orders in cases removed under the federal-officer removal statute. § 1447(d). At the same time, Congress statutorily assured a state court’s jurisdiction to proceed once the remand order is

transmitted. “[T]he State court shall proceed no further unless and until the case is remanded,” said Congress. § 1446(d). Once “[a] certified copy of the order of remand [is] mailed by the clerk to the clerk of the State court,” Congress confirmed, “[t]he State court may thereupon proceed with such case.” § 1447(c).

Against this backdrop, the Fourth, Fifth, Ninth, and Eleventh Circuits have adopted conflicting rules for the same fact pattern: A defendant files a notice of appeal “after the [federal] district court transmitted a remand order” to the state court in a federal-officer removal case. App.4a & n.2. At that time, there is nothing left for the federal district court to do—by statute, jurisdiction is revested in the state court. Put otherwise, there are no federal district court “proceedings” to be stayed, *Coinbase, Inc.*, 499 U.S. at 740, nor is there any risk that a federal appellate court and the district court might “step on each other’s toes,” *id.* at 754 (Jackson, J., dissenting).

Nonetheless, the Fifth and Eleventh Circuits hold that a post-transmittal notice of appeal triggers an automatic *Griggs* stay of the (already transmitted) remand order and thereby also “stays state court proceedings.” App.14a; *accord City of Brunswick v. Honeywell Int’l, Inc.*, 184 F.4th 1230, 1242 (11th Cir. 2026), *pet. for cert. filed*, No. 26-289 (Sept. 3, 2026) (“It is irrelevant to our conclusion that, in this case, the district court had already mailed the remand order to the state court when the defendants filed their notice of appeal.”). By contrast, the Ninth Circuit has expressly rejected that contortion of *Griggs*, citing “[f]ederalism concerns—namely the limited jurisdiction of federal courts and the need to respect the jurisdiction of state courts.” *California ex rel. Harrison v. Express Scripts, Inc.*, 139 F.4th 763, 768

(9th Cir. 2025), *cert. denied*, No. 25-327 (Jan. 12, 2026). And the Fourth Circuit has held that a *pre*-transmittal notice of appeal triggers an automatic *Griggs* stay—but on the ground that there remains “a proceeding in the district court” (“the statutorily required mailing of the order”) that could be stayed, which is not true of *post*-transmittal notices of appeal. *See City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265, 271 (4th Cir. 2025) (technically declining to “decide” the post-transmittal issue).

The Court should vacate the Fifth Circuit’s “*Griggs* stay” pending the Fifth Circuit’s disposition of the appeal and related proceedings in this Court. There is a reasonable probability that this Court will grant certiorari given the clear and indisputable circuit split among the Fourth, Fifth, Ninth, and Eleventh Circuits. There also is a fair prospect of reversal: In the name of *Griggs*, the Fifth and Eleventh Circuits have declared the authority to stay federal district court proceedings that do not exist, override clear statutory language vesting jurisdiction in state courts, and stay state-court proceedings themselves. Whatever the *Coinbase* Court believed *Griggs* to be, this emphatically is not *Griggs*. The equities and the public interest, moreover, squarely call for vacatur, not least because the Fifth Circuit’s attempt to override Louisiana’s judicial system drives a truck through “the bedrock principle of comity.” *California*, 139 F.4th at 769. And any “litigation-related burdens” from state-court proceedings to which respondents might object do not alter that analysis. *See Coinbase, Inc.*, 599 U.S. at 746–47.

Beyond vacating the Fifth Circuit’s decision, the Court should treat this

application as a petition for certiorari before judgment and grant certiorari. Barring unique circumstances, the *Griggs* question presented arises only in an interlocutory posture. (The published interlocutory appellate decisions in this case, *California*, and *City of Martinsville* are prime examples.) After a federal court of appeals resolves the merits of the appeal, the propriety of a stay pending appeal (or lack thereof) is naturally exposed to claims of mootness. *See Coinbase, Inc. v. Bielski*, No. 22-105 (U.S.) (briefing on mootness filed on Jan. 24, Jan. 25, Feb. 15, Mar. 1, Mar. 7, Mar. 10, and Mar. 13); *see Coinbase, Inc.*, 599 U.S. at 747 n.7 (dismissing companion case as improvidently granted). This Court thus has reviewed important stay-pending-appeal questions in an interlocutory posture. *See Nken v. Holder*, 556 U.S. 418, 423 (2009); *Hilton v. Braunskill*, 481 U.S. 770, 773 (1987); *see also Coinbase, Inc.*, 599 U.S. 736. It should grant certiorari before judgment here for the same reason.

In two respects, this case also is a pristine vehicle for resolving the existing circuit split. *First*, it illustrates the “gamesmanship” invited by the Fifth and Eleventh Circuits’ rule. *California*, 139 F.4th at 772. Respondent has no serious claim to federal-officer removal jurisdiction. Its best argument is that *a previously dismissed defendant* would have been able to invoke the federal-officer removal statute and so respondent should be able to claim the same mantle. As Chief Judge Kethledge, Judge Thapar, Judge Sutton, and others have explained, that bizarre reliance on dismissed claims is squarely foreclosed by *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025). *See Horton v. Gen. Elec. Co.*, __ F.4th __, 2026 WL 2654800, at *3–5 (6th Cir. Sept. 9, 2026); *Kentucky ex rel. Coleman v. Express Scripts*,

Inc., __ F.4th __, 2026 WL 2796078, at *5 (6th Cir. Sept. 18, 2026). *Second*, this case lacks the peculiar features of *City of Brunswick* (distributed for the October 16 Conference) that could affect the Court’s consideration of that case. Unlike there, respondent here sought a *Griggs* stay in district court—and unlike there, the *Griggs* issue here is not embedded within a strange discussion of appellate jurisdiction. *See City of Brunswick*, 184 F.4th at 1240 n.8, 1243. To the extent the Court has concerns about the *City of Brunswick* vehicle, therefore, this case presents a clean alternative.

For these reasons, Louisiana¹ respectfully requests that the Court vacate the Fifth Circuit’s October 5 order and, in addition and in the alternative, treat this application as a petition for certiorari before judgment and grant certiorari on the following question:

Does the appeal of a remand order under 28 U.S.C. § 1447(d)—filed after the remand order is transmitted to the state court—automatically stay the remand order and state-court proceedings?

BACKGROUND

1. This case is one of several involving Louisiana’s and its parishes’ attempts to protect the Louisiana coastline. This Court recently saw another of these cases involving Chevron’s claims that it was refining aviation fuel for the United States during World War II. *See Chevron USA Inc. v. Plaquemines Par.*, 608 U.S. 1 (2026). This case is markedly dissimilar, not least because the sole live defendant in this case—respondent Devon Energy Production Company, L.P.—had nothing to do with World War II.

¹ Unless otherwise indicated, this application refers to applicants State of Louisiana and Cameron Parish collectively as “Louisiana.”

This case arises from Cameron Parish, which is located along the Louisiana coast between Lake Charles and Lafayette. Cameron Parish is home to a portion of the Rockefeller Wildlife Refuge. Louisiana owns the Refuge—and Louisiana’s Wildlife and Fisheries Commission administers and oversees the Refuge. App.51a.

In 1920, the Rockefeller Foundation donated the Refuge to Louisiana, subject to certain rules known as the “Rockefeller Rules.” *Id.* Under the Rockefeller Rules, Louisiana must abide by certain conditions to maintain its ownership of the Refuge. *Id.* Louisiana also may grant mineral leases in the Refuge, so long as it abides by the Rules. If Louisiana ever violates those Rules, the Refuge—as the original donation document reflected—would automatically revert to the Rockefeller Foundation. *Id.* In 1944, the Rockefeller Foundation donated its reversionary interest to the United States Department of the Interior, which holds that reversionary interest today; by definition, the United States has no present interest in the Refuge. *Id.*; see *Reversion*, Black’s Law Dictionary (12th ed. 2024) (“specif., a future interest in land arising by operation of law”). And there is no dispute that Louisiana has not violated the Rockefeller Rules.

The Refuge is a vital home for wildlife and fish species, as well as a critical hub for research and outdoor recreation. See *Rockefeller Wildlife Refuge*, La. Dep’t of Wildlife & Fisheries, tinyurl.com/5t2fa25k. This winter, as many as 160,000 waterfowl will take shelter at the Refuge. *Id.* During the spring and the fall, the coastline in the Refuge is a rest stop for migratory birds embarking on, or finishing, their trans-Gulf journey. *Id.* Louisianans are permitted to harvest shrimp, crab, red

drum, spotted seatrout, black drum, largemouth bass, and other fish and shellfish populations within the Refuge. *Id.* Louisianans likewise trap furbearers and alligators in the Refuge—after all, nutria and muskrat can damage the marsh, and alligators are notoriously inhospitable to humans. *Id.*; *cf.*, *e.g.*, Isabella Kwai, *Man Is Attacked by Alligator After Fleeing Louisiana Police*, The New York Times (June 9, 2026), tinyurl.com/yc2yacab; WWLTV, *Video shows fleeing DWI suspect attacked by alligator*, YouTube (June 8, 2026), tinyurl.com/yhxeksm8. In fact, Louisiana recently closed the Refuge for the annual controlled alligator harvest that protects the 100,000 human visitors who enter the Refuge each year. *See* Trey Iles, *Rockefeller Wildlife Refuge to Temporarily Close for Alligator Harvest on Sept. 2-9*, La. Dep’t of Wildlife & Fisheries (Aug. 26, 2026), tinyurl.com/5f4e82ka.



2. This lawsuit—filed in state court in Cameron Parish—challenges respondent’s conduct in Cameron Parish. In respondent’s view, the suit thus implicates the Refuge. Under the Louisiana Wildlife and Fisheries Commission, respondent has performed conservation and repair work in the Refuge. App.51a–52a.

² *Rockefeller Wildlife Refuge*, La. Wildlife & Fisheries Found., tinyurl.com/pjtafw74.

As the district court put it, “state officials exerted significant control and guidance over [respondent’s] work,” which federal officials “only approved ... as part of their regulatory scope.” *Id.* In this litigation, respondent has generously characterized this work as “in furtherance of the federal government’s property interest”—*i.e.*, the reversionary interest that is triggered only if Louisiana someday violates the Rockefeller Rules. App.3a (citation omitted).

Respondent removed this suit to federal court under (as relevant here) the federal-officer removal statute, § 1442(a)(1). Respondent’s problem, however, is that it was not plausibly “acting under” a federal officer in any respect remotely relevant to this case. *Id.* That is why the district court remanded this case to the state court.

a. Under this Court’s precedents, an “acting under” relationship requires some sort of “subjection, guidance, or control” exercised by a federal officer, such that “the private person’s ‘acting under’ [] involve[s] an effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior.” *Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 151–52 (2007) (citation omitted). “[F]ederal regulation alone” does not create such a relationship, “even if the regulation is highly detailed and even if the private firm’s activities are highly supervised and monitored.” *Id.* at 153.

In the remand decision below, the district court held that respondent established no “acting under” relationship by virtue of its conservation and repair work in the Refuge. To the extent the federal government (*i.e.*, the United States Fisheries and Wildlife Service) was involved at all, it was only to “approve[] these projects as part of [its] regulatory scope.” App.52a. And “[i]f anything,” it was “*state*

officials,” not federal officials, who “exerted significant control and guidance over [respondent’s] work in the Rockefeller Wildlife Refuge.” Id. (emphasis added). There is thus no serious argument that respondent was acting under a federal officer—and the federal government’s reversionary interest in the Refuge (triggered if and only if Louisiana were to violate the Rockefeller Rules) of course does not change that fact.

The district court also did not give the time of day to respondent’s alternate argument: that a dismissed defendant’s (ExxonMobil) supposed World War II contracts with the United States could furnish a basis for federal-officer removal jurisdiction. Before the district court issued its remand order, Louisiana agreed to dismiss—and the district court ordered the dismissal of—the claims against all defendants other than respondent because those other defendants settled out of the case. The dismissed claims included claims against a Conoco subsidiary called Burlington Resources Oil & Gas Co., LP,³ Dist.Ct.ECF.43, 44, as well as claims against two ExxonMobil entities, Dist.Ct.ECF.45, 46.

In the lower courts, respondent asserted that—when this suit was first removed and claims against ExxonMobil were still live—ExxonMobil could have established federal-officer removal jurisdiction via alleged World War II refinery contracts. So, respondent reasoned, federal-officer removal jurisdiction is just as secured today via ExxonMobil. That suggestion is wrong given this Court’s recent holding that, where “[t]he operative pleading no longer supports federal jurisdiction,

³ For this reason, the recusal issue caused by Burlington’s presence in *Chevron* is not implicated here. See Letter from Clerk of Court, *Chevron USA Inc. v. Plaquemines Par.*, No. 24-813 (U.S. Jan. 8, 2026).

[] the federal court must remand the case to the state court where it started.” *Royal Canin U.S.A., Inc.*, 604 U.S. at 39; *accord Horton*, 2026 WL 2654800, at *5 (“Under *Royal Canin*—and § 1447—the federal court loses jurisdiction when the federal element of the claim is removed.”); *Kentucky*, 2026 WL 2796078, at *5 (“Even now, Kentucky remains free ... to excise from its complaint any claims giving rise to federal jurisdiction.”). Even if ExxonMobil formerly could have supplied federal-officer removal jurisdiction in this case, therefore, respondent cannot invoke now-terminated claims to create federal jurisdiction.

b. On August 21, 2026—two days after explaining that it would remand this case to state court⁴—the district court entered its judgment granting Louisiana’s motion to remand and stating that “the above-captioned case is REMANDED to Louisiana’s 38th Judicial District Court for Cameron Parish, Louisiana, for further proceedings.” App.19a. Contemporaneously with that directive, the federal clerk of court transmitted a certified copy of the remand order to the state clerk of court. App.20a; *see* § 1447(c) (“A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.”).

“[A]fter the district court transmitted [the] remand order,” App.4a n.2, respondent filed a notice of appeal, App.21a; *see* § 1447(d) (“An order remanding a case to the State court from which it was removed is not reviewable on appeal or

⁴ The district court resolved remand issues regarding a number of related cases (including this case) in one omnibus order entered in a separate docket on August 19, 2026. *See* App.24a–57a. It thereafter incorporated those reasons into a judgment entered in this case on August 21. *See* App.19a.

otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.”). Respondent also filed a motion to stay the remand order, claiming (as relevant here) that—under *Coinbase* and *Griggs*—the already transmitted remand order and any state-court proceedings are “automatically stayed” while respondent’s appeal is ongoing. Dist.Ct.ECF.50-1 at 2–8. Respondent has stated that its stay efforts are intended to prevent the resumption of state-court proceedings.

The district court rejected respondent’s request for an automatic stay. It declined to import *Coinbase* and *Griggs* into this unique context. App.16a. And it recognized that “the Anti-Injunction Act prohibits this Court from issuing a stay order divesting the state court of jurisdiction after the mailing of the Notice of Remand.” *Id.* (citing 28 U.S.C. § 2283). Specifically, “the Clerk mailed the certified remand order before [respondent] sought a stay, thereby authorizing the state court to resume proceedings under § 1447(c).” App.17a. Because the state court has “resumed jurisdiction” by statute, “a federal stay purporting to divest that jurisdiction would have the same practical effect as an injunction against the state proceedings.” *Id.* And because no exception to the Act applies, the Act “bars that relief.” *Id.*⁵

3. In the published stay decision below, the Fifth Circuit rejected the district court’s view and—“[l]ike the Fourth and Eleventh Circuits”—held that respondent “is entitled to an automatic stay for the duration of its appeal.” App.4a; *id.* n.2 (stating

⁵ The district court also denied respondent’s request for a stay based on the discretionary *Nken* factors and under Federal Rule of Civil Procedure 62(a). App.16a. The Fifth Circuit did not address those issues, App.4a n.2, 9a n.5, and thus this application does not address them, either.

that “the *Griggs* principle, as a self-contained matter, affords [respondent] an automatic stay pending appeal”). (The Fifth Circuit did not recognize that the Fourth Circuit’s decision regarding a *pre*-transmittal notice of appeal rested on the assumption that there remained “a proceeding in the district court to which *Coinbase*[/*Griggs*] applies” (*i.e.*, the transmittal of the remand order)—a fact that is not true here. *City of Martinsville*, 128 F.4th at 271; *supra* p.3.) In reaching that decision, the Fifth Circuit did not dispute three keys facts relevant here.

First, although it recognized that *Griggs* connotes “an automatic stay of district court proceedings,” App.5a; *accord* App.6a n.4 (“lower court proceedings”), the Fifth Circuit did not dispute that the district court was not poised to “proceed” such that its “proceeding” could be stayed. Recall that there is nothing for the district court to do: The district court statutorily relinquished its jurisdiction by transmitting the remand order to the state court before respondent appealed that order. *See* §§ 1446(d), 1447(c). Nonetheless, the Fifth Circuit summarily stated that “there is a valid district court proceeding—a remand—to be stayed.” App.12a; *cf. Coinbase, Inc.*, 599 U.S. at 740 (*Griggs* concerns “whether a district court must stay its proceedings”); *id.* at 754 (Jackson, J., dissenting) (*Griggs* concerns whether the federal appellate court and the district court are poised to “step on each other’s toes”). The Fifth Circuit did not explain how a jurisdiction-relinquishing event that has already occurred—the transmittal of a remand order—can be “stayed.”

Second, the Fifth Circuit did not dispute that the plain text of § 1446(d) and § 1447(c) divests a federal court of jurisdiction—and reverts jurisdiction in the state

court—upon the transmittal of a remand order. Instead, the Fifth Circuit relied on its own precedent (which holds that a district court may *discretionarily* stay and even vacate a remand order) to reason that *automatic* stays likewise must be permissible. App.8a–11a. As just noted, however, neither the stay decision below nor the Fifth Circuit’s precedents explains as a textual matter how that position can be squared with Congress’s express statement that, upon the transmittal of a remand order, “[t]he State court may [] proceed with such case.” § 1447(c); *accord* § 1446(d).

Third, the Fifth Circuit did not dispute that the intended effect of its “stay” of the already transmitted remand order is to effectively enjoin state-court proceedings. At one point, the Fifth Circuit asserted that the stay “targets the district court’s remand order, *not* state court proceedings themselves.” App.12a. Two pages later, however, the Fifth Circuit conceded that, “arguably, the automatic stay stays state court proceedings, for it divests state courts of authority to hear the case by divesting their predicate jurisdictional authority: the district court’s remand order.” App.14a. The Fifth Circuit tried to reconcile that fact with the Anti-Injunction Act on the ground that, “[a]bsent state court jurisdiction, there are no valid ‘proceedings in a State court’ to enjoin.” App.13a (quoting 28 U.S.C. § 2283). That, of course, assumes a key conclusion (that the state court, in fact, lacks jurisdiction).

Perhaps recognizing as much, the Fifth Circuit insisted that its injunction against state-court proceedings was necessary in aid of its jurisdiction to decide the appeal and thus exempted from the Anti-Injunction Act. App.14a. “*Coinbase*,” the Fifth Circuit said, “extended [the *Griggs*] principle to protect appellate jurisdiction

from parallel district court proceedings And this Court, alongside the Fourth and Eleventh Circuits, now extends that principle to protect appellate jurisdiction from parallel state court proceedings.” *Id.*

ARGUMENT

The Court should vacate the Fifth Circuit’s October 5, 2026 order pending the disposition of the appeal below and the disposition of any petition for this Court’s review. *Cf. Danco Lab’ys, LLC v. Louisiana*, 146 S. Ct. 1192 (2026). In addition and in the alternative, the Court should treat this application as a petition for certiorari before judgment and grant certiorari given the necessarily interlocutory nature of the question presented and the potential mootness issue if the Court does not grant review now.

I. THE COURT SHOULD VACATE THE FIFTH CIRCUIT’S ORDER.

Louisiana principally requests that this Court vacate the Fifth Circuit’s October 5 order. Given the square circuit split over the extension of *Griggs* to this federal-officer removal context—and the existence of two pending petitions on this issue—there is “a reasonable probability’ that this Court will grant certiorari.” *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers) (citation omitted). And given the Fifth Circuit’s transmogrification of *Griggs*, there is “a fair prospect’ that the Court will then reverse the decision below.” *Id.* (citation omitted). The equities and public interest, moreover, warrant vacatur, not least because of the harm to Congress’s express will and to basic principles of federalism that will “result from the denial of [vacatur].” *Id.* (citation omitted).

A. There Is a Reasonable Probability That This Court Will Grant Certiorari.

The cert-worthiness of the question presented is self-evident because of both (1) the undisputed circuit split and (2) the recurring and important nature of the question presented.

1. The circuits are squarely split.

Beginning with the split, respondent below urged the Fifth Circuit to join “a published circuit majority” (the Eleventh Circuit in *City of Brunswick* and the Fourth Circuit in *City of Martinsville*) and to reject the “cribbed [sic] reading” adopted by “[t]he Ninth Circuit” in *California*. CA5.ECF.7-1 at 15 & n.8. The Fifth Circuit obliged by three times stating that it was joining “the Fourth and Eleventh Circuits.” App.14a; *accord* App.4a & n.2. Louisiana disagrees over whether the resulting split appropriately may be characterized as 3-1 (as opposed to 2-1 or 2-2), but that disagreement is irrelevant because the circuits are squarely split in all events.

a. The Eleventh and Fifth Circuits extend *Griggs* to automatically stay a remand order that already has been transmitted to a state court. The Eleventh Circuit reached this conclusion based on “three reasons.” *City of Brunswick*, 184 F.4th at 1240. *First*, there is “no express ‘non-stay’ language” in § 1447(d) (the appeal provision) that might displace “the background *Griggs* principle.” *Id.* *Second*, “just as an appeal of a motion to compel arbitration decides the forum in which proceedings will continue” (as in *Coinbase*), so, too, “the appeal of a remand order decides ‘whether the case belongs in [state court] or instead in the district court.’” *Id.* (citation omitted). And *third*, the absence of an automatic stay could “nullify[] Congress’s grant of

appellate review” including by “requir[ing] the defendants to engage in litigation in state court.” *Id.*

The Eleventh Circuit deemed it “irrelevant to our conclusion that, in this case, the district court had already mailed the remand order to the state court when the defendants filed their notice of appeal.” *Id.* at 1242. And the consequence of its holding, the Eleventh Circuit said, was “an automatic stay of all district court proceedings—including the remand order—pending resolution of the appeal.” *Id.* at 1241–42. That meant that “any subsequent state court proceedings are rendered void for our purposes.” *Id.* at 1242.

In the decision below, the Fifth Circuit followed the Eleventh Circuit in lockstep. It reasoned that, “[a]s in *Coinbase*, not automatically staying the remand order could jeopardize [respondent’s] appeal and undermine Congress’s decision to afford the § 1447(d) right to appeal.” App.7a. It thought further “litigation in state court” could “moot” the federal appeal. *Id.* (citation omitted). It believed that it could enter a *Griggs* stay even after a remand order has been transmitted, notwithstanding Congress’s directive in § 1447(c) that, after “[a] certified copy of the order of remand [is] mailed by the clerk to the clerk of the State court,” “[t]he State court may thereupon proceed with such case.” App.9a–12a. And it agreed that the intended consequence of its holding is that “there are no valid state court proceedings.” App.13a.

b. By contrast, the Ninth Circuit has refused to extend *Griggs* to automatically

stay a remand order that already has been transmitted to a state court.⁶

Among other cited reasons, the Ninth Circuit believed that “[f]ederalism concerns—namely the limited jurisdiction of federal courts and the need to respect the jurisdiction of state courts—distinguish federal officer removal from the arbitration context” at issue in *Coinbase. California*, 139 F.4th at 768. The Ninth Circuit noted *Coinbase* of course did not involve “briefing on the unique federalism issues implicated by the federal officer removal statute that differ in the arbitration context.” *Id.* “Our federal and state court systems operate on the bedrock principle of comity,” the Ninth Circuit explained, and “an automatic stay pending appeal of a federal officer removal remand order would run afoul of the delicate balance of federalism.” *Id.* at 769. “The Supreme Court,” the Ninth Circuit continued, “has repeated ‘time and time again that the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions.’” *Id.* (quoting *Younger v. Harris*, 401 U.S. 37, 45 (1971)). For that reason, the Ninth Circuit believed that any stay issues should be “discretionary” so that federal courts may carefully consider all relevant factors “before issuing the extraordinary remedy of a stay ... especially when the case involves another sovereign[.]” *Id.* at 768.

The Ninth Circuit added a few other reasons, too, including that the claimed right not to litigate at issue in *Coinbase* was not present here since the “fundamental

⁶ Although the Ninth Circuit did not precisely detail the sequence of events, *see California*, 139 F.4th at 767 (noting that the district court “granted the People’s motion to remand” and “Defendants then appealed that decision”), the district court docket makes clear that the defendants filed their notice of appeal days after the remand order was transmitted to the state court, *see California ex rel. Harrison v. Express Scripts Inc.*, No. 2:23-cv-8570 (C.D. Cal.), ECF.51, 52, 53.

differences between arbitration and litigation do not exist as between litigation in state versus federal courts.” *Id.* at 770. And the Ninth Circuit reasoned that “adopting an automatic stay rule in the federal officer context might encourage gamesmanship by defendants that would frustrate principles of judicial economy.” *Id.* at 771–72.

c. For its part, the Fourth Circuit has suggested, but technically not held, that it agrees with the Ninth Circuit that *Griggs* cannot be extended to automatically stay a remand order that already has been transmitted to a state court. In *City of Martinsville*, the Fourth Circuit considered a remand order transmitted to a state court *after* the removing defendant filed its notice of appeal. In that context, the Fourth Circuit believed that *Griggs* properly could apply to automatically stay the transmittal of the remand order. That is because, in the Fourth Circuit’s view, the question before the district court at that point in time was the same question pending on appeal before the Fourth Circuit: “*whether* the district court can send this case back” to the state court. *City of Martinsville*, 128 F.4th at 271. The Fourth Circuit thus reasoned that this issue implicated the *Griggs* principle—that two federal courts “should not attempt to assert jurisdiction over a case simultaneously.” *Id.* (citation omitted).

In reaching that conclusion, however, the Fourth Circuit expressly distinguished the question on which the Fifth, Ninth, and Eleventh Circuits are squarely split: whether *Griggs* can likewise apply where a notice of appeal is filed *after* a remand order already is transmitted to the state court and thus there is “nothing more for the district court to do.” *Id.* The Fourth Circuit thought it “need not

decide” that question, but it distinguished the issue anyway under § 1447(c):

The district court did not fully transfer control over the case until it mailed a copy of the remand order to the state court. *See* § 1447(c). So at the time of the appeal, the district court still had an action it needed to take before it could shunt the case elsewhere—the statutorily required mailing of the order. That is a proceeding to which *Coinbase* applies. And that resolves this motion.

For this reason, respondent and the Fifth Circuit are wrong to count the Fourth Circuit on their side of the circuit split. If anything, the Fourth Circuit’s preview of its reasoning suggests that the Fourth Circuit is squarely on Louisiana’s and the Ninth Circuit’s side of the split.

* * *

The circuits undisputedly are squarely split on whether *Griggs* can be extended to automatically stay a remand order that was transmitted to the state court before a notice of appeal was filed. Indeed, respondent, the Fifth Circuit, and Louisiana all agree on this point—and that confirms the cert-worthiness of this issue.

2. The question presented is recurring and important.

There also can be no dispute that the Court must intervene given the recurring and important nature of the question presented.

That both this application and a petition for certiorari in *City of Brunswick* are simultaneously pending today is proof positive. That is unsurprising because this issue threatens to arise in virtually every federal-officer removal case. After all, what defendant—having lost in the district court—would forego the chance at a second bite on appeal and, if nothing else, pure delay? *See* § 1447(d); *see also Coinbase, Inc.*, 599 U.S. at 760 (Jackson, J., dissenting) (“Aware that any interlocutory appeal on a

dispositive issue grinds the plaintiff's case to a halt, defendants would presumably pursue that tactic at every opportunity.). And if that defendant does not file a notice of appeal before the remand order is transmitted to the state court, then the question presented in this case arises—hence why two petitions arising from the same context are currently before the Court.

This issue also is important. This Court has never claimed the authority to transform a judicially created “background principle” regarding the relationship between federal courts, *Coinbase, Inc.*, 599 U.S. at 740; *see infra* Section I.B(1), into a mechanism for “stay[ing] state court proceedings,” App.14a, and deeming “*void ab initio*” any state-court proceedings that have occurred, *City of Brunswick*, 184 F.4th at 1242 (citation omitted). To the contrary, our legal tradition is built upon a “core message ... of respect for state courts.” *Smith v. Bayer Corp.*, 564 U.S. 299, 306 (2011). In the Fifth and Eleventh Circuits, however, that core message is unheeded—for federal courts may simply intone “*Griggs*” after a remand order already has been transmitted to the state court, and voilà: the state court is enjoined. And for plaintiffs like Louisiana—which has been waiting for *over ten years* to litigate its case—the practical consequence of an automatic stay is additional months and maybe years of delay. The issue is deeply important.

B. There Is a Fair Prospect That This Court Will Reverse.

The Fifth Circuit's October 5 order also is unlikely to survive this Court's review. That is because (1) the Fifth Circuit's rule bears no resemblance to *Griggs*, (2) the removal statutes and the Anti-Injunction Act would displace *Griggs* even if it

were otherwise implicated, and (3) there are obvious alternative solutions that obviate the distortion of *Griggs*.

1. *Griggs* is inapposite.

Start with the Fifth Circuit’s acknowledgment (App.14a) that it has “extend[ed] [the *Griggs*] principle” to hold that a notice of appeal—filed after a district court already has transmitted the remand order to the state court—automatically stays the remand order and state-court proceedings for the duration of the federal appeal. By its own terms, *Griggs* cannot be extended in that way.

As characterized by the *Coinbase* Court, *Griggs* articulates a basic “background principle”: that “[a]n appeal, including an interlocutory 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). Members of the Court disagreed on how broadly that automatic divestiture sweeps (if it exists at all), but all Justices agreed on the core thrust of *Griggs*: “The problem *Griggs* identifies is the ‘danger a district court and a court of appeals would be simultaneously analyzing the same judgment.’” *Id.* at 754 (Jackson, J., dissenting) (quoting *Griggs*, 459 U.S. at 59). Because a court of appeals and a district court might “step on each other’s toes” absent a stay of the district court’s proceedings, *id.*, *Griggs* suggests that Federal Rule of Appellate Procedure 4 avoids that danger by lodging jurisdiction in only one federal court at a time, 459 U.S. at 402–03. This is the doctrinal basis for the Court’s conclusion that “the *Griggs* rule requires that a district court stay its proceedings while the interlocutory appeal ... is ongoing.” *Coinbase, Inc.*, 599 U.S. at 744; *see id.* at 740 (“In general, filing of a notice of appeal confers jurisdiction on the court of

appeals and divests the district court of control over those aspects of the case involved in the appeal.” (quoting *Marrese v. Am. Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985))).

In three critical ways, however, the Fifth Circuit’s “extension” of *Griggs* to stay an already transmitted remand order and state-court proceedings unmoors *Griggs* from any doctrinal footing.

a. To start, there are no federal district court “proceedings” to speak of, *id.*, nor is there “continue[d] [litigation] in the district court,” *id.* at 741 (citation omitted). Put otherwise, there is no possibility that the district court and the federal court of appeals will “step on each other’s toes.” *Id.* at 754 (Jackson, J., dissenting). So there is nothing that “the District Court was required to stay” when respondent filed its notice of appeal. *Id.* at 747 (maj. op.); see App.2a (claiming that the *Griggs* issue arose only “once [the] notice of appeal was docketed”). This is because, before respondent filed its notice of appeal, the district court already had transmitted its remand order to the state court—“there was [and is] nothing more for the district court to do.” *City of Martinsville*, 128 F.4th at 271. It thus makes zero sense to invoke *Griggs* given that the case plainly is *not* “proceed[ing] simultaneously in the district court and the court of appeals.” *Coinbase, Inc.*, 599 U.S. at 743.

The Fifth Circuit tried to get around this problem by claiming that “there is a valid district court proceeding—a remand—to be stayed.” App.12a; accord *City of Brunswick*, 184 F.4th at 1241–42. That is just wrong. The Fifth Circuit has attempted to stay *a past event* that carries statutory significance: the transmittal of the remand

order to the state court. *See* § 1447(c) (turning on “[a] certified copy of the order of remand ... mailed by the clerk to the clerk of the State court”). An already concluded event is not a “proceeding” in any sense of the English language—and certainly not in the *Griggs* sense. *See Coinbase, Inc.*, 599 U.S. at 743 (expressing concern that a “district court could move forward with pre-trial and trial proceedings”). And a “stay” of an already concluded event is balderdash: No reasonable person would speak of “staying” the 2022 World Series between the Astros and the Phillies, or a Pizza Hut delivery two nights ago. All the same here: It makes no sense to speak of “staying” the transmittal of a remand order that already has occurred. That is a dead giveaway that *Griggs* cannot be extended here.

b. That is especially true because *Griggs* at most is a “background principle” governing the relationship between two federal courts, *id.* at 740—not between a federal court and a state court. *Coinbase* itself made this point, *id.* at 743 (stating that “[t]he *Griggs* rule” avoids the perceived inefficiencies of “allowing a case to proceed simultaneously in the district court and the court of appeals”), and so did *Griggs*, *see* 459 U.S. at 59 (citing the “danger a district court and a court of appeals would be simultaneously analyzing the same judgment”). The Fifth Circuit, however, acknowledged that it was “extend[ing]” *Griggs* to, “arguably,” “stay[] state court proceedings.” App.14a; *accord City of Brunswick*, 184 F.4th at 1241–42. That is extraordinary—and wrong.

First, all Justices in *Coinbase* agreed that, whatever its precise contours, *Griggs* concerns only the relationship between two federal courts. The Court has

never suggested that *Griggs* somehow can be used to control state courts. By doing exactly that, however, the Fifth Circuit (like the Eleventh Circuit) has completely transformed *Griggs* into something that bears no resemblance to *Griggs* itself.

Second, there is a good reason that *Griggs* and *Coinbase* provide no justification for the Fifth Circuit’s renovation: It flouts decades of this Court’s precedents demanding comity and respect between federal and state judicial systems. *See California*, 139 F.4th at 769 (emphasizing that “[o]ur federal and state court systems operate on the bedrock principle of comity”). The Court has “many times in the past” reaffirmed “the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding.” *Mitchum v. Foster*, 407 U.S. 225, 243 (1972) (collecting citations). So profoundly important are those principles that Congress itself has adopted a statute—the Anti-Injunction Act—whose “core message is one of respect for state courts.” *Smith*, 564 U.S. at 306; *see infra* Section I.B(2). Since the Founding, the “general prohibition” reflected in our law “direct[s] that state courts shall remain free from interference by federal courts.” *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng’rs*, 398 U.S. 281, 282 (1970). Small wonder, therefore, that a background principle regarding the relationship between federal courts does not permit an intrusion into the workings of a state judiciary.

c. Finally, neither *Griggs* nor *Coinbase* purports to establish an automatic, across-the-board stay rule for all interlocutory appeals—only those involving a defendant’s claimed right not to litigate. *Cf. Coinbase, Inc.*, 599 U.S. at 760–61 (Jackson, J., dissenting) (noting that “the majority stops short” of extending its rule

to “every interlocutory appeal” that could be said to implicate “a case-dispositive issue”). That is the through line in the context of a district court’s refusal to compel arbitration, *see Coinbase, Inc.*, 599 U.S. at 739 (maj. op.), as well as “the analogous contexts of qualified immunity and double jeopardy,” *id.* at 742. In each context, absent a stay pending appeal, the claimed right not to litigate “would be irretrievably lost” through the actual costs and burdens of litigation. *Id.* at 743.

But that is not the case here. Respondent—like all federal-officer removal defendants—does not and cannot claim a right to avoid litigation and its attendant costs and burdens. It protests only *where* it must litigate and incur those costs and burdens. Three Justices in *Coinbase* expressly rejected the idea that *Griggs* could be extended to every “appeal over the proper forum for a dispute.” *Id.* at 760 (Jackson, J., dissenting). And the *Coinbase* majority appeared to suggest its view of “a stay in the forum selection context” would be tied to the availability of a statutory right to appeal (or a certified appeal under 28 U.S.C. § 1292(b)), *id.* at 746 (maj. op.)—a move that does not work under the federal removal statutes, *see infra* Section I.B(2). *Cf. Coinbase, Inc.*, 599 U.S. at 761 (Jackson, J., dissenting) (“[T]he majority will not commit, for example, to concluding that appeals over non-arbitration forum selection clauses warrant the same mandatory stay.”). This underscores that *Griggs* cannot be extended to “stay” a remand order already transmitted to a state court.

* * *

The Fifth and Eleventh Circuits’ decisions sail under a *Griggs* flag—but this is not *Griggs*, not even close. And that is all the Court need say to reverse.

2. Even if *Griggs* were relevant, Congress statutorily displaced it.

Griggs is especially inapposite here because clear statutory language precludes any invocation of *Griggs*. *Cf. id.* at 744 (maj. op.) (explaining that *Griggs* operates “[a]t least absent contrary indications” from Congress). That displacement flows from both (a) the removal statutes and (b) the Anti-Injunction Act.

a. Begin with the removal statutes. Under that statutory scheme, the removal of a case from state court to federal court prevents that case from proceeding in state court—“unless and until the case is remanded.” § 1446(d). As that statutory language reflects, if a case is remanded to state court, then a state court has jurisdiction once again to proceed. Congress underscored that point by adding § 1447(c): If a district court orders a remand to the state court, “[a] certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.” Congress thus has plainly and unambiguously assured the state court of jurisdiction upon the transmittal of a remand order from the federal court.

That statutorily protected jurisdiction is key here because the Fifth Circuit did not dispute that the district court was well within its authority to transmit its remand order to the Cameron Parish state court. There is thus no question that the state court resumed jurisdiction by statute prior to respondent’s filing a notice of appeal. The only question is whether the notice of appeal itself—via *Griggs*—could re-divest the state court of jurisdiction and return jurisdiction to the federal district court. *See* App.13a (claiming that “the automatic stay here divests the state court of

jurisdiction”). The answer is no because Congress squarely foreclosed that precise invocation of *Griggs*: Upon the transmittal of the remand order, “[t]he State court may [] proceed with such case.” § 1447(c).

The Fifth Circuit protested (App.6a–7a) that, as in *Coinbase*, Congress’s statutory provision of a right to appeal must mean that there should be a corresponding automatic stay. *Accord City of Brunswick*, 184 F.4th at 1240. But the *Coinbase* Court made that point in a context where, unlike here, Congress offered no “contrary indications” to think otherwise. 599 U.S. at 744. Moreover, this Court has long emphasized that § 1447(c) (which revests jurisdiction in state courts upon the transmittal of a remand order) and § 1447(d) (which provides for an appeal in certain contexts) “must be construed together.” *Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 345 (1976). Interpreting the § 1447(d) appeal right (if exercised, as virtually all federal-officer defendants do) to re-divest a state court of jurisdiction would nullify Congress’s § 1447(c) express directive that “[t]he State court may thereupon proceed with such case.” The only way to reconcile those provisions is to recognize the state court’s resumption of jurisdiction during the pendency of the appeal. Each provision is thus fully effectuated—and the federal courts are adept at ensuring as much, *see infra* Section I.B(3).

Citing its own precedents, the Fifth Circuit also protested that, if a *discretionary* stay can “divest state courts—another sovereign—of their jurisdiction,” “then the same is true about *automatic* stays.” App.8a (emphasis added); *accord* App.10a–11a; *City of Brunswick*, 184 F.4th at 1242. But that assumes the conclusion:

that a stay entered after a remand order is transmitted to the state court can re-divest the state court of jurisdiction, notwithstanding Congress’s clear statement that “[t]he State court may thereupon proceed with such case.” § 1447(c). The Fifth Circuit never explained as a textual matter how a federal court could arrogate authority that Congress plainly stripped from federal courts in lodging jurisdiction with a state court upon the transmittal of a remand order. Respectfully, that position is inexplicable.

The removal statutes alone thus would displace *Griggs* even it were otherwise relevant in this context.

b. The Anti-Injunction Act would underscore that displacement. It provides that “[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C. § 2283. “The statute, [this Court has] recognized, ‘is a necessary concomitant of the Framers’ decision to authorize, and Congress’ decision to implement, a dual system of federal and state courts.’” *Smith*, 564 U.S. at 306 (quoting *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988)). For that reason, “the Act’s core message is one of respect for state courts. The Act broadly commands that those tribunals ‘shall remain free from interference by federal courts.’” *Id.* (quoting *Atl. Coast R.R. Co.*, 398 U.S. at 282).

As the district court recognized here, the Act plainly “prohibits this Court from issuing a stay order divesting the state court of jurisdiction after the mailing of the Notice of Remand.” App.16a. The transmittal of the remand order “thereby authoriz[ed] the state court to resume proceedings under § 1447(c).” App.17a. And

thus, “[o]nce the state court resumed jurisdiction, a federal stay purporting to divest that jurisdiction would have the same practical effect as an injunction against the state proceedings.” *Id.*

For its part, the Fifth Circuit did not seriously dispute this much. It stated that “the automatic stay here divests the state court of jurisdiction, so there are no valid state court proceedings to enjoin.” App.13a. But that assumes the conclusion of the disputed point: Can *Griggs* be imported here given the relevant statutory backdrop, including the removal statutes and the Anti-Injunction Act? That assumption is improper not only for that reason but also because—as the quote above shows—even the Fifth Circuit did not dispute that jurisdiction revested in the state court *prior* to respondent’s filing a notice of appeal. *See* App.2a (respondent “was entitled to an automatic stay ... once its § 1447(d) notice of appeal was docketed”). There is thus no question that the Fifth Circuit’s stay order impels precisely what the Anti-Injunction Act prohibits: “interference by federal courts.” *Smith*, 564 U.S. at 306 (quoting *Atl. Coast R.R. Co.*, 398 U.S. at 282).

Perhaps for that reason, the Fifth Circuit immediately backtracked. “Arguably,” the Fifth Circuit admitted, “the automatic stay here enjoins the district court,” and “arguably, the automatic stay stays state court proceedings, for it divests state courts of authority to hear the case by divesting their predicate jurisdictional authority: the district court’s order.” App.13a–14a. Viewed that way, of course “the instant automatic stay falls within the Anti-Injunction Act’s plain terms.” App.14a. To that, however, the Fifth Circuit retorted that *Griggs* gives federal appellate courts

license to automatically halt state-court proceedings “in aid of” the federal courts’ jurisdiction (one of the Act’s exceptions). *Id.*

This is profound logical error. For one thing, it again assumes the answer to the question presented: whether *Griggs* can be imported here given the statutory backdrop. For another, the Fifth Circuit acknowledged that *Griggs* does not actually authorize federal courts to enjoin state courts. *See id.* (emphasizing that *Griggs* “grew from the general understanding that *a federal district court and a federal court of appeals* should not attempt to assert jurisdiction over a case simultaneously,” and that the Fifth Circuit is “extend[ing]” *Griggs* (citation omitted; emphasis added)). For yet another, a state court’s statutorily protected jurisdiction to “proceed with [a] case,” § 1447(c), cannot be overridden by an injunction in the name of another federal statute—not least because such an injunction is “expressly [*un*]authorized by Act of Congress,” § 2283 (emphasis added). And for still another, if there were any doubt on this issue, “every benefit of the doubt goes toward the state court.” *Smith*, 564 U.S. at 307; *accord id.* at 318 (“[C]lose cases have easy answers: The federal court should not issue an injunction”). This case is not close, but if it were, any doubts would be resolved in favor of declining to extend *Griggs* in the face of contrary removal statutes and the Anti-Injunction Act.

3. Obvious alternative solutions eliminate any reason to disfigure *Griggs*.

A recurring theme in the Fifth Circuit and Eleventh Circuits’ decisions is a concern about preserving a federal appeal. But there are at least four practical responses confirming that distorting *Griggs* is unnecessary to address that concern.

First, sophisticated parties who wish to avoid the revesting of jurisdiction in a state court following a remand order know precisely how to accomplish that result. In anticipation of a remand order, they seek discretionary stays (sometimes stipulated, sometimes administrative, etc.) beforehand ensuring that the district court will halt the actual mailing of the remand order to the state court—an event of critical jurisdictional significance—while the defendant pursues its appellate rights. *See, e.g., State ex rel. Nevada Gaming Control Bd. v. Blockratize Inc.*, 2026 WL 700082, at *1 n.2 (D. Nev. Mar. 12, 2026); *California ex rel. Bonta v. Exxon Mobil Corp.*, 2025 WL 595267, at *8 (N.D. Cal. Feb. 24, 2025); *Barbee v. E.I. du Pont de Nemours & Co.*, 2023 WL 6895934, at *1 (N.D. Ind. Oct. 18, 2023); *Adams v. Atl. Richfield Co.*, 2023 WL 6381346, at *1 (N.D. Ind. Sept. 29, 2023); *Delaware ex rel. Jennings v. BP Am. Inc.*, 2022 WL 605822, at *1 (D. Del. Feb. 8, 2022); *Mayor & City Council of Balt. v. BP P.L.C.*, 2019 WL 3464667, at *6 (D. Md. July 31, 2019). Respondent in this case failed to do so—a failure that is particularly notable given that the district court told respondent days before it actually entered judgment that the court would remand this case to state court. *See supra* p. 10 & n.4.

Second, even if a defendant fails to seek such relief, several federal courts have adopted local rules (or informal practices) delaying the execution of remand orders so that a defendant may seek an appeal if it so wishes before a state court resumes jurisdiction. The First Circuit, for example, has specifically addressed this point by collecting citations and advising its own district courts to consider “avoid[ing] immediately certifying the remand order.” *Forty Six Hundred LLC v. Cadence Educ.*,

LLC, 15 F.4th 70, 81 (1st Cir. 2021). And there are examples of its and other district courts doing exactly that in response to *Forty Six Hundred LLC*. See, e.g., *New Hampshire v. 3M Co.*, 132 F.4th 556, 559 (1st Cir. 2025) (noting that the district court affirmatively “delayed the formal remand” by two weeks so that 3M could “file for a stay pending appeal,” which 3M “did not do”); see also *Goldstone v. Deloitte Consulting LLP*, 818 F. Supp. 3d 224, 226 & n.1 (D. Mass. 2026); *King v. Imperial Bag Co./S. Freedman & Son’s*, 2026 WL 2017259, at *6 (D. Md. July 13, 2026).

Third, even if there is no discretionary stay or delay, a federal appellate court still may expedite its proceedings to outrun any perceived harms from ongoing state-court proceedings. The Fifth Circuit recently provided a textbook example in the wake of this Court’s *Chevron* decision. In a related case, the Fifth Circuit denied a stay of a remand order but expedited proceedings such that full merits briefing, oral argument, and a Fifth Circuit judgment were complete in 41 days—all on a defendant’s claim that expedition was necessary to forestall harm from state-court proceedings. See *Plaquemines Par. v. Chevron USA*, No. 23-30336 (5th Cir.), ECF.204–49. That path is available in every case for a defendant that wishes to protect its claim to federal jurisdiction.

Fourth, even if (1) a federal district court relinquishes its jurisdiction by transmitting the remand order to the state court, (2) state-court proceedings have resumed, and (3) a federal appellate court later determines that remand was improper, the federal courts are not unable to offer relief to the removing defendant. The First Circuit has had a number of cases fitting that profile, including *Forty Six*

Hundred LLC itself. There, the First Circuit recognized that there is a “procedural gap” in the removal statutes because there is no “formal procedural mechanism for the retrieval of a removed case erroneously returned to a state court.” 15 F.4th at 80. But the First Circuit saw “no reason ... why general principles of comity, cooperation, and communication between state and federal courts are inadequate to bridge this procedural gap.” *Id.* And so in *Forty Six Hundred LLC* and ensuing similar cases, the First Circuit has simply directed district courts to rely on the “long and storied history of comity and cooperation between state and federal courts” to retrieve the cases from state court. *Id.* at 81; see *Nelson v. Town of Wayland Bd. of Health*, 2024 WL 4524245, at *1 (1st Cir. Oct. 15, 2024); *Girouard v. Wells Fargo Bank, N.A.*, 2022 WL 4592893, at *1 (1st Cir. Mar. 4, 2022); cf. *New Hampshire*, 132 F.4th at 563 (“For the foregoing reasons, the judgment of the district court is *affirmed* and the case should remain where the district court sent it—in state court.”).

These four practical points are important: There is no good reason to badly mangle *Griggs*—as the Fifth and Eleventh Circuit have done—when there are obvious alternative solutions that equally achieve those courts’ desire to give full effect to a defendant’ statutory right to appeal a federal-officer remand order. To the extent the Court believes that desire is justified, the Court need only reject the disfigurement of *Griggs* while pointing to these alternative solutions. That underscores the critical fact here—the Court is likely to reverse.

C. The Equities and Public Interest Favor Vacatur.

Vacatur of the Fifth Circuit’s October 5 order is equally justified given the

equities and public interests in play.

1. Start with the equities. One classic and recurring example of irreparable harm is when a sovereign state “is enjoined by a court from effectuating statutes enacted by representatives of its people.” *Maryland*, 567 U.S. at 1303 (Roberts, C.J., in chambers) (citation omitted); *accord Labrador v. Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring in the grant of stay). That sort of irreparable harm is implicated here in two distinct ways.

First, the Fifth Circuit’s order avowedly divests the State of Louisiana’s own judiciary of jurisdiction that both is expressly protected by statute and (as the district court has concluded) has properly been restored to the state court. It is difficult to imagine a more-irreparable sovereign harm. *Cf. Mitchum*, 407 U.S. at 243 (emphasizing “the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding”). *Second*, the Fifth Circuit’s order also avowedly divests the State of Louisiana as a litigant of its ability to enforce its own duly enacted laws. Louisiana has been waiting to litigate this case *for over a decade*—stalled at every turn by respondent’s efforts to move this case to federal court. The Fifth Circuit’s order perpetuates that irreparable harm by attempting to prevent Louisiana “from enforcing [its] law” indefinitely while respondent exhausts all appeals. *Labrador*, 144 S. Ct. at 929 (Kavanaugh, J., concurring in the grant of stay); *see* App.17a–18a (concluding that “further delay would impair Louisiana and Cameron’s interests in remedying the alleged land loss of coastal lands and enforcing Louisiana’s coastal-zone laws”).

Notably, respondent has no claim to irreparable harm on the other side of the ledger. Below, respondent has bemoaned the prospect of pre-trial and trial proceedings in state court absent an injunction against state-court proceedings. But this Court has repeatedly rejected arguments that “litigation-related burdens ... constitute irreparable harm.” *Coinbase, Inc.*, 599 U.S. at 746–47 (collecting citations). So, Louisiana easily wins any balancing of the equities. And even if the Court believed that “the harms and the equities [were] very weighty on both sides,” “assessing [Louisiana’s] likelihood of success on the merits” would control the disposition of this application. *Labrador*, 144 S. Ct. at 929 (Kavanaugh, J., concurring in the grant of stay). Given the fair prospect of this Court’s reversal on the merits, *see supra* Section I.B, the equities resolve in Louisiana’s favor.

2. So does the public interest. As cases like *Smith*, *Chick Kam Choo*, and *Mitchum* establish—and as the district court recognized, App.18a—the public has a serious interest in the harmonious interworking of our federal and state judicial systems. The comity essential to our federalism falls apart when one judicial system intrudes upon the other. And that is precisely the consequence of the Fifth and Eleventh Circuits’ decisions: By their own terms, they proclaim that “there are no valid state court proceedings” where they have deemed *Griggs* to apply, App.13a, and they strike as “*void ab initio*” any state-court proceedings that have occurred, *City of Brunswick*, 184 F.4th at 1242 (citation omitted). *Cf.* App.18a (district court explaining that “comity and the public interest favor allowing the remanded state-court proceedings to continue”).

The public also has an interest in the judiciary’s faithful implementation of Congress’s duly enacted laws. If the Court agrees with Louisiana’s assessment of the merits, *see supra* Section I.B, the Fifth and Eleventh Circuit’s transfiguration of *Griggs* squarely conflicts with the plain text of the removal statutes and the Anti-Injunction Act. And that is reason enough to vacate the Fifth Circuit’s order.

II. TO AVOID POTENTIAL MOOTNESS, THE COURT SHOULD TREAT THIS APPLICATION AS A PETITION FOR CERTIORARI BEFORE JUDGMENT.

While the foregoing is sufficient to warrant vacatur of the October 5 order, the better approach in this unique context is to treat this application as a petition for certiorari before judgment and grant certiorari on the following question:

Does the appeal of a remand order under 28 U.S.C. § 1447(d)—filed after the remand order is transmitted to the state court—automatically stay the remand order and state-court proceedings?

That is principally because the interlocutory nature of the question presented carries obvious mootness risks. By definition, the automatic stay in question is tied to the ongoing appeal. Once the Fifth Circuit decides that appeal on the merits, the question whether a stay pending appeal should have been entered in the first place threatens to become a moot point. So the question presented almost always is going to arise—and be most ripe—in an interlocutory posture. The published interlocutory appellate decisions in this case, *California*, and *City of Martinsville* are prime examples. And the danger this Court narrowly avoided in *Coinbase* confirms the point. *See Coinbase, Inc. v. Bielski*, No. 22-105 (U.S.) (briefing on mootness filed on Jan. 24, Jan. 25, Feb. 15, Mar. 1, Mar. 7, Mar. 10, and Mar. 13); *see Coinbase, Inc.*, 599 U.S. at 747 n.7 (dismissing companion case as improvidently granted).

All this explains the Court’s practice of reviewing important stay-pending-appeal questions in an interlocutory posture. *See Nken*, 556 U.S. 418; *Hilton*, 481 U.S. 770; *Coinbase, Inc.*, 599 U.S. 736. It should grant certiorari before judgment here for the same reason.

This case also is the ideal vehicle for the Court to resolve the outstanding circuit split. For one thing, it illustrates the “gamesmanship” invited by the Fifth and Eleventh Circuits’ rule. *California*, 139 F.4th at 772. As detailed above, respondent has no serious claim to federal-officer removal jurisdiction—and thus no serious basis for its appeal. *See supra* pp.4–5, 8–10. For another thing, if the Court has concerns about the *City of Brunswick* vehicle, this case lacks any potential vehicle issues. Where the split could have been characterized as 1-1 when the *City of Brunswick* petition was docketed, this case arises from yet another circuit’s published decision cementing at least a 2-1 circuit split. Where “[n]o party ... requested a stay” in *City of Brunswick*, 184 F.4th at 1240 n.8, respondent in this case did. And where the *Griggs* problem in *City of Brunswick* is embedded in an odd discussion of whether the Eleventh Circuit had appellate jurisdiction, *see id.* at 1243, the *Griggs* issue in this case is the only issue resolved by the Fifth Circuit’s order. Although it is unclear why any of those facts would prevent review in *City of Brunswick*, these distinctions eliminate any doubt regarding review in this case.

Louisiana adds only one further note regarding its crafting of the question presented. The clearest circumstance where *Griggs* should not be extended is where a remand order already has been transmitted to the state court by the time a

defendant files its notice of appeal. *See supra* Section I.B. That is the question on which the Fifth, Ninth, and Eleventh Circuits are squarely split—and which the Fourth Circuit recognized as potentially outcome-determinative. That also is the only question squarely presented in this case and *City of Brunswick*, both of which involve post-transmittal notices of appeal. Louisiana’s question presented thus focuses specifically on that question.

There is a related question—considered in *City of Martinsville*—whether *Griggs* should apply where a defendant files its notice of appeal *before* the remand order is transmitted. In that context, a court likewise would have to determine whether the heavy artillery of an automatic *Griggs* stay properly could be imported into this unique context, notwithstanding the obvious federalism overtones and the discretionary tools readily available to (and frequently used by) parties and courts. But that question is not presented on the facts of this case, and the Court need not address it. *Contra* Pet. for Cert. i, *City of Brunswick*, No. 26-289 (U.S.) (“Whether an appeal from a remand order under 28 U.S.C. § 1447(d) triggers an automatic stay, barring the state court from proceeding with the case.”).

CONCLUSION

The Court should vacate the Fifth Circuit’s October 5 order. In addition and in the alternative, the Court should treat this application as a petition for certiorari before judgment and grant certiorari.

Respectfully submitted,

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