



FOR IMMEDIATE RELEASE

June 23, 2023

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

## In WLF Success, SCOTUS Confirms That FAA Requires Litigation Stay During Arbitrability Appeals

(*Coinbase v. Bielski*)

**“Today’s ruling ensures that both the parties and the courts will receive the benefits of arbitration.”**

—Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Earlier today, the U.S. Supreme Court reversed a decision of the U.S. Court of Appeals for the Ninth Circuit that would have forced a company to proceed with costly and burdensome litigation while its arbitrability appeal was pending. The decision was a victory for Washington Legal Foundation, which filed an amicus brief in the case. As WLF explained in its brief, the intolerable risk of bearing that burden would upend the core policies animating the Federal Arbitration Act (FAA).

Under the FAA, an arbitration clause in a contract involving commerce is both valid and enforceable. When a district court refuses to compel arbitration as the parties agreed, Section 16 of the FAA allows an immediate appeal as of right from that decision. Most courts of appeals held that such an appeal automatically divests the district court of jurisdiction and stays the litigation. But the Ninth Circuit—joined by the Second and Fifth Circuits—held otherwise. In their view, an appeal from the denial of a motion to compel arbitration does not divest the district court of jurisdiction, so the defendant must either obtain a stay pending appeal under the traditional discretionary test or bear the dual burdens of trial litigation and arbitrability appeals.

In today’s decision, the Supreme Court adopted the majority rule: “The sole question here is whether the district court must stay its pre-trial and trial proceedings while the interlocutory appeal is ongoing. The answer is yes: The district court must stay its proceedings,” wrote Justice Brett Kavanaugh on behalf of the Court. The majority’s reasoning largely tracks policy arguments WLF advanced in its brief. Namely, that Section 16 of the FAA makes sense only if an interlocutory appeal from the trial court’s refusal to compel arbitration automatically stays litigation in the district court. Congress never would have granted defendants the right to an immediate appeal if it had contemplated that litigation would continue apace while the appeal was pending. On the contrary, Congress crafted Section 16 against the background principle that an appeal divests a district court of jurisdiction over the case being appealed. And Congress recognized that the main virtues of arbitration—avoiding the cost and burden of litigation—would be lost if the case proceeds simultaneously in litigation and appeal only to be ultimately decided in arbitration.

*Celebrating its 46th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.*

###