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**Case Name and Number:** *Coinbase, Inc. v. Suski*, No. 23-3

**Introduction:** Today, the Supreme Court held in a unanimous decision that courts, not arbitrators, must decide which contract controls when the parties have entered into two contracts—one sending arbitrability issues to an arbitrator, and the other sending arbitrability to the courts—and the parties dispute whether the underlying claims in a lawsuit are subject to arbitration.

**Background:** The Supreme Court has repeatedly held that the Federal Arbitration Act requires enforcing not only agreements to arbitrate the merits of the parties' claims but also so-called "delegation clauses"—agreements to have the arbitrator decide whether the claims are arbitrable.

Respondents are users of petitioner Coinbase's cryptocurrency exchange platform. When they created their accounts, they agreed to a contract containing an arbitration provision with a delegation clause. Respondents later participated in a sweepstakes for a chance to win cryptocurrency. When they submitted their entries, they agreed to a second contract containing a forum-selection clause providing that California state and federal courts have exclusive jurisdiction over claims related to the sweepstakes.

After the sweepstakes concluded, respondents sued Coinbase, alleging that the sweepstakes violated California consumer-protection statutes. The district court denied Coinbase's motion to compel arbitration, reasoning that the sweepstakes rules and their forum-selection clause controlled the claims in the case and superseded the prior contract with respect to those claims. The Ninth Circuit affirmed.

**Issue:** Who—a judge or an arbitrator—decides whether a subsequent contract supersedes an earlier arbitration agreement that contains a delegation clause.

**Court's Holding:** In a unanimous opinion authored by Justice Jackson, the Supreme Court held that a court must decide whether a subsequent contract that does not contain a delegation clause supersedes an earlier contract that does.

The Court reiterated that arbitration is a matter of contract and reaffirmed that parties are free to agree to have an arbitrator decide threshold questions of arbitrability. But when parties enter into multiple agreements that contain different provisions regarding who should decide arbitrability, the Court continued, a court and not an arbitrator must resolve the question of which agreement controls.

Notably, the Court limited its holding to who decides arbitrability under these circumstances. It did not address whether the Ninth Circuit correctly interpreted the sweepstakes rules to supersede the earlier delegation clause or whether the claims in the case are arbitrable, saying "[t]hat issue is outside the scope of the question presented."

Justice Gorsuch filed a concurring opinion, emphasizing that the Court's opinion is limited to resolving the "who decides" question. He noted that the Court continued to recognize that parties can agree to delegation clauses and that "the Court does not endorse the reasoning in the Ninth Circuit's opinion, let alone its state contract law analysis of the parties' agreements."

Mayer Brown filed an *amicus* brief in support of Coinbase on behalf of the Chamber of Commerce of the United States of America, American Bankers Association, Cato Institute, American Tort Reform Association, and the Business Council of New York State, Inc. Read the opinion [here](#).