No. 05-1138

In the Supreme Court of the United States

STATE OF ALABAMA AND STATE OF FLORIDA,
PETITIONERS

v.

UNITED STATES ARMY
CORPS OF ENGINEERS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

PAUL D. CLEMENT
Solicitor General
Counsel of Record

SUE ELLEN WOOLDRIDGE
Assistant Attorney General

GREER S. GOLDMAN
MICHAEL T. GRAY
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the court of appeals was required to affirm a preliminary injunction on the basis of the All Writs Act, 28 U.S.C. 1651, even though the district court neither granted the injunction on that basis nor made the finding necessary to support an injunction on that basis.

2. Whether the district court could have granted an injunction under the All Writs Act even though adequate legal remedies were available to petitioners.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 4-33) is reported at 424 F.3d 1117.

JURISDICTION

The judgment of the court of appeals was entered on September 19, 2005. A petition for rehearing was denied on December 6, 2005 (Pet. App. 1-3). The petition for a writ of certiorari was filed on March 6, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners, who are plaintiffs in this lawsuit filed in the District Court for the Northern District of Alabama (the Alabama case), seek to enjoin respondent United States Army Corps of Engineers from implementing an agreement to settle a case brought by Southeastern Federal Power Customers (SeFPC) in the District Court for the District of Columbia (the D.C. case). Both lawsuits relate to the Corps' operation of Buford Dam in Georgia. After the Corps agreed to a settlement with SeFPC and other parties to the D.C. case, the Alabama district court entered a preliminary injunction prohibiting the Corps from implementing that settlement. The D.C. district court approved the settlement agreement, but noted that the parties could not implement the agreement until the Alabama court dissolved its preliminary injunction. After the Alabama court refused to do so, the Eleventh Circuit vacated that injunction.

1. In the River and Harbors Act of 1945, ch. 19, 59 Stat. 10, and the Act of July 24, 1946, ch. 595, 60 Stat. 634, Congress authorized the Corps to build the Buford Dam on the Chattahoochee River approximately 50 miles northeast of Atlanta, forming the reservoir known as Lake Sidney Lanier. The Corps has authority under the Water Supply Act of 1958, 43 U.S.C. 390b *et seq.*, to reallocate storage in Lake Lanier for municipal and industrial water supply purposes, but congressional authorization is required if a reallocation would "seriously affect the purposes for which the project was authorized" or "involve major structural or operational changes." 43 U.S.C. 390b(d). In 1989, the Corps announced plans to seek congressional authorization to reallocate storage space in Lake Lanier for municipal

and industrial water supply, in order to facilitate its entry into proposed water storage contracts with local water supply providers. Pet. App. 7-8.

2. In June 1990, petitioner State of Alabama filed this lawsuit alleging, among other things, that the Corps' plan to seek congressional approval to enter into permanent water storage contracts required review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* Pet. App. 8-9. Alabama, Florida, Georgia, and the Corps then began to negotiate a solution to a larger dispute over the allocation of water among those states.

In September 1990, Alabama and the Corps filed a joint motion to stay the litigation so that those negotiations could proceed. Pet. App. 9. The joint motion provided that the Corps would not, before terminating the agreement, "execute any contracts or agreements which are the subject of the complaint in this action unless expressly agreed to, in writing, by [Alabama] and Florida." *Ibid*. Under the terms of the proposed stay, however, either side could terminate the stay upon written notice. *Ibid*. (brackets in original). The district court granted that stay. *Id*. at 10.

3. In December 2000, SeFPC filed the D.C. case. The rate that SeFPC pays for power from Buford Dam on Lake Lanier is affected by the rates the Corps charges the water supply providers for their water supply storage in Lake Lanier. SeFPC wanted the Corps to increase the rates charged to the water supply providers, in order to reduce the rates paid by SeFPC. See Pet. App. 10.

The Corps and SeFPC, along with Georgia and the water supply providers (who had moved to intervene), signed a settlement agreement to resolve the SeFPC

case. The Corps agreed to a process that could lead to ten-year interim contracts with the water supply providers, which would likely reduce the rates paid by SeFPC. The agreement provides that the Corps will conduct NEPA review of the environmental impact of the interim contracts. If thereafter the Corps decides not to enter into the interim contracts, the settlement agreement will be null and void, allowing the D.C. case to resume. Pet. App. 10-11.

After the parties to the D.C. case submitted the settlement agreement to the D.C. district court, petitioners sought to intervene in that case in order to oppose the settlement. The D.C. district court allowed petitioners to intervene, and denied their motion to transfer the case to the Alabama district court. Pet. App. 11-12 & n.10.

4. a. In addition to proceeding in the D.C. district court, petitioner Alabama filed a motion in the Alabama district court seeking a temporary restraining order and preliminary injunction to enjoin the settlement agreement and declare it null and void. Alabama argued that the settlement agreement violated the 1990 stay order because it was a contract or agreement that was the subject of its complaint in the Alabama case. Florida joined that motion, and alleged that the Corps also violated several environmental statutes by signing the settlement agreement. The Corps and Georgia opposed petitioners' motions, and, on September 22, 2003, the Corps formally terminated the 1990 stay order in accordance with the terms of the joint motion to stay the case. Pet. App. 11-13 & n.11.

On October 15, 2003, the Alabama district court entered a preliminary injunction. Pet. App. 44-54. Under the traditional four-part test for a preliminary injunc-

tion, the court determined that petitioners would likely succeed on the merits of their challenge to the D.C. settlement agreement, that petitioners would suffer irreparable injury if the settlement agreement were implemented, that the equities weighed in petitioners' favor, and that an injunction was consistent with the public interest. *Id.* at 49-54. With respect to likelihood of success, the court determined that the Corps violated the 1990 stay order by entering into the settlement agreement, *id.* at 48-49, and that there was a substantial likelihood that the interim contracts envisioned by the settlement agreement would violate several environmental statutes, *id.* at 50-51. Based on its analysis of the four-part test, the court preliminarily enjoined the Corps from (i) filing the settlement agreement with the D.C. court, (ii) implementing that agreement, or (iii) entering into any new storage or withdrawal contracts affecting the relevant region. *Id.* at 54. The Corps and Georgia filed notices of appeal.

b. On November 24, 2003, the Alabama district court stayed the Alabama case until the district court in the D.C. case determined the validity of the settlement agreement. Pet. App. 13-14.

After the D.C. district court received supplemental briefing on the effect of the Alabama district court's preliminary injunction, it issued an order approving the settlement agreement. *Southern Fed. Power Customers, Inc.* v. *Caldera*, 301 F. Supp. 2d 26 (2004), appeal dismissed, 400 F.3d 1 (D.C. Cir. 2005). The D.C. court held that the agreement is lawful, and it overruled petitioners' objections to the agreement. 301 F. Supp. 2d at 35. The court explained that the 1990 stay was vacated by the Corps' notice, and that the Alabama court's preliminary injunction had no effect on the D.C. court's ju-

risdiction. *Ibid.* The D.C. court stated, however, that implementation of the agreement would be "subject to [the Alabama court's] injunction, and to that end, before they may act under the Settlement Agreement, the parties to it must first obtain dissolution of the injunction." *Ibid.* See Pet. App. 14-15.

c. Following the D.C. district court's approval of the settlement agreement, Georgia filed a motion in the Eleventh Circuit seeking a limited remand to the Alabama district court to allow the Corps and Georgia to seek dissolution of the preliminary injunction. The court of appeals stayed the appeal, but the Alabama district court determined that the D.C. district court's approval of the settlement agreement was not a changed circumstance that warranted dissolution of the preliminary injunction. Pet. App. 15, 34-43. The Corps and Georgia appealed that order.

5. The Eleventh Circuit vacated the preliminary injunction and remanded the case to the district court. Pet. App. 4-33. Addressing petitioners' contention, "made for the first time at oral argument," that "the injunction at issue was an injunction issued under the All Writs Act, 28 U.S.C. § 1651(a)," the court explained that, "assuming we deem it appropriate even to address an argument that was conspicuously absent from the briefs," the district court did not enter the injunction pursuant to the All Writs Act, but instead "pursuant to its traditional equitable powers." *Id.* at 25, 26. The court explained that the district court never invoked the All Writs Act, and never made the finding, required by that Act, that an injunction was necessary or appropriate in aid of the court's jurisdiction. *Id.* at 26 & n.21.

The court of appeals also held that "an All Writs Act injunction would simply have been inappropriate in this

case." Pet. App. 26. Because "[a]n injunction under the All Writs Act invokes the equitable power of the court," the court of appeals explained that "a court may not issue an injunction under the All Writs Act if adequate remedies at law are available." *Ibid.* "Generally, if a party will have [an] opportunity to raise its claims in the concurrent federal proceeding sought to be enjoined, that concurrent proceeding is deemed to provide an adequate remedy at law." *Ibid.* The court acknowledged that "exceptional circumstances * * * have supported injunctions against related proceedings under the All Writs Act," but found that such circumstances—such as in rem jurisdiction, class actions, and situations in which a court acts to protect its final judgment—are not present here. *Id.* at 27 n.22. The court also noted that contempt proceedings provide an appropriate means of enforcing an injunction. *Id.* at 29 n.23.

Finally, the court of appeals held that the preliminary injunction could not be upheld under the traditional standards governing such an injunction. Pet. App. 27-33. In the court of appeals' view, petitioners had not established either a likelihood of success on the merits or irreparable harm. *Id.* at 29-33. The court stressed that the preliminary injunction was inappropriately designed to punish past conduct instead of to prevent future harm, because the harm alleged by petitioners—the absence of notice before the settlement was negotiated and signed—had already occurred. *Id.* at 27-29. The court further held that "the district court abused its discretion by converting an obligation that was freely terminable with notice under the 1990 order into one that is absolute and interminable, and thus far more burdensome than what the original stay order encompassed." *Id.* at 31 n.24.

ARGUMENT

Petitioners do not challenge the court of appeals' holding that the preliminary injunction was inappropriately entered under the traditional four-factor test used by the district court to determine the appropriateness of preliminary injunctive relief. See Pet. App. 27-33. Instead, they argue (Pet. 11-22) that the court of appeals should have affirmed the injunction on the alternative basis of the All Writs Act, which authorizes federal courts to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. 1651(a). The court of appeals' decision is correct and does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. Petitioners first contend (Pet. 12-14) that the court of appeals "erred in vacating the district court's injunction simply for failure to cite the All Writs Act." The court of appeals did not, however, vacate the injunction for a simple failure to cite the All Writs Act. Instead, the court of appeals correctly explained that the district court did not invoke the All Writs Act in any way, and instead analyzed the issue under the traditional four-part test for granting a preliminary injunction. Pet. App. 26.

The district court began its analysis by explaining that "[a] district court may grant injunctive relief if the movant establishes the following: '(1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be ad-

verse to the public interest." Pet. App. 49 (quoting *McDonald's Corp.* v. *Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998)). The court then went on to grant a preliminary injunction based on its analysis of those factors, not the All Writs Act. *Id.* at 50-54. For that reason, as the court of appeals observed, the district court did not make a "finding that the [preliminary injunction] was 'necessary or appropriate in aid of' the court's exercise of jurisdiction," as is "required to invoke the court's authority under the All Writs Act." *Id.* at 26 n.21 (quoting 28 U.S.C. 1651).

Although petitioners argue that "a judgment *may* be affirmed on appeal for any reason supported by the record," Pet. 12 (emphasis added), that point provides no basis for reversing the court of appeals' decision for at least two reasons. First, appellate courts' *discretion* to affirm on grounds not relied upon below does not *require* them to affirm instead of remanding for further proceedings. See generally *Roberts* v. *Galen of Va., Inc.*, 525 U.S. 249, 253 (1999).

Second, as petitioners acknowledge (Pet. 13), appellate courts ordinarily may not affirm on alternative grounds if doing so would require additional fact-finding. See, *e.g.*, *New Comm Wireless Servs., Inc.* v. *SprintCom, Inc.*, 287 F.3d 1, 13 (1st Cir. 2002) ("Injunctive relief is, by its very nature, fact-sensitive and case-specific. For that reason, the court of appeals ordinarily will not uphold a preliminary injunction on a ground that was not fully addressed by the trial court."). As the court of appeals noted, the district court did not make a finding that an injunction against the implementation of the settlement agreement was necessary or appropriate in aid of its jurisdiction, as required by the All Writs Act. Pet. App. 26 n.21; see *Retirement Sys.* v.

J.P. Morgan Chase & Co., 386 F.3d 419, 425 (2d Cir. 2004) (holding that district court's determination that All Writs Act injunction is necessary in aid of its jurisdiction is factual finding subject to clear error review).

Contrary to petitioners' assumption (Pet. 13), the district court's conclusion that the Corps had violated the 1990 stay does not, by itself, establish that an injunction against the implementation of the settlement agreement in the D.C. case was necessary or appropriate in aid of its jurisdiction. Even if there were a violation of the 1990 stay order, petitioners have had a full and fair opportunity to invoke that order in the D.C. case, and the court in that case expressly took account of the preliminary injunction in approving the settlement, but noting that it could not be enforced until the injunction was dissolved. Pet. App. 14-15. In any event, the Corps dissolved the stay by providing written notice, as permitted by the stay order. *Id*. at 13.

Petitioners assert (Pet. 14 & n.8) that "[o]ther courts of appeals routinely and correctly review the validity of injunctions under the All Writs Act, regardless of whether the district court explicitly cited the Act." As explained above, however, the district court did not merely fail to cite the Act; it granted the preliminary injunction based on the traditional four-factor test for preliminary injunctive relief, without making the finding necessary to support an All Writs Act injunction. Moreover, petitioners cite no case in which a court of appeals held that it was *required* to affirm an injunction under the All Writs Act even though the district court did not rely on that basis for the injunction. Nor do petitioners cite any case with even remotely analogous facts where a court of appeals affirmed an injunction under the All

Writs Act that had been granted based on a different legal standard without required fact finding.

In any event, the question whether the court of appeals was required to treat the preliminary injunction as an All Writs Act injunction is academic, because the court of appeals went on to determine, in an alternative holding, that the injunction could not be sustained on that basis. Pet. App. 26-27.

2. Petitioners argue (Pet. 14-22) that the court of appeals erred by holding, in the alternative, that because "[a]n injunction under the All Writs Act invokes the equitable power of the court * * * a court may not issue an injunction under the All Writs Act if adequate remedies at law are available." Pet. App. 26. Far from conflicting with this Court's precedents, as petitioners claim (Pet. 15), the court of appeals' holding is fully consistent with this Court's holding that "[t]he All Writs Act invests a court with a power essentially equitable and, as such, not generally available to provide alternatives to other, adequate remedies at law." *Clinton* v. *Goldsmith*, 526 U.S. 529, 537-538 (1999) (citing *Carlisle* v. *United States*, 517 U.S. 416, 429 (1996); 19 James W. Moore, *Moore's Federal Practice* § 201.40 (3d ed. 2006)). The All Writs Act authorizes only those writs that are "agreeable to the usages and principles of law," 28 U.S.C. 1651(a), not writs in derogation of those principles.

The court of appeals correctly recognized that petitioners had an available remedy at law in the D.C. litigation. Pet. App. 26-27. Although petitioners argue (Pet. 15) that the D.C. district court simply "washed its hands of the issue," that court permitted petitioners to intervene, entertained briefing on the effect of the 1990 stay as well as on petitioners' statutory claims, and deter-

mined that neither the stay nor the environmental statutes invoked by petitioners prevented the Corps from entering into the settlement. Pet. App. 14-15; *Southern Fed. Power Customers*, 301 F. Supp. 2d at 35. Petitioners were free to appeal that determination, and they have in fact done so. Contempt proceedings also provide another available remedy that petitioners are now pursuing. See Pet. App. 29 n.23; Pet. 11 n.4.[1]

Although petitioners contend that the courts of appeals are divided (Pet. 16-22), there is no conflict. Petitioners rely primarily on cases that did not involve interference with other pending federal court proceedings. Even in situations that do involve other federal court proceedings, the court of appeals did not rule out the availability of the All Writs Act in appropriate contexts. It explained that such an injunction might be appropriate in an in rem case, a class action, or a situation in which a court sought to enforce its final judgment, but is not appropriate in the circumstances of this case, where one federal court sought to direct the conduct of proceedings before another federal court in order to enforce a 13-year-old stay order that, by its terms, could be and was dissolved by one of the parties. Pet. App. 26-27 & n.22; see 11A Charles A. Wright et al., *Federal Practice and Procedure* § 2942, at 58 (2d ed. 1995) ("[I]f the party seeking the injunction could raise the same issues in the other [federal] proceeding, the court typically will take the position that the party has an adequate alternative remedy and does not need injunctive

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[1] Of course, the *availability* of relief at law does not imply that petitioners are *entitled* to that relief, and the Corps is defending the D.C. district court's order approving the settlement agreement and opposing petitioners' motion for contempt sanctions.

relief."). None of petitioners' cases involved remotely analogous circumstances.

3. Further review is also unwarranted because petitioners do not contest two of the court of appeals' other holdings that would bar injunctive relief under any equitable theory, including the All Writs Act. Although a court may issue an injunction pursuant to the All Writs Act to "prevent the frustration of orders it has previously issued," *United States* v. *New York Tel. Co.*, 434 U.S. 159, 172 (1977), the court of appeals correctly explained that the preliminary injunction here would not prevent the frustration of the now-terminated 1990 stay order, but would rewrite the terms of that order to make it "far more burdensome than what the original stay order encompassed." Pet. App. 31 n.24. Thus, "the district court abused its discretion by converting an obligation that was freely terminable with notice under the 1990 order into one that is absolute and interminable." *Ibid*. In addition, the court of appeals explained that the injunction was inappropriately imposed as "a sanction for past conduct," not to prevent future harm (or to protect the court's prospective jurisdiction), because the alleged harms had already occurred. *Id*. at 28. Although the court of appeals considered those alternate, unchallenged grounds only with respect to the traditional four-factor test for preliminary injunctive relief, those grounds apply to injunctive relief under any equitable theory, and therefore provide an additional reason that review should be denied.

4. The petition should be denied for prudential reasons as well. The court of appeals vacated a preliminary injunction and remanded for further proceedings. Pet. App. 33. This Court does not ordinarily review such interlocutory decisions. See *Brotherhood of Locomotive*

Firemen v. *Bangor & Aroostock R.R.*, 389 U.S. 327, 328 (1967) (per curiam); *Virginia Military Inst.* v. *United States*, 508 U.S. 946 (1993) (opinion of Scalia, J., respecting denial of the petition for a writ of certiorari); Robert L. Stern et al., *Supreme Court Practice* § 4.18, at 258 (8th ed. 2002). The interlocutory posture of this case is "of itself alone" a "sufficient ground for the denial of the [writ]." *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).

In addition, if the settlement of the D.C. litigation violated petitioners' legal rights, petitioners had every opportunity to seek redress in that litigation, and they have in fact availed themselves of that opportunity. Indeed, petitioners' appeal of the D.C. district court's decision approving the settlement agreement is currently pending in the D.C. Circuit.[2] If petitioners were to prevail on their challenge to the settlement agreement in that forum, their claims here would be effectively moot—another reason to deny review in the interlocutory posture of this case.

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[2] Although the D.C. Circuit dismissed petitioners' first appeal because the case had not reached final judgment, *Southern Fed. Power Customers, Inc.* v. *Caldera*, 400 F.3d 1, 2 (2005), the district court on remand entered a judgment pursuant to Federal Rule of Civil Procedure 54(b), and petitioners took another appeal, which is now pending.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General
SUE ELLEN WOOLDRIDGE
Assistant Attorney General
GREER S. GOLDMAN
MICHAEL T. GRAY
Attorneys

MAY 2006