No. 24-935

In the Supreme Court of the United States

FLOWERS FOODS, INC., et al.,
Petitioners,

v.

ANGELO BROCK,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

BRIEF OF RESPONDENT

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QUESTION PRESENTED

Are last-mile drivers a "class of workers engaged in foreign or interstate commerce"?

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INTRODUCTION

The Federal Arbitration Act exempts the employment contracts of "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The question presented here is whether last-mile drivers—workers who transport goods on the last leg of an interstate journey—are a "class of workers engaged in interstate commerce." The answer to that question is yes.

Like any other statute, the FAA must be given its ordinary meaning at "the time of the Act's adoption in 1925." *New Prime Inc. v. Oliveira*, 586 U.S. 105, 114 (2019). At that time, it was already well settled that last-mile transportation workers are "engaged in interstate commerce." Indeed, it was and still is black-letter law that once goods begin an interstate journey, they remain in interstate transportation until they reach their final destination. And anyone who transports those goods along the way is engaged in interstate transportation—even if they are only responsible for an intrastate leg of the journey.

Not only were these principles well established when Congress enacted the FAA, this Court had spent nearly two decades applying them to railroad employees. Seventeen years before the FAA was passed, Congress enacted the Federal Employers' Liability Act, which applied only to railroad employees engaged in interstate commerce. By the time the FAA was enacted, there were countless decisions of this Court establishing that railroad employees who handle interstate goods are engaged in interstate commerce—even if they are only responsible for an intrastate part of the journey. Thus, when Congress exempted transportation workers "engaged in interstate commerce," it did so against the

backdrop of nearly two decades of caselaw explaining what that meant—two decades establishing that last-mile workers would be exempt.

In 1925, the supply chain depended on last-mile railroad employees and last-mile seamen. Today's last-mile truck drivers are engaged in interstate commerce in precisely the same way.

Flowers cannot seriously argue otherwise. It concedes (at 21) that transportation workers are "engaged in interstate commerce" if they are engaged in interstate transportation or work "so closely related to interstate transportation as to be practically a part of it." And it doesn't even try to dispute that in 1925, workers who transported goods on the last leg of an interstate journey were engaged in interstate transportation.

So despite having urged this Court to "resolve the last-mile question," Pet. Reply 7, Flowers abandons any attempt to demonstrate that last-mile drivers are not a class of workers engaged in interstate commerce. Instead, it argues (at 12) that *no* worker—regardless of what class of workers they belong to—is exempt from the FAA unless they "move goods across state lines" or "interact with the vehicles that do." But that claim has no basis in the text or history of the statute. Indeed, Flowers does not cite a single source—contemporaneous with the FAA or otherwise—that has ever adopted that understanding of interstate transportation or the phrase "engaged in interstate commerce."

Rather, Flowers asks this Court to craft a bespoke rule for purposes of the FAA. *See, e.g.*, Petrs. Br. 40. Its main pitch for jettisoning the text and history of the Act is that determining whether a worker is a member of the class of last-mile drivers may be difficult—and, presumably, determining whether they've touched a

vehicle is easier. The company takes aim at the Tenth Circuit's reliance on diagrams and factors to try to pierce through Flowers' effort to conceal the work its drivers perform. But this Court need not affirm the Tenth Circuit's reasoning to affirm its holding. And diagrams and factors are not necessary. If a worker's job is to transport goods on the last leg of an interstate journey to their final intended destination, the worker is engaged in interstate commerce.

This will not ordinarily be a hard question. UPS drivers, for example, are last-mile drivers because they deliver packages on the last leg of their journey from one state to final destinations in another. So too are Flowers' drivers: They transport goods that are being sent from manufacturing plants in one state to their undisputed final destination in another, Flowers' retail-store customers. In fact, at the cert stage, Flowers had no trouble identifying Mr. Brock as a last-mile driver, and it asked the Court to take this case "on th[at] assumption." Pet. Reply 8.

Thus, even if this Court were willing to abandon text and history in favor of administrability, there's no call to do so here. Indeed, it is Flowers' interpretation that threatens to "breed litigation" and "uncertainty." *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 254 (2024). Flowers explicitly asks this Court to unmoor the FAA from the well-established understanding of interstate transportation in 1925. *See* Petrs. Br. 40. That would mean questions that have been settled for over a century—that Congress believed to be settled when it enacted the FAA—would suddenly be fair game. And courts would have nothing to rely on but their policy preferences to try to answer those questions.

This Court has never adopted that view of statutory interpretation. It should not do so now. Instead, this Court should reaffirm what has been clear for over a century: Last-mile drivers are a class of workers "engaged in interstate commerce." They are therefore exempt from the FAA.

STATEMENT

A. Legal background

1. The FAA requires courts to enforce arbitration clauses. 9 U.S.C. §§ 2-4.[1] But the statute has an exception: "[N]othing" in the statute "shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. In a series of cases over the past two decades, this Court has explained how to interpret this exemption.

Like any statute, this Court has explained, this exemption must be given its ordinary meaning at "the time of the Act's adoption in 1925." *New Prime*, 586 U.S. at 114. Although some of its terms "swept more broadly at the time … than might seem obvious today," courts must give effect to the then-contemporaneous understanding, not "invest old statutory terms with new meanings." *Id.* at 113, 119-20. Accordingly, whether a worker is a member of "any … class of workers engaged in foreign or interstate commerce" depends on how those

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[1] This brief omits ellipses when shortening the phrase "engaged in foreign or interstate commerce" to "engaged in commerce" or "engaged in interstate commerce." Unless otherwise noted, all internal quotation marks, citations, and alterations have been omitted from quotations throughout this brief. Citations to "CAJA" are to the joint appendix in the court of appeals.

terms were understood in 1925. *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 455 (2022).

Engaged in foreign or interstate commerce. In *Saxon*, the Court determined that in 1925, "to be 'engaged' in something" meant "to be 'occupied,' 'employed,' or 'involved' in it." 596 U.S. at 457 (quoting *Black's Law Dictionary* 220 (2d ed. 1910) (*Black's*)). And the term "commerce" meant "[i]ntercourse by way of trade and traffic between different peoples or states and the citizens or inhabitants thereof, including not only the purchase, sale, and exchange of commodities, but also … the transportation of persons as well as of goods." *Black's* 220; *accord Bowman v. Chicago & Nw. Ry. Co.*, 125 U.S. 465, 485-86 (1888); *see Saxon*, 596 U.S. at 457 (citing contemporaneous dictionaries).

To be "engaged in foreign or interstate commerce," therefore, meant to be occupied, employed, or involved in trade or traffic between the inhabitants of different states or countries.

Seamen, railroad employees, or any other class of workers. The exemption, however, does not apply to all workers "engaged in interstate commerce." It is limited to workers "engaged in interstate commerce" like "seamen" and "railroad employees"—or, as this Court explained in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), transportation workers.

To reach this conclusion, the Court relied on the interpretive "maxim *ejusdem generis*": Where a statute lists specific words—like "seamen" and "railroad employees"—followed by a generic phrase—like "any other class of workers engaged in commerce"—the generic phrase should be interpreted to cover "objects similar in nature" to the specifically enumerated words that precede it. *Id.* at 114-15. The "linkage" between

"seamen" and "railroad employees," the Court explained, is that they are transportation workers. *Id.* at 114-15, 121.

The FAA was enacted after decades of strife in the transportation industry that had repeatedly halted interstate commerce—and decades of efforts by Congress, the courts, and the Executive Branch to try to quell that unrest. *See infra* 27. The exemption for transportation workers reflects Congress's "demonstrated concern" with their "necessary role in the free flow of goods." *Cir. City*, 532 U.S. at 121.

2. This Court's decision in *Saxon* illustrates how these textual pieces fit together. There, the Court held that an airplane cargo loader was a member of a "class of workers engaged in foreign or interstate commerce"—and therefore exempt from the FAA. 596 U.S. at 453-55. The Court began by "defining the relevant class" based on their work. *Id.* at 455-56. The class, the Court held, was airplane cargo loaders, or "workers who physically load and unload cargo on and off airplanes on a frequent basis." *Id.*

Next, the Court determined whether that class is engaged in commerce. *Id.* at 457. Relying on caselaw contemporaneous with the FAA, the Court reasoned that in 1925, "there could be no doubt that interstate transportation is still in progress, and that a worker is engaged in that transportation, when she is doing the work of unloading or loading cargo from a vehicle carrying goods in interstate transit." *Id.* (quoting *Erie R.R. Co. v. Shuart*, 250 U.S. 465, 468 (1919)); *see also id.* at 457 (relying on pre-FAA caselaw under the Federal Employers' Liability Act holding that "the loading or unloading of an interstate shipment by the employees of a carrier is so closely related to interstate transportation as to be practically a part of it"). Because airplane cargo

loaders "perform activities within the flow of interstate commerce when they handle goods traveling in interstate and foreign commerce," the Court held, they are engaged in commerce and exempt from the FAA. *Id.* at 463.

This Court recently reinforced that textual approach in *Bissonnette v. LePage Bakeries Park Street, LLC*, 601 U.S. 246 (2024). That case involved the same workers as this one: commercial truck drivers who work for Flowers, transporting goods that Flowers manufactures in one state on the final leg of their journey to retailers in another. *Id.* at 249. Flowers asked this Court to add a limitation to the worker exemption not present in its text: that "a transportation worker must work for a company in the transportation industry." *Id.* at 252. Flowers argued that doing so was necessary to ensure that the exemption remained narrow and easy to administer. *See id.* at 256. But the Court rejected this request to interpret the exemption "without any guide in the text of § 1 or this Court's precedents." *Id.* at 254. And it rejected the claim that doing so was necessary to limit the scope of an exemption already narrowed, by its terms, to workers engaged in interstate transportation. *See id.* at 256.

B. Factual background

1. Angelo Brock is a commercial truck driver who works full time hauling goods for Flowers Foods. Pet. App. 2a, 50a; CAJA 23. Flowers is one of the largest manufacturers of bread and other packaged baked goods in the United States. Pet. App. 3a-4a; *Bissonnette*, 601 U.S. at 248-49. Flowers' brands line grocery shelves across the country, from Walmart to Safeway to Costco. Pet. App. 3a; *see* CAJA 7, 14, 131.

Flowers relies on truck drivers like Mr. Brock to deliver its products to those retailers. Pet. App. 3a-5a; CAJA 6-7, 263. The company uses a "system" it calls

"direct-store-delivery." CAJA 129, 141. The company ships baked goods directly from its manufacturing plants across the country to its retail-store customers. CAJA 158, 271. Here's how it works: Goods are manufactured in one of Flowers many industrial bakeries, shipped to a regional warehouse near the retailers that ordered them, and then almost immediately picked up by a last-mile driver who transports them the rest of the way. CAJA 265-66, 271. Mr. Brock is one of Flowers' last-mile drivers—responsible for the final, intrastate leg of the goods' interstate journey. CAJA 280-81.

Externally, Flowers claims that its last-mile drivers are "independent distributors" who buy products from Flowers for resale to the distributors' customers. CAJA 129-32. Flowers requires its drivers to establish shell companies and sign convoluted contracts that give the appearance that they are independent businesspeople. CAJA 6-7, 51-93. But internally, the company admits that the drivers' "sole operating function" "is to deliver bread products for us to our customers." CAJA 263; *see* Pet. App. 26a (describing SEC filing in which Flowers describes the *retailers* as Flowers' *customers*, not the drivers).

While Flowers requires its drivers to transmit orders from the retailers on their routes, Flowers itself makes these sales. CAJA 7, 10-11, 14-15, 141; *see* Pet. App. 25a & n.8. Flowers' drivers just deliver the goods that Flowers has sold. CAJA 15, 17-18, 187 (Flowers' SEC statement explaining that Flowers is "the principal," the retailer is Flowers' "customer," and the last-mile driver is Flowers' "agent"). The company tells its drivers when, where, and how to deliver its products. CAJA 17-18 (mandating "certain physical appearance" for drivers;

subjecting drivers to "bosses at Flowers"; setting "calendar[s]," "schedule[s]," and "task[s]" for drivers).

In the lower courts, Flowers has repeatedly emphasized that its last-mile drivers are performing the last leg of a single, continuous, interstate journey. *See, e.g.*, CAJA 271, 280-81; Br. of Defendants-Appellees, *Ash v. Flowers Foods*, 2023 WL 6930370, at *12 (5th Cir. 2023) ("The Distributors' leg of the journey from a Louisiana warehouse to the Louisiana customer was part and parcel of the baked goods' interstate transportation from the out-of-state bakeries to the Louisiana customers."); Mot. for Partial Summ. J. at 25-26, *Noll v. Flowers Foods*, No. 15-cv-00493 (D. Me. May 31, 2019) (similar). After all, as Flowers itself explained, the goods Flowers "produce[s] in response to [retailers'] orders are for [those] end customers, and not simply a warehouse." CAJA 271. The warehouse is just a "temporary pause" in the journey that allows the goods to be transferred from one driver to another. *Id.*; *see* CAJA 265-66.

2. By claiming that its truck drivers are "independent distributors," Flowers avoids minimum-wage laws and employment taxes. CAJA 15. It also deducts its own business expenses from its drivers' paychecks, and makes them pay for the equipment that Flowers requires them to use. CAJA 16, 19. Flowers even charges its drivers for the privilege of driving for the company, and it forces them to finance those payments at "exorbitant interest rates." CAJA 16.

Mr. Brock sued Flowers, alleging that the drivers it classifies as independent contractors are actually Flowers' employees. CAJA 23. Therefore, Mr. Brock alleged, Flowers must comply with minimum-wage and overtime laws, and it may not withdraw business expenses from its drivers' paychecks. CAJA 23-24.

Flowers moved to compel arbitration based on an arbitration clause in the "Distributor Agreement" that it requires its drivers to sign. Pet. App. 6a-7a. Although Mr. Brock is a truck driver who hauls goods manufactured in one state to retail customers in another, Flowers argued that he isn't a transportation worker within the meaning of the FAA. CAJA 33-44. The company contended that the FAA only exempts those who work for companies in the transportation industry; and it contended that its drivers are not "engaged in interstate commerce" because they are "primarily business owners," who distribute goods without crossing state lines. *Id.*

The district court rejected both arguments. The court held that Mr. Brock belongs to a class of workers that "haul[s] goods on the final legs of interstate journeys." Pet. App. 50a. That class, the Court held, is "engaged in interstate commerce." Pet. App. 52a. Presaging this Court's decision in *Bissonnette*, the court also held that there is no basis for imposing an industry requirement found nowhere in the exemption's text. Pet. App. 42a-46a.

3. The Tenth Circuit affirmed. Surveying the decisions of other circuits, the court differentiated two classes of workers: "(a) [l]ast-mile delivery drivers," who are responsible for the last, often intrastate leg of a shipment of goods from one state to another; and "(b) rideshare and food-delivery" drivers, who pick up and drop off people or food in the same local area. Pet. App. 13a.

The court was persuaded by the growing lower-court consensus that last-mile drivers are exempt from the FAA, while rideshare and food-delivery drivers are not. Pet. App. 15a-18a. That distinction, these lower courts emphasized, reflects the ordinary meaning of the words "engaged in interstate commerce" when the Act was enacted. Pet. App. 17a-18a. In 1925, workers "who

haul[ed] goods on the final intrastate legs of interstate journeys" were understood to be "engaged in interstate commerce." Pet. App. 14a-18a. But where goods—like, for example, local restaurant deliveries—were not themselves in interstate transportation, the workers who delivered them were not engaged in interstate transportation. *Id.*

Mr. Brock, the Court held, is a last-mile driver. Pet. App. 26a. His "intrastate delivery route forms the last leg of the products' continuous interstate" journey from Flowers' manufacturing plants to its retail-store customers. *Id.* The goods' temporary stop at a regional warehouse is "simply part of a process by which a delivery provider transfers the packages to a different vehicle for the last mile of the packages' interstate journeys." Pet. App. 26a-27a. Because Mr. Brock's job is to transport goods on the last leg of their interstate journey, the court concluded, he is a member of a class of workers "engaged in interstate commerce" and therefore exempt from the FAA. Pet. App. 29a.

SUMMARY OF ARGUMENT

"The controlling principle in this case is the basic and unexceptional rule that courts must give effect to the clear meaning of statutes as written." *Star Athletica, LLC v. Varsity Brands, Inc.*, 580 U.S. 405, 414 (2017). The Federal Arbitration Act exempts the "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Last-mile drivers transport goods on the last leg of an interstate journey. Just like last-mile "seamen" and "railroad employees" in 1925, last-mile drivers are engaged in interstate transportation. They are, therefore, a "class of workers engaged in interstate commerce" exempt from the FAA.

I.A. When the Federal Arbitration Act was passed, it was well established that transportation workers are "engaged in interstate commerce" if they are engaged in interstate transportation, or in work so closely related to it as to be practically a part of it. Everyone agrees that standard applies here.

Last-mile drivers are engaged in interstate transportation. By 1925, the established rule was that goods shipped from one state to another retain their interstate character—that is, remain in interstate transportation—until they reach their final destination. It was black-letter law, therefore, that those who transport those goods are engaged in interstate transportation, even if they are only responsible for an intrastate leg of the journey. Indeed, this Court had repeatedly held that last-mile transportation workers are "engaged in interstate commerce." When Congress exempted transportation workers engaged in commerce from the FAA, it incorporated that settled understanding.

B. Exempting last-mile drivers, is also consistent with how the terms "railroad employees" and "seamen" were understood in 1925. This Court has applied the principle of *ejusdem generis* to hold that those terms inform and limit the scope of section 1's residual clause ("any other class of workers"). In 1925, "railroad employees" and "seaman" encompassed many employees who were critical to interstate commerce yet worked wholly within one state, including the equivalent of modern-day last-mile drivers. The railroads could not have functioned, for example, without the employees who worked on short-haul lines. So too, maritime commerce often depended on skilled pilots who came aboard only for an intrastate leg of an interstate journey. The residual category in section

1 is likewise best read to include other types of last-mile workers.

C. Purpose and history confirm that last-mile drivers are exempt. Congress enacted the FAA in the wake of decades of transportation strikes that had caused interstate commerce to grind to a halt. Congress exempted transportation workers because of their critical role in the free flow of goods. Like last-mile seamen and railroad employees in 1925, last-mile drivers today play this same critical role. In addition, if Congress had not exempted last-mile transportation workers, that would have caused the conflict in dispute-resolution schemes that Congress sought to avoid because last-mile workers employed by railroads and express companies were already covered by the Transportation Act of 1920.

II. Flowers' contrary interpretation of section 1 has no basis in the text, purpose, or history of the statute.

A. Flowers contends (at 13) that workers are engaged in interstate commerce for purposes of section 1 only if they move goods across state lines or "interact" with vehicles that do. That interpretation is at odds with the FAA's text, and Flowers does not identify any court that has ever interpreted the phrase "engaged in interstate commerce" in any statute to bear that meaning. Transportation workers are engaged in interstate commerce when they transport goods on an intrastate leg of an interstate journey, regardless of whether they also interact with a vehicle that crosses state lines.

Flowers also contends that treating last-mile drivers as being engaged in interstate commerce based on the interstate character of the goods they deliver improperly shifts the focus to the goods, rather than the drivers' work. But the nature of the drivers' work depends on the goods they deliver. That's what it means for

transportation workers to be "engaged in interstate commerce": The goods they carry are in interstate transportation. That's why this Court held in *Saxon* that airline cargo handlers are engaged in interstate commerce: The cargo that they load and unload is in interstate transportation.

Flowers' novel interpretation of "engaged in interstate commerce" would also put the FAA at odds with the settled meaning of similar jurisdictional language in related statutes—including the Federal Employers' Liability Act, which governed railroad employees engaged in interstate commerce, at the time the FAA was enacted.

B. Flowers' competing account of the history and purpose of section 1 is likewise unsound. According to Flowers, limiting section 1 along the lines it proposes here would not have disrupted the dispute-resolution schemes that existed for railroad employees and seamen as of 1925. But the Transportation Act of 1920 governed the disputes of railroad employees responsible for the intrastate leg of an interstate journey, regardless of whether they interacted with a border-crossing vehicle. The same is true of the Shipping Commissioners Act, the dispute resolution statute that governed seamen in 1925 and that applied to last-mile workers like pilots. Subjecting these classes of workers to both those dispute-resolution systems and arbitration under the FAA would have caused exactly the disruption Flowers disclaims.

C. Finally, abandoning the FAA's text and history in favor of Flowers' novel, touch-the-vehicle requirement would invite a host of line-drawing problems and lead to arbitrary results. Courts would be left to address the resulting absurdities without any guidance because Flowers' approach has no basis in text or precedent. This

case illustrates the point: The proper inquiry is whether the relevant class of last-mile drivers, as a whole, transports goods that are on an interstate journey. The statute's ordinary meaning—and Flowers' own concessions—make clear that they do. The Tenth Circuit's decision was more complicated than it needed to be, but this Court reviews judgments, not opinions. That judgment should be affirmed.

ARGUMENT

I. Last-mile drivers are exempt from the FAA.

Mr. Brock is a member of a class of workers "engaged in interstate commerce": last-mile drivers. *See* Pet. Reply 8 ("The Court would thus take the case on the assumption that Brock serves as Flowers's last-mile driver."). Last-mile drivers haul goods on the final leg of an interstate journey.

They work for shipping companies like FedEx, DHL, and UPS. *See, e.g.*, *Optimizing Last Mile Delivery*, FedEx, https://perma.cc/92JQ-D88G ("Last mile delivery is the final step of the supply chain delivery process — the point at which a shipment reaches its final delivery destination."); *Everything You Need to Know About Last Mile Delivery*, DHL (Mar. 1, 2023), https://perma.cc/YL5A-UHLJ; *UPS Mail Innovations*, UPS, https://perma.cc/CDZ2-GD8C. They work for the United States Postal Service, delivering "to more than 170 million addresses at least six days a week." *U.S. Postal Service Announces Bid Solicitation for Access to Last-Mile Delivery Network*, U.S. Postal Serv. (Dec. 17, 2025), https://perma.cc/H3DN-VQ3Z. And, like Mr. Brock, they work for manufacturers or retailers that have their own nationwide transportation network.

Without last-mile drivers, goods would never arrive at their final destinations. The same was true in 1925: The nation's supply chain depended on last-mile seamen and railroad employees. And when the FAA was enacted, it was beyond dispute that these last-mile transportation workers were engaged in interstate commerce, even if their leg of the journey was only within a single state. In exempting transportation workers engaged in interstate commerce, therefore, Congress exempted last-mile drivers.

A. Those who transport goods on an intrastate leg of an interstate journey are "engaged in interstate commerce."

There's no dispute about what standard applies here: In 1925, it was well established that transportation workers are "engaged in interstate commerce" if they are "engaged in interstate transportation, or in work so closely related to it as to be practically a part of it." *Pederson v. Del. L & W R Co.*, 229 U.S. 146, 151 (1913) (collecting cases); *see Saxon*, 596 U.S. at 458-59 (applying this standard to the worker exemption); Petrs. Br. 18, 21. Last-mile drivers easily satisfy this standard. When the FAA was enacted, it was well settled that workers who transport interstate freight are engaged in interstate transportation—even when responsible for only an intrastate leg of the journey.

1. Interstate commerce is not merely the crossing of a state line. It is the trade and traffic between citizens of the different states of this country. *See Welton v. Missouri*, 91 U.S. 275, 280 (1875) (emphasizing the "national importance" of "that portion of commerce … which consists in the transportation and exchange of commodities"). Interstate commerce is what enables food produced in one state to be sold at grocery

stores in another,[2] oil produced in one state to power buildings in another,[3] and books printed in one state to educate students in another.[4]

"[T]he very purpose and motive of that branch of commerce which consists in [the] transportation" of goods is to enable this flow of commerce. *Bowman v. Chi. & Nw. Ry. Co.*, 125 U.S. 465, 499 (1888); *Wabash, St. L. & P. Ry. Co. v. Illinois*, 118 U.S. 557, 573 (1886) ("It cannot be too strongly insisted upon that the right of continuous transportation, from one end of the country to the other, is essential, in modern times, to that freedom of commerce.").

Interstate transportation, therefore, has never been understood to be limited to the act of crossing borders. The "general rule" has always been that once goods have started on an interstate journey, the "interstate character" of that journey continues until the goods reach their "final destination." *Binderup v. Pathe Exch. Inc.*, 263 U.S. 291, 309-10 (1923); *Ill. Cent. R.R. Co. v. De Fuentes*, 236 U.S. 157, 163 (1915) (citing cases). Goods, therefore, remain in interstate transportation—in interstate commerce—until they reach that destination, even during intrastate portions of the journey.[5]

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[2] *See Lemke v. Farmers' Grain Co. of Embden, N.D.*, 258 U.S. 50, 53-54 (1922).

[3] *See W. Oil Refining Co. v. Lipscomb*, 244 U.S. 346, 349 (1917).

[4] *See Text-Book Co. v. Pigg*, 217 U.S. 91, 106-07 (1920).

[5] *See, e.g.*, *Rhodes v. Iowa*, 170 U.S. 412, 413-14 (1898) (liquor sent from Texas to Burlington, Iowa, via one railroad, received there by a representative for another railroad, moved from Burlington to Brighton, Iowa, then moved "within the state" from the train platform to a freight house before final delivery was still "in the course of

By the time the FAA was enacted, this rule was reflected in scores of this Court's cases. For example, this Court repeatedly held that goods remained in interstate commerce during the last, intrastate leg of a railroad journey. *See, e.g.*, *W. Oil Ref. Co. v. Lipscomb*, 244 U.S. 346, 348-50 (1917) (oil sent from Illinois refinery to Tennessee remained in "continuing interstate movement" during last leg of journey between two rail stations in Tennessee); *McNeill v. S. Ry. Co.*, 202 U.S. 543, 559 (1906) (same for coal sent from outside North Carolina before last intrastate leg of journey from railroad tracks to final destination nearby); *Baltimore & Ohio S.W. R. Co. v. Settle*, 260 U.S. 166, 169-70, 173-74 (1922) (same for lumber sent from the South on last leg of journey between two freight stations in Ohio).

And it was common in 1925 for companies to ship goods to agents in other states, who then picked up the goods at the railroad station and delivered them to local purchasers. This Court routinely held that those goods, too, remained in interstate commerce during this last leg of their journey. *See, e.g.*, *Rearick v. Pennsylvania*, 203 U.S. 507, 510-12 (1906); *Caldwell v. North Carolina*, 187

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interstate transportation"); *Old Dominion S.S. Co. v. Virginia*, 198 U.S. 299, 301, 306 (1905); *The Daniel Ball*, 77 U.S. 557, 564-65 (1870); *N.Y. Cent. & Hudson R.R. Co. v. Carr*, 238 U.S. 260, 261-62 (1915); *Minneapolis & St. L. R.R. Co. v. Gotschall*, 244 U.S. 66, 66-67 (1917); *N.C. R. Co. v. Zachary*, 232 U.S. 248, 255-56 (1914); *Grand Trunk W. Ry. Co. v. Lindsay*, 233 U.S. 42, 44 (1914); *S. Pac. Terminal Co. v. Interstate Com. Comm'n*, 219 U.S. 498, 522-23 (1922); *Barrett v. City of New York*, 232 U.S. 14, 28-29 (1914); *United States v. Cap. Transit Co.*, 325 U.S. 357, 362-63 (1945); *Norfolk & W. R.R. Co. v. Pennsylvania*, 136 U.S. 114, 118-19 (1890); *Hanley v. Kansas City S. Ry. Co.*, 187 U.S. 617, 620-21 (1903); *Claiborne-Annapolis Ferry Co. v. United States*, 285 U.S. 382, 386-87, 392 (1932).

U.S. 622, 630-32 (1903); *Crenshaw v. Arkansas*, 227 U.S. 389, 401 (1913).

These cases do not stand alone. Over and over again, in the years leading up to the FAA, this Court held that it didn't matter whether freight changed hands or changed title or stopped at a warehouse. The rule was the same: Goods remain in interstate commerce until they reach their final destination. *See, e.g.*, *Caldwell*, 187 U.S. at 632 (interstate commerce included agent receiving product components in separate packages, assembling the product, and delivering it to local purchasers); *Lipscomb*, 244 U.S. at 348-50 ("temporary stop" before intrastate leg did not break "continuity of the movement" to the place oil was "destined"); *Binderup*, 263 U.S. at 309 ("intermediate" stop with local agency before intrastate delivery to "final destination" did not change "interstate character" of transportation); *Rearick*, 203 U.S. at 512 ("[I]t is plain that, wherever might have been the title, the transport of the brooms for the purpose of fulfilling the contracts was protected commerce.").[6]

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[6] *See also, e.g., McNeill*, 202 U.S. at 559 (pause on a siding in North Carolina did not "complete" "interstate transportation," which was ongoing until cars loaded with coal "from points outside of [North Carolina]" were "delivered" locally from railroad tracks to final destination nearby); *Swift & Co. v. United States*, 196 U.S. 375, 398-99 (1905) (cattle shipped from out of state remained in interstate commerce despite brief "interruption" in stockyards before reaching purchaser in second state); *Santa Cruz Fruit Packing Co. v. NLRB*, 303 U.S. 453, 463 (1938) ("where the actual movement is interstate," the "arrangements that are made between seller and purchaser with respect to the place of taking title" or making "payment" do not alter the interstate-commerce analysis); *Heymann v. S. Ry. Co.*, 203 U.S. 270, 273-74 (1906) (placement in a warehouse of goods that had arrived from out of state, before delivery to the purchasers, did not conclude

2. Because interstate transportation continues until goods reach their final destination, workers who transport those goods are engaged in interstate transportation—"engaged in interstate commerce"—even if they're responsible only for an intrastate leg of the journey. That rule, too, was well settled when the FAA was enacted.

Again, case after case from this Court had held as much. In *Rearick*, for example, the Court held that an agent of an Ohio broom-seller was "engaged in interstate commerce" when picking up brooms from a train station in Pennsylvania and completing their last-mile delivery to the seller's Pennsylvania customers. 203 U.S. at 512-13.

In *Foster*, the Court held that a last-mile steamboat was "engaged in commerce between the States" because it transported goods coming from other states and countries on the last leg of their journey into port. *Foster v. Davenport*, 63 U.S. 244, 246 (1859).

In *Philadelphia & Reading Railway Co. v. Hancock*, the Court held that a railroad employee whose job was only to transport coal from a mine to a storage yard two miles away was "employed in commerce between the states" because that local transportation was the first leg of the coal's "transportation to another state." 253 U.S. 284, 285-86 (1920).

And in *North Carolina Railroad Co. v. Zachary*, the Court held that a last-mile railroad employee employed

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interstate commerce); *Cap. Transit Co.,* 325 U.S. at 362-63 ("entire trip" of government workers from D.C. to agencies in Virginia was "interstate transportation," despite stopping at terminal in D.C. partway through and changing vehicles, as the "interstate journey" began when the worker gets onto a streetcar or bus and "actually ended" only when the worker get out at their place of work).

on a route entirely within North Carolina was "engaged in interstate commerce" because the freight to be hauled came from out of state. 232 U.S. 248, 255 (1914); *see also Minneapolis & St. L. R.R. Co. v. Gotschall*, 244 U.S. 66, 66-67 (1917) (no dispute that railroad worker who was injured on a train within Minnesota was "engaged in interstate commerce" because the train was "transporting interstate commerce merchandise").[7]

Of particular relevance is caselaw under the Federal Employers' Liability Act, which Congress enacted nearly two decades before the FAA. *See* Pub. L. No. 60-100, ch. 149, 35 Stat. 65 (1908). In 1925, FELA—which imposes

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[7] *See also, e.g., Norfolk*, 136 U.S. at 119 (railroad company operating solely in Pennsylvania was "engaged in interstate commerce" because it served as "link" for goods coming into and out of state); *The Daniel Ball*, 77 U.S. at 565 (steamer operating "entirely within the limits" of Michigan was "engaged in commerce between the States" because it "transport[ed] goods destined for other states, or goods brought from without the limits of Michigan and destined to places within that State"); *Old Dominion*, 198 U.S. at 301 (steam tug operating entirely intrastate to transfer goods from ocean-going steamers or move steamers to docks was "engaged in interstate commerce"); *Seaboard Air Line Ry. v. Moore*, 228 U.S. 433, 435 (1913) (railroad employee on a switch engine that never left the railyard was "engaged in interstate commerce" because the goods being hauled were ultimately destined for another state); *Carr*, 238 U.S. at 261-62 ("brakeman on a pickup freight train running from Rochester to Lockport" on New York Central railroad lines was "engaged in interstate commerce" when removing certain cars from a train carrying interstate goods during a stop in North Tonawanda, New York); *United States v. Union Stock Yard & Transit Co. of Chi.*, 226 U.S. 286, 304-05 (1912) (companies transporting freight while "interstate commerce" was "still in progress" were themselves "engage[d] in [interstate] transportation" even though their services were "performed wholly in one state"); *Bouvier's Law Dictionary and Concise Encyclopedia* 532 (8th ed. 1914) (a delivery company "is still engaged in interstate commerce" when it transports a good "from a steamer or railroad … through the street of the city to the consignee").

liability on railroad companies for injuries to railroad employees—applied only when the railroad was "engaging in [interstate] commerce" and the railroad employee was "employed … in such commerce" at the time of the accident. *Id.* As this Court explained, that meant that the employee had to be "engaged in interstate commerce" when they were injured. *Mich. Cent. R.R. Co. v. Vreeland*, 227 U.S. 59, 66 (1913); *Second Emp'rs' Liab. Cases (Mondou v. N.Y., N.H. & H.R. Co.)*, 223 U.S.1, 51-52 (1912).

To determine whether a railroad employee was, in fact, "engaged in interstate commerce," the Court looked to the work the employee performed. *See Pederson*, 229 U.S. at 151 (to determine whether worker was engaged in interstate commerce, the Court's "only" concern was "the *nature of the work* in which the plaintiff was employed" (emphasis added)); *see, e.g.*, *Penn. Co. v. Donat*, 239 U.S. 50, 52 (1915) (detailing work performed by yard conductor to conclude worker was "clearly" "engaged in interstate commerce at the time of the injury").

Railroad workers were "engaged in interstate commerce" if they are "engaged in interstate transportation, or in work so closely related to it as to be practically a part of it." *Pederson*, 229 U.S. at 151 (collecting cases); *Baltimore & O. S. W. R.R. Co. v. Burtch*, 263 U.S. 540, 543 (1924). And in case after case, the Court made clear that workers handling interstate freight were engaged in interstate transportation—even if their work was entirely intrastate. *See, e.g.*, *Hancock*, 253 U.S. at 285-86; *Zachary*, 232 U.S. at 255; *Gotschall*, 244 U.S. at 66-67; *Donat*, 239 U.S. at 51-52 (railroad employee switching cars that had transported coal from out of state between the train and a track was "engaged in interstate commerce at the time"); *Grand Trunk W.*

Ry. Co. v. Lindsay, 233 U.S. 42, 44 (1914) (switchman coupling "four loaded freight cars, moving in interstate commerce" in a yard in Chicago was "engaged in carrying on interstate commerce").

When Congress exempted transportation workers "engaged in interstate commerce" from the FAA's reach, it did so against the backdrop of nearly two decades' worth of FELA cases explaining what that phrase meant. And that caselaw itself applied longstanding, black-letter law. *See supra* 17-20. The worker exemption "brings [that] old soil with it." *George v. McDonough*, 596 U.S. 740, 746 (2022); *see also Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010) ("We normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent."). It exempts last-mile drivers.

B. The enumerated categories of "seamen" and "railroad employees" confirm that last-mile drivers are covered by the worker exemption.

The contemporaneous meaning of the phrase "engaged in interstate commerce" is further supported by statutory context. Seamen and railroad employees—the two categories of workers that are enumerated in the exemption—have long included workers responsible for an intrastate leg of an interstate journey. Indeed, like last-mile drivers today, last-mile seamen and railroad employees were critical to commerce in 1925.

Railroad employees. In 1925, the term "railroad employees" simply meant workers "engaged in the customary work directly contributory to the operation of the railroads." *New Prime*, 586 U.S. at 120; *see id.* at 120 n.11 (citing Transp. Act of 1920, ch. 91, Pub. L. No. 66-152, 41 Stat. 456, 470-71, and *Ry. Emps' Dep't v. Ind. Harbor Belt R.R. Co.*, Decision No. 982, 3 R.L.B. 332, 337 (1922)). Though railroads were central to interstate

commerce, most railroad employees did not personally cross state lines. *See 39th Annual Report of the Interstate Commerce Commission*, H.R. Doc. No. 69-56, at 116-19 (1925). They were freight handlers, signalmen, flagmen, repairmen. *See Int'l Ass'n of Machinists v. Atchison, Topeka, & Santa Fe Ry.*, Decision No. 2, 1 R.L.B. 13, 22-27 (1920).

And of particular relevance here, commerce depended on railroad employees who were responsible for the intrastate leg of an interstate journey. "Although a number of large railroads linked the nation by the turn of the twentieth century, literally hundreds of short line and regional railroads made up the bulk of our national rail network." Paul Stephen Dempsey & William G. Mahoney, *The U.S. Short Line Railroad Phenomenon: The Other Side of the Tracks*, 21 Transp. L.J. 383, 385 (1992). The interstate shipment of goods by rail therefore frequently depended on an intrastate leg—and on the railroad employees responsible for that leg. *See, e.g.*, *Hancock*, 253 U.S. at 285 ("trainman" whose "duties … never took him out of Pennsylvania" was in "employ" of railroad when "operating a train of loaded cars" from a mine to a yard "two miles away" in same state); *Gotschall*, 244 U.S. at 66-67 ("brakeman" on a freight train "transporting interstate merchandise"); *Carr*, 238 U.S. at 261-63 ("brakeman on a 'pick-up' freight train running" between cities in New York).

Seamen. Similarly, the foreign and interstate shipment of goods by sea depended on last-mile seamen. In 1925, the term "seamen" referred broadly to all workers "employed or engaged in any capacity on board any ship." *Saxon*, 596 U.S. at 460 (quoting *Webster's New International Dictionary of the English Language* 1906 (1922)).

As with railroad employees, many seamen never personally crossed a state line or ventured into foreign waters. *See, e.g.*, *Ellis v. United States*, 206 U.S. 246, 259-60 (1907) ("all of the hands" aboard several dredges in Boston Harbor—boats that barely moved, let alone crossed borders—were seamen). But as with railroad employees, seamen who transported goods or passengers on the last mile of a foreign or interstate journey were critical to commerce.

The paradigmatic example is pilots—skilled seamen who boarded vessels to navigate them through difficult waters, along rivers, or into or out of ports. *See, e.g.*, *Pac. Mail S.S. Co. v. Joliffe*, 69 U.S. 450, 456 (1864); *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 344-45 (1991) (collecting cases from before 1920); *The Carrie L. Tyler*, 106 F. 422, 425 (4th Cir. 1901). Absent these last-mile seamen, boats—and the goods and passengers on them—could not complete their foreign or interstate journeys. *See, e.g.*, *The Taurus & The Kate Jones*, 91 F. 796, 796 (E.D.N.Y. 1898) (describing pilots for Hell Gate, a narrow tidal strait in New York state, through which "pass[ed] daily all vessels going to or from the city of New York by the East river"); *Estopinal v. Vogt*, 46 So. 908, 909 (La. 1908) ("The defendants … are river pilots, plying their vocation between the head of the passes at the mouth of the Mississippi river and the city of New Orleans.").

But pilots were not the only last-mile seamen. There were boats dedicated to carrying goods and passengers from larger ships on the last leg of their journey to shore. *See, e.g.*, *Foster v. Davenport*, 63 U.S. 244 (1859). Towboats, ferries, barges, lighters all operated within a single state as one link in an interstate journey. *See, e.g.*, *id.*; *The Daniel Ball*, 77 U.S. at 565; *Old Dominion*, 198

U.S. at 301, 306; *Morrison v. Com. Towboat Co.*, 116 N.E. 499, 499 (Mass. 1917). All of these vessels, of course, were operated by seamen. *See Saxon*, 596 U.S. at 460.

* * *

Flowers identifies no persuasive reason to think that Congress included last-mile "railroad employees" and last-mile "seamen" in section 1, but then sharply changed course in the residual clause to exclude any other last-mile transportation workers. To the contrary, the residual clause plainly encompasses such workers, including the modern-day equivalent: last-mile truck drivers.

C. Purpose and history confirm that the FAA excludes last-mile drivers.

The ordinary, contemporaneous meaning of the FAA's terms leaves no doubt that the statute exempts last-mile drivers. This Court, therefore, can start and end there. But if more were needed, the purpose and historical context of the worker exemption confirm the statute's meaning. As this Court explained in *Circuit City*, Congress crafted the exemption for a "simple reason": to avoid "unsettl[ing]" the "dispute resolution schemes" that governed transportation workers at the time and, more generally, to leave free from mandated individual dispute resolution workers who played a "necessary role in the free flow of goods." 532 U.S. at 121.

In 1925, this was an urgent task. Labor unrest had wracked transportation for decades, regularly bringing commerce to a halt. *See* William G. Mahoney, *The Interstate Commerce Commission/Surface Transportation Board as Regulator of Labor's Rights and Deregulator of Railroads' Obligations*, 24 Transp. L.J. 241, 245 n.19, 247 (1997) (detailing hundreds of

strikes). Not long before the FAA was passed, for example, a nationwide strike of shopmen (train repair and maintenance workers) paralyzed the railroads for months. *See* Margaret Gadsby, *Strike of the Railroad Shopmen*, 15 Monthly Lab. Rev., no. 6 (Dec. 1922) at 1-2, 6. Work stoppages by seamen "towing freight" and tugging steamships into port threatened the nation's supply chain. *See, e.g.*, *Crews of Tugboats Threaten to Strike*, *N.Y. Times*, June 30, 1917, at 1 (threatened strike by tugboat crews would "delay all the commerce of the port" and "seriously interfere with" "[t]he coal business").

Mandating the enforcement of private arbitration agreements for such disputes would have undermined the evolving solutions deployed by all three branches of the federal government. The judicial branch heard numerous lawsuits and issued injunctions in public proceedings. Mahoney, 24 Transp. L.J. at 246-47 & 246 n.24. Presidents used their authority to investigate grievances and to encourage negotiations. *Id.* at 247-48. And Congress repeatedly enacted laws providing for federal dispute-resolution mechanisms in the hopes of avoiding further strikes. *See* Erdman Act, ch. 370, 30 Stat. 424, 424 (1898); Newlands Act, ch. 6, 38 Stat. 103, 104 (1913); Transp. Act, 41 Stat. at 470-71.

The purpose of section 1 was to preserve space in the transportation sector for such measures, without the threat that labor disputes involving workers critical to the free flow of commerce would be ushered off the public stage and relegated into private arbitration. Section 1 ensured not only that the "established … statutory dispute resolution schemes" in place in 1925 would continue to operate as designed, but that other measures taken to resolve any future strife would be unencumbered

by mandatory private arbitration. *Cir. City*, 532 U.S. at 121.

1. That goal would be undercut if last-mile drivers were not exempt. Last-mile drivers today play the same critical role in commerce as last-mile seamen and railroad employees in 1925. Without them, goods do not reach their destination. The impact on commerce is no different if there's labor unrest among drivers who transport the goods across state lines than if there's labor unrest among drivers who are responsible for getting the goods to their final destination: Bread doesn't reach grocery shelves either way. *See, e.g.*, Jess Dankert & Sarah Gilmore, *Retailers Urge Quick Resolution to Avoid UPS Strike*, *Retail Industry Leaders Association* (Jul. 18, 2023) https://perma.cc/3TM7-S2EB (prospect of a UPS delivery-driver strike, including among last-mile drivers, threatened to disrupt "the timely delivery of essential goods such as groceries, medicine, and school supplies to customers doorsteps").

In 1925, Congress would have been well aware of the importance of last-mile delivery. In the decades before the FAA, work stoppages by teamsters had seriously disrupted commerce. For example, in 1919, a teamsters strike in New York City forced a national express company to "place[] an embargo on all shipments to the city" until the resolution of the dispute because "a vast quantity of perishable express was lying" at its depots would rot, resulting in a "sharp increase in the price of eggs, butter and seafood" within a day. *Strike Paralyzes Rlwy Express*, *N.Y. Times*, Oct. 14, 1919, at 1; *see also* Eric Arnensen, *Waterfront Workers of New Orleans* 38, 175, 197 (1991) (teamsters join 1907 New Orleans port strike); Oscar Ameringer, *If You Don't Weaken* 201 (1940) (detailing "froze[n]" port and "[t]housands of tons"

of wasted produce). Congress would not have omitted such critical workers from Section 1.

2. Exempting last-mile workers was also necessary to avoid the prospect that compulsory private arbitration would unsettle the dispute-resolution statute that governed both railroad employees and express company employees when the FAA was enacted: the Transportation Act of 1920, ch. 91, 41 Stat. 456. The statute imposed a "duty" on "all carriers and their officers, employees, and agents to exert every reasonable effort" to ensure that labor disputes did not cause "any interruption to the operation of any carrier." *Id.* at 469. To effectuate that duty, the Act created the Railroad Labor Board to resolve employment disputes between carriers and their employees. *Id.* at 470-71.

The Board regularly decided disputes involving railroad employees who moved goods on an intrastate portion of an interstate journey. *See, e.g.*, *Bhd. of Locomotive Eng'rs v. Louisville & Nash. R.R. Co.*, Interpretation No. 9 to Decision No. 2, 1 R.L.B. 83, 83 (1920) (employee working on branch lines wholly within Alabama); *Bhd. of Locomotive Eng'rs v. Tex. & Pac. Ry.*, Decision No. 1906, 4 R.L.B. 526, 526 (1923) (employee working on engine between two cities in Louisiana); *Ferry Boatman's Union of Cal. v. S. Pac. Co.*, Decision No. 1885, 4 R.L.B. 485, 845-87 (1923) (employees on railroad-operated ferries at the Port of San Francisco). That included disputes of railroad truckers, who were typically responsible for driving goods around or between yards and warehouses. *See, e.g., Bhd. of Ry. & S.S. Clerks, Freight Handlers, Express & Station Emps. v. Balt. & Ohio R.R. Co.*, Decision No. 1040, 3 R.L.B. 459, 460 (1922).

In addition to railroad employees, the Transportation Act governed the employees of express companies.

Transp. Act, 41 Stat. at 469. Express companies ensured that packages reached their ultimate destination through "the collection of packages for the railroads and the delivery from the railroad." Bert Benedict, *The Express Companies of the United States: A Study of a Public Utility* 17 (1919). The Railroad Labor Board routinely resolved disputes between express companies and their last-mile drivers. *See, e.g.*, *Bhd. of Ry. & S.S. Clerks, Freight Handlers, Express & Station Emps. v. Am. Ry. Express Co.*, Decision No. 683, 3 R.L.B. 84, 84-85 (1922); *Bhd. of Ry. & S.S. Clerks, Freight Handlers, Express & Station Emps. v. Am. Ry. Express Co.*, Decision No. 1246, 3 R.L.B. 730, 730 (1922).

Had Congress not included last-mile workers in section 1, these employees would have been subject to both the dispute-resolution mechanisms of the Transportation Act of 1920 and the prospect of compulsory private arbitration—precisely the conflict section 1 was designed to avoid. Including last-mile employees was therefore necessary for section 1 to fulfil its historical purpose. Even today, applying the FAA to last-mile transportation workers could give rise to the conflict that Congress wished to avoid. The Transportation Act of 1920 has been supplanted by the Railway Labor Act, which provides a comprehensive framework for resolving labor disputes for employees of railroads, airlines, and express companies. *See* 45 U.S.C. §§ 151-59, 181; *The Railway Labor Act*, ch. 3, at 2, 5-7, 10 (Douglass W. Hall et al. eds., 2020). And that Act, like its predecessor, applies to workers who are responsible for an intrastate leg of an interstate journey. Indeed, by definition it extends to employees of a rail carrier engaged in transportation between "a State and a place in the same … State as part of the interstate rail network."

49 U.S.C. § 10501(a)(2)(A); *see* 45 U.S.C. § 151; *see also Re: UTDC Transit Servs., Inc.*, 17 N.M.B. 343, 358 (1990).

II. Flowers' contrary interpretation has no basis in the statute.

At the certiorari-stage, Flowers contended that this case presents an "ideal vehicle" to address a "last-mile split" in the circuit courts, and that the "last-mile question" was well presented here because the Court would "take the case on the assumption that Brock serves as Flowers's last-mile driver." Pet. Reply 1, 7-8. But having persuaded the Court to grant certiorari on that premise, Flowers offers no argument whatsoever about the class of last-mile drivers that it asked the Court to address. Indeed, the term "last-mile" appears nowhere in Flowers' argument. Flowers instead now contends (at 12) that *no* worker who delivers freight within a single state is a transportation worker—apparently regardless of what class of workers they belong to—unless they "interact" with a border-crossing vehicle. That assertion cannot be squared with the text, history, or purpose of the statute.

A. Flowers' argument is contrary to the ordinary meaning of the worker exemption.

1. Flowers concedes that workers are engaged in interstate commerce if their work is "so closely related to interstate transportation as to be practically a part of it." Petrs. Br. 21 (quoting *Saxon*, 596 U.S. at 457). That concession is fatal to the company's position here: As explained above, by 1925, it was well established that the work of last-mile transportation workers is not just "closely related to interstate transportation"; it *is* interstate transportation.

Flowers does not offer a single source—not one—to the contrary. Last-mile drivers thus have the "direct, active, or necessary role" in interstate transportation that Flowers says (at 13) is required.

Flowers argues that the FAA focuses on the work performed by the worker. *See Saxon*, 596 U.S. at 456; *Bissonnette*, 601 U.S. at 253. We agree. Mr. Brock is not a baker or a web designer, asking this Court to exempt him from the FAA because he works for a company that transports goods. Mr. Brock is a commercial truck driver who transports interstate freight. Because of the work Mr. Brock personally performs, he is a member of a class of workers—last-mile drivers—engaged in interstate transportation. *See Saxon*, 596 U.S. at 456-59.

Flowers is wrong to assert (at 38) that whether a worker transports interstate freight is irrelevant to whether the "worker's work" constitutes interstate commerce. That's what it means for workers who transport goods to be "engaged in interstate commerce": they transport goods that are in interstate transportation. This Court recognized as much in *Saxon*, holding that airline cargo loaders, as a class, are engaged in interstate commerce because the cargo they load and unload is in interstate transportation when they do so. 596 U.S. at 463.

Flowers is thus compelled to try to gerrymander a rule that can accommodate *Saxon* but forecloses last-mile drivers. Hence, transportation workers are engaged in commerce if they cross borders or interact with a border-crossing vehicle. But airline cargo loaders are not exempt from the FAA because they touch vehicles that have crossed borders. They're exempt because they "handle goods traveling in interstate and foreign commerce." *Id.* Flowers can't cite any example of Congress ever resting

a statute on whether workers happen to "interact" with a vehicle that crosses state lines. Nor can Flowers cite any source—contemporaneous with the FAA or otherwise—that supports the proposition that whether a worker transports interstate freight is irrelevant to whether the worker is engaged in interstate commerce. If Congress had wanted to enact a statute with that novel meaning, it would have said so.

Contrary to Flowers' suggestion (at 23), adhering to the well-established meaning of "engaged in interstate commerce" would not collapse the distinction between section 1 and 2 of the FAA. Section 2 provides that an arbitration clause in a "maritime transaction or a contract evidencing a transaction involving commerce" is enforceable, unless it is invalid under generally applicable contract law. 9 U.S.C. § 2. As this Court has explained, this "involving commerce" language ensures that the FAA reaches the full scope of contracts Congress may regulate under its Commerce Clause authority. *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 273 (1995). Section 2 thus applies to all manner of transactions: employment, sales, construction, etc. *See, e.g.*, *id.*; *Cir. City*, 532 U.S. at 113. Section 1—the worker exemption—excepts a narrow subset of those arbitration clauses from the statute's scope: arbitration clauses in the employment contracts of transportation workers.

Flowers argues (at 23) that if Congress intended to exempt workers who transport interstate freight but do not cross state lines, it would have used the word "transaction" in section 1. Of course, as this Court explained in *Circuit City*, employment must be a "transaction" within the meaning of the FAA; otherwise, the Act would not apply to any employment contracts at all. 532 U.S. at 113. It also makes sense that Congress

used the phrase "engaged in interstate commerce" in the worker exemption—a phrase whose scope was already well-established—rather than attempting to specify every circumstance under which transportation workers are so engaged. That's not a meaningful-variation problem; it's efficient drafting.

Flowers' second meaningful-variation argument fares no better: Flowers observes (at 19) that although the FAA defines commerce to include not only foreign and interstate commerce, but also territorial commerce, the worker exemption specifies that it applies only to classes of workers "engaged in *foreign or interstate* commerce." According to Flowers, this means that the Court is "compelled" to read the statute "to require cross-border transportation." If Flowers means that the exemption must be limited to workers who personally cross borders, this Court has already rejected that argument. *See Saxon*, 596 U.S. at 461 (rejecting Southwest's effort to limit section 1 to "only workers who physically move goods or people" across borders); Petrs. Br. at 16-21, *Saxon*, 596 U.S. 450 (No. 21-309). If Flowers means that a class of workers must be engaged in foreign or interstate transportation, then that point adds nothing to Flowers' argument. Again, the problem for Flowers is that in 1925, it was clear that workers who transport interstate freight *are* engaged in interstate commerce—even if they are responsible only for an intrastate leg of the journey.

Flowers also does not even attempt to square its gerrymandered touch-the-vehicle requirement with the principle of *ejusdem generis*. Nor can it: Neither seamen nor railroad employees were limited to workers who personally cross borders or touch border-crossing vehicles. *See supra* 23-26. To the contrary, employees

recognized as seamen and railroad employees were frequently responsible only for the intrastate leg of an interstate journey, and such workers were critical to commerce. Flowers thus cannot point to a single word in the worker exemption that supports its interpretation.

2. As Flowers itself admits (at 39-40), its interpretation of "engaged in interstate commerce" would also put the FAA at odds with the settled meaning of similar jurisdictional language in related statutes. Congress has never used the phrase "engaged in interstate commerce" to mean crosses borders or touches a vehicle that does. Nor can Flowers identify any statute where Congress has adopted those requirements—in any terms.

To the contrary, Flowers' interpretation would conflict with a host of statutory schemes that use similar language. Most important is the Federal Employers' Liability Act, which—as explained above—governed railroad employees engaged in interstate commerce for nearly two decades by the time the FAA was passed. Under FELA, transportation workers who transport goods on the intrastate legs of interstate journeys are engaged in interstate commerce—regardless of whether they interacted with the train that carried the goods across borders. *See Hancock*, 253 U.S. at 286 (employee engaged in interstate commerce when he transported, within a single state, cars carrying coal bound for other states, though the cars were only "gathered" into a train that would cross borders "[l]ater" by other employees). Flowers offers no convincing basis for this Court to substitute Flowers' novel, bespoke interpretation of that phrase for the one Congress believed it was enacting. Indeed, this Court has already rejected that gambit. *Compare* Petrs. Br. at 36-41, *Saxon*, 596 U.S. at 450 (No.

21-309) (arguing that FELA does not inform the meaning of the FAA's worker exemption) *with Saxon*, 596 U.S. at 457 (defining the scope of the exemption by reference to FELA caselaw).[8]

Flowers' interpretation would also conflict with the way this Court has construed statutes "designed to protect the movement of goods in commerce," *Bissonnette*, 601 U.S. at 253; *see Cir. City*, 532 U.S. at 121 (construing the worker exemption in accordance with these statutes). Flowers argues (at 3) that it doesn't matter whether workers transport goods that are in the "flow of interstate commerce" is irrelevant to whether they are "engaged in interstate commerce." But this Court has held the opposite. *See, e.g.*, *Cir. City*, 532 U.S. at 121 (explaining that this Court "held that the phrase 'engaged in commerce' in [the Clayton Act] means engaged in the flow of interstate commerce" and construing the worker exemption in accordance with this understanding); *see also Saxon*, 596 U.S. at 462 (cargo loaders were exempt from the FAA because their "activities [were] within the flow of interstate commerce"). As this Court explained in interpreting the

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[8] To briefly address Flowers' arguments: FELA explicitly required the railroad employee—not just the railroad company—to be engaged in interstate commerce. *See supra* 22-23. And, as explained above, it determined whether the employee was engaged in interstate commerce by examining the work the employee performed. *See id.* *Ejusdem generis* was not required to limit FELA to transportation—by its terms it applied only to railroad employees. And whatever the scope of its substantive provisions, its jurisdictional hook—that the railroad employee must be engaged in interstate commerce—was interpreted exceedingly narrowly, in accordance with this Court's limited understanding of the scope of Congress's Commerce Clause power at the time of FELA's enactment. *See Emp'rs' Liab. Cases*, 207 U.S. 463, 496, 498 (1908). Indeed, Flowers itself recognizes as much. *See* Petrs. Br. 33.

worker exemption in *Circuit City*, a "variable standard for interpreting common, jurisdictional phrases would contradict [the Court's] earlier cases and bring instability to statutory interpretation." 532 U.S. at 117-18.

That conclusion is only reinforced by another statutory regime invoked by Flowers in this very litigation—the Motor Carrier Act, ch. 498, 49 Stat. 543 (1935). The law originally gave the Interstate Commerce Commission authority to regulate transportation by motor carriers "engaged in interstate or foreign commerce," § 202(b); *see* 49 U.S.C. §§ 13501, 31502; 29 C.F.R. § 782.2(a)(2). Flowers has repeatedly argued—including in the proceedings below in this case—that its last-mile drivers are engaged in interstate commerce for purposes of the Motor Carrier Act (and are thus not entitled to overtime). *See* Flowers C.A. Br. 26 n.5; *see also Ash v. Flowers Foods, Inc.*, 2024 WL 1329970, at *2 (5th Cir. 2024) (holding that Flowers' drivers are "engaged in interstate commerce" under of the Motor Carrier Act).

With good reason. In *Morris v. McComb*, 332 U.S. 422 (1947), this Court held that the Motor Carrier Act allowed the Interstate Commerce Commission to set maximum hours for truck drivers hauling goods on the intrastate leg of an interstate journey. *Id.* at 431–32. The goods—not the drivers or their trucks—were moving across state lines, *see id.* at 427, 433–35, but that was sufficient for the drivers' trips to "count[] as being in 'interstate commerce'" under the statute. *Id.* at 432.

Based on *Morris* and similar cases, the Department of Labor has explained that the interstate-commerce requirements of the Motor Carrier Act are satisfied even when "the vehicles do not actually cross State lines but operate within a single State, if what is being transported is actually moving in interstate commerce." 29 C.F.R.

§ 782.7(b)(1). The Federal Motor Carrier Safety Administration likewise defines "interstate commerce" to include transportation "[b]etween two places in a State as part of … transportation originating outside the State." 49 C.F.R. § 390.5; *see* 49 U.S.C. § 113(f) (agency's role in administering the Motor Carrier Act). Both the Interstate Commerce Commission and its modern successor have agreed, reiterating that truck drivers who transport goods on a "continuous movement" to their intended destination are "engaged in interstate commerce"—even if they drive only an intrastate segment of the goods' broader interstate journey. *Ex parte No. MC-207*, 8 I.C.C. 2d 470, 472–73 (1992).

No sensible approach to statutory interpretation would treat the very same truck drivers, doing the same work in the same place for the same employer, as being engaged in interstate commerce for purposes of the Motor Carrier Act but not the FAA.

B. History and purpose do not support Flowers' view.

Absent any textual argument, Flowers spends much of its brief arguing that its interpretation "would not have disrupted" the dispute resolution schemes that governed seamen and railroad employees when the FAA was enacted. Petrs. Br. 24-31. In other words, Flowers contends that its reading isn't inconsistent with the purpose of the worker exemption. *See id.* But that's not enough. Statutes are not interpreted by courts picking their favorite among all possible interpretations that are consistent with a statute's hypothesized purpose. The touchstone of statutory interpretation is the ordinary, contemporaneous meaning of the statute's terms. And, in any event, Flowers' interpretation *would* have disrupted the preexisting dispute resolution schemes.

1. As explained above, the Transportation Act of 1920 governed the disputes of many workers—both railroad employees and express-company workers—responsible for the intrastate leg of an interstate journey, regardless of whether they interacted with a border-crossing vehicle. If these workers were not exempt from the FAA, then a court could be required to compel private, individual arbitration of a dispute that Congress provided in the Transportation Act should be heard by the Railroad Labor Board.

Flowers doesn't seriously grapple with this problem. The company observes (at 28) that the Railroad Labor Board lacked jurisdiction over "street, interurban, or suburban electric railway not operating as part of a general steam railroad system of transportation." But, as Flowers' own cases demonstrate, the reason for this exclusion was that these railways were fundamentally local passenger transportation; they did not ordinarily form part of the supply chain by which goods made their way onto shelves across the country. *See, e.g.*, *Omaha & Council Bluffs Street Ry. Co. v. Interstate Com. Comm'n*, 230 U.S. 324, 336 (1913); *Piedmont & N. Ry. Co. v. Interstate Com. Comm'n*, 286 U.S. 299, 307 (1932). And when they did, the exclusion no longer applied. *Piedmont*, 286 U.S. at 307. Moreover, by its terms, the exclusion does not apply to the railroads and express companies that weren't "street, interurban, or suburban electric railways." It therefore did not limit the Railroad Labor Board's jurisdiction over last-mile workers employed by these companies.

Flowers argues that its interpretation is "bolstered" by the Interstate Commerce Act's "express recognition that it did not apply to "the transportation of passengers or property wholly within one State." Petrs. Br 29

(quoting Transp. Act, 41 Stat. at 474). But that provision only proves the point: This Court repeatedly held that the Act nevertheless applied to the intrastate portion of an interstate journey. Such transportation, the Court explained, *is* interstate transportation. *See Tex. & New Orleans R.R. Co. v. Sabine Tram Co.*, 227 U.S. 111 (1913) (transportation of goods within a single state subject to Interstate Commerce Act where ultimate destination was abroad); *United States v. Union Stock Yard & Transit Co. of Chicago*, 226 U.S. 286, 304 (1912) ("That the service is performed wholly in one state can make no difference if it is a part of interstate carriage.").

2. Flowers fares no better leaning on the Shipping Commissioners Act, the dispute resolution statute that governed seamen in 1925. Flowers argues (at 24-25) that because Shipping Commissioners Act arbitration only applied to the crew of vessels on a foreign or coastwise journey, a seaman could not be subject to the Act without crossing into foreign waters. After all, Flowers contends, even to travel from Los Angeles to San Francisco, a ship must venture out far enough into the ocean that it reaches international waters.

That view rests on a misunderstanding of the statute. Contrary to Flowers' assertion, seamen in the "coastwise trade" did not necessarily venture into foreign waters. Perhaps counterintuitively to modern ears, the word "coastwise" wasn't limited to voyages that were literally coastal; it was used in contradistinction to foreign voyages and referred to trade between any two United States ports. *Gordon v. Blackton*, 117 N.J.L. 40, 41 (Sup. Ct. 1936), aff'd, 118 N.J.L. 159 (1937), aff'd, 303 U.S. 91 (1938) (citing *Belden v. Chase*, 150 U.S. 674, 696-97 (1893)). Thus, domestic journeys were coastwise "whether they navigate[d] rivers or the sea-coast proper." *Ravesies v.*

United States, 37 F. 447 (C.C.S.D. Ala. 1889); *see e.g.*, *City & Cnty. of San Francisco v. Cal. Steam Nav. Co.*, 10 Cal. 504, 507 (1858); *Gordon*, 117 N.J.L. at 41. Thus, seamen on coastwise journeys need not ever leave a single state.

Flowers also ignores the quintessential last-mile seamen: pilots. Flowers does not explain why these seamen, when piloting vessels on the first or last mile of a coastwise or foreign journey, would have fallen outside the scope of the Shipping Commissioners Act.[9]

In any event, Flowers' attempt to rely on the Shipping Commissioners Act fails for a more fundamental reason: Arbitration under the Act was voluntary. *See* § 25, 17 Stat. 262, 267 (1872). Seamen's disputes were largely resolved by admiralty courts. 1 Martin J. Norris, The Law of Seamen §82 (2d ed. 1951). If Congress had enacted a statute that forced seamen to arbitrate instead, *that* would have caused labor unrest—precisely what Congress was trying to avoid. *See* J.P. Chamberlain, Current Legislation, 9 A.B.A. J. 523, 525 (1923) (noting that the FAA "was amended at the instance of the representatives of the Seamen's Union who did not want seamen's wages to be subject to compulsory arbitration"); Petrs. Br. 26-27 (explaining that shipping-commissioner arbitration was unpopular and often avoided).

3. In a last-ditch effort to find any foothold in history or purpose, Flowers argues (at 32-35) that in 1925, Congress only had the authority to regulate the contracts

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[9] Flowers notes (at 24-25) that shipping commissioner arbitration applied to the "crew," 46 U.S.C. § 651. That included pilots, who were generally treated as part of a vessel's crew. *E.g.,* 46 U.S.C. § 221 (1925); *see also United States v. Winn*, 28 F. Cas. 733, 735 (C.C.D. Mass. 1838) (Story, J.) (seamen and inferior officers part of crew unless a statute excluded them "by enumerating them, as contradistinguishing them from the rest of the crew").

of employment of workers engaged in interstate transportation. Maybe so. But again, in 1925, it was well established that last-mile transportation workers *are* engaged in interstate transportation.

C. Flowers' insistence that this Court divorce the exemption from text, history, and precedent is unworkable and leads to arbitrary results.

Ultimately, the dispute here is narrow. The parties agree that the FAA exempts classes of workers whose work is "so closely related to interstate transportation as to be practically a part of it." *Saxon*, 596 U.S. at 457. The disagreement is about how to apply that standard: Should the Court look to the well-developed body of law that existed in 1925 answering this question? Or should it invent a new body of law unique to the FAA, divorced from the well-settled understanding of the scope of interstate transportation when the FAA was enacted? Flowers argues for the latter.

But not only does that violate the fundamental principle that statutes should be interpreted according to their ordinary meaning at the time, it leaves courts without "any guide in the text of § 1 or this Court's precedents" as to how the exemption should apply. *Bissonnette*, 601 U.S. at 254. Flowers raises (at 41-42) a host of line-drawing questions. But those questions had already been answered by this Court well before Congress enacted the FAA. *See infra* 45. Ignoring that precedent doesn't eliminate the need for line-drawing; it exacerbates it. Every question about interstate transportation that was settled by the time Congress enacted the FAA would be reopened for debate. And, unmoored from history and precedent, courts would have nothing to guide them in answering those questions but their own policy preferences.

This case is a perfect example: Based on the overwhelming textual and historical record, the lower courts are virtually unanimous that last-mile drivers are "engaged in interstate commerce." *See* BIO 15. But unbound by the contemporaneous meaning of the phrase "engaged in interstate commerce," Flowers asks this Court to adopt a never-before-seen touch-the-vehicle requirement. Without text or history to justify this requirement, Flowers argues only that it's good policy: According to Flowers, it would make the statute easier to apply and narrower than simply exempting last-mile drivers. Neither is true.

1. Start with workability. Flowers offers no explanation for how its novel requirement should apply. If Mr. Brock performed exactly the same work, but instead of driving his own truck, he jumped into the truck that had just hauled the goods over the Colorado state line, would he be exempt? What if Mr. Brock transferred the goods directly from the border-crossing truck into his own? Are car wash attendants at truck stops exempt? How about gas station attendants? They interact with border-crossing vehicles. Absent any grounding in text and history, Flowers offers no way to answer these "arcane riddles." *Bissonnette*, 601 U.S. at 254.

Flowers suggests (at 41-42) that its requirement is necessary to avoid difficult questions about who counts as a last-mile driver. According to Flowers, it may be hard to tell whether a worker's job is to transport goods on the last leg of an interstate journey. But in most cases, this will not be a difficult inquiry. It does not require a fact-intensive inquiry or balancing multiple factors. It merely requires answering the same question this Court has asked for more than a century: Do the workers transport

goods that are being shipped from one state to their final destination in another?

The Tenth Circuit here found it difficult to cut through Flowers' attempt to obscure what its truck drivers do. But it need not have. Flowers itself admits that its goods are transported across state lines for delivery to its retail customers. *See* CAJA 263; *see also* Pet. App. 26a. Under longstanding precedent in place when the FAA was passed, Flowers' attempt to hide the obvious is irrelevant. Interstate goods are in interstate transportation until they reach their final destination, and any worker who transports those goods is engaged in interstate commerce. To the extent questions may arise at the margins about whether a particular plaintiff is a member of the class of last-mile drivers, courts can rely on the years of precedent that Congress itself relied on in enacting the worker exemption. This Court need not adopt the Tenth Circuit's reasoning to affirm its judgment. *See Amgen Inc. v. Sanofi*, 598 U.S. 594, 615 (2023).

2. As to breadth, exempting any worker who interacts with a border-crossing vehicle isn't any narrower than exempting the class of last-mile drivers. It's just more arbitrary. On Flowers' view, a pizza-delivery driver in Kansas City would be exempt because they (and their vehicle) routinely cross the Missouri-Kansas border. As would, presumably, a truck-stop car-wash attendant because their job is to interact with border-crossing vehicles. But a commercial truck driver necessary to ensure that out-of-state goods make it to grocery store shelves would not. Flowers offers no reason why Congress would have drawn this line.

Adhering to the contemporaneous meaning of a "class of workers engaged in interstate commerce" does not

pose this problem. Flowers argues that it's impossible to differentiate pizza-delivery drivers from last-mile drivers. But Flowers itself had no trouble doing so at the certiorari-stage. *See* Pet. Reply 8 (emphasizing that "Brock is no restaurant delivery driver," and the "sole question here" is whether last-mile drivers—not restaurant-delivery workers—are exempt). Section 1, after all, focuses on "class[es] of workers" and their relationship to commerce: As a class, last-mile drivers are engaged in interstate transportation, and therefore interstate commerce, because they transport goods in interstate commerce to their final destination. On the other hand, although some pizza delivery drivers may incidentally cross state lines, the work of the class "as a whole" is not interstate transportation: It's delivering cooked food from local restaurants to local residents. *See Saxon*, 596 U.S. at 456.

The ordinary, contemporaneous meaning of "engaged in interstate commerce" also takes care of Flowers' parade of horribles (at 42-43): workers who package baked goods, grocery store clerks, and conveyor-belt operators. These workers' work all takes place either before interstate transportation begins or after it ends. *See Gen. Oil Co. v. Crain*, 209 U.S. 211, 228-29 (1908) ("The beginning and ending of the transit which constitutes interstate commerce are easy to mark. The first is defined to be the point of time that an article is committed to a carrier for transportation to the state of its destination, or started on its ultimate passage. The latter is … the point of time at which it arrives at its destination."). It is not following the text and history of the FAA, then, that leads to Flowers' overbreadth problems; it is abandoning those guideposts.

This Court should decline Flowers' invitation to do so. Last-mile transportation workers have always been understood to be "engaged in interstate commerce." The FAA is no different.

CONCLUSION

For the foregoing reasons, this Court should affirm.

Respectfully submitted,

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