No. 23-51

In the Supreme Court of the United States

NEAL BISSONNETTE and TYLER WOJNAROWSKI,
on behalf of themselves and all others similarly situated,
Petitioners,

v.

LEPAGE BAKERIES PARK ST., LLC, C.K. SALES CO., LLC, and FLOWERS FOODS, INC.,
Respondents.

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

BRIEF OF PETITIONERS

JENNIFER D. BENNETT
Counsel of Record
JESSICA GARLAND
GUPTA WESSLER LLP
505 Montgomery Street
Suite 625
San Francisco, CA 94111
(415) 573-0336
jennifer@guptawessler.com

DEEPAK GUPTA
LINNET DAVIS-STERMITZ
STEFANIE OSTROWSKI
GUPTA WESSLER LLP
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741

HAROLD L. LICHTEN
MATTHEW THOMSON
ZACHARY L. RUBIN
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
(617) 994-5800

Counsel for Petitioners

November 13, 2023

QUESTION PRESENTED

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.

This Court has held that this exemption applies to any class of workers that is engaged in commerce in the same way as seamen and railroad employees—that is, transportation workers. But in the decision below, the Second Circuit added an additional requirement: Workers must not only be engaged in transportation; they must also be employed in the "transportation industry." The Second Circuit defined this requirement to mean that the worker is in an industry that "pegs its charges chiefly to the movement of goods or passengers" and "generate[s]" its "predominant source of commercial revenue . . . by that movement." Pet. App. 48a.

The question presented is:

To be exempt from the Federal Arbitration Act, must a class of workers that is actively engaged in interstate transportation also be employed in the transportation industry?

TABLE OF CONTENTS

Question presented i

Table of authorities iv

Introduction 1

Opinions below...3

Jurisdictional statement...3

Statutory provision involved..4

Statement of the case 4

A. Statutory background 4

B. Factual and procedural background 8

Summary of argument...14

Argument 16

I. A "class of workers" engaged in interstate transportation is "engaged in commerce," regardless of the industry in which those workers are employed. 16

II. In 1925, "seamen" and "railroad employees" were defined by the work they performed, not price structure or revenue source...21

III. *Saxon* forecloses an industry requirement. 33

IV. The Second Circuit's price-structure-and-revenue approach would have been unworkable in 1925 and is just as unworkable now. 35

Conclusion 38

TABLE OF AUTHORITIES

Cases

Aluminum Co. v. Ramsey,
117 S.W. 568 (Ark. 1909) 30

Aluminum Co. v. Ramsey,
222 U.S. 251 (1911)...30

Ayer & Lord Tie Co. v. Kentucky,
202 U.S. 409 (1906)...19, 23, 24

Baggs v. Standard Oil Co.,
180 N.Y.S. 560 (1920) 24

Belyea v. Cook,
162 F. 180 (N.D. Cal. 1908) 24

Boston Marine Insurance Co. v. Metropolitan Redwood Lumber Co.,
197 F. 703 (9th Cir. 1912) 23

Caldwell v. North Carolina,
187 U.S. 622 (1903)...18

Canales v. CK Sales Co., LLC,
67 F.4th 38 (1st Cir. 2023) 9

Carlisle Packing Co. v. Sandanger,
259 U.S. 255 (1922)...24

Circuit City Stores, Inc. v. Adams,
532 U.S. 105 (2001).....................................2, 5, 6, 32, 35

Crenshaw v. Arkansas,
227 U.S. 389 (1913) 19

CSX Transportation, Inc. v. Alabama Department of Revenue,
562 U.S. 277 (2011) 32

Dayton Coal & Iron Co. v. Dodd,
188 F. 597 (6th Cir. 1911) 30, 31

Ellis v. United States,
206 U.S. 246 (1907) 24

Erie Railroad Co. v. Shuart,
250 U.S. 465 (1919) 8

George Leary Construction Co. v. Matson,
272 F. 461 (4th Cir. 1921) 24

Haavik v. Alaska Packers' Association,
263 U.S. 510 (1924) 24

Homochitto Lumber Co. v. Albritton,
96 So. 403 (Miss. 1923) 31

J.J. Newman Lumber Co. v. Irvin,
79 So. 2 (Miss. 1918) 30

Jackson v. Ayden Lumber Co.,
74 S.E. 350 (N.C. 1912) 30, 31

Kansas City v. Seaman,
160 P. 1139 (Kan. 1916) 21

Kirmeyer v. Kansas,
236 U.S. 568 (1915) 20

Lucking v. Detroit & Cleveland Navigation Co.,
265 U.S. 346 (1924) 23

McCullough v. Jannson,
292 F. 377 (9th Cir. 1923) 24

McDermott International, Inc. v. Wilander,
498 U.S. 337 (1991) 27

Merck & Co., Inc. v. Reynolds,
559 U.S. 633 (2010) 21

Morgan v. Grande Ronde Lumber Co.,
148 P. 1122 (Or. 1915) 30

New Prime Inc. v. Oliveira,
139 S. Ct. 532 (2019) 1, 6

Parris v. Tennessee Power Co.,
188 S.W. 1154 (Tenn. 1916) 31

Procter & Gamble Co. v. United States,
225 U.S. 282 (1912) 30

Rearick v. Pennsylvania,
203 U.S. 507 (1906) 20, 21

Rossi v. Pennsylvania,
238 U.S. 62 (1915) 20

Schus v. Powers-Simpson Co.,
89 N.W. 68 (Minn. 1902) 31

Smith v. Atchison, Topeka & Santa Fe Railway Co.,
87 S.W. 1052 (Tex. Civ. App. 1905) 31

Southwest Airlines Co. v. Saxon,
596 U.S. 450 (2022) 1, 6-8, 13-15, 17, 22, 29, 33-35, 38

Star Athletica, LLC v. Varsity Brands, Inc.,
580 U.S. 405 (2017) 14

Stewart v. Blackwood Lumber Co.,
136 S.E. 385 (N.C. 1927) 31

The Abby Dodge v. United States,
223 U.S. 166 (1912) 19

The Carrier Dove,
97 F. 111 (1st Cir. 1899) 24

The Donna Lane,
299 F. 977 (W.D. Wash. 1924) 27

The Howick Hall,
10 F.2d 162 (E.D. La. 1925) 27

The John & Winthrop,
182 F. 380 (9th Cir. 1910) 24

The S.L. Goodal,
6 F. 539 (D. Conn. 1881) 23, 24

The W.F. Babcock,
85 F. 978 (2d Cir. 1898) 27

The Wailua,
2 Haw. 356 (1860) 24

Tower Lumber Co. v. Brandvold,
141 F. 919 (8th Cir. 1905) 30

Tucker v. Alexandroff,
183 U.S. 424 (1902) 24

U.S. Bulk Carriers, Inc. v. Arguelles,
400 U.S. 351 (1971) 27

United States v. Louisiana & Pacific Railway Co.,
234 U.S. 1 (1914) 37

United States v. Simpson,
252 U.S. 465 (1920) 19

Vitas v. Grace Hospital Society,
141 A. 649 (Conn. 1928) 31

Wagner v. City of Covington,
251 U.S. 95 (1919) 21

West Kentucky Coal Co. v. Parker's Administrator,
17 S.W.2d 753 (Ky. Ct. App. 1929) 23

Wilson v. United States,
232 U.S. 563 (1914) 19

Woodward Iron Co. v. Thompson,
88 So. 438 (Ala. 1921) 31

Statutes

9 U.S.C. § 1 .... i, 1, 4, 7, 12, 14, 32

9 U.S.C. § 2 .... 4, 27

28 U.S.C. § 1254 3

49 U.S.C. § 13102 36

Act of Apr. 2, 1888,
ch. 50, 25 Stat. 73 27

Act of Aug. 19, 1890,
ch. 801, 26 Stat. 320 26

Act of Feb. 18, 1895,
ch. 97, 28 Stat. 667 26

Act of June 9, 1874,
ch. 260, 18 Stat. 64 26

Act of Mar. 2, 1923,
ch. 178, 42 Stat. 1377 31

Act of Mar. 3, 1875,
ch. 156, 18 Stat. 485 27

Federal Aviation Administration Authorization Act of 1994,
49 U.S.C. § 14501 36

Interstate Commerce Act,
ch. 104, 24 Stat. 379 (1887) 30

Shipping Commissioners Act of 1872,
ch. 322, 17 Stat. 262 .... 26, 27

Treaty of Friendship & General Relations, Spain-United States,
July 3, 1902, 33 Stat. 2105 28

Other Authorities

2022 Top 100 Private Carriers, Transport Topics 36

24 Ruling Case Law (1919) (ed. William M. McKinney & Burdett A. Rich) 25

9 *Oxford English Dictionary* (1913) 22

Abandoned Ship, Met Death: Four Fishermen Drowned While Their Vessel Was Blown to Safety, The N.Y. Times, Dec. 12, 1904 25

Alfred D. Chandler Jr., *The Visible Hand: The Managerial Revolution in American Business* (1977) 23, 29

Amazon buys its first planes to expand air network, BBC News (Jan. 6 2021) 36

As Press Views Sea Raid, The N.Y. Times, March 31, 1915 26

Benjamin W. Labaree et al., *America and the Sea: A Maritime History* (1998) 23

Black's Law Dictionary (2d ed. 1910) 17, 22, 29

Bouvier's Law Dictionary (8th ed. 1914) 22

Bureau of Fisheries, Report of the Commissioner of Fisheries for the Fiscal Year 1906 & Special Papers 23

Consular Bureau, U.S. Department of State, Digest of Consular Regulations Relating to Vessels & Seamen (1921) 25

E. Keble Chatterton,
Seamen All (1924) 25

Fifty Railroad Employees Strike, The Oregonian,
June 3, 1913..31

Flowers Foods, Inc.,
Current Report (Form 8-K) (September 1, 2023)............36

Flowers Foods, Inc.,
Quarterly Report (Form 10-Q) (May 20, 2021) 36

Ford Wages Startle Ship Operators, 19 Am.
Shipping, no. 7, July 1925...23

F.S. Reitzel,
Marine Accounting for Oil Companies, The Oil
& Gas Journal, Dec. 16, 1926 26

Gary Frantz,
*Transportation Report: The rise of private
fleets (and dedicated operations)*, DC Velocity
(May 3, 2019)...36

George L. Canfield & George W. Dalzell,
The Law of the Sea (1921) 25

Herman Melville,
Moby-Dick (1851)..26

J.P. Chamberlain,
Current Legislation, 9 A.B.A. J. 523 (1923) 28

Knut Gjerset,
Norwegian Sailors in American Waters: A Study in the History of Maritime Activity on the Eastern Seaboard (1933) 37

Mike Reiss, Bob Pitts & Josh Feinberg,
Private Fleet: A key differentiator in service, Logistics Mgmt. (June 2, 2022) 36

Miniature Survey of the News for a Week, Am. Lumberman, July 24, 1915..26

Oil Ship and Crew Lost, The Petroleum Gazette, Apr. 1912 26

Paul S. Taylor,
Organization and Policies of the Sailors' Union of the Pacific, 16 Monthly Lab. Rev. 11 (1923)..........28

Paul S. Taylor,
The Sailors' Union of the Pacific (1923)....................23

Poor's Directory of Railway Officials & Manual of American Street Railways (1890) 30

Poor's Manual of Railroads (1924).................................30

Robert M. Hughes,
Handbook of Admiralty Law (1920) 25

Sales and Contracts to Sell in Interstate and Foreign Commerce, and Federal Commercial Arbitration: Hearings on S. 4213 and S. 4214 Before a Subcomm. of the S. Comm. on the Judiciary, 67th Cong. 9 (1923)....................................28

The Cyclopedic Dictionary of Law (1901) 22

The Naval Bill Reported, The N.Y. Times, April 6, 1900 26

Thomas M. Walker, *Dress Reform in the Navy*, The N.Y. Times, Aug. 3, 1902 25

W.L. Summers, *Wills of Soldiers and Seamen*, 2 Minn. L. Rev. 261 (1918)..25

Webster's New International Dictionary of the English Language (1920).......................................17, 22

William Cronon, *Nature's Metropolis* (1991)..23

INTRODUCTION

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. The question in this case is whether commercial truck drivers are a "class of workers engaged in commerce" in the same way as "seamen" and "railroad employees." This question should be answered the way that all statutory interpretation questions are answered: "according to [the] ordinary, contemporary, common meaning" of the statute's words at the time they were enacted. *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 455 (2022). That ordinary meaning points to a clear answer here: Yes. Commercial truck drivers are a "class of workers engaged in commerce" just like "seamen" and "railroad employees." They are, therefore, exempt from the FAA.

In 1925, when the FAA was enacted, it was well established that anyone engaged in foreign or interstate transportation was "engaged in commerce." Transportation work was also the defining feature of "seamen" and "railroad employees." Commercial truck drivers are transportation workers. So they are "engaged in commerce" in precisely the same way as "seamen" and "railroad employees." Nothing more is needed to resolve this case.

But without examining the meaning of the text at "the time of the Act's adoption," *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019), the Second Circuit added an additional requirement to the statute. According to the Second Circuit, workers must not only be part of a class of transportation workers. They must also work in a "transportation industry," which the court defined as an industry that "pegs its charges chiefly to the movement of

goods or passengers" and "generate[s]" its "predominant source of commercial revenue . . . by that movement." Pet. App. 48a.

That requirement has no basis in the text of the FAA. To the contrary, when the FAA was enacted, anyone engaged in interstate transportation was "engaged in commerce"—regardless of what industry they worked in.

Nor were "seamen" or "railroad employees" limited to those who worked for companies that pegged their prices to or predominantly generated their revenue from the movement of goods. Seamen were simply those who worked aboard a vessel. And railroad employees were those who did railroad work. Neither category had anything to do with price structure or revenue. In fact, this Court has already identified the common link between "seamen" and "railroad employees." *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 121 (2001). And it is not industrial price structure and revenue. It's the workers' "necessary role in the free flow of goods." *Id.*

The Second Circuit did not cite any evidence to the contrary—or, for that matter, any evidence at all about what these words meant in 1925. Instead, the court asserted that its price-structure-and-revenue test would provide a "reliable principle" for interpreting the worker exemption. But the Second Circuit's rule is anything but reliable. This case is the perfect example. The plaintiffs are commercial truck drivers who spend most of their day hauling goods. How do we know they are in the bakery industry and not the trucking industry? And how should a court determine how whatever industry they're in pegs its prices or generates its revenue? What about truck drivers—or airline pilots—for companies like Amazon that sell and haul their own goods as well as the goods of others? What industry are they in, and how would a court

evaluate that industry's price structure and revenue? The Second Circuit's price-structure-and-revenue requirement is not just atextual; it's unworkable.

And even if the Second Circuit's industry requirement did yield an administrable rule, courts are not free to rewrite statutes to make them easier to apply. The FAA exempts exactly the workers it says it does: seamen, railroad employees, and any other class of workers engaged in commerce. Congress chose not to add a price-structure-and-revenue requirement. This Court should not override Congress's choice.

OPINIONS BELOW

The district court's opinion (Pet. App. 99a) is reported at 460 F. Supp. 3d 191 (D. Conn. 2020). The court of appeals' initial opinion (Pet. App. 1a) is reported at 33 F.4th 650 (2d Cir. 2022). Its amended opinion on rehearing (Pet. App. 38a) is reported at 49 F.4th 655 (2d Cir. 2022). And its order denying rehearing en banc (Pet. App. 77a) is reported at 59 F.4th 594 (2d Cir. 2023).

JURISDICTIONAL STATEMENT

The Second Circuit entered its initial decision on May 5, 2022. Pet. App. 1a. It granted petitioners' timely petition for rehearing and issued an amended opinion on September 26, 2022. Pet. App. 38a. It denied petitioners' timely petition for rehearing en banc of the amended decision on February 15, 2023, Pet. App. 78a, and entered judgment on February 22, 2023. On May 11, 2023, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to June 15, 2023, and on June 8, 2023, Justice Sotomayor extended the time within which to file that petition to July 17, 2023. This Court granted certiorari on September 29, 2023. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 1 of the Federal Arbitration Act, 9 U.S.C. § 1, provides, in relevant part:

> "Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

STATEMENT OF THE CASE

A. Statutory background

In 1925, Congress enacted the Federal Arbitration Act, which requires courts to enforce arbitration clauses. 9 U.S.C. § 2. But that mandate has an exception: "[N]othing" in the Act "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. This Court has considered this exemption three times, each time emphasizing that—like

any other statute—it must be interpreted according to its terms.[1]

1. The Court's first encounter with the exemption was two decades ago in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001). In that case, the Court held that the exemption does not apply to all contracts of employment. *Id.* at 109. It applies just to "contracts of employment of transportation workers." *Id.*

To reach this conclusion, the Court relied on the interpretive canon *ejusdem generis*: Where a statute lists specific categories followed by a general catch-all phrase, the catch-all phrase is interpreted to "embrace only objects similar" to the specifically enumerated categories. *Id.* at 114–15. The Court observed that the "wording" of the FAA's worker exemption—"seamen, railroad employees, or any other class of workers engaged in commerce"—"calls for the application of th[is] maxim." *Id.*

The critical "linkage" between "seamen" and "railroad employees," the Court held, is that they are "transportation workers." *Id.* at 121. Thus, the Court concluded that to be exempt from the Federal Arbitration Act, a class of workers cannot be engaged in just any "foreign or interstate commerce," but must be engaged in the kind of commerce "seamen" and "railroad employees"

---

[1] For simplicity, this brief omits ellipses when shortening "engaged in foreign or interstate commerce" to "engaged in commerce" or "engaged in interstate commerce." Citations to "JA" are to the joint appendix filed in the Second Circuit; citations to "App." are to the joint appendix before this Court; and citations to "Pet. App." are to the appendix submitted with the petition for certiorari. In addition, unless otherwise specified, all internal quotation marks, emphases, alterations, and citations are omitted from quotations throughout.

are engaged in: transportation. *Id.* The Court explained that the exemption reflects "Congress' demonstrated concern with transportation workers and their necessary role in the free flow of goods." *Id.*

2. This Court next revisited the FAA's worker exemption in *New Prime Inc. v. Oliveira*, which held that the exemption applies to both employees and independent contractors. 139 S. Ct. 532 (2019). In doing so, the Court observed that many of the exemption's terms—including "seamen" and "railroad employees"—"swept more broadly at the time of the Act's passage than might seem obvious" now. *Id.* at 543. And it emphasized that the exemption's words should be given the meaning they had at "the time of the Act's adoption in 1925," not what comes to mind to "lawyerly ears today." *Id.* at 539.

New Prime also rejected the contention that a "liberal federal policy favoring arbitration agreements" justified reading the exemption more narrowly than its text would otherwise suggest. *Id.* at 543. Accepting an "appeal to [] policy" over text, the Court explained, would "thwart rather than honor" congressional intent. *Id.* "By respecting" the exception's text, the judiciary "respect[s] the limits up to which Congress was prepared to go when adopting the Arbitration Act." *Id.*

3. This Court's most recent case involving the worker exemption, *Southwest Airlines Co. v. Saxon*, again reiterated that the Act must be interpreted "according to its ordinary, contemporary, common meaning." 596 U.S. at 455. The question in *Saxon* was whether a worker who loaded and unloaded cargo from airplanes was exempt from the FAA. *Id.* at 453. To answer that question, the Court undertook a two-step analysis: "We begin by defining the relevant 'class of workers' to which [the

plaintiff] belongs. Then, we determine whether that class of workers is 'engaged in foreign or interstate commerce.'" *Id.* at 455 (quoting 9 U.S.C. § 1).

In defining the relevant "class of workers," *Saxon* explicitly rejected an approach based on "industry." *Id.* at 455–56, 460. The Court explained that the exemption "speaks of 'workers'" and the commerce in which those "workers" are "engaged," not the industry in which their employer operates. *Id.* at 456. Its application, the Court held, therefore depends on "the actual work" a worker performs, "not what [their employer] does generally." *Id.* Thus, the relevant class of workers in *Saxon* was workers who "physically load and unload cargo on and off airplanes"—not workers in a particular industry or who work for a particular kind of company. *Id.*

The Court rejected the parties' competing efforts to use *ejusdem generis* to either broaden or narrow the relevant class. First, the Court rejected the plaintiff's argument that the natural parallel to "seamen" and "railroad employees" is airline employees. *Id.* at 460. "[S]eamen," the Court explained, is not an "industrywide categor[y]." *Id.* The term means those who "work on board a vessel," not those who work in the maritime industry. *Id.* So working in a particular industry, the Court concluded, can't be the "common attribute" that "seamen" and "railroad employees" share for purposes of the *ejusdem generis* canon. *Id.* at 460–61.

Second, the Court rejected Southwest's argument that the exemption is limited to classes of workers who work aboard a vessel. *Id.* at 461–62. The Court explained that while "seamen" work on board a vessel, the term "railroad employees" is "at most ambiguous." *Id.* at 462. That ambiguity, the Court held, "sinks" Southwest's "*ejusdem*

generis argument." *Id.* at 461. "[T]he inference embodied in *ejusdem generis* is that Congress remained focused on some *common* attribute shared by the preceding list of specific items when it used the catchall phrase." *Id.* at 461–62 (emphasis added). The doctrine neither requires "nor permits" courts to "limit a broadly worded catchall phrase based on an attribute that inheres in only one of the list's preceding specific terms." *Id.* at 462.

Having identified the relevant class of workers based on the work they perform, the Court then turned to deciding whether those workers are "engaged in foreign or interstate commerce" within the meaning of the FAA. Relying on sources contemporary with the passage of the statute, the Court held that cargo loaders are "plainly" so engaged. *Id.* at 463. When the FAA was passed, there was "'no doubt'" that those who load and unload "cargo from a vehicle carrying goods in interstate transit" were engaged in interstate transportation—and therefore interstate commerce. *Id.* at 458–59 (quoting *Erie R.R. Co. v. Shuart*, 250 U.S. 465, 468 (1919)). They are, therefore, exempt from the FAA. *Id.*

The Court concluded by rejecting Southwest's contention that the statute evidences a "proarbitration purpose[]" that justifies construing the worker exemption more narrowly than its text would suggest. *Id.* at 463. Where the exemption's "plain text suffices to show that" a class of workers is "exempt from the FAA's scope," the Court explained, "we have no warrant to" deviate from that text. *Id.*

B. Factual and procedural background

1. The plaintiffs in this case, Neil Bissonnette and Tyler Wojnarowski, are commercial truck drivers. Pet. App. 39a; JA36, 408 (photograph of Mr. Bissonnette's

truck). They worked full time hauling goods for Flowers Foods, the multibillion-dollar company that manufactures Wonder Bread and other packaged baked goods found on grocery shelves throughout the country. JA14, 17; *see* Flowers Foods, https://flowersfoods.com (last visited Nov. 2, 2023).[2] Flowers ships its products across state lines from its manufacturing plants to stores like Walmart, Target, and Safeway. *See* JA15, 36, 163. The plaintiffs were responsible for the last leg of that journey—from Flowers' regional warehouse in Connecticut to stores throughout the state. JA17; JA36 (Flowers' answer to the complaint stating that the plaintiffs "transport . . . certain goods originating out of state").

Flowers classified the plaintiffs as independent contractors. JA13, 15, 19. The company required them to form shell corporations; it mandated that they purchase the right to transport Flowers goods; and it demanded that they pay for the trucks they drove on the company's behalf. JA15, 18. But while Flowers requires its drivers to sign contracts purporting to deem them "independent" distributors, they are, in fact, Flowers employees: Their job is to transport Flowers' goods under Flowers' control. JA15–18.

Flowers has never disputed that most of the plaintiffs' work hours were spent transporting its goods. *See* Pet. App. 67a n.1 ("[T]he defendants offer no evidence to counter the complaint's allegations that the actual delivery of product constituted the lion's share of the plaintiffs' work."); *cf. Canales v. CK Sales Co., LLC*, 67 F.4th 38, 45 (1st Cir. 2023) (reciting district court finding

---

[2] Flowers Foods is a conglomerate, and the defendants in this case are Flowers and related entities. Unless otherwise specified, this brief refers to them together as Flowers.

in another case involving Flowers truck drivers that they "transport[] goods for fifty hours or more each week").

2. In 2019, Mr. Bissonnette and Mr. Wojnarowski filed this lawsuit, alleging that Flowers had misclassified them as independent contractors and violated state and federal wage laws. JA1. They alleged that Flowers illegally took deductions from their paychecks, charged them for the privilege of working for the company, and failed to pay them overtime. JA20.

Flowers moved to compel arbitration based on an arbitration clause in its "Distributor Agreement," the contract Flowers requires its drivers to sign.[3] JA48. The plaintiffs opposed the motion, arguing that they are exempt from the Federal Arbitration Act. JA161. They explained that commercial truck drivers who haul goods that are being transported from one state to another—even those who are only responsible for an intrastate leg of that journey—have long been understood to be transportation workers "engaged in interstate commerce." JA 167–75. Their contracts of employment, they argued, are therefore exempt from the FAA. *See id.*

The district court held otherwise. Pet. App. 100a–01a. In the court's view, even though they "spen[t] the majority of their working hours delivering" goods, the plaintiffs still were not transportation workers because Flowers' contract characterized them as independent businesses that performed other tasks in addition to transportation. Pet. App. 113a–17a.

---

[3] Technically, the plaintiffs contracted with CK Sales Co., LLC, a Flowers subsidiary that "is in the business of contracting" with the workers who transport Flowers' goods. App. 2; *see* Pet. App. 68a n.2.

3. A split panel of the Second Circuit affirmed, but it declined to adopt the district court's reasoning. Pet. App. 3a. The panel majority held that Flowers' truck drivers are not exempt from the FAA because, in its view, "they are in the bakery industry, not a transportation industry." *Id.* According to the majority, if Flowers hired a trucking company to deliver its goods, the drivers who worked for that company delivering Flowers' goods would be exempt. *See id.* But because Flowers hires its own truck drivers, the court believed the exemption does not apply. *See id.*

The majority explained that the FAA exempts only transportation workers. Pet. App. 8a. And because "neither Congress nor the Supreme Court has defined 'transportation worker,'" the panel reasoned that it should be "define[d] by affinity" to the statute's enumerated categories, "seamen" and "railroad employees." *Id.* But the majority did not examine the meaning of "seamen" or "railroad employees" in 1925. *Id.* Instead, it just assumed that these categories "locate the 'transportation worker' in the context of a transportation industry." *Id*

Having added a "transportation industry" requirement to the worker exemption, the majority next needed to define its new requirement. Pet. App. 11a. "[A]n individual works in a transportation industry," the majority held, "if the industry in which the individual works pegs its charges chiefly to the movement of goods or passengers, and the industry's predominant source of commercial revenue is generated by that movement." *Id.* The court did not explain how it arrived at this definition or cite anything to support it. *Id.*

It simply went on to apply it here. *Id.* In doing so, the majority did not examine the work Flowers' drivers perform. *See id.* Instead, it looked to the business of their

employer, Flowers. *See id.* It asserted that when stores like Walmart buy Flowers' products, they are buying baked goods, "not transportation services." *Id.* So, in the majority's view, Flowers' commercial truck drivers are in the bakery industry, not the transportation industry. *Id.* Therefore, the court held, they are not exempt from the FAA. Pet. App. 12a.

Judge Pooler dissented. "Because the movement of goods through interstate commerce is a central part of the plaintiffs' occupation as truckers," she would have held "that they belong to a 'class of workers engaged in foreign or interstate commerce,' 9 U.S.C. § 1, and that the FAA does not apply." Pet. App. 30a. The majority's contrary conclusion, she wrote, "is supported by neither the FAA's text nor any case interpreting it." *Id.*

The dissent emphasized that the text of the FAA "asks whether a worker belongs to a class of workers 'engaged in interstate or foreign commerce.' It does not ask for whom the worker undertakes her transportation work." Pet. App. 33a (quoting 9 U.S.C. § 1). And it has long been clear that commercial truck drivers who haul goods are "engaged in commerce." Pet. App. 27a, 33a. That's why the "one area of clear common ground among federal courts addressing the transportation worker exemption [had been] that truck drivers qualify." Pet. App. 24a.

4. Shortly after the Second Circuit issued its decision, this Court decided *Saxon*. Following that decision, the panel granted rehearing, but the majority adhered to its prior view. Pet. App. 45a–50a. It recognized *Saxon*'s mandate that courts "consider 'the actual work'" a worker performs, rather than the industry in which the employer operates. Pet. App. 48a. But it dismissed that mandate as inapplicable here. Pet. App. 48a–50a. According to the

majority, because the plaintiff in *Saxon* worked for an airline, the decision applies only to those who work in a transportation industry. *Id.* And the majority had already decided that Flowers' truck drivers do not.

Judge Pooler again dissented. In addition to reiterating the view that the majority's decision is unmoored from the statute's text and conflicts with the decisions of other circuits, the dissent also rejected the majority's "limited" characterization of *Saxon*. Pet. App 70a. *Saxon*, the dissent pointed out, held that a worker is exempt "based on what she does[,] . . . not what [her employer] does generally." *Id.* (quoting *Saxon*, 596 U.S. at 456). And it did not limit this holding to workers employed in an industry that "pegs its charges chiefly to the movement of goods [or] passengers." *See* Pet. App. 69a–70a. Yet the majority "conclude[d] that the plaintiffs are not" exempt "*[o]nly* by looking to what their employer does generally—making and selling bread." Pet. App. 68a (emphasis added). In the dissent's view, *Saxon* "squarely foreclosed" this approach. Pet. App. 70a.

5. The Second Circuit denied rehearing en banc, Pet. App. 77a–78a, but several judges dissented, Pet. App. 79a. As Judge Nathan explained in her dissent, the panel majority did "the opposite of what *Saxon*'s reasoning and holding require." Pet. App. 81a. It "ignor[ed] Justice Thomas's textual reasoning" and "supplant[ed this] Court's clear interpretive directives with its own atextual test." Pet. App. 82a. The "transportation industry requirement," the dissent concluded, "is, as *Saxon* demonstrates and holds, unsupported by the text of the FAA." Pet. App. 84a.

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. Just like "seamen" and "railroad employees," commercial truck drivers are a "class of workers engaged in commerce." They are, therefore, exempt from the FAA. Nothing in the statute's text supports adding an additional requirement that they work in an industry that pegs its charges to the movement of goods or generates its income primarily from that movement.

I. To start, the exemption's residual clause—"any other class of workers engaged in commerce"—focuses on the "actual work" a class of workers performs. *Saxon*, 596 U.S. at 456. It asks whether the labor in which a class of workers is "engaged" constitutes "commerce," not whether a worker is part of an industry with a particular price structure or revenue model.

And in 1925, when the FAA was enacted, it was well-established that transporting interstate goods is "commerce." Indeed, this Court had repeatedly held as much. It had also repeatedly made clear that anyone engaged in that transportation is therefore "engaged in commerce." The price structure and revenue source of the worker's industry was irrelevant. A worker engaged in transporting interstate goods was, by definition, "engaged in commerce."

II. In adopting its price-structure-and-revenue requirement, the Second Circuit did not consider the

meaning of the phrase "engaged in commerce" in 1925. Instead, the court asserted that its limitation was rooted in the statute's reference to "seamen" and "railroad employees." But those terms, too, have nothing to do with price structure or revenue. In 1925, anyone who worked aboard a ship was a seaman. And anyone who did railroad work was a railroad employee. The common link between seamen and railroad employees is not price structure or revenue source. It's that they are transportation workers. So too are truck drivers.

III. In addition to lacking any basis in the ordinary meaning of the FAA, the Second Circuit's price-structure-and-revenue requirement conflicts with this Court's own recent interpretation of the worker exemption in *Saxon*—twice over. First, *Saxon* held that a "class of workers" must be defined by the "actual work" the workers perform, not what their employer "does generally." *Saxon*, 596 U.S. at 456. The Second Circuit's approach does exactly the opposite: If Walmart hires a trucking company to haul its goods across the country, the employees of that trucking company are exempt from the FAA. But if Walmart directly hires long-haul truck drivers to do the same job, they are not exempt. The only difference in these two scenarios is the drivers' employer. That's precisely the distinction *Saxon* rejected.

Second, *Saxon* held—again, based on this Court's understanding of the FAA's text—that "any class of workers directly involved in" the interstate transportation of goods is exempt from the Act. *Saxon*, 596 U.S. at 457. Adding a price-structure-and-revenue requirement found nowhere in the text of the statute directly contravenes this holding.

IV. Finally, if text and precedent were not enough, common sense also weighs heavily against the Second

Circuit's approach. It's difficult to imagine how courts could possibly administer a price-structure-and-revenue test. Companies frequently defy easy categorization. Corporations like Amazon, Walmart, and Flowers both sell and transport goods. The same was true in 1925. How are courts to determine what industry these companies are in and how that industry pegs its prices and generates its revenue? Will judges need to hold evidentiary hearings featuring dueling industrial experts just to determine whether to compel arbitration in the first place? It makes no sense to graft onto the FAA—a statute designed to promote efficient dispute resolution—a requirement that in many cases will be difficult, if not impossible, to apply.

If that is what Congress had written, of course, this Court would have to comply. But Congress did nothing of the sort. This Court should not add a requirement to the FAA that has no basis in the words that Congress actually wrote and that would do nothing other than make it more difficult to determine which workers are exempt from the statute.

ARGUMENT

I. A "class of workers" engaged in interstate transportation is "engaged in commerce," regardless of the industry in which those workers are employed.

At issue in this case is whether the plaintiffs—commercial truck drivers for Flowers Foods—belong to a "class of workers engaged in commerce" within the meaning of the FAA. The key question, therefore, is what it meant for a "class of workers" to be "engaged in commerce" in 1925, when the statute was enacted. That question has a clear answer: In 1925, anyone engaged in foreign or interstate transportation was "engaged in

commerce." And so a class of workers engaged in interstate transportation was, by definition, a class of workers "engaged in commerce." Industry was irrelevant.

1. To start, the language of the exemption focuses on what workers do for their employer, not what their employer "does generally." *Saxon*, 596 U.S. at 456. "The word 'workers' directs the interpreter's attention to 'the *performance* of work.'" *Id.* (citing dictionaries contemporary with the FAA). And the word "engaged"—"meaning occupied, employed, or involved"—"emphasizes the actual work that the members of the class, as a whole, typically carry out." *Id.* (same). Thus, the relevant "class of workers" must be defined by the work its members perform. *See id.*

Similarly, whether that class is "engaged in commerce" depends solely on whether the work the class performs constitutes interstate commerce. *See id.* at 457–58. "Again, to be 'engaged' in something means to be 'occupied,' 'employed,' or 'involved' in it." *Id.*; *Webster's New International Dictionary of the English Language* 725 (1920). And in 1925, "commerce" "include[d], among other things, the transportation of goods, both by land and by sea." *Saxon*, 596 U.S. at 457 (citing dictionaries contemporary with the FAA); *accord Black's Law Dictionary* 220 (2d ed. 1910).

Thus, when the FAA was enacted, anyone "employed" or "involved" in the interstate transportation of goods was understood to be "engaged in commerce." *See Saxon*, 596 U.S. at 457. None of these words had anything to do with what industry a person was in, let alone how that industry pegged its charges or generated its revenue.

2. That ordinary meaning was reflected in this Court's contemporaneous precedent. In the years preceding the

FAA, this Court repeatedly made clear that the interstate transportation of goods constitutes "interstate commerce," regardless of who performed the transportation or what industry they were in.

In *Caldwell v. North Carolina*, for example, this Court held that a worker "employed by" an Illinois portrait company to deliver portraits to customers in North Carolina was engaged in "interstate commerce." 187 U.S. 622, 622–25 (1903). The worker had been convicted of delivering portraits without a license, under a local ordinance prohibiting such delivery. *Id.* at 622–24. This Court overturned the conviction, holding that the ordinance was "invalid as an attempt to interfere with and to regulate interstate commerce." *Id.* at 622–24, 633.

The facts of *Caldwell* are not much different than those here: The portrait company sent the portraits and their frames in separate packages to North Carolina by rail. *Id.* The portrait company's worker then picked up those packages from the railroad station, put the portraits in the frames, and transported them on the final leg of their journey to purchasers in the state. *Id.*

Yet this Court rejected the contention that the way in which the portrait company delivered its portraits was relevant to determining whether their delivery constituted interstate commerce. *Id.* at 632. Whether the company used a separate transportation company to ship the portraits directly to purchasers, relied on its own employees to do so, or some combination of the two, the Court held, "in nowise changes the character of the commerce as interstate." *Id.* Goods traveling from one state to another are in "interstate commerce" until those goods reach their final destination, regardless of who is doing the transporting. *See id.*; *see also Crenshaw v.*

Arkansas, 227 U.S. 389, 395–96 (1913) (holding that a state law criminalizing peddling "impose[d] a direct burden upon interstate commerce" when applied to the employee of a Missouri stove range manufacturer, whose job was to pick up ranges that had been shipped to a depot in Arkansas and complete their delivery to Arkansas purchasers).

This Court reached the same conclusion in *United States v. Simpson*, 252 U.S. 465 (1920). There, the Court held that a federal law prohibiting liquor from being "transported in interstate commerce" applied to a person who had transported whiskey across state lines in his own car. *Id.* at 466. The Court rejected the argument that the statute was "confined to transportation for hire or by public carriers." *Id.* at 467. If Congress had intended to limit the statute in that way, the Court reasoned, it would have said so. *Id.* But the "statute ma[de] no distinction between different modes of transportation." *Id.* at 466. It barred *all* transportation of liquor "in interstate commerce." *Id.* And whether it takes "one form or another," interstate transportation is "interstate commerce." *Id.*; *accord Wilson v. United States*, 232 U.S. 563, 566–67 (1914).

3. Because interstate transportation was necessarily interstate commerce, this Court routinely made clear that anyone engaged in interstate transportation was "engaged in commerce." Thus, in *Ayer & Lord Tie Co. v. Kentucky*, vessels transporting a railroad-tie manufacturer's goods across state lines were "engaged in interstate commerce," even though they were owned by the manufacturer itself. 202 U.S. 409, 421 (1906); *see also e.g.*, *The Abby Dodge v. United States*, 223 U.S. 166, 176 (1912) (holding that a vessel collecting sponges in the

ocean and transporting them back to the United States "was engaged in foreign commerce").

And in *Kirmeyer v. Kansas*, this Court held that a beer seller who transported beer by wagon from his Missouri warehouse, near the Kansas-Missouri border, to customers in Kansas was "engaged in interstate commerce" when doing so. *See* 236 U.S. 568, 572–73 (1915). It didn't matter that the seller did not charge for the transportation—that is, that he did not peg his prices to the movement of goods. *See id.* at 571. Nor was it relevant that he delivered the beer using his own "horse-drawn wagons from a point near the state line, instead of by railroad from a greater distance." *Id.* at 572. "The right to send [goods] from one state to another and the act of doing so," this Court held, "are interstate commerce," regardless of who is transporting the goods or how they charge for their services. *Id.*; *see also Rossi v. Pennsylvania*, 238 U.S. 62, 66 (1915) (holding, in a case in which a liquor dealer and his employee transported their own goods by wagon, that "the transportation of intoxicating liquor, as of other merchandise, from state to state, is interstate commerce").

Applying this same ordinary meaning in *Rearick v. Pennsylvania*, this Court had no trouble concluding that a worker not much different than Flowers' truck drivers was "engaged in interstate commerce." 203 U.S. 507, 512–13 (1906). The worker was employed by an Ohio broom seller to pick up brooms the company had shipped by rail to Pennsylvania and deliver them to the Pennsylvania customers who had purchased them. *Id.* "[I]t is plain," the Court held, that "the transport of the brooms . . . was protected [interstate] commerce." *Id.* So it was equally clear that the worker was "engaged in interstate

commerce when he delivered" them. *See id.*; *see also Wagner v. City of Covington*, 251 U.S. 95, 100–01 (1919) ("indisputable" that drink manufacturers were "engaged in interstate commerce" when they transported their own goods "in response to orders previously received" from customers in another state); *Kansas City v. Seaman*, 160 P. 1139, 1141 (Kan. 1916) ("wholesale grocer" who transports his own goods by wagon to a retailer in another state—or whose agents do so—is "engaged in interstate commerce").

Thus, over and over again, in the years leading up to the FAA's enactment, this Court recognized that anyone engaged in transporting interstate goods was engaged in interstate commerce. Not once did it suggest that the words "interstate commerce" or "engaged in commerce" require a worker to be employed in an industry that pegs its charges to the movement of goods and generates its predominant source of commercial revenue by that movement.

"We normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent." *Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 648 (2010). Here, that precedent overwhelmingly confirms what is already evident from the ordinary meaning of the FAA's words: that in 1925, whether a worker was engaged in commerce had nothing to do with industry. Anyone engaged in transporting interstate goods was "engaged in commerce."

II. In 1925, "seamen" and "railroad employees" were defined by the work they performed, not price structure or revenue source.

The Second Circuit did not even attempt to root its price-structure-and-revenue requirement in the phrase

"class of workers engaged in commerce." Instead, the court asserted—without citing any evidence contemporaneous with the FAA's enactment—that the statute's reference to "seamen" and "railroad employees" "locate[s] the 'transportation worker' in the context of a transportation industry." Pet. App. 46a. It then defined this "transportation industry"—again without citing any evidence—as an industry that "pegs its charges chiefly to the movement of goods or passengers" and "generate[s]" its "predominant source of commercial revenue" through "that movement." Pet. App. 48a.

But in 1925, the words "seamen" and "railroad employees" had nothing to do with price structure or revenue. To the contrary, anyone employed aboard a ship was a seaman. And anyone who did the work of a railroad was a "railroad employee." As this Court explained in *Saxon*, the *ejusdem generis* canon cannot limit the worker exemption based on a characteristic seamen and railroad employees do not share. 596 U.S. at 462.

Seamen. In 1925, the term "seamen" meant anyone "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)) (emphasis added); *see* 9 *Oxford English Dictionary* 329 (1913) ("One whose occupation or business is on the sea; a sailor as opposed to a landsman."); *Black's Law Dictionary* 1063 ("Sailors; mariners; persons whose business is navigating ships."); *The Cyclopedic Dictionary of Law* 831 (1901) (similar); *Bouvier's Law Dictionary* 3022–23 (8th ed. 1914) (similar).[4]

---

[4] For some purposes, the word seamen excluded certain roles like captains or apprentices. *See, e.g.*, *Webster's New International Dictionary of the English Language* 1906. But these exclusions were

Shipping in 1925 was much like trucking today. Some companies that owned ships were in the business of transporting goods for others. *See, e.g.*, *Lucking v. Detroit & Cleveland Nav. Co.*, 265 U.S. 346, 348–49 (1924). But many companies owned (or leased) ships for other reasons: Commercial fishing and whaling enterprises, for example, had their own boats; manufacturers often shipped their own goods to market; and commodities sellers like coal, oil, and lumber companies often operated their own ships. *See, e.g.*, Benjamin W. Labaree et al., *America and the Sea: A Maritime History* 386, 398, 527 (1998) (describing early-twentieth-century shipping including ships owned by Alaska fisheries, the "fleet of sailing ships" that Standard Oil used to export kerosene, and a Ford Motor Company-owned ship transporting "crated automobiles"); Alfred D. Chandler Jr., *The Visible Hand: The Managerial Revolution in American Business* 350, 352, 355 (1977) (explaining that food manufacturers, petroleum companies, and chemical companies owned their own ships); Paul S. Taylor, *The Sailors' Union of the Pacific* 163 (1923) (noting that the schooners that transported lumber along the Pacific coast were usually owned by the lumber companies).[5]

---

based on the worker's job, not their industry.

[5] *See also, e.g.*, *Ayer & Lord Tie Co.*, 202 U.S. at 410–11, 418 (railroad-tie manufacturer); *W. Ky. Coal Co. v. Parker's Adm'r*, 17 S.W.2d 753, 753, 755 (Ky. Ct. App. 1929) (coal company); *Ford Wages Startle Ship Operators*, 19 Am. Shipping, no. 7, July 1925, at 9 (car manufacturer); Bureau of Fisheries, Report of the Commissioner of Fisheries for the Fiscal Year 1906 & Special Papers, The Fisheries in Alaska 14–15 (fish canneries); *The S.L. Goodal*, 6 F. 539, 542 (D. Conn. 1881) (fish-oil companies); *Bos. Marine Ins. Co. v. Metro. Redwood Lumber Co.*, 197 F. 703, 708–09 (9th Cir. 1912) (lumber company); William Cronon, *Nature's Metropolis* 160, 163, 166, 170 & n.70 (1991)

So "seamen" worked for all sorts of companies that did not peg their charges primarily to the movement of goods or generate most of their revenue through that movement. This Court's case law demonstrates the point: A worker on a fishing boat owned by a canned salmon manufacturer was a "seaman." *Haavik v. Alaska Packers' Ass'n*, 263 U.S. 510, 513 (1924); *accord Carlisle Packing Co. v. Sandanger*, 259 U.S. 255, 257–59 (1922). So too were workers who operated boats owned by a railroad-tie manufacturer, transporting its goods to market. *Ayer & Lord Tie Co.*, 202 U.S. at 410–11 (statement of White, J.) (quoting company's description). Workers aboard a dredge, hired by the dredging company, were also "seamen." *Ellis v. United States*, 206 U.S. 246, 257–60 (1907). As were the crew members of a Russian warship. *Tucker v. Alexandroff*, 183 U.S. 424, 445 (1902).[6]

These are not isolated examples. Whalers, fishers, manufacturers, the military—if an enterprise (or country) had a boat, the workers operating that boat were

---

(describing the ships lumbermen used to transport timber).

[6] Case law from courts across the country is rife with similar examples. To take just a few: *McCullough v. Jannson*, 292 F. 377, 378 (9th Cir. 1923) ("seaman" employed by lumber company); *The Carrier Dove*, 97 F. 111, 112 (1st Cir. 1899) (crew of a fishing vessel, paid by share of profits from the catch, were "seamen"); *The S.L. Goodal*, 6 F. at 542 (crew of fishing vessels owned by companies that processed fish into fertilizer were "seamen"); *The Wailua*, 2 Haw. 356, 357, 361–62 (1860) (crew of whaling vessel, paid based on share of catch, were "seamen"); *The John & Winthrop*, 182 F. 380, 381 (9th Cir. 1910) (crew of whaling vessel were "seamen"); *Belyea v. Cook*, 162 F. 180, 181 (N.D. Cal. 1908) (same); *Baggs v. Standard Oil Co.*, 180 N.Y.S. 560, 560–61 (1920) (allowing claim against oil company based on "obligation of a shipowner to furnish seamen with proper medical care"); *George Leary Constr. Co. v. Matson*, 272 F. 461, 463 (4th Cir. 1921) (worker on construction company's scow was a "seaman").

"seamen." *See supra* note 6 & *infra* note 7 (collecting examples). It did not matter if they were in an industry that pegged its prices to the movement of goods and generated most of its revenue from that movement. Every source we have—dictionaries, case law, books, newspapers, journal articles, industry publications—confirms that the only thing that mattered was that they performed the work of the ship.[7]

---

[7] We list here just a small sample, but there are endless examples. For dictionaries, see *supra* page 22. For case law, see *supra* page 24 & note 6. For statutes, see *infra* pages 26–27 & note 10. For other publications, see, for example: Robert M. Hughes, *Handbook of Admiralty Law* 23–24 (1920) ("Everyone who is regularly attached to the ship, and contributes to her successful handling, is a seaman," including dredge operators, "[f]ishermen and sealers," "though they may do other incidental work."); George L. Canfield & George W. Dalzell, *The Law of the Sea* 54 (1921) ("The word 'seaman' includes every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board of any vessel belonging to any citizen of the United States."); 24 Ruling Case Law § 198 (1919) (ed. William M. McKinney & Burdett A. Rich) (seamen include "all hands employed on the vessel in furtherance of the main object of the enterprise in which she is engaged"); E. Keble Chatterton, *Seamen All*, at v, 3, 14–32, 98 (1924) (describing "adventure by sea . . . by all sorts of seamen" including pirates, privateers, and workers on opium ships); Consular Bureau, U.S. Dep't of State, Digest of Consular Regulations Relating to Vessels & Seamen 17 (1921) (defining "American seamen" as "[c]itizens of the United States regularly shipped on American vessels in any ports . . . ."); W.L. Summers, *Wills of Soldiers and Seamen*, 2 Minn. L. Rev. 261, 264 (1918) ("The term 'mariner or seaman' had been held to apply to all persons in the maritime service, from a common seaman to an admiral or captain, and to include not only those in government service, but merchant seamen as well."); Thomas M. Walker, *Dress Reform in the Navy*, The N.Y. Times, Aug. 3, 1902, at 5 (describing workers aboard a warship as seamen); *Abandoned Ship, Met Death: Four Fishermen Drowned While Their Vessel Was Blown to Safety*, The N.Y. Times, Dec. 12, 1904, at 2 (describing crew of fishing vessel as "seamen"); *Oil Ship*

This broad definition was also reflected in the federal statutes governing seamen at the time. Take, for example, the Shipping Commissioners' Act, which established basic protections for seamen and provided them a dispute-resolution mechanism. Shipping Commissioners Act of 1872, ch. 322, 17 Stat. 262. That Act, which had been in effect for over fifty years when the FAA was passed, defined seamen to include "every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board" "*any*" American "ship." *Id.* § 65 (emphasis added); *see also id.* (defining "ship" to "comprehend every description of vessel navigating on any sea or channel, lake or river").[8]

If Congress had limited the FAA's worker exemption to seamen in an industry that pegged its prices to and generated most of its revenue from transportation itself, it would have subjected many seamen to two conflicting dispute resolution schemes. *See U.S. Bulk Carriers, Inc.*

---

and Crew Lost, The Petroleum Gazette, Apr. 1912, at 19 (describing crew of oil company's tanker as "seamen"); *As Press Views Sea Raid*, The N.Y. Times, March 31, 1915, at 2 ("seamen of the German Navy"); F.S. Reitzel, *Marine Accounting for Oil Companies*, The Oil & Gas Journal, Dec. 16, 1926, at 86 (describing importance of "marine department" to "self-contained oil company," to transport company's oil internally as well as to customers, and describing requirements for hiring "seamen" to operate the company's vessels); *The Naval Bill Reported*, The N.Y. Times, April 6, 1900, at 5 ("seamen" on naval ships); *Miniature Survey of the News for a Week*, Am. Lumberman, July 24, 1915, at 24 (same); Herman Melville, *Moby-Dick* 263 (1851) (seamen aboard the whaling ship *The Pequod*).

[8] Congress repeatedly amended the scope of the Shipping Commissioners' Act, so it did not always apply to all seamen. *See, e.g.*, Act of June 9, 1874, ch. 260, 18 Stat. 64; Act of Aug. 19, 1890, ch. 801, 26 Stat. 320; Act of Feb. 18, 1895, ch. 97, 28 Stat. 667. But Congress never altered the definition of the word "seamen" itself.

v. Arguelles, 400 U.S. 351, 356 (1971) (explaining that since 1790, Congress has, by statute, provided that *courts* protect seamen's rights to the prompt payment of wages, that the Shipping Commissioners Act authorized courts to appoint shipping commissioners as their adjuncts, and that requiring seamen to submit to non-shipping commissioner arbitration would conflict with this statutory scheme).[9]

Other seamen statutes were similarly broad. For example, the Jones Act, enacted in 1920 to enable seamen to bring negligence claims against their employers, applies to all workers "employed on board a vessel in furtherance of its purpose." *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 339, 343–46 (1991) (discussing the breadth of the term "seamen" at the time the Jones Act was enacted and applying that definition to a worker on a paint boat supervising the painting of an oil platform). Similarly, the statute governing the Marine Hospital Service defined "seaman" as "any person employed on board in the care, preservation, or navigation of any vessel, or in the service, on board, of those engaged in such care, preservation, or navigation." Act of Mar. 3, 1875, ch. 156, § 3, 18 Stat. 485, 485.[10]

---

[9] The FAA requires courts to enforce any arbitration scheme an employer may impose (so long as it does not violate ordinary contract-law principles). 9 U.S.C. § 2. But the Shipping Commissioners Act authorized binding arbitration only in one narrow circumstance: when, after a dispute had arisen, a seaman agreed in writing to resolve that particular dispute before a shipping commissioner. § 25, 17 Stat. at 267; *see The Donna Lane*, 299 F. 977, 982 (W.D. Wash. 1924); *The Howick Hall*, 10 F.2d 162, 163 (E.D. La. 1925); *The W.F. Babcock*, 85 F. 978, 983 (2d Cir. 1898).

[10] *See also, e.g.*, Act of Apr. 2, 1888, ch. 50, 25 Stat. 73, 73 (describing "the crew of the wrecked whaling bark Napoleon" as

This well-established understanding of seamen as including all boat-workers was also reflected in the International Seamen's Union. *See, e.g.*, Arthur Emil Albrecht, *International Seamen's Union of America: A Study of its History & Problems*, Bulletin of U.S. Bureau of Labor Statistics, No. 342, at 108 (1923) (union constitution describing broad eligibility for membership). Indeed, the "backbone" of that union was the Sailors' Union of the Pacific, whose core membership was sailors on lumber schooners—boats that were almost always owned by lumber companies. Paul S. Taylor, *Organization and Policies of the Sailors' Union of the Pacific*, 16 Monthly Lab. Rev. 11, 11, 17 (1923).

This union, whose key members would not have satisfied the Second Circuit's test, was instrumental in urging Congress to adopt the worker exemption to the FAA. *See, e.g.*, 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"); *Sales and Contracts to Sell in Interstate and Foreign Commerce, and Federal Commercial Arbitration: Hearings on S. 4213 and S. 4214 Before a Subcomm. of the S. Comm. on the Judiciary*, 67th Cong. 9 (1923) (statement of W.H.H. Piatt, Representative, ABA).

Put simply, there is no evidence whatsoever that seamen were limited to those who worked in an industry that pegs its charges to the movement of goods and

"shipwrecked seamen"); Treaty of Friendship & General Relations, Spain-United States, art. XXIV, July 3, 1902, 33 Stat. 2105, 2117 (treating "persons forming part of the crew of ships of war or merchant vessels" as "seamen").

generates its predominant revenue through that movement. To the contrary, everyone who worked aboard a boat—regardless of who they worked for—was a seaman.

Railroad employees. The ordinary meaning of "seamen" in 1925 is enough to doom the Second Circuit's approach. After all, any *ejusdem generis*-based limitation on the worker exemption must be a limitation that "seamen" and "railroad employees" share. *See Saxon*, 596 U.S. at 462 ("*Ejusdem generis* neither demands nor permits that we limit a broadly worded catchall phrase based on an attribute that inheres in only one of the list's preceding specific terms."). But "railroad employees," too, were identified by their work—not price structure or revenue source.

While the term "seamen" had a long history in maritime law, the phrase "railroad employees" had no such longstanding definition. Unlike "seamen," dictionaries from 1925 do not have an entry for "railroad employees." But the ordinary meaning of the phrase "railroad employee" is simply one who does the work of a railroad. *Cf., e.g.*, *Black's Law Dictionary* 989 (defining "railroad" as a "road or way on which iron or steel rails are laid for wheels to run on, for the conveyance of heavy loads"); *id.* at 421 (defining "employee" as "a person employed").

Of course, because of the infrastructure required to ship goods interstate by rail, manufacturers were much less likely to operate their own railroad than their own boat. *See* Chandler, *The Visible Hand*, at 87. Still, many manufacturers—particularly commodities manufacturers like lumber and mining companies—had their own railroads, which they used to transport goods around their

property or to link their property with a larger railroad. *See, e.g.*, *Aluminum Co. v. Ramsey*, 222 U.S. 251, 254 (1911) (mining railroad); *Procter & Gamble Co. v. United States*, 225 U.S. 282, 284–85 (1912) (manufacturing company's railroad); *Jackson v. Ayden Lumber Co.*, 74 S.E. 350, 351 (N.C. 1912) (lumber company's railroad); *Poor's Directory of Railway Officials & Manual of American Street Railways* 1163–77 (1890) (listing the "[p]rivate [l]umber, [l]ogging and [m]ining [r]ailroads of the United States"); *Poor's Manual of Railroads* 1–17 (1924) (listing "small private roads," including "private logging roads"); *id.* at 1507, 2097–2100 (similar).

These proprietary railroads—like any other railroad—were called "railroads." *See, e.g.*, *Ramsey*, 222 U.S. at 254 (mining company was "operating a railroad"); *Aluminum Co. v. Ramsey*, 117 S.W. 568, 569 (Ark. 1909), *aff'd* 222 U.S. 251 (1911) ("The Aluminum Company of North America is engaged in the mining of bauxite . . . and in connection with its plant operates a narrow-gauge railroad . . . which is used for the purpose of hauling the ore from the mines to the drying shed."); *Morgan v. Grande Ronde Lumber Co.*, 148 P. 1122, 1123 (Or. 1915) ("railroad" owned and operated by lumber company); *J.J. Newman Lumber Co. v. Irvin*, 79 So. 2, 2 (Miss. 1918) (same); *Tower Lumber Co. v. Brandvold*, 141 F. 919, 920 (8th Cir. 1905) (same); *Dayton Coal & Iron Co. v. Dodd*, 188 F. 597, 599–601 (6th Cir. 1911) (private "railroad" owned by coal company).[11]

---

[11] To be sure, some regulations applied only to public railroads. *See, e.g.*, Interstate Commerce Act, ch. 104, 24 Stat. 379 (1887) (limiting statute to common carriers). But that wasn't always the case. *See, e.g.*, *Parris v. Tenn. Power Co.*, 188 S.W. 1154, 1155–57 (Tenn. 1916) (collecting cases). And it didn't change the fact that proprietary railroads were railroads.

And the workers operating them, therefore, were called "railroad employees." *See, e.g.*, *Woodward Iron Co. v. Thompson*, 88 So. 438, 439 (Ala. 1921) (workers operating mining company's railroad were "railroad employees"); *Homochitto Lumber Co. v. Albritton*, 96 So. 403, 403 (Miss. 1923) (lumber-company defendant could be held liable for an injury to one of its employees because a Mississippi statute had "abolish[ed]" the fellow-servant rule "as to all railroad employees"); *Fifty Railroad Employees Strike*, The Oregonian, June 3, 1913, at 16 (describing strike of "[m]ore than 50 railroad employes of the Pacific Lumber Company," which brought the company to "a standstill").[12]

Thus, the phrase "railroad employees" had nothing to do with price structure or revenue. A "railroad employee" was simply someone who worked on a railroad. Just as a "telegraph employee" operated a telegraph, and a "laundry employee" did the laundry, a "railroad employee" did the work of a railroad.[13]

---

[12] *Accord Jackson*, 74 S.E. at 351–52 (making clear that employee of lumber company "directly engaged in operation of the [company's] railroad" was a "railroad employé"); *Schus v. Powers-Simpson Co.*, 89 N.W. 68, 71 (Minn. 1902) (similar); *Stewart v. Blackwood Lumber Co.*, 136 S.E. 385, 386 (N.C. 1927) (private logging railroads are covered by state statute "governing actions brought by railroad employees against railroads for personal injuries or actions of this nature"); *see also, e.g.*, *Dodd*, 188 F. at 599 ("locomotive engineer," "fireman," and "brakeman" employed by coal company).

[13] *Cf., e.g.,* Act of Mar. 2, 1923, ch. 178, 42 Stat. 1377, 1422–23 (1923) ("laundry employees" at "National Home for Disabled Volunteer Soldiers"); *Vitas v. Grace Hosp. Soc'y*, 141 A. 649, 649 (Conn. 1928) ("laundry employees" at hospital); *Smith v. Atchison, Topeka & Santa Fe Ry. Co.*, 87 S.W. 1052, 1053 (Tex. Civ. App. 1905) ("telegraph employé" for a railroad).

*   *   *

The point of *ejusdem generis* is to ensure that a "general" catch-all phrase does "not render" the statute's more "specific words meaningless." *CSX Transp., Inc. v. Ala. Dep't of Revenue*, 562 U.S. 277, 295 (2011). This Court has already accomplished that purpose by limiting the FAA's worker exemption to transportation workers. *See Circuit City*, 532 U.S. at 114–15 (explaining that limiting the exemption to transportation workers gives effect to the words "seamen" and "railroad employees"). There is no need—or basis—to further limit the exemption.

As *Circuit City* explained, the "linkage" between "seamen," "railroad employees," and the FAA's "residual exclusion of 'any other class of workers engaged in foreign or interstate commerce,'" is Congress's "demonstrated concern with transportation workers and their necessary role in the free flow of goods." *Id.* at 121 (quoting 9 U.S.C. § 1). Commercial truck drivers play the same necessary role in the free flow of goods as seamen and railroad employees—regardless of who employs them. They are, therefore, exempt.[14]

---

[14] In its brief in opposition, Flowers was unable to muster any evidence that in 1925, seamen and railroad employees were defined by how the industries in which they worked pegged their charges or generated their revenue. Instead, the company relied on the oral argument transcript in *Saxon*. Capitalizing on the fact that the petitioners here are represented by the same counsel, Flowers asserted that "the attorney representing the plaintiff in *Saxon* conceded" at argument that transportation workers for companies shipping their own goods would not have been "seamen" or "railroad employees" in 1925. BIO 31 (quoting remarks by counsel about how workers employed by non-shipping companies "likely" would have been classified in 1925). But that question was not briefed in *Saxon*. And as Ms. Saxon's counsel indicated at argument, historical research

III. *Saxon* forecloses an industry requirement.

In addition to having no basis in the plain meaning of the statute, the Second Circuit's industry requirement cannot be squared with this Court's decision in *Saxon*. *Saxon* explicitly rejected an "industrywide approach" to interpreting the worker exemption. 596 U.S. at 456. Instead, this Court held, a person is a member of a '"class of workers' based on" the "actual work" the worker performs. *Id.* And, the Court held, "*any* class of workers directly involved in transporting goods across state or international borders falls within § 1's exemption." *Id.* at 457 (emphasis added).

Applying these principles, this Court concluded that the class of workers to which the plaintiff in *Saxon* belonged is workers "who physically load and unload cargo on and off airplanes on a frequent basis." *Id.* at 456. And, it concluded, that class is "engaged in commerce"—and therefore exempt from the FAA—because those who "physically load and unload cargo on and off planes traveling in interstate commerce are, as a practical matter, part of the interstate transportation of goods." *Id.* at 457.

Applying *Saxon*'s approach here, the class of workers to which the plaintiffs belong is workers who drive trucks transporting cargo on a frequent basis. That class is even

---

is necessary to conclusively answer it. Tr. of Oral Argument in *Saxon* at 57:18–22 ("[S]o what I would do to answer that question is to look at whether those people would have been engaged in commerce in the same way as railroad employees and seamen at the time."). Thorough research into this specific question now demonstrates that boat and railroad workers in 1925 would have been "seamen" and "railroad employees," regardless of who hired them. Any suggestion to the contrary is incorrect.

more "plain[ly]" a "part of the interstate transportation of goods" than *Saxon*'s cargo loaders, *id.*: Its workers actually haul the goods. Under *Saxon*, that's all the exemption requires.

The Second Circuit's industry requirement conflicts with *Saxon* twice over. First, it violates *Saxon*'s mandate that the exemption hinges on the "actual work" a worker performs, "not what" the worker's employer "does generally." *Id.* at 456. On the Second Circuit's view, the exemption applies differently to workers who perform exactly the same work depending on what their employer does. A long-haul truck driver transporting goods for Walmart is exempt if the driver works for a trucking company Walmart has hired but not exempt if Walmart hires the driver directly. An airplane pilot transporting goods sold by Amazon is exempt if Amazon has hired FedEx to transport its wares, but not if it is using its own fleet. *Saxon* rejected these employer-based distinctions as lacking any basis in the text of the statute.

Second, grafting a price-structure-and-revenue requirement onto the exemption also cannot be reconciled with *Saxon*'s holding that "*any* class of workers" engaged in interstate transportation is exempt. *Id.* at 457 (emphasis added). That holding follows directly from the text of the statute—which exempts "any other class of workers engaged in commerce," not "any members of a class of workers engaged in commerce who are also in an industry that pegs its charges to the movement of goods and generates its revenue predominantly from that movement."

This is not a case in which the decision below conflicts with some offhand dicta in a long-forgotten opinion. The Second Circuit's industry requirement conflicts with what

this Court, less than two years ago, held the words of the statute mean.

IV. The Second Circuit's price-structure-and-revenue approach would have been unworkable in 1925 and is just as unworkable now.

Not only is the Second Circuit's price-structure-and-revenue requirement atextual; it is unworkable. The court offered no reason why a Congress concerned with the "free flow of goods," *Circuit City*, 532 U.S. at 121, would distinguish between goods transported by the company that sold them and those transported by a shipping company. Either way, the workers that transport these goods are integral to getting bread on the shelves and oil to the pumps.

The Second Circuit asserted that adopting a price-structure-and-revenue requirement would provide a "reliable principle" for interpreting the FAA's worker exemption. Pet. App. 46a. But courts are not "free to pave over bumpy statutory texts" to make them easier to apply. *Saxon*, 596 U.S. at 463.

And, in any event, there is nothing "reliable" about the Second Circuit's approach. To the contrary, the court's price-structure-and-revenue test would be virtually impossible to apply: How should courts determine an industry's "predominant source of commercial revenue" or the composition of its "charges"? Must they hold an evidentiary hearing? Do parties that dispute whether the FAA applies need to hire industrial experts?

Many companies—companies like Amazon, Walmart, and Flowers—both sell goods and transport them. *See* Pet. App. 69a; Mike Reiss, Bob Pitts & Josh Feinberg, *Private Fleet: A key differentiator in service*, Logistics

Mgmt. (June 2, 2022), https://perma.cc/V8TP-ZJU5.[15] These companies' "private fleets" are essentially "logistics companies within a company." Reiss, Pitts, & Feinberg, *Private Fleet*. Amazon has its own planes. *Amazon buys its first planes to expand air network*, BBC News (Jan. 6 2021), https://perma.cc/Q2PV-F5CH. Walmart's truck drivers drive 700 million miles a year. Distribution, Fulfillment, & Drivers, https://careers.walmart.com/drivers-distribution-centers (last visited Nov. 12, 2023). Flowers itself has thousands of drivers. *See, e.g.*, Flowers Foods, Inc., Current Report (Form 8-K) (Sept. 1, 2023) (settling with approximately 475 California-based drivers); Flowers Foods, Inc., Quarterly Report (Form 10-Q) (May 20, 2021) (identifying thousands of "distribution rights").[16]

How should courts handle these companies' workers? Should they order discovery about how the company prices its goods and how much of its revenue is attributable to transportation? Or may they simply assume, as the majority below apparently did, that if a company both sells goods and transports those goods to its customers, the bulk of the price is attributable to the goods themselves and not their transportation?

What about companies that mostly sell and transport their own goods but sometimes also transport the goods of

---

[15] *See also, e.g.*, Gary Frantz, *Transportation Report: The rise of private fleets (and dedicated operations)*, DC Velocity (May 3, 2019), https://perma.cc/8D55-Z6V5; *2022 Top 100 Private Carriers*, Transport Topics, https://perma.cc/EG9L-VKHL.

[16] Indeed, in trying to assert a preemption defense, Flowers has previously argued that it is a "motor carrier of property" within the meaning of the Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. § 14501(c). JA377; *see also* JA40 (asserting same preemption defense in its answer in this case). That statute defines "motor carrier" as "a person providing motor vehicle transportation for compensation." 49 U.S.C. § 13102(14).

others? Should their workers be treated differently? How about those that use wholly owned subsidiaries to transport their goods? And why aren't commercial truck drivers—like the plaintiffs here—who sell their driving services to a manufacturer part of an industry that generates its predominant source of revenue by the movement of goods, just because the manufacturer they work for isn't?

These questions would have been no easier to answer in 1925 when the FAA was enacted. As explained above, then, as now, many manufacturers transported their own goods. *See supra* section II. And many "seamen" and "railroad employees" worked for companies like commodities producers, commercial fisheries, and goods manufacturers. *See id.* Some railroads that were technically open to the public, in practice, shipped almost exclusively the goods of a single manufacturer whose owners also owned the railroad. *See, e.g.*, *United States v. La. & Pac. Ry. Co.*, 234 U.S. 1, 3–11 (1914) (statement of Day, J.). And some producers owned their own boats to ship their own goods, but also sometimes took passengers aboard and offered transport for other manufacturers' goods. *See, e.g.*, Knut Gjerset, *Norwegian Sailors in American Waters: A Study in the History of Maritime Activity on the Eastern Seaboard* 95–97 (1933) (describing United Fruit Company). Applying the price-structure-and-revenue test to these 1925 companies would have been just as difficult as applying it to Amazon or Flowers today.

And it made no more sense then than it does now to rest the application of the FAA—a statute designed to promote efficient dispute resolution—on difficult, fact-intensive threshold questions. Presumably, that's why the

text of the statute evidences no intent to do so. This Court has already provided a "reliable principle" to interpret the FAA. It's the principle this Court articulated in *Saxon*—the principle supplied by the text of the FAA itself: The statute exempts "any class of workers directly involved" in interstate transportation. *Saxon*, 596 U.S. at 457.

Commercial truck drivers that transport interstate cargo are such a class. They are, therefore, exempt from the statute.

CONCLUSION

The judgment of the court of appeals should be reversed.

November 13, 2023 Respectfully submitted,

JENNIFER D. BENNETT
Counsel of Record
JESSICA GARLAND
GUPTA WESSLER LLP
505 Montgomery Street
Suite 625
San Francisco, CA 94111
(415) 573-0336
jennifer@guptawessler.com

DEEPAK GUPTA
LINNET DAVIS-STERMITZ
STEFANIE OSTROWSKI*
GUPTA WESSLER LLP
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741

HAROLD L. LICHTEN
MATTHEW THOMSON
ZACHARY L. RUBIN
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street
Suite 2000
Boston, MA 02116
(617) 994-5800

**Not admitted in the District of Columbia; practicing under direct supervision of members of the D.C. Bar pursuant to Rule 49(c)(8)*

Counsel for Petitioners