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

BRIEF OF AMICUS CURIAE PUBLIC JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE

Public Justice is a nonprofit legal advocacy organization that specializes in precedent-setting, socially significant civil litigation, with a focus on fighting corporate and governmental misconduct.[1] The organization maintains an Access to Justice Project that pursues litigation and advocacy efforts to remove procedural obstacles that unduly restrict the ability of workers, consumers, and people whose civil rights have been violated to seek redress for their injuries in the civil court system.

As part of its Access to Justice Project, Public Justice appeared before this Court as counsel of record for Respondent in *New Prime Inc. v. Oliveira*, 139 S. Ct. 532 (2019), where this Court held that transportation workers are exempt from the Federal Arbitration Act (FAA). Public Justice has a continued interest in ensuring that the exemption in § 1 of the FAA is properly interpreted in accordance with its text and the historical and statutory context in which the statute was enacted.

SUMMARY OF ARGUMENT

The question presented in this case is whether a class of workers that is actively engaged in interstate transportation must also be employed in the transportation industry to be exempt from the FAA—not whether so-called "last-mile" drivers are or are not exempt. In deciding this case, this Court should not

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[1] Pursuant to Rule 37.6, Amicus affirms that no counsel for any party authored this brief in whole or in part, and no person or entity other than Amicus, its members and its counsel has made a monetary contribution to support the brief's preparation or submission.

disrupt the well-settled law that the FAA's transportation-worker exemption applies to workers, like petitioners, who are engaged in the "last-mile" transportation of goods. The defendant, Flowers Foods, ships its products across state lines from its manufacturing plants to stores like Walmart, Target, and Safeway. Petitioners were responsible for the last leg of that journey, transporting the goods from Flowers' regional warehouse in Connecticut to stores throughout the state.

In the Second Circuit, defendants argued that because plaintiffs were responsible for the last leg of the journey, which did not involve moving goods across state lines, plaintiffs' work was not sufficiently connected to the interstate transportation of goods to be exempt from the FAA. This argument is not within the question presented on which this Court granted certiorari. And in any event, it is precluded by the well-established meaning of "engaged in foreign or interstate commerce" that existed when the FAA was enacted and is also inconsistent with how courts today have interpreted the FAA and statutes that use similar language. Last-mile transportation workers are engaged in moving goods along the interstate stream of commerce, even if they are only responsible for one leg of that interstate journey within one state. Holding otherwise would not only fly in the face of the text but undermine the purpose of § 1's transportation-worker exemption and lead to absurd results.

Thus, as this Court grapples with the question of whether workers must be employed in the transportation industry to be exempt from the FAA, it should recognize that workers engaged in the

transportation of goods within a single state are engaged in interstate transportation if the intrastate leg is part of the goods' interstate journey.

ARGUMENT

I. When the FAA Was Passed, the Meaning of Workers "Engaged in Commerce" Included Last-Mile Transportation Workers.

Section 1's transportation-worker exemption must be interpreted in accordance with the text's meaning at the time the law was enacted, *see Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 455 (2022), and when the FAA was enacted in 1925, a "class of workers engaged in commerce" included anyone engaged in foreign or interstate transportation, including those who transported goods or passengers within a single state, so long as those goods or passengers came from or were headed to another state. Black's Law Dictionary defined "commerce" as "[i]ntercourse by way of trade and traffic between different peoples or states and the citizens or inhabitants thereof, including not only the purpose, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and the transportation of persons as well as of goods, both by land and by sea." Black's Law Dictionary 220 (2d ed. 1910). "The ordinary meaning of those words does not suggest that a worker employed to deliver goods that originate out-of-state to an in-state destination is not 'engaged in commerce' any less than a worker tasked with delivering goods between states." *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 910 (9th Cir. 2020).

Indeed, before 1925, a good was understood to be in interstate commerce from the time it "started in the

course of transportation to another state or foreign country" until it reached its final destination, even if the final leg of that journey took place within a single state. Bouvier's Law Dictionary and Concise Encyclopedia 532 (8th ed. 1914) (explaining that "an express company taking goods from a steamer or railroad and transporting them through the street of the city to the consignee is still engaged in interstate commerce"). Thus, any worker engaged in the transportation of a good along its interstate journey was engaged in interstate commerce, even if that worker only facilitated the transportation of that good within a single state.

This Court embraced this understanding of the term "engaged in commerce" in the years preceding the passage of the FAA. The Court interpreted similar language in the Federal Employers' Liability Act (FELA), which requires railroads "engaging in commerce" to pay "damages to any person suffering injury while he is employed by such carrier in such commerce." 45 U.S.C. § 51. The Court held that the Act only applied where the railroad and employee were "engaged in [interstate] commerce," *Mondou v. New York, N.H. & H.R. Co.*, 223 U.S. 1, 47 (1912), and then repeatedly held that the Act applied to workers that never crossed state lines, *see Shanks v. Delaware, L. & W.R. Co.*, 239 U.S. 556, 558-59 (1916) (collecting cases).

More specifically, in interpreting FELA, the Court held that workers who transport goods that are destined for—or arriving from—another state are engaged in interstate commerce, even if those workers are only responsible for a specific leg of the journey that takes place entirely within a single state.

For example, in *Philadelphia & R. Railway Co. v. Hancock*, 253 U.S. 284, 285 (1920), the Court held that a railroad worker whose "duties . . . never took him out of Pennsylvania" was still engaged in interstate commerce and subject to FELA because the coal he transported within Pennsylvania was destined for other states. *Id.* at 285-86. His transportation of the coal from a mine to a railroad storage yard "two miles away" was "a step in the transportation of the coal to real and ultimate destinations" outside of Pennsylvania, and he was therefore engaged in the interstate transportation of goods. *Id.*

Similarly, prior to *Hancock*, this Court had held that a switch engine foreman injured on a train hauling lumber within Florida was engaged in interstate commerce because the lumber's ultimate destination was New Jersey. *See Seaboard Air Line Ry. v. Moore*, 228 U.S. 433, 435 (1913) (stating it "plain" that lower court's ruling that employee was not engaged in interstate commerce was "without merit"). In *The Daniel Ball*, 77 U.S. 557 (1870), this Court held that a steamer that operated solely in Michigan and "did not run in connection with, or in continuation of, any line of vessels or railway leading to other States" was nevertheless "engaged in commerce" as long as "she was employed in transporting goods destined for other States, or goods brought from without the limits of Michigan and destined to places within that State." *Id.* at 565. And in *Norfolk & Western Railroad Co. v. Commonwealth of Pennsylvania*, 136 U.S. 114 (1890), the Court held that a company whose railroad was entirely within Pennsylvania was "engaged in interstate commerce" because it was a link in a chain of railroads that

carried passenger and freight from other states into Pennsylvania, and from Pennsylvania into other states. *Id.* at 119. Thus, prior to 1925, the Court routinely held that a worker engaged in the transportation of goods or persons traveling between states is "engaged in interstate commerce" even if they are only responsible for one leg of that journey that takes place entirely within one state. Because § 1's transportation-worker exemption must be interpreted in accordance with the text's meaning at the time the law was enacted, the exemption applies to last-mile transportation workers.

Faced with this wall of authority, Flowers argued in the Second Circuit that even if last-mile drivers might be engaged in commerce under the FAA, that doesn't include petitioners here, who are not truck drivers operating in a continuous interstate transit line but are instead business owners operating a self-contained, local business. Second Circuit Resp. Br. [Doc. 87] at 36. To start, the petitioners here are, in fact, misclassified employees, not business owners. But regardless, workers who spend time operating a last-mile transportation business are still engaged in interstate commerce.

Preceding the passage of the FAA, it was well established that workers who did not personally transport goods or passengers, but whose jobs were "so closely related to" interstate transportation "as to be practically a part of it" were also "engaged in interstate commerce." *Baltimore & O. S. W. R. Co. v. Burtch*, 263 U.S. 540, 542-43 (1924). This included, for example, workers who protected the safety of interstate commerce, by repairing bridges or watching dangerous intersections, even though they

did not cross state lines and even though they also facilitated *intra*state commerce. *See Philadelphia & R. Ry. Co v. Di Donato*, 256 U.S. 327, 329-30 (1921). The Court also held that an employee who cooked meals for workers repairing bridges used by interstate trains was "engaged in interstate commerce," *Philadelphia, B. & W. R. Co. v. Smith*, 250 U.S. 101, 102-04 (1919), as was a worker who cleared obstruction from railroad tracks but did not himself operate or work on the train, *see S. Ry. Co. v. Puckett*, 244 U.S. 571, 573 (1917). Thus, the fact that some of the petitioners may spend time operating the business that transports Flowers' goods from the regional warehouse to stores throughout the state—the last leg of the goods' interstate journey—does not change the fact that those petitioners are engaged interstate commerce. And regardless, Flowers has not disputed that most of petitioners' work hours were spent transporting goods that originated out of state. *See* Pet. App. 67a n.1.

II. Today, Courts Widely Agree that Last-Mile Drivers and Those who Work Closely with Such Transportation Are Engaged in Interstate Commerce.

A. Courts Consistently Interpret the FAA's § 1 Exemption to Encompass Last-Mile Drivers.

Both before and after this Court's decisions in *New Prime Inc. v. Oliveira*, 139 S. Ct. 532 (2019) and *Saxon*, 596 U.S. 450, courts have consistently interpreted the FAA's transportation-worker exemption to encompass last-mile drivers and those that do work closely related to such last-mile transportation. Courts reaching that conclusion have

explained that exempting last-mile drivers is consistent with both the understanding of the terms of the statute at the time the FAA was enacted, *see supra* Part I, and with the way in which those terms have been interpreted in other statutes, *see infra* Part II.B.

To begin, in *Saxon*, this Court held that workers who load and unload cargo and baggage onto and off airplanes are transportation workers for purposes of the FAA § 1 exemption even though they did not cross state lines. 596 U.S. at 458. It explained that transportation workers are those who "play a direct and necessary role in the free flow of goods across borders." *Id.* (internal quotation marks omitted). And that necessarily includes workers who load and unload cargo because transportation is still in progress. *Id.* This Court reached its conclusion without regard for whether the cargo in question had been warehoused at the airport or whether the cargo was on its last intrastate flight. Rather, the crucial element was that the cargo loaders were helping the goods along on their interstate journey.

Last-mile drivers are no different. Like cargo loaders and unloaders, they play a "direct and necessary role" in the flow of goods across state and international lines. Without last-mile drivers making deliveries from warehouses and distribution centers to customers—whether retail customers or end-user customers—goods' interstate journeys would be incomplete.

The Ninth Circuit has held just that. In holding that drivers delivering packages from Amazon warehouses to consumers are "engaged in commerce" for purposes of FAA § 1, the Ninth Circuit looked to

the ordinary meaning of those words at the time the FAA was enacted. *Rittmann*, 971 F.3d at 910 (citing *New Prime*, 139 S. Ct. at 539). To reinforce its conclusion that Congress understood last-mile drivers to be engaged in commerce, the court also looked to the way similar language has been interpreted in other statutes. *Id.* at 911-14. The Ninth Circuit reconsidered its holding on last-mile drivers following *Saxon* and reached the same conclusion, explaining that any "pause in the journey of the goods at the warehouse" does not "alone remove them from the stream of commerce." *Carmona Mendoza v. Domino's Pizza, LLC*, 73 F.4th 1135, 1138 (9th Cir. 2023) (citing *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 570 (1943)) (holding that workers delivering pizza ingredients from a Domino's warehouse to franchisees were engaged in commerce and exempt); *see also Miller v. Amazon.com, Inc.*, No. 21-36048, 2023 WL 5665771, at *1 (9th Cir. Sept. 1, 2023) (affirming that last-mile Amazon delivery drivers are exempt after *Saxon*).

The Ninth Circuit is hardly alone. In a lengthy, carefully reasoned decision, the First Circuit reached the same conclusion with regard to workers making last-mile deliveries from Amazon warehouses to consumers. *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 26 (1st Cir. 2020). Like the Ninth Circuit, the First Circuit has confirmed that its decision that last-mile deliveries are part of the interstate flow of commerce remains good law after *Saxon*. *See Fraga v. Premium Retail Servs., Inc.*, 61 F.4th 228, 237-38 & n.7, 240 (1st Cir. 2023) (holding that if merchandisers frequently delivered point-of-purchase materials to retailers and if the materials had not yet exited the stream of commerce, merchandisers were exempt); *see also*

Muller v. Roy Miller Freight Lines, LLC, 34 Cal. App. 5th 1056, 1069 (Cal. Ct. App. 2019) (holding truck driver moving goods intrastate as one leg of goods' interstate journey exempt under § 1).

And, decades ago, the Sixth Circuit easily reached the same conclusion with regard to the quintessential last-mile delivery workers: postal workers. *Bacashihua v. U.S. Postal Serv.*, 859 F.2d 402, 405 (6th Cir. 1988). The court explained that postal workers, as a class, are responsible for mail moving in interstate commerce, making no distinction between those sorting mail in postal distribution centers, those driving trucks of mail across state lines, and mail carriers on local routes. *Id.* All postal workers were critical to moving the mail across state lines to its final destination.

Courts—including this one—have been careful to delineate between true last-mile deliveries and local deliveries of goods that once traveled in interstate commerce. *See Saxon*, 596 U.S. at 457 n.2. The question is not whether the goods made a stop at a warehouse, *see Carmona*, 73 F.4th at 1138, but rather whether the goods exited the stream of interstate commerce before commencing a new, local journey. Typically, when goods reach the retailer, restaurant, or consumer who ordered them shipped, they depart the stream of commerce. *See Fraga*, 61 F.4th at 239-40. While drivers ensuring the goods complete the last leg of their interstate journeys are "engaged in commerce," "couriers who deliver[ ] goods intrastate from restaurants and grocery stores to consumers who ordered those goods from the restaurants and grocery stores [are] not." *Id.* at 239; *see also Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir.

2020) (Barrett, J.). That is true even if the local delivery drivers sometimes cross state lines. *See id.*; *Cunningham v. Lyft, Inc.*, 17 F.4th 244, 252 (1st Cir. 2021); *Osvatics v. Lyft, Inc.*, 535 F. Supp. 3d 1, 17-18 (D.D.C. 2021) (Jackson, J.).

This distinction is not new. *United States v. Yellow Cab Co.* examined whether different types of taxi service implicated interstate commerce for purposes of federal anti-trust law. 332 U.S. 218, 228-32 (1947), *overruled in part on other grounds by Copperweld Corp. v. Ind. Tube Corp.*, 467 U.S. 752 (1984). Where railroads contracted for a taxi company to ferry passengers between rail stations to accommodate their train transfers, that taxi service was "clearly a part of the stream of interstate commerce," as it was "an integral step" in a traveler's overall train journey. *Id.* at 228-29. But where taxis were taking passengers to and from rail stations as part of their normal local taxi service, that was not. *Id.* at 230-32.

Hewing to *Yellow Cab*, modern courts have held that ride-hailing drivers, like those working for Uber and Lyft, and local couriers, like those delivering meals or groceries from local establishments, are more like the local taxi drivers this Court held were not working in interstate commerce. *See, e.g.*, *Singh v. Uber Techs., Inc.*, 67 F.4th 550, 562 (3d Cir. 2023); *Cunningham*, 17 F.4th at 250-51; *Capriole v. Uber Techs., Inc.*, 7 F.4th 854, 863-64 (9th Cir. 2021); *see also Wallace*, 970 F.3d at 802. On the other hand, those contracting with the business moving products across state lines to do last-mile deliveries of those products to the retailer or customer are part of the flow of interstate commerce—just like the taxi services that contracted with the railroads to shuttle

passengers between trains. *See Immediato v. Postmates, Inc.*, 54 F.4th 67, 77 (1st Cir. 2022) (holding workers are engaged in the stream of commerce where their work is "a constituent part of that [interstate] movement, as opposed to a part of an independent and contingent intrastate transaction"). In short, courts have consistently concluded that the § 1 exemption applies to true last-mile delivery workers, and have drawn well-reasoned and consistent lines about which workers are not exempt.

B. This Interpretation of "Engaged in Commerce" Is Consistent with How Courts Have Interpreted Similar Statutes.

The FAA is not unique in premising applicability on whether certain actions are closely tied with interstate commerce, and the way courts have interpreted those statutes is consistent with concluding that true last-mile drivers are "engaged in commerce." Indeed, more than a dozen federal statutes use the phrase "engaged in commerce," "engaged in . . . interstate or foreign commerce," or "engaged in foreign commerce."[2] When interpreting

[2] *E.g.*, 7 U.S.C. § 511a (regulating tobacco producers); 13 U.S.C. § 303 (relating to Secretary of the Treasury functions); 15 U.S.C. § 13 (provision of the Clayton Act); 15 U.S.C. § 26a(a) (restrictions on purchasing gasohol and other synthetic motor fuel); 15 U.S.C. § 291 (prohibiting stamping with the words "United States assay"); 15 U.S.C. § 1221(b) (governing automobile dealer suits); 18 U.S.C. § 1962 (Racketeer Influenced and Corrupt Organizations); 21 U.S.C. § 373 (relating to carriers engaged in interstate commerce); 29 U.S.C. § 207(a) (Fair Labor Standards Act overtime provision); 42 U.S.C. § 6276 (regulating energy programs); 42 U.S.C. § 6391(a) (preventing foreign

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similar FAA language, courts should and do look to precedent interpreting these other statutes, for similar language in two statutes is a "strong indication" that they should be interpreted in a similar manner. *See Northcross v. Bd. of Educ. of Memphis City Schs.*, 412 U.S. 427, 428 (1973) ("The similarity of language in § 718 [of the Emergency School Aid Act] and § 204(b) [of the Civil Rights Act of 1964] is, of course, a strong indication that the two statutes should be interpreted *pari passu*.").

In particular, courts have looked to FELA and the Fair Labor Standards Act (FLSA) when interpreting the FAA's § 1 exemption. *See, e.g.*, *Waithaka*, 966 F.3d at 19-22 (relying on FELA to interpret FAA); *Nieto v. Fresno Beverage Co., Inc.*, 245 Cal. Rptr. 3d 69, 76 (Cal. Ct. App. 2019) (relying on the FLSA to interpret FAA).

1. Under FELA, workers similar to those handling last-leg deliveries are "engaged in commerce." FELA requires railroads "engaging in commerce between any of the several States" to pay "damages to any person suffering injury while he is employed by such carrier in such commerce." 45 U.S.C. § 51. FELA coverage requires the employer and employee to have been engaged in interstate commerce at the time of injury. *Burtch*, 263 U.S. at 542. Because Congress "incorporat[ed] almost exactly the same phraseology into the Arbitration Act of 1925," it must have had FELA in mind when drafting the FAA. *Tenney Eng'g, Inc. v. United Elec. Radio & Machine Workers of Am. (U.E.) Local 437*, 207 F.2d 450, 453 (3d Cir. 1953).

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nations from discriminating against U.S. citizens engaged in commerce in those nations).

This Court has interpreted FELA's similar language to include employees who handle intrastate legs of goods' interstate journeys, as well as those who do not even personally transport goods or passengers, but whose work is "so closely related to" interstate transportation "as to be practically a part of it." *See supra* Part I (citing *Hancock*, 253 U.S. at 286 and *Burtch*, 263 U.S. at 542, 544); *see also Shanks*, 239 U.S. at 558. In doing so, the Court engaged in a narrower "practical" rather than "technical" analysis. *See Chicago & N.W. Ry. Co. v. Bolle*, 284 U.S. 74, 78-79 (1931) (describing *Shanks*).

The First Circuit and the Ninth Circuit have relied on FELA to conclude that the meaning of "engaged in interstate commerce" when the FAA was enacted encompasses last-mile drivers. *Waithaka*, 966 F.3d at 17-22; *Rittmann*, 971 F.3d at 912-13. As a contemporaneous statute with "language nearly identical to that of Section 1 of the FAA," it would be odd for Congress to have intended the language in the two statutes to have different meanings. *Waithaka*, 966 F.3d at 19.

Courts have rejected the argument that FELA should not inform the meaning of the FAA because FELA is a remedial law that creates claims whereas the FAA controls how claims are resolved. This argument is unpersuasive and ignores the plain language of these statutes. The First Circuit explained that this Court never referenced FELA's remedial purpose when holding that FELA considers workers involved in an intrastate leg of an interstate journey to be engaged in interstate commerce. *Waithaka*, 966 F.3d at 22 (citing *Hancock*, 253 U.S. at 285-86). Moreover, all statutes are "remedial" to some

extent, because all statutes are designed to remedy some problem. Antonin Scalia, *Assorted Canards of Contemporary Legal Analysis*, 40 Case W. Res. L. Rev. 581, 585 (1989-90). "[T]here is not the slightest agreement on what . . . the phrase 'remedial statutes'" means. *Id.* at 583.

In short, because the FAA and FELA are contemporaneous and linguistically similar statutes, their "engaged in commerce" provisions should be construed similarly.

2. Case law interpreting the FLSA and the related Motor Carrier Act exemption further shows that workers handling intrastate legs of interstate journeys are engaged in interstate commerce. *See Nieto*, 245 Cal. Rptr. 3d at 76 ("[G]uidance regarding the 'engaged in commerce' standard for the FAA's transportation worker exemption may be found in cases discussing an exemption to . . . the Fair Labor Standards Act." (citation omitted)). The FLSA requires employers to pay overtime compensation to any employee working more than forty hours per week "who in any workweek is *engaged in commerce* or in the production of goods for commerce, or is employed in an enterprise *engaged in commerce*." 29 U.S.C. § 207(a)(1) (emphases added). Under the Motor Carrier Act exemption, the FLSA's overtime-pay requirement does not apply to a private motor carrier's employee when the employee "moves goods in interstate commerce and affects the safe operation of motor vehicles on public highways." *Foxworthy v. Hiland Dairy Co.*, 997 F.2d 670, 672 (10th Cir. 1993) (citing 49 U.S.C. §§ 3102, 10521).

Under these statutes, an employee's deliveries do "not have to cross state lines to engage in interstate

commerce." *McGee v. Corp. Express Delivery Sys.*, No. 01 C 1245, 2003 WL 22757757, at *4 (N.D. Ill. Nov. 20, 2003) (relying on this Court's "practical continuity of movement test" in *Walling*, 317 U.S. at 568). Rather, "[t]ransportation within a single state may remain 'interstate' in character when it forms a part of a 'practical continuity of movement' across state lines from the point of origin to the post of destination." *Foxworthy*, 997 F.2d at 672 (quoting *Walling*, 317 U.S. at 568). As this Court has noted, "Any other test would allow formalities to conceal the continuous nature of the interstate transit which constitutes commerce." *Walling*, 317 U.S. at 568. It is "practical considerations," not "technical conceptions," that determine whether an employee is engaged in interstate commerce. *Mitchell v. C.W. Vollmer & Co., Inc.*, 349 U.S. 427, 429 (1955); *see also South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2092-95 (2018) (rejecting a prior, "formalistic" physical presence rule for when states may require an out-of-state entity to collect and remit sales taxes in favor of a new test that considers "the day-to-day functions of marketing and distribution in the modern economy").

Looking to practical considerations rather than technical conceptions, this Court has clarified that a "break" or "temporary pause" in transportation, such as goods being placed temporarily in a warehouse, "does not necessarily terminate" those goods' "interstate journey." *Walling*, 317 U.S. at 568-69. Rather, "if the halt in the movement of the goods is a convenient intermediate step in the process of getting them to their final destinations, they remain 'in commerce' until they reach those points." *Id.* at 568. Applying these standards, the *Walling* Court reasoned that the employees might, depending on the

findings of fact on remand, be engaged in commerce under the FLSA where they worked at branches of a wholesale business constantly receiving merchandise on interstate shipments but did not deliver any of the merchandise across state lines. *Id.* at 565-66, 572.

Furthermore, in *Foxworthy*, the Tenth Circuit held that a route driver who delivered dairy products "solely within the State of Oklahoma"—a quintessential last-mile driver—was engaged in interstate commerce for purposes of the Motor Carrier Act. 997 F.2d at 671-72. The dairy products were produced in Fort Smith, Arkansas, and delivered to a refrigerated trailer in Ponca City, Oklahoma, where the employee would pick them up and deliver them to customers. *Id.* at 671-72. The court held that the employee was engaged in interstate commerce when transporting the dairy products solely within Oklahoma because the moment the products left Arkansas, they were destined for the Ponca City customers. *Id.* at 673. Thus, the employee's intrastate transportation was part of the "practical continuity of movement" of the dairy products from Arkansas to Oklahoma. *Id.* at 672, 674.

Finally, the California Court of Appeals relied in part on FLSA case law to reject an employer's argument that an employee did not fall under the FAA § 1 exemption because the employee only delivered products within California and did not cross state lines. *Nieto*, 245 Cal. Rptr. 3d at 76. Looking at FLSA precedent, *Nieto* held there is a "well-established principle [that] '[i]ntrastate deliveries of goods are considered to be interstate commerce if the deliveries are merely a continuation of an interstate journey.'" *Id.* (quoting *Bell v. H.F. Cox, Inc.*, 146 Cal.

Rptr. 3d 723, 737 (Cal. Ct. App. 2012)). Thus, the employee there was engaged in interstate commerce while making intrastate deliveries because the intrastate deliveries were a key part of moving the goods from other states to their final destinations in California. *Id.* at 76-77.

Applying the principles of these cases to the FAA, it is clear that—just like under FELA and FLSA—workers are engaged in interstate commerce when their work is closely tied to moving goods interstate from their origin in one state to their destination in another. Their work can be so closely tied regardless of whether the goods make a stop in a warehouse along the way and regardless of whether the worker crosses state lines. Under these principles, last-mile delivery workers fall squarely within those workers engaged in interstate commerce.

III. Excluding Last-Mile Drivers Would Undermine the Transportation-Worker Exemption's Purpose and Lead to Absurd Results.

Recognizing that last-mile drivers, like petitioners here, fall under the FAA's § 1 exemption is consistent with the purpose of the transportation-worker exemption and avoids absurd results. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("interpretations of a statute which would produce absurd results are to be avoided").

1. Congress enacted the FAA in 1925 against the backdrop of its "established or developing statutory dispute resolution schemes" passed in response to violent and disruptive labor disputes. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 1221 (2001). Based on this context, "[i]t is reasonable to assume"

that § 1 exempts "seamen" and "railroad employees" from the FAA "for the simple reason" that Congress "did not wish to unsettle" its existing dispute resolution schemes in those contexts. *Id.* Section 1's additional exemption of "any other class of workers engaged in foreign or interstate commerce" reflects Congress' broader concern with *all* "transportation workers and their necessary role in the free flow of goods." *Id.* That is, Congress was concerned with workers in transportation industries who were both vital to commerce and capable of grounding commerce to a halt. So in § 1, it reserved for itself the ability to continue regulating the disputes of workers integral to commerce rather than leave such disputes to "whatever arbitration procedures the parties' private contracts might happen to contemplate." *New Prime*, 139 S. Ct. at 537.

Excluding from the § 1 exemption those last-mile drivers who play a "direct and 'necessary role in the free flow of goods' across borders," *Saxon*, 596 U.S. at 458 (quoting *Circuit City*, 532 U.S. at 121), even if they are only responsible for one leg of that journey within one state, would undermine this general purpose. The interruption to commerce caused by a labor conflict does not depend on where along the stream of interstate commerce the conflict occurs: when cargo loaders place interstate shipments onto a truck, *cf. id.* at 457-58; commercial drivers move those goods across state lines to regional warehouses, *New Prime*, 139 S. Ct. at 536, 539; or, as here, other drivers haul those goods from regional warehouses to retail stores, consumers' homes, and other final destinations. A disruption at the beginning, middle, or end of this sequence impedes the interstate journey

of goods and thus commerce, contrary to congressional intent.

2. Excluding last-mile transportation workers from the FAA's § 1 exemption because they do not move goods across state lines would also lead to arbitrary results. Two commercial truck drivers performing the same work—completing the shipment of goods that have traveled in the stream of interstate commerce—would be classified differently based solely on the happenstance of a route.

Consider a delivery driver who completes the shipment of a product flown from Modesto, California to Kansas City, Missouri, a trip of over 1,700 miles across five state lines. A delivery driver assigned to the north side of the Missouri River wouldn't cross state lines while completing the shipment to a destination in Missouri, while a driver assigned to the south side of the river would. But regardless, without either last-mile driver making their deliveries, the shipment's interstate journey would be incomplete. Delivery drivers completing the shipment of products shipped to Omaha, Nebraska, right on the border with Iowa, would face similar haphazard application of the FAA depending on their route along the east and west sides of the Missouri River.

Section 1's exemption was designed to stabilize interstate commerce and promote predictability, not lead to these sorts of haphazard applications. In deciding this case, therefore, the Court should not disrupt its established, practical analysis of whether one's work is so directly related to interstate commerce as to be a part of it, in favor of an overly technical approach that treats crossing state lines as dispositive. *See Saxon*, 596 U.S. at 456 (defining a

"class of workers" based on the "actual work" they "typically carry out"); *cf. Mitchell v. Lublin, McGaughy & Assocs.*, 358 U.S. 207, 212 (1959) ("Where employees' activities have related to interstate instrumentalities or facilities, such as bridges, canals and roads, we have used a practical test to determine whether they are 'engaged in commerce[]'" within the meaning of FLSA); *C.W. Vollmer & Co.*, 349 U.S. at 429 ("The question whether an employee is engaged 'in commerce' within the meaning of the [FLSA] is determined by practical considerations, not by technical conceptions.").

CONCLUSION

The judgment of the Court of Appeals for the Second Circuit should be reversed, and this Court should not disturb settled law that last-mile drivers' contracts are exempt from the FAA.

Respectfully submitted,

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