

No. 24-935

IN THE
Supreme Court of the United States

FLOWER FOODS, INC., *et al.*,

Petitioners,

v.

ANGELO BROCK,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT

**BRIEF FOR THE CALIFORNIA
EMPLOYMENT LAW COUNCIL AS *AMICUS
CURIAE* IN SUPPORT OF PETITIONERS**

PAUL GROSSMAN
LESLIE L. ABBOTT
CHRIS A. JALIAN
Counsel of Record
SEAN D. UNGER
ERIC D. DISTELBURGER
PAUL HASTINGS LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
(213) 683-6000
chrisjalian@paulhastings.com

Counsel for Amicus Curiae

387975



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	4
I. The Court Should Reconfirm <i>Bissonnette</i> Is The Test And Reverse	4
A. This Court’s Precedents, Up And Through <i>Bissonnette</i> , Provide Another Avenue For Reversal.....	4
B. The Court’s Holding Below Failed To Follow <i>Bissonnette</i> , And Thus Should Be Overturned.....	8
II. CELC Asks The Court Confirm Which Circuit Decisions Chronicled In <i>Brock</i> Do Not Survive....	9
III. CELC Members Look For Clear Rules.....	14
CONCLUSION	16

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES	
<i>Allied-Bruce Terminix Cos. v. Dobson</i> , 513 U.S. 265 (1995).....	15
<i>Alvarado v. Dart Container Corp. of Cal.</i> , 4 Cal. 5th 542 (2018).....	1
<i>Bissonnette v. LePage Bakeries Park St., LLC</i> , 49 F.4th 655 (2d Cir. 2022)	6
<i>Bissonnette v. LePage Bakeries Park St., LLC</i> , 601 U.S. 246 (2024).....	2-4, 6-15
<i>Carmona Mendoza v. Domino’s Pizza, LLC</i> , 73 F.4th 1135 (9th Cir. 2023), <i>cert. denied</i> 144 S. Ct. 1391 (2024).....	2, 6, 10, 11
<i>Circuit City Stores, Inc. v. Adams</i> , 532 U.S. 105 (2001).....	4, 5
<i>Donahue v. AMN Servs., LLC</i> , 11 Cal. 5th 58 (2021).....	1
<i>Fed. Comm’n v. Consumers’ Rsch.</i> , 606 U.S. 656 (2025)	12
<i>Ferra v. Loews Hollywood Hotel, LLC</i> , 11 Cal. 5th 858 (2021).....	1

Cited Authorities

	<i>Page</i>
<i>Frlekin v. Apple Inc.</i> , 8 Cal. 5th 1038 (2020).....	1
<i>In re Grice</i> , 974 F.3d 950 (9th Cir. 2020)	14
<i>Lopez v. Cintas Corp.</i> , 47 F.4th 428 (5th Cir. 2022).....	11
<i>Marcelle v. Lupia</i> , 348 U.S. 956 (1955) (per curiam)	12
<i>Moses H. Cone Mem’l Hosp. v.</i> <i>Mercury Constr. Corp.</i> , 460 U.S. 1 (1983).....	15
<i>Preston v. Ferrer</i> , 552 U.S. 346 (2008).....	15
<i>Rittmann v. Amazon.com, Inc.</i> , 971 F.3d 904 (9th Cir. 2020)	6, 7, 10, 11
<i>Southwest Airlines Co. v. Saxon</i> , 596 U.S. 450 (2022).....	5, 10, 11, 13
<i>Sturgeon v. Frost</i> , 577 U.S. 424 (2016).....	12

Cited Authorities

	<i>Page</i>
<i>Tisdale v. Apria Healthcare LLC</i> , No. 2:24-cv-09620-AH, 2025 WL 1356942 (C.D. Cal. Apr. 24, 2025) <i>appeal filed</i> No. 25-3387 (9th Cir. May 28, 2025)	9, 10, 13
<i>Troester v. Starbucks Corp.</i> , 5 Cal. 5th 829 (2018)	1
<i>Viking River Cruises, Inc. v. Moriana</i> , 596 U.S. 639 (2022)	1
<i>Waithaka v. Amazon.com, Inc.</i> , 966 F.3d 10 (1st Cir. 2020)	6, 7, 10
<i>Walker v. Amazon Logistics, Inc.</i> , No. 1:25-cv-1840, 2025 WL 2933896 (N.D. Ohio Oct. 15, 2025)	9, 10
<i>Wallace v. Grubhub Holdings, Inc.</i> , 970 F.3d 798 (7th Cir. 2020)	14
<i>Wirtz v. Hotel, Motel & Club Emp. Union, Loc. 6</i> , 391 U.S. 492 (1968)	12
<i>Wirtz v. Local Unions 410, IUOE</i> , 366 F.2d 438	12
<i>Wooddell v. Int’l Bhd. of Elec. Workers, Loc. 71</i> , 502 U.S. 93 (1991)	12

Cited Authorities

Page

STATUTES

9 U.S.C. § 1.....4

9 U.S.C. § 2.....4

RULES

SUP. CT. R. 37.6.....1

INTEREST OF AMICUS CURIAE

Amicus Curiae California Employment Law Council (“CELC”) files this brief in support of petitioners Flower Foods, Inc., *et al.*¹ CELC is a voluntary, non-profit organization that promotes the common interests of employers and the general public in fostering the development in California of reasonable, equitable, and progressive rules of employment law. CELC’s membership includes approximately 80 private-sector employers in the State of California who collectively employ well in excess of a half-million Californians. CELC has participated as *amicus* in many of California’s leading employment cases,² and several in this Court.³

Many members of *amicus* have arbitration agreements with some or all of their employees, and therefore have a significant stake in the outcome of this case. *Amicus*’ experience with and expertise in the practical aspects

1. Pursuant to Supreme Court Rule 37.6, *amicus* declares that no party or any counsel in the pending appeal either authored this brief in whole or in part, or made a monetary contribution to fund the preparation or submission of the accompanying brief, and no person or entity made a monetary contribution intended to fund the preparation or submission of the accompanying brief other than *amicus* and its members.

2. See, e.g., *Donahue v. AMN Servs., LLC*, 11 Cal. 5th 58 (2021); *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021); *Frlekin v. Apple Inc.*, 8 Cal. 5th 1038 (2020); *Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (2018); *Alvarado v. Dart Container Corp. of Cal.*, 4 Cal. 5th 542 (2018).

3. See, e.g., *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022).

of employment matters allow it to assist this Court in evaluating the issues in this case.

SUMMARY OF ARGUMENT

After years of divergence in the lower courts, this Court’s decision in *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246 (2024) set clear rules for the Federal Arbitration Act’s transportation worker exemption. To fall within the exemption, this Court said, “any” employee claiming the exemption is “require[ed]” to show they “play[ed] a direct and ‘necessary role in the free flow of goods’ across borders[.]” *Id.* at 256 (citation omitted). The beauty of the test is its simplicity. Employees and HR managers alike can easily understand and apply the test with nothing more than common sense—and without the need for a law degree.

Lower courts, however, have failed to apply *Bissonnette*. As the decision below highlights, lower courts have looked for nuance when this Court looks for clean lines. Cert. Pet. App. at 18a-22a. This Court instructs to look to the worker and the work he or she performed, not to undertake an employer-focused review of business operations. *Bissonnette*, 601 U.S. at 253-54. Make the analysis straightforward, this Court says. *Id.* Do not create a test that “turn[s] on arcane riddles about the nature of a company’s services.” *Id.* at 254.

But courts below have failed to adhere to that message. Lower courts continue to focus on the business and not the worker’s work. *See, e.g., Carmona Mendoza v. Domino’s Pizza, LLC*, 73 F.4th 1135, 1138 (9th Cir. 2023), *cert. denied* 144 S. Ct. 1391 (2024). And, as evidenced by

the Tenth Circuit's decision, lower courts have continued to develop multi-factor, fluctuating tests that even the trained lawyer has trouble applying. Cert. Pet. App. at 18a-22a.

CELC's ask as *amicus* is straightforward: Reaffirm the simple test that *Bissonnette* directs. Each element of the test is binary. Does the exemption potentially apply to *any* worker claiming the exemption regardless of industry? *Bissonnette's* answer: Yes, the test applies to "any exempt worker[.]" *Bissonnette*, 601 U.S. at 256. Would a tangential or once-removed connection to the movement of goods across state lines qualify? *Bissonnette's* answer: No, the exemption was intended a "narrow scope[.]" and thus to qualify for it, the work must be "direct and 'necessary [to] the free flow of goods' across borders." *Id.* (citations omitted). Up or down. Yes or no. Clear lines. The binary nature of the analysis helps both employer (from small to big) and employee (from executive to warehouse worker) understand whether a given worker is exempt or not.

CELC asks that the Court confirm for the lower courts that *Bissonnette* is the test, and that their continual push to make the test more complex (and multi-factored) is inconsistent with the easily applicable approach this Court has developed. *Bissonnette* fully answers the question presented in this appeal and should lead to reversal. The lower courts need only be reminded to listen to and apply that answer.

ARGUMENT

I. The Court Should Reconfirm *Bissonnette* Is The Test And Reverse

Amicus agrees with Petitioners' arguments and will not repeat them. Petitioners' discussion of the statutory language and its history is compelling and dispositive. Reversal should follow.

A. This Court's Precedents, Up And Through *Bissonnette*, Provide Another Avenue For Reversal

While *amicus* agrees with Petitioner's analysis, CELC suggests that to reverse, the Court need only apply *Bissonnette*. The opinion readily provides controlling answers. First, some context.

The FAA makes "valid, irrevocable, and enforceable" any contract "to settle by arbitration a controversy thereafter arising out of such contract or transaction." 9 U.S.C. § 2. A narrow exemption exists, however, under Section 1 of the FAA; it extends no further than "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1.

In *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), this Court applied cannons of statutory interpretation to understand what Congress intended by the phrase "any other class of workers engaged in . . . interstate commerce." *Id.* at 113 (citation omitted). The Court explained that this phrase is "controlled and

defined by reference to the enumerated categories of workers which are recited just before it,” *i.e.*, “seamen” and “railroad employees.” *Id.* at 114-15. The “linkage” between “seamen” and “railroad employees,” the Court found, is that both “concern . . . transportation workers and their necessary role in the free flow of goods.” *Id.* at 121. “[T]he residual exclusion of ‘any other class of workers’” is therefore limited in the same way, *id.*, and should “be afforded a narrow construction.” *Id.*

Decades later, in *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022), this Court again addressed the scope of the exemption and held that to claim the exemption, “any such worker must at least play a direct and necessary role in the free flow of goods across borders.” *Id.* at 458 (citations and quotation marks omitted). “Put another way,” the Court continued, “transportation workers must be actively ‘engaged in transportation’ of those goods across borders via the channels of foreign or interstate commerce.” *Id.* (citing *Circuit City*, 532 U.S. at 121).

Saxon “rejected” an “industrywide approach.” *Saxon*, 596 U.S. at 456. Just as “seamen” refers to a “subset of workers engaged in the maritime shipping industry”—“only those who work on board a vessel”—transportation workers must be understood within this same narrow context and should not be expanded to include “virtually all employees of major transportation providers.” *Id.* at 446-61. Rather, the proper analysis requires focus on “‘the *performance* of work’ . . . *emphasiz[ing]* the actual work that the members of the class, as a whole, typically carry out.” *Id.* at 456 (emphasis in original, citation omitted).

Two years later, in *Bissonnette*, this Court again was met with confusion over the exemption. The Second Circuit held the transportation worker exemption inapplicable unless the worker worked in a “transportation industry[;]” it found that a worker who does not work in a transportation industry cannot be “excluded from the FAA[.]” *Bissonnette v. LePage Bakeries Park St., LLC*, 49 F.4th 655, 661-62 (2d Cir. 2022). This Court reversed.

Having told lower courts to focus on the work performed not the industry of the worker, this Court again rejected an industry-based focus and again sought to clarify both the narrowness and simplicity of the test it expected lower courts to apply. *Bissonnette*, 601 U.S. at 252-54. The Court sought to avoid “arcane riddles about the nature of a company’s services,” such as: “Does a pizza delivery company derive its revenue mainly from pizza or delivery? Do companies like Amazon and Walmart—which both sell products of their own and transport products sold by third parties—derive their revenue mainly from retail or shipping?” *Id.* at 254. These were the wrong questions and would entangle the parties on irrelevant disputes. “Mini-trials on the transportation-industry issue could become a regular, slow, and expensive practice in FAA cases.” *Id.* So focus on the worker and the work performed, the Court instructed, not the industry: “The relevant question was ‘what [Saxon] does at Southwest, not what Southwest does generally.’” (*Id.* (quoting *Saxon*, 596 U.S. at 456).)⁴

4. That this Court chose to use Amazon and pizza delivery as examples strikes CELC as a suggestion that the Court was aware of the decisions in *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904 (9th Cir. 2020), *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020), and *Carmona Mendoza, supra*, and disfavored those decisions.

But the Court did not stop there. In rejecting defendant’s argument that “[b]ecause ‘virtually all products move in interstate commerce,’ ‘all workers who load or unload goods—from pet shop employees to grocery store clerks—will be exempt from arbitration[,]’” *Bissonnette*, 601 U.S. at 256, the Court went out of its way to confirm the opposite: “We have *never* understood § 1 to define the class of exempt workers in such limitless terms.” *Id.* (emphasis added). “To the contrary,” the Court held, “a transportation worker is one who is actively engaged in transportation of . . . goods across borders via the channels of foreign or interstate commerce.” *Id.* at 256 (citation and quotation marks omitted). “In other words, any exempt worker must at least play a direct and necessary role in the free flow of goods across borders.” *Id.* (emphases added; quotation marks and citation omitted). “These requirements”—“any” worker, “must,” “direct and necessary” “goods across borders”— “limit[] § 1 to its appropriately narrow scope.” *Id.* (quotation marks and citation omitted).

CELC can’t help but think that the clarity of the *Bissonnette* discussion was meant as a message. “Requirements” is not the language of nuance. “Direct and necessary” is not vague. Application of the test to “any” worker is not an invitation to find exceptions. Rather, the Court used language any lay person would understand, which was binary, rigid, and simple. That language controls here.

As the Tenth Circuit was express in its reliance on *Rittmann* and *Waithaka* in deciding *Brock*, *see infra*, CELC asks that should the Court reverse, it make clear that *Rittmann* and *Waithaka* and the cases that apply them are also set aside.

B. The Court’s Holding Below Failed To Follow *Bissonnette*, And Thus Should Be Overturned

The question, then, is whether the Tenth Circuit properly applied *Bissonnette*’s test. The answer is clearly “no.”⁵ Rather than focus on the worker, the court below focused on the contractual relationships between the employer, its customers, and the worker. Cert. Pet. App. at 18a-22a. The problem with that approach is apparent: The same worker might be a transportation worker in one instance, but not in another, depending on factors wholly unrelated to the duties he performs.

Brock, for example, was found to be a transportation worker notwithstanding that he “operates his own business, takes title to the goods, services his own customers, and can increase profits through various business strategies of his choice,” all within a single state. Cert. Pet. App. at 22a. In other words, under the Tenth Circuit’s formulation, it matters not what the worker is doing, but rather for whom the worker works—again an *industry* focus not a worker focus. That’s no different than the test *Bissonnette*, adhering to *Saxon*, expressly rejected. *Bissonnette*, 601 U.S. at 254.

Bissonnette makes clear that the Tenth Circuit’s analysis was incorrect. First, no emphasis was placed on the “requirements” that the work be “direct and necessary” to the interstate movement of goods. *Bissonnette*, 601 U.S. at 256. Second, contrary to *Bissonnette*’s instruction to

5. The Tenth Circuit cited *Bissonnette* only once despite it being the Court’s most recent statement of the law. Cert. Pet. App. at 11a.

avoid “arcane riddles,” *id.* at 247, the Tenth Circuit’s test is a paradigm of confusion, requiring an in-depth analysis to “the various relationships at play.” Cert. Pet. App. at 22a. A straightforward application of *Bissonnette* compels reversal.

II. CELC Asks The Court Confirm Which Circuit Decisions Chronicled In *Brock* Do Not Survive

CELC’s strong desire is that the Court keep to the *Bissonnette* test, apply it, and be emphatic in that application. It will hopefully lead to greater certainty and fewer conflicts reaching this Court.

But if the Court is looking for a more incremental approach or wishes to leave open further future development, CELC, as it did in *Bissonnette*, has a suggestion: Make *express* what Circuit decisions do not survive. Why? Because history teaches that without such clear statements the disparity in lower court approaches will remain.

Take for example two recent district court cases: *Tisdale v. Apria Healthcare LLC*, No. 2:24-cv-09620-AH (PVCx), 2025 WL 1356942, at *1 (C.D. Cal. Apr. 24, 2025) *appeal filed* No. 25-3387 (9th Cir. May 28, 2025), and *Walker v. Amazon Logistics, Inc.*, No. 1:25-cv-1840, 2025 WL 2933896, at *6 (N.D. Ohio Oct. 15, 2025).

At issue in *Tisdale* were drivers delivering medical equipment from store branches to customers. The equipment they delivered, some of which originated out of state, first sat in a distribution center in California, then a branch in California “where ‘it generally sits for over 30

days,” before the drivers ever interacted with the goods. *Tisdale*, 2025 WL 1356942 at *4. Nevertheless, relying heavily on *Rittmann* and *Carmona Mendoza*, the court held the drivers exempt transportation workers, akin to the “last mile” delivery drivers at issue in *Rittmann*. *Id.* Ignoring that *Bissonnette* expressly *rejected* the idea that “all workers who load or unload goods—from pet shop employees to grocery store clerks”—fall within the exemption, *Bissonnette*, 601 U.S. at 256, the *Tisdale* court embraced reasoning that any worker within an “interstate supply chain,” regardless of work done, falls within the exemption, so long as at one point they touched the good. *Tisdale*, 2025 WL 1356942, at *4.

Now compare that with the court’s decision in *Walker*. There, the Court dealt with Amazon delivery drivers like in *Rittmann* and *Waithaka* on which the Tenth Circuit grounded its analysis below. The *Walker* Court understood that the implication of *Saxon* and *Bissonnette* was to *negate Rittmann* and *Waithaka*:

Walker cites two circuit court opinions in support of his position. *See* Doc. 10, at 2 (citing *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904 (9th Cir. 2020) and *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020)). But these decisions predate *Saxon* and *Bissonnette*[sic]. And while both of these cases involved Amazon Flex drivers like Walker, both decisions also used language that conflicts with *Saxon* and *Bissonnette*.

Walker, 2025 WL 2933896, at *6.

The Ohio court thus understood *Bissonnette* to reject prior circuit-level reasoning. The California court did not. This confusion will remain without this Court’s definitive statement. Post-*Saxon*, for example, the Ninth Circuit believed *Rittmann* remained good law despite the evident conflict in its reasoning with *Saxon*’s.⁶ Compare *Rittmann*, 971 F.3d at 918 (“In this case, Amazon’s business includes not just the selling of goods, but also the delivery of those goods, typically undertaken by those businesses we have considered to be engaged in foreign and interstate commerce, e.g., FedEx and UPS.”) with *Saxon*, 596 U.S. at 456 (“*Saxon* is therefore a member of a ‘class of workers’ based on what she does at Southwest, not what Southwest does generally.”).

CELC suggests that should the Court be more inclined to leave open some issues for future cases, even while reconfirming *Bissonnette*, it should, at a minimum, make express which Circuit decisions it is overruling when it otherwise might leave that to implication. The Tenth Circuit below chronicled the divergence among the Circuits. Cert. Pet. App. at 13a-15a (collecting cases like *Rittmann*, *Waithaka*, and *Lopez v. Cintas Corp.*, 47 F.4th 428 (5th Cir. 2022)). A clear statement of which cases on that list survive and which ones do not will be of immeasurable value in slowing the pace of the current disputes.⁷

6. See, e.g., *Carmona Mendoza*, 73 F.4th at 1137 (“Our prior decision squarely rested upon our reading of *Rittmann* [], a case whose continued validity *Saxon* expressly declined to address. *Saxon*, 142 S. Ct. at 1789 n.2. Unless *Rittmann* is somehow ‘clearly irreconcilable’ with *Saxon*, we are required to continue to follow it.”).

7. Helpful to district courts in navigating what remains good law, this Court has often been express when rejecting Circuit-level

Should the Court agree and do so, CELC expects that the expressed or implied result will be a presumption that two—and only two—categories of workers would fall within the transportation worker exemption, consistent with its “appropriately narrow scope.” *Bissonnette*, 601 U.S. at 256.

The first category is workers who physically transport goods or people across borders—such as the airline pilot or railroad conductor. Their inclusion should be obvious and would fit expressly under the test in both *Bissonnette* and *Saxon*.

The second category would include workers who “typically” or “frequently” physically load or unload goods “directly” from the interstate transporter, consistent with

approaches. *E.g.*, *Fed. Comm’n v. Consumers’ Rsch.*, 606 U.S. 656, 672 (2025) (“We reject . . . the Fifth Circuit’s combination theory.”); *Sturgeon v. Frost*, 577 U.S. 424, 438 (2016) (“We reject the interpretation of Section 103(c) adopted by the Ninth Circuit.”). And, the Court has likewise been clear when adopting a Circuit-level approach. *E.g.*, *Wooddell v. Int’l Bhd. of Elec. Workers, Loc. 71*, 502 U.S. 93, 102, 112 (1991) (citing specific cases; “As respondents must be aware, the interpretation we adopt today has been the law in a number of Federal Circuits for some time and was adopted 10 years ago by the Court of Appeals for the Ninth Circuit in a case specifically involving the IBEW Constitution.”); *Wirtz v. Hotel, Motel & Club Emp. Union, Loc. 6*, 391 U.S. 492, 507 (1968) (“In such case we adopt the reasoning of the Court of Appeals for the Second Circuit in *Wirtz v. Local Unions 410, IUOE*, 366 F.2d 438, 443”). Ideal here would be an express rejection and an express adoption (or clarification). *E.g.*, *Marcelle v. Lupia*, 348 U.S. 956, 957 (1955) (per curiam) (“We reject the construction placed upon the statute by the Fifth Circuit . . . and approve the construction placed thereon by the Second Circuit whose judgment is affirmed.”).

Saxon. Such loaders/unloaders would engage “directly” with the interstate conduit (the plane that crossed the border) and be “necessary” to the movement of goods across state lines in that without their efforts the goods—as a practical matter—would not have moved across state lines and would simply return to their point of origin.

Every other indirect worker—the shelf-stocker, the retail clerk, the internal warehouse worker, or the local delivery driver who never touched the goods until they were already in the state—would be neither direct nor necessary. Such a rule, in turn, would negate the difficult to administer nuances courts have sought to permit. The question would not be whether one is a last mile driver or whether the good has come to rest—though surely, and contrary to *Tisdale*, when a good has sat within a state for a period of time, any further worker engaging with the good would be neither “direct” nor “necessary” to its movement across state borders (and the Court could say so as an intermediate step).⁸ Instead, the Court would simply ask: Was your job to drive the good over state lines? Or, were you the first to unload it from the plane? Simple. Administrable. Little litigation fuss.

These pronouncements are not only fully consistent with *Bissonnette*, but would also confirm that the test

8. On this point, CELC agrees with Petitioners that the *Bissonnette* requirements applied in full negate the need for an intermediate come-to-rest step. (See Pet. Br. 37-38 (filed December 4, 2025).) Surely, once a good has come to rest, anyone interacting with that good thereafter is neither “direct” nor “necessary” to the movement of goods across borders. But if the Court is looking for an incremental step, the resting of a good for any period of time is an intermediate step the Court could take.

looks to the role of the worker and not to the nature of the good or the good's origin story. "Today almost every object we buy has some component that comes from out-of-state." *In re Grice*, 974 F.3d 950, 958 (9th Cir. 2020). But that focus is not the exemption's focus. This Court has already refused to bring "all workers who load or unload goods" within the exemption. *Bissonnette*, 601 U.S. at 256; see also *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir. 2020) (Barrett, J.) ("A package of potato chips, for instance, may travel across several states before landing in a meal prepared by a local restaurant and delivered by a Grubhub driver; likewise, a piece of dessert chocolate may have traveled all the way from Switzerland.").

At a minimum, however, the express confirmation of what reasoning applies and, importantly, which cases from within those discussed by the Tenth circuit decision in *Brock* fall along with it and which do not, will aid with *Bissonnette*'s application in future cases.

III. CELC Members Look For Clear Rules

The need for a clear and easily administrable test like that confirmed in *Bissonnette* is of particular import to CELC—an organization that represents close to 100 private-sector employers who collectively employ hundreds of thousands of Californians, many of whom have private arbitration agreements.

CELC members should not need lawyers (or judges for that matter) to understand whether a newly onboarded worker will be bound by an arbitration agreement, or whether he may avoid his contractual obligations by fitting within the transportation worker exemption. Multi-

factored tests, like that fashioned by the Tenth Circuit, fuel litigation and make employee and employer alike uncertain whether contractual agreements on the forum for disputes will hold. And all from a statute that was intended by Congress to do the very opposite.

As Justice Ginsburg explained for the Court in *Preston v. Ferrer*, 552 U.S. 346 (2008), the FAA cannot abide “long delayed [threshold proceedings], in contravention of Congress’ intent ‘to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.’” *Id.* at 357 (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983)); accord *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 282 (1995) (O’Connor, J., concurring) (avoiding a construction of the FAA that would “foster prearbitration litigation that would frustrate the very purpose of the statute”). This Court reaffirmed that animating concern in *Bissonette*. 601 U.S. at 254 (“All this complexity and uncertainty would breed[] litigation from a statute that seeks to avoid it.”) (citation and quotation marks omitted). CELC asks this Court apply it here again.

CONCLUSION

CELC asks that the Court reverse the decision below, reaffirm the Court's commitment to the *Bissonnette* test, and expressly reject the circuit-level decisions on which the Tenth Circuit relied.

Respectfully Submitted,

PAUL GROSSMAN
LESLIE L. ABBOTT
CHRIS A. JALIAN
Counsel of Record
SEAN D. UNGER
ERIC D. DISTELBURGER
PAUL HASTINGS LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
(213) 683-6000
chrisjalian@paulhastings.com

Counsel for Amicus Curiae

December 11, 2025