No. 24-935

IN THE
Supreme Court of the United States

FLOWERS FOODS, INC., ET AL.,
Petitioners,

v.

ANGELO BROCK,
Respondent.

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

BRIEF FOR *AMICUS CURIAE* AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE[1]

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a federation of 64 national and international labor organizations that represent 15 million working people. Over the course of its 140-year history, dating to 1886, the AFL-CIO has gained significant expertise in the structure of work, including the transportation work at issue in this case. It has an interest in this Court's jurisprudence reflecting the realities of work in our Nation.

It also has a historical interest in this case insofar as many parties to cases before the Railroad Labor Board (RLB), which administered the Transportation Act of 1920, were unions affiliated with the AFL at the time. As this Court has recognized, those precedents inform the proper interpretation of the Federal Arbitration Act (FAA).

Beyond its historical interests, the AFL-CIO has current interests in this case as well. Many of its affiliates' members rely on arbitration to resolve labor disputes and, as this Court has recognized, they have an interest in ensuring that arbitration under the FAA does not interfere with the dispute-resolution mechanisms administered pursuant to other statutes. Additionally, where its affiliates' members may not be covered by arbitration under a collective-bargaining agreement or labor statute, the AFL-CIO has an interest in ensuring that those workers may enforce their legal rights at the workplace through appropriate forums provided by federal and state law, unimpeded by unduly narrow interpretations of the exemption to FAA coverage.

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity, other than the *amicus curiae*, made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

I. Brock falls within the FAA's § 1 exemption because he delivers baked goods locally as part of their continuous movement, intended from the outset and at all times, from out-of-state bakeries to in-state retail stores.

This Court interprets the FAA in light of its ordinary meaning at the time of enactment, informed by Congress's presumed knowledge of pre-existing precedent. By the time Congress enacted the FAA, both this Court and the RLB recognized that work performed locally in a segment of an overall interstate journey was part of interstate transportation, especially where the parties always intended the continuous interstate transportation of goods.

This Court first announced that approach in *Gibbons v. Ogden*, 22 U.S. (9 Wheat. 1) 1 (1824), and amplified it in case after case in the century from that decision to the FAA's enactment. Under that precedent, intermediate layovers—including at distribution warehouses—did not undermine the transportation's interstate character. Whether the shipper itself transported the cargo or did so through a series of local contractors was also irrelevant. The key to the Court's jurisprudence was the essential character of the movement: where did the parties intend for the shipment to start and ultimately stop? Transportation that required multiple companies to complete each segment of an overall through-line was no less interstate for the corporate cooperation.

RLB precedent from 1920 through 1925 fully accorded with those basic principles. For example, the RLB repeatedly exercised jurisdiction over local delivery workers—like lighterers, warehouse truckers, express truck drivers, and freight handlers—who themselves never crossed state lines for their jobs. That's no sur-

prise. Numerous railroad positions never required workers to travel out of state, yet all those positions contributed directly to the operation of the railroad.

Consistent with this Court's focus on the movement of the goods transported, rather than the corporate entity conducting the hauling, the RLB consistently found railroads in violation of the Transportation Act when they contracted out work subject to prior awards for railroad workers' wages. The major theme of that long line of decisions is that Congress provided dispute-resolution mechanisms in the Transportation Act to safeguard the public's right to uninterrupted travel, and if railroads could evade the fruits of those mechanisms—wage awards—by contracting out railroad work, the contracted-out workers in turn could strike and disrupt the public's right to uninterrupted travel. The public interest accordingly depended on whether the regulated work functioned as part of the railroad operation, not on whether the workers themselves were direct railroad employees or employees of companies who contracted with railroads.

Brock and other delivery drivers complete Flowers's delivery of goods baked in one state and shipped to retail outlets in another. They are engaged in interstate transportation under that precedent.

II. The Court's FAA precedents overlook decisive evidence that, as originally understood, FAA § 1 exempted all employment contracts, not merely those with transportation workers. That evidence is the marginal note to § 1, printed in the Statutes at Large. FAA, Pub. L. 68-401, 43 Stat. 883, 883 (1925). That note says the FAA is "[n]ot applicable to employment contracts of workers." *Id.*

The Secretary of State prepared that marginal note, pursuant to his obligation—in effect from 1874 through 1950—to publish Statutes at Large at the close of each

session of Congress. He discharged that obligation with the utmost care, recognizing that, by law, the published Statutes at Large provides legal evidence of the content of federal law. *See* 1 U.S.C. § 112.

The Court accordingly erred in overlooking that evidence when it decided *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), and limited the § 1 exemption to contracts with transportation workers, rather than all employment contracts. To be fair, no party to that case even cited the session law, let alone highlighted the significance of the marginal note.

Recognizing the force of statutory stare decisis, we don't ask the Court to correct that mistake in this case. But the Court should account for that decisive evidence of the original public meaning of the scope of § 1's exemption by making sure not to compound the error with an unduly narrow interpretation of transportation work. Fortunately, this Court, for two centuries now, has properly understood that interstate transportation includes local delivery of goods that are part of an overall interstate journey. The Court should reject petitioner's request to retreat from that longstanding understanding.

ARGUMENT

I. Brock falls within the § 1 exemption because he delivers baked goods locally as part of their continuous movement from out-of-state bakeries to in-state retail stores, and the parties to the transportation of those goods originally and persistently intend them to cross state lines.

This Court follows a two-step test for exemption under § 1. *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 455 (2022). First, it identifies the relevant "class of

workers" to which the worker belongs, focusing on the work performed by the worker himself rather than on his employer's business more generally. *Id.* at 455–56. Next, it determines whether that "class of workers is engaged in foreign or interstate commerce." *Id.* at 455 (cleaned up). The second inquiry requires the worker to "play a direct and necessary role in the free flow of goods across borders" or, equivalently, to be "actively engaged in transportation of . . . goods across borders via the channels of foreign or interstate commerce." *Id.* at 458 (cleaned up). The worker, however, needn't himself "physically move goods or people across" state or international boundaries. *Id.* at 461–63.

A. Brock belongs to a class of workers who deliver Flowers's products in trucks to Flowers's customers.

All agree Brock belongs to a class of workers who deliver Flowers goods in trucks to its customers. Pet. App. 11a; Pet. Br. 11; Resp. Br. 15. All also agree that, like Flowers's other delivery drivers, Brock doesn't himself cross state lines as part of that delivery. Pet. App. 12a; Pet. Br. 11; Resp. Br. 16.

Brock works as part of Flowers's direct-store-delivery program, Pet. App. 4a, through which Flowers distributes its products directly to its customers' stores (as opposed to its customers' warehouses). CA.App. 141.[2] Flowers's customers are retail outlets, like supermarkets and restaurants. *Id.*

To start the direct-store delivery process, Brock submits orders for Flowers's Colorado customers to out of state bakeries in Texas, Nevada, California, Ar-

[2] "CA.App." refers to the Defendants-Appellants' appendix filed with the Tenth Circuit as document #19-1.

izona, and other states. Pet. Br. 9; JA 96; CA.App. 266. The out-of-state bakeries then bake the perishable goods and ship them across state lines to Flowers's warehouse in Colorado, where Flowers workers unload them and put them in a designated place. JA 93, 95–96; Pet. App. 5a. Brock then picks up the products the evening they arrive and delivers them, unaltered, to retail outlets for sale. CA.App. 272; JA 9, 96.

Because those baked goods have a "very limited shelf life," they are "not held in any sort of inventory except in exceptional circumstances." CA.App. 272. They aren't "altered or processed during the temporary pause at the distribution" warehouses where they typically stay only six to twelve hours. *Id.* In the words of a Flowers officer, the products "are in nearly continuous movement from the [out-of-state] point of origin to the [in-state] point of destination." *Id.* Indeed, Flowers tracks the interstate shipments from the producing bakeries to the retail outlets, JA 96, 23 (§ 10.1), and delivery drivers must remove stale products from the retail stores, a certain percentage of which Flowers buys back. JA 25–26.

Flowers and its bakeries "are aware that the products they produce in response to such orders are for end customers, and not simply a warehouse, given the structure of the [direct store delivery] system, the perishable nature of the goods, and the specific quantity ordered by each Distributor." CA.App. 272. That awareness results, in part, from the distributor agreement itself, which obligates Flowers to make and deliver baked goods to its in-state distributors for the purpose of supplying them to in-state retail outlets. JA 17 (§ 6.1); *see also* JA 9–10 (§§ 2.1, 2.2–2.3, 2.5).

In short, the agreed class of drivers to which Brock belongs (those who deliver Flowers goods in trucks to its customers) performs the final segment of a contin-

uous movement of baked goods from out-of-state bakeries to in-state retailers—with Flowers, the retailers, and delivery drivers like Brock fully aware, from the get-go, that the baked goods are intended to make this interstate journey from bakeries to retail outlets.

B. Brock and other Flowers delivery drivers engage in interstate transportation by completing the last leg of a continuous movement of baked goods, intended from the outset and throughout the journey to cross state lines.

This Court's recent FAA cases emphasize the fundamental tenet that courts properly read statutes in accord with their "ordinary meaning at the time Congress enacted" them. *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (cleaned up). *Accord Southwest Airlines*, 596 U.S. at 455. This Court also "'generally assumes that, when Congress enacts statutes, it is aware of this Court's relevant precedents,'" *Bartenwerfer v. Buckley*, 598 U.S. 69, 80 (2023) (quoting *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 701 (2022)), and other precedents construing "statutes designed to protect the movement of goods in commerce." *See Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 253 (citing *Circuit City*, 532 U.S. at 121). Specifically, this Court has looked to RLB precedent under the Transportation Act of 1920, §§ 300–16, 41 Stat. 456, 469–74 (1920), to limn FAA's § 1 exemption. *New Prime*, 586 U.S. at 120 n.11. Applying those standards, Flowers's delivery drivers clearly engage in interstate transportation.

1. Since 1824, this Court has recognized that intrastate navigation is part of interstate commerce when sufficiently "connected" to an interstate journey. *Gibbons*, 22 U.S. at 197, 239–40 (invalidating state law

giving seamen exclusive rights to navigate steamships within the state, where federal law regulated coastal navigation regardless of vessel). As Chief Justice Marshall explained for the Court, "commerce," under the Constitution, is a "unit, every part of which is indicated by the term," so interstate commerce does not "stop at the external boundary line of each State, but may be introduced into the interior." *Id.* at 194. As a result, if a "foreign voyage may commence or terminate at a port within a State," interstate commerce continues into the state. *Id.* at 195.

The Court amplified this analysis when railroads overtook sea-based navigation as the Nation's primary means of interstate transportation. Where there is "continuous transportation of goods" reflecting "but one voyage" across state lines, the continuous journey is interstate commerce, regardless of the 'instrumentalities by which the transportation from the one point to the other is effected . . . ." *Wabash, St. Louis & Pac. Ry. Co. v. Illinois*, 118 U.S. 557, 572–73, 577 (1886) (invalidating state law purporting to regulate rates only of the intrastate segment of railroad transportation that was part of an interstate journey). The contrary approach, with each state regulating intrastate "transportation of goods and chattels through the country," would interfere with and "seriously embarress[]" [sic.] interstate transportation. *Id.* at 573.

This analysis governed case after case leading up to the FAA's 1925 enactment.

A picture-frame-deliverer, who delivered pictures only within Greensboro, North Carolina, engaged in interstate commerce where the picture company shipped the goods from Chicago, Illinois, to a railroad depot in Greensboro for the worker to pick up and deliver locally. *Caldwell v. North Carolina*, 187 U.S. 622, 630–32 (1903). "That the articles were sent as freight by rail,

and were received at the railroad station by an agent who delivered them to the respective purchasers, in nowise changes the character of the commerce as interstate." *Id.* at 632. Exempting from interstate transportation goods sent to a local delivery agent, the Court feared, "would evidently take a considerable portion of . . . traffic out of the salutary protection of the interstate commerce clause of the Constitution." *Id.*

A stove range deliverer who worked only within an Arkansas county and was convicted for operating without a state license obtained a vacatur of his conviction under the state licensing law. *Crenshaw v. Arkansas*, 227 U.S. 389, 392, 395 (1913). Looking to substance, not labels, the Court found the local delivery to be part of interstate commerce because "[o]rders are taken and transmitted to the manufacturer in another state for ranges to be delivered in fulfillment of such orders, which are in fact shipped in interstate commerce and delivered to the persons who ordered them." *Id.* at 401.

Similarly, shipping lumber between two Texas cities for export to Europe was foreign commerce. *Texas & New Orleans R.R. Co. v. Sabine Tram Co.,* 227 U.S. 111, 122 (1913). This conclusion stood even though the contract between the exporter, who ordered the shipment, and the manufacturer, which sent the lumber on its way, did not address the lumber's final destination. *Id.* at 123 (contract itself "did not contemplate, provide for, or even intend, that the freight should go beyond" a port city within Texas). An agreed final destination was irrelevant. *Id.* at 124–25. The dispositive question was whether there was "continuity of movement" to a "foreign destination intended at the time of the shipment." *Id.* at 124. The "absence of a definite foreign destination" did not undermine the essential interstate character of the shipment. *Id.* at 130.

Likewise, a grain producer that sold grain in-state to buyers who later shipped them to markets in other states engaged in interstate commerce. *Lemke v. Farmers' Grain Co. of Embden, ND*, 258 U.S. 50, 53–55 (1922). The producer did not itself conduct the interstate shipment but knew its buyers would ship its wheat out of state. *Id.* at 54. This Court had "no question" that such a "course of dealing constitutes interstate commerce . . . ." *Id.*

Indeed, a "through shipment" of grain—that is, a continuous one with local intermediate points[3]—maintained its "interstate character" even when the grain was "stored in warehouses and mixed with other grain" at an intermediate point in the journey. *Bd. of Trade of City of Chicago v. Olsen*, 262 U.S. 1, 33–34 (1923).

And the last leg—from one station in Cincinnati (Madisonville) to another in Cincinnati (Oakley)—of lumber's journey from the South was interstate transportation where the Cincinnati-based shipper ordered the lumber from across state lines. *Baltimore & Ohio S.W. R.R. Co. v. Settle*, 260 U.S. 166, 167–68 (1922). The shipper's "original and continuing intention so to reship" the lumber locally made that last leg of the trip "part of a through interstate movement," even though the "contract of transportation entered into between shipper and carrier" didn't include the final local leg. *Id.* at 168–169. A carrier simply cannot "convert an interstate shipment into intrastate transportation" by chopping the continuous journey into its "component parts." *Id.* at 170.

A temporary pause at an "intermediate stopping place," like a warehouse, does not interrupt the inter-

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[3] Think of a flight from, say, El Paso, Texas, to Denver, Colorado, with a layover in Dallas/Ft. Worth.

state character of otherwise continuous interstate movement. *Settle*, 260 U.S. at 170–71. Like a relay-race baton, a good shipped from one state to another with a temporary layover at a warehouse moves continuously even though carried by many hands.[4]

Thus, by 1925, this Court had firmly established that local delivery is part of interstate commerce when the local movement of goods is part of a continuous, overall interstate journey (even one that includes intermediate layovers), intended at the outset for destination in another state. The Congress that enacted the FAA surely knew this clear rule when it exempted from FAA coverage agreements of "workers engaged in foreign or interstate commerce." 9 U.S.C. § 1.

The Court continued to adhere to this rule, for both water and land transportation, after the FAA's enactment. *See, e.g.*, *Hughes Bros. Timber Co. v. Minnesota*, 272 U.S. 469, 472–76 (1926) (segment of timber shipment by vessel on intrastate river, interstate transportation, where timber was loaded from river onto rail for further interstate shipment, regardless of title during initial, intrastate leg); *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 565–68 (1943) (branches of

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[4] *Settle* and *Sabine Tram* thus likely supersede *ICC v. Detroit, Grand Haven & Milwaukee Ry. Co.*, 167 U.S. 633 (1897), relied upon by an amicus supporting Flowers. *See* Amazon Br. 16–17. *Detroit Grand Haven* found delivery by cart of passengers' cargo from the railroad terminal to their homes or destinations no longer part of transportation by rail. *Id.* at 644. To the extent that holding turned on the definition of transportation by rail under the Interstate Commerce Act, *see id.* at 644, it's distinguishable because interstate transportation under this Court's FAA jurisprudence isn't limited to any particular mode of transportation. And to the extent Amazon would read *Detroit Grand Haven* more broadly to apply to final segments of interstate transportation generally, *Settle* and *Sabine Tram* jettisoned that approach shortly before Congress enacted the FAA.

wholesale distributor, which did not themselves deliver across state lines, engaged in interstate commerce by picking up goods at interstate carriers' terminals, for local distribution, where goods moved continuously, with only temporary stops, on interstate journey); *United States v. Capital Transit Co.*, 325 U.S. 357, 363 (1945) (passengers' commute from District of Columbia to Virginia was one interstate journey, such that intra-state segment was part of an interstate trip in the "commonly accepted sense of the transportation concept"); *United States v. Yellow Cab Co.*, 332 U.S. 218, 228–29 (1947) (transportation of interstate passengers and luggage between stations in one city, instate commerce, where overall journey is interstate), *overruled on other grounds by Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984); *Central Greyhound Lines of N.Y. v. Mealey*, 334 U.S. 653, 655–56 (1948) ("It is too late in the day to deny that transportation which leaves a State and enters another State is 'Commerce . . . among the several states' simply because the points from and to are in the same State."); *United States v. Capital Transit, Co.*, 338 U.S. 286, 288–90 (1949) (District of Columbia bus company that transported passengers only within District was part of interstate transportation where passengers continued commute on other companies' connecting bus lines to and from Virginia).[5]

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[5] Lower courts have followed suit in applying the Fair Labor Standards Act (FLSA) motor-carrier exemption, which requires engagement in interstate commerce, to first- or last-leg drivers who deliver products locally as part of an overall interstate shipment. *See, e.g., Escobedo v. Ace Gathering, Inc.*, 109 F.4th 831, 834–37 (5th Cir. 2024) (crude oil haulers); *Kennedy v. Equity Transp. Co.*, 663 Fed. Appx. 38, 40 (2d Cir. 2016) (Pepsi product driver); *Deherrera v. Decker Truck Line, Inc.*, 820 F.3d 1147, 1154–59 (10th Cir. 2016) (drivers of brewery materials); *Collins v. Heritage Wine Cellars, Ltd.*, 589 F.3d 895, 896–901 (7th Cir.

Brock's local delivery of Flowers's baked goods easily satisfies this longstanding rule. Flowers's own officer admits its baked goods travel in a "nearly continuous movement from the point of origin to the point of destination," and that, like Flowers, the out-of-state bakers are "aware that the products they produce in response to such orders are for end customers, and not simply a warehouse, given the structure of the [direct store delivery] system, the perishable nature of the goods, and the specific quantity ordered by each Distributor." CA.App. 271–72. Indeed, Flowers keeps an eye on its products throughout the interstate journey and maintains an interest in them after the journey ends at the retail stores—reserving the right to repurchase stale products to protect its brand. *Supra* at 6.

Those sworn concessions establish the continuity of movement along an interstate journey and the original, persistent intent to ship baked goods across state lines. That's all that's needed to show Brock engaged in interstate transportation.

2. Some amici supporting Flowers contend *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), followed a contrary approach for last-leg deliverers. *See* DRI Br. at 5, 7, 13; Coalition for Workforce Innovation Br. at 7. They misread that case by conflating live chickens with their ready-to-cook butchered parts. In *Schechter*, live chickens moved by rail from several states to railroad terminals within New York City (and some additional terminals in New Jersey). 295 U.S. at 520. The shippers' agents then picked

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2009) (wine transporter); *Mena v. McArthur Dairy, LLC*, 352 Fed. Appx. 303, 306–07 (11th Cir. 2009) (dairy product drivers); *Walters v. Am. Coach Lines of Miami, Inc.*, 575 F.3d 1221, 1229–30 (11th Cir. 2009) (bus drivers); *Shew v. Southland Corp.*, 370 F.2d 376, 380–81 (5th Cir. 1966) (dairy product hauler).

them up from those terminals and trucked them to a slaughterhouse in Brooklyn. *Id.* at 521, 542–43. The Court considered that continuous journey—from out-of-state poultry farms, to New York City railroad terminals, to the Brooklyn slaughterhouse—an "interstate" transaction, even though the trucking from Manhattan to Brooklyn was entirely intrastate. The interstate transportation of live chickens "ended" at the Brooklyn slaughterhouse. *Id.* at 543. Why? Because the live chickens came to a "permanent rest" at the slaughterhouse, as the Court euphemistically put it. *Id.* at 543. More directly, the Brooklyn slaughterhouse was where the chickens were "immediately slaughtered, prior to delivery" in "slaughtered form." *Id.* at 521, 524 (cleaned up). In short, the interstate transportation of live chickens included the intrastate Manhattan-to-Brooklyn hauling by truck (during which the chickens were still alive) but excluded the trip from the Brooklyn slaughterhouse to Brooklyn butchers and grocery stores because, by that point, the live chickens had been transformed into a wholly different product.

Had Flowers shipped flower, yeast, and water to Denver for Brock to bake Wonderbread there and then deliver it to local grocery stores, *Schechter* would deem the purely intrastate hauling of that bread intrastate transportation. *See also Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 799, 802–03 (7th Cir. 2020) (Barrett, J.) (local meal deliverer not subject to FAA exemption based on prior interstate travel of ingredients, where meal itself never crossed state borders). But because Flowers shipped Brock freshly baked bread and pastries for the final, local delivery, unaltered, CA.App. 272, *Schechter* deems the entire trip from out-of-state bakeries through the warehouse and delivery to local grocery stores to be one interstate journey, which Brock is engaged in.

Accordingly, *Schechter* accords with the century of pre-1925 precedent, from *Gibbons* onward, combined with another century of post-FAA adherence to that precedent, that make pellucid that Brock is a worker "engaged in foreign or interstate commerce" under FAA § 1.

C. Railroad Labor Board precedent confirms Brock's engagement in interstate transportation.

1. From 1920 through 1926 (when succeeded by the Railway Labor Act[6]), the Transportation Act of 1920 governed labor relations between railroad carriers and their employees. Transportation Act of 1920, §§ 300–16, 41 Stat. 456, 469–74 (1920).

The Act applied only to certain railroad carriers engaged in interstate commerce. *Id.*, § 300(1), (4), 41 Stat. 469. And it imposed specified duties on "all carriers and their officers, employees, and agents." *Id.*, § 301, 41 Stat. 469.

The RLB—which administered the Act—repeatedly exercised jurisdiction over local delivery drivers, even when railroads contracted out work previously performed by their direct employees. These repeated holdings, on the eve of the FAA's enactment, show interstate transportation included local delivery when customary and necessary to railroad operations.

When a railroad, for example, turned over its lighterage—work transferring freight between a ship and a railroad car by truck[7]—to third-party companies, whose truck drivers worked at piers entirely within a

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[6] Railway Labor Act, Pub. L. 69-257, 44 Stat. 577 (1926).

[7] *Lighterage*, Black's Law Dictionary (12th ed. 2024) (sense 3).

state (New Jersey, New York, and Pennsylvania, respectively), the RLB exercised jurisdiction over the employees and found the contracting-out violated the wages and working rules awarded by earlier RLB decisions and thus violated the Act. *Bhd. of Ry. & S.S. Clerks v. Delaware, Lackawanna & W. R.R. Co.*, No. 1279, 3 R.L.B. 813, 813–17 (1922).

The RLB also exercised jurisdiction and restored awarded wages when railroads contracted out the work of warehouse truckers, who hauled freight locally from warehouses to railroad cars. *Bhd. of Ry. & S.S. Clerks v. Cincinnati, Indianapolis & W. R.R. Co.*, No. 1262, 3 R.L.B. 757, 757–58 (1922).[8] Truck drivers who delivered mail locally within Toledo, Ohio, also fell within the RLB's jurisdiction. *Am. Fedn. of R.R. Workers v. New York Central R.R. Co.*, No. 1472, 3 R.L.B. 1076, 1076–77 (1922).

In denying a seniority-based claim for a job transfer of an express company truck driver who worked only within Philadelphia, completing express messenger runs, the RLB again exercised jurisdiction over the delivery driver notwithstanding the wholly local nature of his work. *Bhd. of Ry. & S.S. Clerks v. Am. Ry. Express Co.*, No. 1940, 4 R.L.B. 581, 581–82 (1923).

In January 1925—just a month before Congress enacted the FAA—the RLB exercised jurisdiction over drivers who delivered freight and oil locally, within Great Falls, Montana, in sustaining those workers' wage claim. *Bhd. of Ry. & S.S. Clerks v. Great N. Ry. Co.*, No. 2812, 6 R.L.B. 48, 48–49 (1925).

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[8] For more detail on the work of railroad warehouse truckers, see, e.g., *Norfolk & W. Ry. Co.*, 1 N.M.B. 68, 72 (1938); *Chicago, N. Shore & Milwaukee Ry. Co.*, 1 N.M.B. 276, 279 (1943).

And in the same month, the RLB also exercised jurisdiction over a messenger who delivered messages by railroad between two California cities. *Bhd. of Ry. S.S. Clerks v. Am. Ry. Express Co.*, No. 2824, 6 R.L.B. 65, 65–67 (1925).[9]

The RLB thus consistently recognized deliverers who worked only within a single state—whether they operated by truck or by railroad, and whether they operated for contractors or as carrier employees—to fall within the Board's jurisdiction to regulate interstate commerce.

2. These local-delivery decisions accord with the fact that many employees have long worked for railroads without crossing state lines themselves.

While countless decisions could be cited as proof of the point, the Court need not look beyond *IAM v. Atchison, Topeka & Santa Fe Ry.*, No. 2, 1 R.L.B. 13 (1920)—the RLB's first wage award. That decision governed labor relations for 18 unions and scores of carriers (the double-columned list of which spans four pages of reported decisions). The wage tables identify numerous employees whose work didn't require them to cross state borders, including, among many others, storekeepers, janitors, ticket handlers, warehouse workers, bridge builders, telegraphers, ash-pit men, engine-room oilers, boiler-room tenders, yard masters, stationary engineers, and stationary firemen. *Id.* at 22–27. Railroad work necessarily included a wide variety of local work that never required individual employees themselves to cross state lines. Yet, all un-

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[9] *Wells Fargo & Co. v. Taylor*, 254 U.S. 175 (1920), is thus of no moment as it held only that an express messenger wasn't a railroad employee under the Federal Employers' Liability Act. It nonetheless recognized the messenger was injured while engaged and employed in "interstate commerce." *Id.* at 187–88.

questionably worked directly and necessarily as part of interstate transportation.[10]

3. The RLB's local-delivery decisions also accord with its consistent refusal to allow railroads to circumvent wages and work rules established as "just and reasonable" in prior RLB decisions by contracting out work to companies who paid less. Transportation Act, § 307(d), 41 Stat. at 471.

The RLB explained this position at length in *Railway Employees' Department v. Indiana Harbor Belt Railroad Co.*, No. 982, 3 R.L.B. 332 (1922), a case involving contracting out work of the carrier's car-repair shop. The Board accepted the validity, as a contractual matter, of the agreements sending the work from the railroads to other companies. *Id.* at 336. It nonetheless held those contracts violated the Transportation Act, whose purpose was to "prevent interruption to [railroad] traffic, growing out of disputes between carriers and their employees." *Id.* at 337 (citing § 301). In the wake of labor disputes that had, for years, disrupted railroad transportation, Congress's concern was eminently practical and, the RLB recognized, "undoubtedly contemplate[d] those engaged in the customary work directly contributory to the operation

[10] Flowers argues the RLB did not have jurisdiction over workers who performed local work by incorrectly focusing on the RLB's jurisdiction over only interstate *carriers*. Pet. Br. 28–31. As demonstrated by the litany of cases cited above, the RLB regularly asserted jurisdiction over workers who did only local work when those individuals worked for interstate carriers properly subject to the Act. Flowers's focus on the nature of the carrier's business, rather than the employees' work, is thus misplaced.

of the railroads." *Id.*; *accord id.* at 339. For, if railroads could evade RLB decisions establishing just and reasonable wages by contracting out customary railroad work, the now-contracted-out workers could strike and interrupt railroad operations just as dramatically as if they had been direct railroad employees. *Id.* at 337–38. Whether a railroad used its own employees or contracted out work "essential to its operation" to other companies, the public's interest in uninterrupted railroad transportation remained the same. *Id.* at 339. Congress's chosen means of securing that interest—RLB wage awards—applied equally to contracted out work that was essential to railroad operations. *Id.*

The RLB later applied its *Indiana Harbor* holding to cases involving contracted companies that used their own tools, equipment and facilities and, even before the enactment of the Transportation Act, had performed the same kind of work as the railroad hired them to perform where the contracting evaded prior wage awards. *Bhd. of Ry. & S.S. Clerks*, No. 1279, 3 R.L.B. at 816, 818. *Cf.*, *id.* at 821–24 (dissenting opinion contending, based on liberty of contract, *Indiana Harbor* shouldn't apply to truly independent contractors performing work in their usual line of business).

As long as the work was part of the carrier's "necessary and customary work," the Transportation Act covered it, whether performed by railroad employees or employees of railroad contractors. *Bhd. of Ry. & S.S. Clerks v. NY Central R.R.*, No. 2401, 5 R.L.B. 396, 400 (1924); *Bhd. of Ry. & S.S. Clerks v. Cleveland, Cincinnati, Chicago & St. Louis Ry.*, No. 2402, 5 R.L.B. 401, 404 (1924); *Bhd. of Ry. & S.S. Clerks v. NY Central R.R.*, No. 2403, 5 R.L.B. 405, 408 (1924); *American Fedn. of R.R. Workers v. NY Central R.R. Co.*, No. 2404, 5 R.L.B. 409, 412 (1924).

Similar opinions fill the pages of the RLB reporters.[11] These decisions leave no doubt that whether

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[11] *See Maint. of Way Employees v. St. Louis S.W. Ry. Co.*, No. 120, 2 R.L.B. 96 (1921); *Maint. of Way Employees v. Chicago Great W. R.R. Co.*, No. 1075, 3 R.L.B. 539 (1922); *Ry. Employees' Dept. v. Chicago Great W. R.R. Co.*, No. 1076, 3 R.L.B. 540 (1922); *Ry. Employees' Dept. v. St. Louis Brownsville & Mexico Ry. Co.*, No. 1078, 3 R.L.B. 544 (1922); *Maint. of Way Employees v. Indiana Harbor Belt R.R. Co.*, No. 1079, 3 R.L.B. 545 (1922); *Ry. Employees' Dept. v. MKT Ry. Co.*, No. 1080, 3 R.L.B. 548 (1922); *Bhd. of Ry. & S.S. Clerks v. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.*, No. 1119, 3 R.L.B. 594 (1922); *Bhd. of Ry. & S.S. Clerks v. N.Y. Central R.R. Co.*, No. 1209, 3 R.L.B. 665 (1922); *Bhd. of Ry. & S.S. Clerks v. Erie R.R. Co.*, No. 1210, 3 R.L.B. 667 (1922); *Maint. of Way Employees v. San Antonio, Uvalde & Gulf R.R.*, No. 1212, 3 R.L.B. 670 (1922); *Firemen & Oilers v. Great N. Ry. Co.*, No. 1213, 3 R.L.B. 673 (1922); *Ry. Employees' Dept. v. Erie R.R. Co.*, No. 1214, 3 R.L.B. 675 (1922); *Maint. of Way v. Chicago & N.W. Ry. Co.*, No. 1215, 3 R.L.B. 678 (1922); *Ry. Employees' Dept. v. N.Y Central R.R. Co.*, No. 1216, 3 R.L.B. 679 (1922); *Am. Fed'n of R.R. Workers v. N.Y. Central R.R. Co.*, No. 1217, 3 R.L.B. 682 (1922); *Maint. of Way Employees v. Erie R.R. Co.*, No. 1218, 3 R.L.B. 683 (1922); *Am. Fed'n of R.R. Workers v. Erie R.R. Co.*, No. 1219, 3 R.L.B. 686 (1922); *Am. Fed'n of R.R. Workers v. N.Y. Central R.R. Co.*, No. 1220, 3 R.L.B. 687 (1922); *Maint. of Way Employees v. Chicago Milwaukee & St. Paul Ry.*, No. 1222, 3 R.L.B. 689 (1922); *Bhd. of Locomotive Eng'rs v. Cincinnati Indianapolis & W. R.R. Co.*, No. 1224, 3 R.L.B. 690 (1922); *Ry. Employees Dept. v. Chicago Great W. R.R. Co.*, No. 1225, 3 R.L.B. 692 (1922); *Maint. of Way Employees v. Chicago Great W. R.R. Co.*, No. 1226, 3 R.L.B. 696 (1922); *Maint. of Way Employees v. St. Louis-San Francisco Ry. Co.*, No. 1230, 3 R.L.B. 700 (1922); *Maint. of Way Employees v. St. Louis San Francisco Ry. Co.*, No. 1231, 3 R.L.B. 702 (1922); *Bhd. of Ry. & S.S. Clerks v. N.Y. Central R.R. Co.*, No. 1232, 3 R.L.B. 705 (1922); *Ry. Employees' Dept. v. Indiana Harbor Belt R.R. Co.*, No. 1235, 3 R.L.B. 709 (1922); *Ry. Employees' Dept. v. Erie R.R. Co.*, No. 1241, 3 R.L.B. 727 (1922); *Maint. of Way Employees v. Chicago & Alton R.R. Co.*, No. 1254, 3 R.L.B. 741 (1922); *Ry. Employees' Dept. v. Michigan Central R.R. Co.*, No. 1255, 3 R.L.B. 745 (1922); *Maint. of Way Employees v. Chicago, Rock Island, & Pac. Ry.*, No. 1256, 3 R.L.B. 747 (1922); *Ry. Em-*

work was considered part of interstate transportation depended on its function, not the contractual arrangements a railroad may have used to secure it.

A dozen years after the FAA's enactment, this Court adopted precisely the same logic in finding that the Railway Labor Act applied to a railroad's repair-shop workers, who performed their work as "independent contractors." *Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 557 (1937). This Court insisted that it is "the nature of the work done and its relation to interstate transportation which afford adequate basis for the exercise of the regulatory power of Congress." *Id.*

Applying this logic here, Brock and other Flowers delivery drivers are undoubtedly "engaged in . . . interstate commerce," 9 U.S.C. § 1, by providing the necessary and customary work of transporting Flowers's baked goods from their origin in out-of-state bakeries to their final destination at in-state retail stores, re-

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ployees' Dept. v. Bangor & Aroostook R.R., No. 1257, 3 R.L.B. 750 (1922); *Ry. Employees' Dept. v. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.*, No. 1259, 3 R.L.B. 752 (1922); *Ry. Employees' Dept. v. Pere Marquette Ry. Co.*, No. 1260, 3 R.L.B. 754 (1922); *Bhd. of Ry. & S.S. Clerks v. Cincinnati, Indianapolis & W. R.R. Co.*, No. 1263, 3 R.L.B. 758 (1922); *Ry. Employees' Dept. v. Ann Arbor R.R. Co.*, No. 1264, 3 R.L.B. 762 (1922); *Ry. Employees' Dept. v. Western Maryland Ry. Co.*, No. 1361, 3 R.L.B. 934 (1922); *Order of R.R. Telegraphers v. S. Pac. Co.*, No. 1634, 4 R.L.B. 139 (1923); *Int'l Ass'n of R.R. Supervisors of Mechanics v. W. Maryland Ry. Co.*, No. 1888, 4 R.L.B. 491 (1923); *Maint. of Way Employees v. W. Maryland Ry. Co.*, No. 1889, 4 R.L.B. 493 (1923); *Am. Fed'n of R.R. Workers v. Erie R.R. Co.*, No. 1963, 4 R.L.B. 616 (1923); *Maint. of Way Employees v. Erie R.R. Co.*, No. 2054, 4 R.L.B. 788 (1923); *Maint. of Way Employees & Ry. Shop Laborers v. Chicago & N. W. Ry. Co.*, No. 2173, 5 R.L.B. 174 (1924); *Maint. of Way Employees v. Missouri-Kansas-Texas Lines*, No. 2207, 5 R.L.B. 213 (1924); *Bhd. of Ry. & S.S. Clerks v. Delaware, Lackawanna & W. R.R. Co.*, No. 3905, 6 R.L.B. 1248 (1925).

gardless of whether they do so as direct Flowers employees or their contractors.

II. The Court's FAA precedents overlook decisive evidence that, as originally understood, § 1 exempted all employment contracts, and the Court should not now compound its mistake through an unduly constrained construction of transportation.

1. The FAA's session law contains a marginal note summarizing § 1's final sentence. The note reads: "Not applicable to employment contracts of workers." FAA, Pub. L. 68-401, 43 Stat. 883, 883 (1925). That note provides indisputable evidence of § 1's original, public meaning.

Session laws, as they appear printed in the Statutes at Large, "shall be" and are "legal evidence of the laws and treaties therein contained, in all the courts of the United States . . . ." An act providing for publication of the revised statutes and the laws of the United States (Publication Act), ch. 333, §§ 7–8, 18 Stat. 113, 114 (1874). *Accord* 1 U.S.C. § 112 ("The United States Statutes at Large shall be legal evidence of laws . . ., in all the courts of the United States . . . .").

The 1874 Publication Act charged the Secretary of State with the responsibility of compiling session laws at the close of every session of Congress. Publication Act, § 6, 18 Stat. 113. He had that responsibility until 1950, when Congress transferred it to the Office of the Federal Register, National and Records Administration (formerly known as the National Archives and Records Service). *See* Reorganization Plan No. 20 of 1950, 64 Stat. 1272.[12]

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[12] The United States Code, published by the Government Printing Office under the auspices of the Office of the Law Revision Counsel, did not exist until 1926—after the FAA's enact-

During the period of Secretary of State publication, 1874–1950, the Statutes at Large had to "carry marginal notes indicating the subject-matter of the instruments which the notes accompany"—and the Secretary conducted a "long, painstaking, demanding" process to "make certain that no errors have crept in" to the printed session laws. E. Wilder Spaulding, *Law Publications of the Department of State*, 3 Dep't St. Bull. 301, 304 (1940). Indeed, the Secretary ensured that the Statutes at Large, including their marginal notes, were "as nearly perfect as editor and printer can make them for they are legal evidence of the laws in the courts of the United States . . . ." *Id.*

It is this process that led to § 1's marginal note, describing the FAA's coverage as "[n]ot applicable to employment contracts of workers." FAA, Pub. L. 68-401, § 1 (marginal note), 43 Stat. 883, 883 (1925).

2. Reasonable jurists may disagree as to whether the 1874 Publication Act and its successors (including its partial codification in 1 U.S.C. § 112) make the marginal note to § 1 itself law. Certainly, the 1874 Publication Act and its successors provide, by law, that the Statutes at Large—including all their contents—are "legal evidence" of federal law in American courts.

Regardless, there can be no disagreement that the Secretary of State drafted and published the marginal note to § 1, as it appears in the Statutes at Large, at the close of the 1925 session of Congress, making every effort possible to produce an error-free, perfect publication reflecting the laws Congress had passed that year.

At the very least, § 1's marginal note reflects the Secretary's understanding of the scope of § 1's exemption—an understanding that he communicated, by

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ment. Act of June 30, 1926, ch. 713, 44 Stat. 778.

law, publicly to every reader looking for legal evidence of federal laws.

There are few pieces of evidence of original public meaning as compelling as this one. Often, when seeking original public meaning, the Court must comb historical dictionaries, ratification debates, public discussions, contemporary treatises, and the like for circumstantial evidence of a provision's historical, public meaning. Not so here. Here, we have direct evidence of the original construction of § 1 by the sole officer charged by law with preparing sessions laws for publication, and we have it in a form that is communicated, by law, to every reader looking for evidence of the law's meaning.

That evidence should be decisive that the FAA exempts all "employment contracts of workers," not merely agreements with transportation workers, as this Court held in *Circuit City,* 532 U.S. at 109. Indeed, "the contemporary and consistent views of a coordinate branch of government can provide evidence of the law's meaning." *Bondi v. VanDerStok*, 604 U.S. 458, 481 (2025) (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2004). Here, the Secretary of State has never sought to revise the marginal note originally published in the 1925 Statutes at Large. And 75 years later, when the question was first before this Court, the United States maintained its position that the FAA exempts all employment contracts. *See* Br. of U.S., *Circuit City Stores, Inc. v. Adams*, No. 99-1379 (2000). Section 1's marginal note is thus entitled to at least as much weight as evidence of statutory meaning as section headings. *See Rudisill v. McDonough*, 601 U.S. 294, 309 (2024) (section headings provide evidence of statute's meaning); *Dubin v. United States*, 599 U.S. 110, 121 (2023) (same).

When this Court construed § 1 to exempt only arbitral agreements with transportation workers, not all employment contracts, none of the Court's opinions cited the FAA's session law, let alone § 1's marginal note. *Cf.*, *Circuit City*, 532 U.S. at 109–40. To be fair, neither did the parties. *Cf.*, Br. of Circuit City, *Circuit City Stores, Inc. v. Adams*, No. 99-1379, at x–xi (2000); Br. of Adams, *Circuit City Stores, Inc. v. Adams*, No. 99-1379, at vi–ix (2000); Reply Br. of Circuit City, *Circuit City Stores, Inc. v. Adams*, No. 99-1379, at iii–v (2000). And the United States cited the session law only to refer to the date of its enactment, not to make any substantive argument regarding its contents. Br. of U.S., *Circuit City Stores, Inc. v. Adams*, No. 99-1379, at 2, 6 (2000). No one brought § 1's marginal note to the Court's attention, so the Court can hardly be faulted for overlooking its significance.

Still, with the session law now plainly in view, it must be admitted that the Court's initial encounter with the scope of § 1's exemption overlooked decisive evidence of the provision's original public meaning.

3. We nonetheless recognize that stare decisis has added force in the field of statutory interpretation. *See, e.g., Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 456 (2015). Certainly, none of the parties has asked this Court to overturn *Circuit City*, and neither do we in this case.

Accounting now for the clear evidence that § 1 was originally understood by the public to exempt all employment contracts, this Court, at least, should not compound its earlier error by giving an unduly narrow interpretation to the concept of "transportation worker" that it superimposed on the statute in *Circuit City*. After all, absent any express indication that courts should construe exemptions narrowly (and, in the face of § 1's Statutes at Large marginal note, there is no such indication here), this Court gives exemptions a

"fair reading," not a broad or narrow one. *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 88–90 (2018) (citing A. Scalia & B. Garner, Reading Law 363 (2012)).

As shown above, for two centuries now, from *Gibbons* through today, this Court has properly understood local delivery of goods to constitute part of interstate transportation where the goods embark on a continuous interstate journey and the parties to the journey have an original, persistent intent to send the goods from one state to another. Reading § 1 fairly, the Court should reject petitioner's request to retreat from its longstanding approach to interstate transportation that includes local segments.

CONCLUSION

For these reasons, the Court should affirm the judgment below.

Respectfully submitted,

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