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

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INTRODUCTION

Brock claims he is a transportation worker "engaged in interstate commerce" because the baked goods he delivers are on an interstate journey and his local deliveries, which require no cross-border travel or engagement with interstate vehicles, are the last step in that journey. Those facts may render Brock involved with interstate commerce under the Commerce Clause, but § 1 requires more. It applies only when the worker is "actively engaged in transportation of … goods across borders." *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 256 (2024) (internal quotation marks and citations omitted). The exemption turns on the *transportation work* the class of workers performs, not the travel of the goods they carry.

The exclusively intrastate delivery driver, who has no contact with interstate vehicles and performs no cross-border transportation, is not actively engaged in transporting goods across borders simply because he carries goods that crossed a border. Otherwise, § 1 would collapse into the Commerce Clause in a way this Court has held is inconsistent with its terms, *see Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 115-16 (2001); *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022), and its application would require inquiries into the goods' sale and journey, as opposed to the contract of employment and the worker's work—§ 1's focus.

Brock essentially ignores the Court's § 1 jurisprudence and declares that, in 1925, everyone understood that "last-mile drivers" were "engaged in interstate commerce." But the legion of cases Brock

cites are largely inapplicable Commerce Clause or FELA cases. To the extent they bear on this case at all (and they do not), they disprove Brock's arguments.

Despite Brock's curious use of an ellipsis when quoting FELA (Resp.Br.22), in 1925, FELA applied when a rail carrier was "engaging in [interstate commerce]" and the worker "was employed *by such carrier* in such commerce"—a qualitatively different inquiry than § 1's and a different textual requirement than what Brock suggests. FELA's starting analysis was whether the *rail carrier*'s roadbed, rail line, bridge, engine, car, or other instrument of transportation with which the worker was working at the time of injury was part of interstate transportation—an inapposite inquiry, but one that looks more like Flowers' approach to § 1 than Brock's.

Thus, *none* of Brock's cited cases concerns a worker (like Brock) operating an exclusively intrastate vehicle on an intrastate-only route, which is presumably why Brock uses the "last mile" label instead of analyzing the cases' facts. Brock's purported "last mile railroad workers" cases involve employees working directly with the intrastate portion of a railcar's interstate journey—like an Amtrak employee who works on the Acela (an interstate train) from Route 128 to Boston's South Station (all in Massachusetts). Those workers fall within § 1 under *Saxon* and are outside the question presented: They are directly and actively engaged with an interstate vehicle that is, itself, in interstate transportation. Brock is not. The same is true of shipping pilots: They board and navigate ships that

are on foreign and interstate journeys. Tugboats attach and do the same. Brock does not.

Apart from unhelpful precedent, Brock rests his case on a misinterpretation of *Saxon*, a misapplication of *ejusdem generis*, a revisionist history, and an analysis that ignores the Court's precedent and Flowers' arguments.

The upshot is this: While it has reserved the question presented here, the Court's § 1 cases establish principles that answer it. Section 1 requires transportation work that is "actively," "direct[ly]," and "necessar[ily]" part of cross-border transportation. Workers who cross state lines meet that test. *See, e.g.*, *Bissonnette*, 601 U.S. at 256. So do those who actively and directly engage with interstate vehicles, for example, by "load[ing] cargo on a plane bound for interstate transit." *Saxon*, 596 U.S. at 458. But local drivers like Brock—who do neither—do not. The judgment below should be reversed.

ARGUMENT

I. BROCK'S APPROACH TO § 1 DEPARTS FROM ITS TEXT AND THE COURT'S § 1 PRECEDENT.

A. Brock's Interpretation Cannot Be Squared With The Court's § 1 Jurisprudence.

Section 1's residual-clause exemption is "narrow," reaching only workers who play a "direct," "necessary," and "active[]" role in cross-border transportation. *Bissonnette*, 601 U.S. at 256 (quoting *Saxon*, 596 U.S. at 458). Thus, the Court has "never understood § 1 to define the class of exempt workers in … limitless terms." *Id.*

Brock purportedly "agree[s]" that § 1 focuses on the worker's work. Resp.Br.32. But that focus presents an immediate problem for him. His transportation work consists of driving goods from a local warehouse to local retailers. Pet.Br.10, 21-23. That work is no different from the local pizza-delivery driver's; it is the same as the driver who delivers bread from a local bakery to a local retailer. The "out-of-state nature of the goods is irrelevant to the actual work" Brock performs. *Rittman v. Amazon.com, Inc.*, 971 F.3d 904, 926 (9th Cir. 2020) (Bress, J., dissenting); *see* Pet.Br.14-23.

Unable to fit within the governing standard, Brock tries to change it and sidestep the core "direct," "necessary" and "active" requirements of *Saxon* and *Bissonnette*. Indeed, he makes only fleeting references to the language the Court has repeatedly used to define § 1's scope. *See* Resp.Br.16 (citing *Saxon*); *id.* at 32 (asserting without meaningful analysis that "[l]ast-mile drivers … have [a] 'direct, active, direct, or necessary role' in interstate transportation"). And in the one instance where Brock discusses the Court's precedent, he misinterprets it.

According to Brock, the Court adopted his interpretation of § 1 in *Saxon*, holding that the baggage handlers were exempt "because they 'handle goods traveling in interstate and foreign commerce.'" Resp.Br.32 (quoting *Saxon*, 596 U.S. at 463). The bags' journey was purportedly the cornerstone of the Court's analysis.

While the Court best understands what it meant in *Saxon*, its analysis trained on Ms. Saxon's direct and

active work with *airplanes* crossing state lines. That direct connection was through loading and unloading cargo, but Ms. Saxon was exempt because the cargo was coming "*on and off airplanes that travel in interstate commerce*." *Saxon*, 596 U.S. at 463 (emphasis added). "[O]ne who loads cargo *on a plane bound for interstate transit* is intimately involved with the commerce (*e.g.*, transportation) of that cargo." *Id.* at 458 (emphasis added).

Thus, in *Bissonnette*, the Court described *Saxon* as focused on the worker's "direct and necessary role in the free flow of goods across borders." 601 U.S. at 256 (quoting *Saxon*, 596 U.S. at 458). The issue was whether workers were "actively engaged in transportation … across borders via the channels of foreign or interstate commerce." *Id.* (quoting *Saxon*, 596 U.S. at 458). If *Saxon* were adopting a simple goods'-journey rule, the Court's repeated reliance on the workers' engagement with an airplane traveling interstate, and the need for a "direct and necessary role" in moving goods across borders, would have been gratuitous.

B. Brock's Reliance On Cases Interpreting Other Statutes Is Misplaced.

1. Instead of the Court's § 1 cases, Brock relies, first, on pre-1925 cases defining when a good was in interstate commerce under the Commerce Clause—the "final destination" or "come to rest" cases like *Caldwell v. North Carolina*, 187 U.S. 622, 624-26 (1903); *Binderup v. Pathe Exchange Inc.*, 263 U.S. 291, 309-10 (1923); *Crenshaw v. Arkansas*, 227 U.S. 389, 395-97 (1913); *Rearick v. Pennsylvania*, 203 U.S. 507, 511 (1906); *Illinois Central Railroad Co. v. De*

Fuentes, 236 U.S. 157, 163 (1915); *Western Oil Refining Co. v. Lipscomb*, 244 U.S. 346, 349 (1917); *Baltimore & O. S. W. R. Co. v. Settle*, 260 U.S. 166, 170 (1922); and *McNeill v. Southern Railway Co.*, 202 U.S. 543, 559 (1906), to name a few. *See* Resp.Br.16-19 & nn.2-6.

Those cases are inapposite. They embrace a view of "interstate commerce" grounded in the Commerce Clause, which is broader than § 1's reach. *See Circuit City*, 532 U.S. at 115-16; *Saxon*, 596 U.S. at 457-58. Moreover, their holdings turned not on the worker's work—§ 1's focus—but on the structure of commercial transactions. More fundamentally, the Court was not interpreting the phrase "engaged in commerce," let alone as it is used in § 1. It was interpreting the Commerce Clause. The Court used "engaged in commerce"—typically only once, if at all—casually. That is not the type of "settled," "consisten[t]," precedential consensus against which Congress can be understood to act. *Cf. Edelman v. Lynchburg Coll.*, 535 U.S. 106, 116-17 (2002).

2. The fact that Brock *must* rely on these cases demonstrates that his interpretation is wrong. His starting assumption—that a good remains in "interstate commerce" for § 1 purposes until it comes to rest—depends on Commerce Clause cases and thus requires the Court to read "engaged in interstate commerce" in § 1 as coextensive with the Commerce Clause. Doing so, however, would destroy the meaningful variation between § 1 and § 2. *See Circuit City*, 532 U.S. at 115-16; *Saxon*, 596 U.S. at 457-58.

In addition, Brock's Commerce Clause cases require an analysis of commercial transactions, not the

contract of employment and the worker's work, which is inconsistent with every textual signal in § 1, and § 1's use of "contract of employment" instead of § 2's "transactions." Pet.Br.14-23. As to the first problem, Brock says effectively nothing, failing to engage with Flowers' textual analysis. As to the second, Brock acknowledges § 1 and § 2's textual differences, but dismisses them as merely limiting § 1 to employment contracts. Resp.Br.33. But in *New Prime Inc. v. Oliveira*, the Court observed that the "contracts of employment" language also signals Congress' intent to focus on "the performance of *work* by *workers*." 586 U.S. 105, 114–16 (2019); Pet.Br.15-16.

Finally, Brock's reliance on the "final destination" cases disproves his assertion that his interpretation is easy to apply because the Court supposedly already performed all the necessary line drawing in them. Resp.Br.42, 44-45; *id.* 16-19 & nn.2-6. These are the very cases the Court *abandoned*; the final destination concept "proved highly vexing in the Commerce Clause context when tried over a hundred years ago." *Rittmann*, 971 F.3d at 921 (Bress, J., dissenting). Those cases turned on "eminently manipulable distinctions," Norman R. Williams, *The Commerce Clause and the Myth of Dual Federalism*, 54 UCLA L. REV. 1847, 1872 (2007), that "caus[ed] no end of confusion and consternation among contemporary commentators," Barry Cushman, *Formalism and Realism in Commerce Clause Jurisprudence*, 67 U. CHI. L. REV. 1089, 1114 (2000). Even a cursory review demonstrates how convoluted the "final destination" analysis can become—and has become in the First, Ninth and Tenth Circuits, which rely on those cases. *See Rittmann*, 971 F.3d at 915-19; *Waithaka v.*

Amazon.com, Inc., 966 F.3d 10, 19-21 (1st Cir. 2020); Pet.App.1a-34a.

3. Brock next makes the inferential leap that because a good was in interstate commerce under the Commerce Clause until it reached its final destination, any transportation worker involved with the good's journey must be "engaged in interstate commerce" under § 1. Resp.Br.20-21. Again, this leap requires importing the Commerce Clause into § 1 and analyzing commercial transactions. But more to the point, none of Brock's "well settled" cases (*id.* at 20) purportedly establishing this leap actually do so.

Running through Brock's list (*id.* at 20-21):

In *Rearick*, the Court invalidated a state licensing requirement under the Commerce Clause because the relevant transaction—an interstate sale to an agent—was actually to out-of-State customers. 203 U.S. at 510-11. The Court interpreted the Commerce Clause, not the phrase "engaged in interstate commerce" as used in § 1.

In *Foster v. Davenport*, the Court held that a tugboat operating in Alabama waters was "engaged in the foreign or coastwise trade," 63 U.S. 244, 246 (1859), not because it transported interstate freight (Resp.Br.20), but because it was "employed *in aid of vessels engaged in the foreign or coastwise trade*," and its navigation "cannot be distinguished from that in which the vessels it towed or unloaded were engaged." *Foster*, 63 U.S. at 246 (emphasis added). The tugboat, unlike Brock, was directly and actively engaging with a vehicle in interstate transportation and is outside the question presented.

In *Philadelphia & Reading Railway Co v. Hancock*, a FELA case, the Court held that a railroad crewmember was operating rail cars in interstate commerce even though his trip was local, because "[t]he ultimate destination of *some of these cars* was outside of Pennsylvania," *i.e.*, out-of-State. 253 U.S. 284, 285 (1920) (emphasis added). Like the hypothetical Amtrak employee, the crewmember was operating railcars traveling interstate and is outside the question presented.

In *North Carolina Railroad Co. v. Zachary*, 232 U.S. 248, 259 (1914), a FELA case, the Court did not hold that a "last-mile railroad employee" was engaged in interstate commerce because "the freight … came from out of [S]tate." Resp.Br.20-21. It held that the "*the train* which was to be hauled from Selma to Spencer[, North Carolina] by Engine No. 862, was being made up in part from *cars* that had come in from Pinners Point[, Virginia]," and the cars were "*put into the Spencer train in order to be carried forward as a part of a through movement of interstate commerce*." 232 U.S. at 259 (emphases added). Indeed, the focus on railcars rather than "freight" is clear from the Court's holding that it would make no difference if the cars contained no freight at all. *Id.* The crewmember in *Zachary* was directly and actively engaged with rail cars traveling interstate, unlike Brock.[1]

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[1] Brock chastises Flowers for not using the term "last-mile driver" (Resp.Br.31), but Brock's use of it obscures more than illuminates, as he misuses the term to describe workers who directly and actively engage with interstate vehicles—workers outside the question presented, which accurately describes last mile drivers. *See* Pet.i.

And in *Minneapolis & St. Louis Railroad Co. v. Gotschall*, another FELA case, the issue was whether the jury was properly instructed on negligence. 244 U.S. 66, 67 (1917). The Court assumed without deciding that the railroad company was engaged in interstate commerce. *Id.* at 66-67.

Brock's other cited cases (*see* Resp.Br.21 n.7), most of which concern FELA or the boundaries of the Interstate Commerce Clause, are similarly distinguishable.

None of Brock's authority holds that a transportation worker who does *not* directly engage with an interstate vehicle and operates an intrastate-only vehicle to deliver locally goods that once crossed state lines is plays an active, direct, and necessary role in interstate transportation.

4. Brock's misreading of these cases apparently stems from his misreading of FELA. In 1925, a railroad employee satisfied FELA's interstate commerce requirement by working, at the time of injury, on a carrier's railcar, engine, rail line, roadbed, bridge, or other instrument of transportation that, *itself*, was engaged in interstate commerce. Pet.Br.39. The employee was said to be engaged in interstate commerce by virtue of working with the *carrier*'s instruments of interstate transportation that were engaging in interstate commerce.

Brock disagrees and, quoting FELA, argues that FELA "applied only when the railroad was 'engaging in [interstate] commerce' and the railroad employee was 'employed … in such commerce'"—the latter quote containing the curious ellipsis. Resp.Br.22.

But FELA provided in relevant part that:

> [E]very common carrier by railroad while engaging in commerce between any of the several States … shall be liable in damages to any person suffering injury while *he is employed by such carrier* in such commerce.

Apr. 22, 1908, ch. 149, §1, 35 Stat. 65 (emphasis added).

Brock's ellipsis obscures the statute's focus *on the carrier*. In whistling past this language, Brock misses that the carrier must be engaged "in such commerce." Accordingly, in *Pedersen v. Delaware, Lackawanna & Western Railroad Co.*, on which Brock relies (Resp.Br.22), the Court stated that, under FELA, "[t]he true test always is: Is the work in question a part of the interstate commerce in which the carrier is engaged?" 229 U.S. 146, 152 (1913). There, the employee's work was bridge repair, and the Court held that *bridges* are "indispensable to interstate commerce." *Id.* at 151.

Thus, while Brock boldly claims that "in case after case, the Court made clear that workers handling interstate freight were engaged in interstate transportation" (Resp.Br.22), in case after case, the Court made clear that the worker must be working with a rail car, bridge, railway line, engine, or other instrument of transportation that, itself, was in interstate commerce. *See supra* at 5-10; *see also Pa. Co. v. Donat*, 239 U.S. 50, 52 (1915) (working with "[t]wo loaded coal cars coming from without the State") (cited at Resp.Br.22); *Grand Trunk W. Ry. Co. v. Lindsay*, 233 U.S. 42, 44-45 (1914) (injured by "four

loaded freight cars moving in interstate commerce") (cited at Resp.Br.17 n.5, 22-23).

FELA focused on the worker's relationship with the carrier's interstate transportation, not freight. It applied to workers who operated the intrastate portion of freight's interstate travel, because the rail cars containing the freight were traveling interstate. Thus, to the extent § 1 brings FELA's "old soil" with it (Resp.Br.23), and it does not, that soil fertilizes Flowers' interpretation.

5. In all events, § 1 does not import FELA's analysis.[2] Pet.Br.39-40. Ellipsis aside, in 1925, FELA looked to whether the worker was injured "while he [was] employed by" a carrier "engaging in commerce between any of the several [S]tates," 35 Stat. 65, 65 (1908), while § 1 requires that the "class of workers" be "engaged in foreign or interstate commerce." 9 U.S.C. § 1.

This textual difference compels different analyses. Under § 1, the class of workers must have an "active[]," "direct and necessary" role in cross-border transportation. *Bissonnette*, 601 U.S. at 256 (quoting *Saxon*, 596 U.S. at 458). Under 1925 FELA, the worker's specific tasks were evaluated at the moment of injury and could be more attenuated from the actual

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[2] Brock suggests (Resp.Br.16, 31) that Flowers and the Court agree that FELA governs § 1 because, in *Saxon*, the Court stated that Ms. Saxon was "as a practical matter, part of the interstate transportation of goods," which is a FELA-type analysis, and Flowers has cited that language. *See* 596 U.S. at 457; Pet.Br.15. But this Court has never suggested that § 1 imports FELA entirely, and Flowers' reliance on *Saxon* is not importing it either. *See* Pet.Br.33 n.4, 39-41.

cross-border transportation—like bridge repair or cleaning insulation on an interstate track's powerlines, *S. Pac. Co. v. Indus. Acc. Comm'n*, 251 U.S. 259, 263 (1920). Indeed, FELA's laser focus on the worker's exact tasks at the "moment of injury" led to FELA "decisions drawing very fine distinctions," *S. Pac. Co. v. Gileo*, 351 U.S. 493, 497 (1956), that do not fit a "class of workers" inquiry. And, as Flowers has explained, FELA and §1 have fundamentally different purposes. *See* Pet.Br.39-40.

Brock's claim that FELA's jurisdictional hook was "interpreted exceedingly narrowly" (Resp.Br.36 n.8) is wrong. FELA, a remedial statute, has a "scope … so broad that it covers a vast field." *N.Y. Cent. & Hudson River R.R. Co. v. Carr*, 238 U.S. 260, 262 (1915).[3] Conversely, § 1 is a "limit[ed]" exception to § 2 that has a "'narrow' scope." *Bissonnette*, 601 U.S. at 256 (quoting *Circuit City*, 532 U.S. at 118).

6. Decisions involving a smattering of other statutes are equally unhelpful to Brock. The National Labor Relations Act postdated the FAA by a decade. *See* Resp.Br.19 (citing *Santa Cruz Fruit Packing Co. v. NLRB*, 303 U.S. 453, 463 (1938)). The Wilson Act, which applied to alcoholic beverages, contained different language, triggering only "upon arrival in" a State. 26 Stat. 313 (1890); *see* Resp.Br.19. And the Interstate Commerce Act and its amendments, *see* Resp.Br.17-19, used different language, and

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[3] Contrary to Brock's claim (Resp.Br.36 n.8), Flowers has not suggested otherwise. It argued only that FELA clearly excluded workers like Brock after the Court ruled FELA unconstitutional for encompassing work with purely intrastate transportation. *See* Pet.Br.33-34.

contained specific provisions for interstate legs, 24 Stat. 379, 382 (1887); *see Davis v. Cle., C.C. & St. L. Ry. Co.*, 217 U.S. 157, 178 & n.† (1910); Pet.Br.28-30. These statutes and the cited cases are thus inapposite.

The same is true of the Motor Carrier Act. *See* Resp.Br.37-38. As the Eleventh Circuit has explained, the Motor Carrier Act is a "remedial statute" with a "purpose … completely different" from the FAA, and "these statutes use different words." *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337, 1349 (2021) (internal quotation marks and citations omitted). Thus, to Flowers' knowledge, no court has looked to the Motor Carrier Act to interpret § 1. *See, e.g.*, *id.*; *Freeman v. Easy Mobile Labs, Inc.*, 2016 WL 4479545, at *2 n.2 (W.D. Ky. Aug. 24, 2016). Brock's only cited authority on this issue, *Morris v. McComb*, 332 U.S. 422 (1947), did not involve the FAA and addressed how much of a job needed to involve interstate commerce, rather than the antecedent question of what activities qualified as interstate commerce. *Id.* at 431-33.

7. That leaves Brock's claim that Flowers' interpretation is "novel" and "bespoke." Resp.Br.35; *see id.* at 2, 14, 31-33. But in *Circuit City*, the Court recognized that § 1's language is unusual and held that courts must construe it "with reference to the statutory context in which it is found and in a manner consistent with the FAA's purpose." 532 U.S. at 118. In the § 1 context, it rejected the argument that "statutory jurisdictional formulations necessarily have a uniform meaning whenever used by Congress." *Id.* (internal quotation marks and citation omitted). Given § 1's unique language and purpose, it is unsurprising that its jurisdictional formulation does

not map cleanly onto other statutes. *See, e.g.*, *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 522-25 (1994) (rejecting analogy to statute with "virtually identical language" because of differing context).

II. SECTION 1'S USE OF "SEAMEN" AND "RAILROAD EMPLOYEES" DOES NOT SUPPORT BROCK'S INTERPRETATION.

Brock's fallback arguments—that "seamen" and "railroad employees" confirm his interpretation, and that *ejusdem generis* does too—fare no better. Resp.Br.23-26, 34-35.

A. Brock fails to establish that both "seamen" and "railroad employees" are analogous to local delivery drivers.

In *Saxon*, the Court recognized that "seamen" in 1925 "were only those 'whose occupation [was] to assist in the management of ships *at sea*; a mariner; a sailor; ... any person (*except masters, pilots*, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship.'" *Saxon*, 596 U.S. at 460 (emphases added) (quoting *Seamen*, WEBSTER'S NEW INTERNATIONAL DICTIONARY (1922)). To be "at sea" is to be in interstate or foreign commerce. Pet.Br.26-27.

In any event, Brock's "last-mile seamen" (Resp.Br.25-26) are analogous to Ms. Saxon. Starting with pilots, the Court excluded them from the definition of seamen in *Saxon*. 596 U.S. at 460-61. Regardless, pilots, unlike Brock, directly and actively engage with ships in foreign and interstate commerce—they board and navigate them. The same is true of towboats, ferries, barges and lighters. *See Old Dominion S.S. Co. v. Virginia*, 198 U.S. 299, 299-

300 (1905) (ships transferred passengers and freight to "larger ocean-going vessels") (cited at Resp.Br.25-26); *Morrison v. Com. Towboat Co.*, 116 N.E. 499, 500 (Mass. 1917) (tugboat directly engaged with "interstate vessel") (cited at Resp.Br.26). Brock's primary support, *Foster*, explains that these kinds of ships adopt the interstate or foreign character of the ships with which they directly interact. 63 U.S. at 246; *see supra* at 8. Brock's final example is even less helpful, as the Court held that navigable rivers are federal waters (not intrastate), *see The Daniel Ball*, 77 U.S. 557, 564 (1870). And as explained, *see supra* 5-12, the same is true of Brock's "last-mile railroad employees." Resp.Br.20, 23-24.

B. These failures doom Brock's *ejusdem* argument. *Ejusdem* "neither demands nor permits" the incorporation of a characteristic "that inheres in only one of the list's preceding specific terms." *Saxon*, 596 U.S. at 462.

If anything, § 1's use of "seamen" and "railroad employees" hurts Brock's argument. Neither "is defined in the statute with reference to the provenance of the goods (or people) they transport. Instead, the FAA casts them at a high level of generality, referring to the broad type of work they perform." *Rittman*, 971 F.3d at 927 (Bress, J., dissenting). Thus, "the 'linkage' between 'seamen' and 'railroad employees' is that they are both transportation workers." *Bissonnette*, 601 U.S. at 253 (quoting *Circuit City*, 532 U.S. at 118-19, 121).

C. In addition, Brock misapplies the *ejusdem* canon. *Ejusdem* instructs that *only* transportation workers fall within the residual clause's scope. But

the residual clause does not cover *every* transportation worker, because its text requires that the transportation workers be "engaged in foreign or interstate commerce." 9 U.S.C. § 1; *see* Pet.Br.17-18. Thus, even Brock agrees that "workers who transport goods ordered from local retailers" are not exempt. BIO.11; *see also* Resp.Br.10 (similar).

Brock also incorrectly claims that if "last-mile 'railroad employees'" and "last-mile 'seamen'" are exempt, then "any other last-mile transportation workers" should be too. Resp.Br.26. But (putting aside Brock's misuse of the "last mile" label) the residual clause can contain requirements that would exclude some subsets of seamen and railroad employees from *its* scope. "[T]hat only goes to show that Congress in specifically exempting these particular 'class[es] of workers' [seamen and railroad employees] wanted to cover anyone who could meet that description. It does not change how we approach the meaning of the residual clause." *Rittman*, 971 F.3d at 928 (Bress, J., dissenting).

Consider, for example, a statute that exempts "onions, beets, and other red foods" from a tax. *Ejusdem* might suggest that the residual clause—other red foods—encompasses only vegetables, not fruit or meat. In that instance, the residual clause's "red" requirement would exclude white, yellow and green vegetables from its scope, even though onions and beets can both be yellow. Congress may have been concerned with all onions and beets, but only red varietals of other vegetables.

Here, *ejusdem* excludes non-transportation workers from the residual clause's scope. *Circuit City*, 532

U.S. at 121. And the residual clause's "engaged in foreign or interstate commerce" requirement means that, to fall within the residual clause, the transportation workers must be engaged in such commerce.

III. PURPOSE AND HISTORY DO NOT AID BROCK.

Brock's arguments about congressional purpose and history are no better. Resp.Br.26-31.

A. According to Brock, Congress was aware of the importance of last-mile delivery drivers in 1925, but Brock cites only *two* examples. Resp.Br.28-29. The paucity of examples shows there was no epidemic of local-delivery-driver strikes for Congress to address.

His examples are also unhelpful. The 1919 teamsters strike was against a company the federal government nationalized under its war powers, BERT BENEDICT, THE EXPRESS COMPANIES OF THE UNITED STATES 37-39 (1919), and concerned federal wage control, *see Strike Paralyzes Railway Express,* N.Y. TIMES, Oct. 14, 1919, at 1. That Congress was seeking to resolve a strike about a distinctly federal issue pursuant to its war powers does not suggest that Congress was concerned about local-driver strikes in § 1. Brock also points to "teamsters join[ing] [a] 1907 New Orleans port strike." Resp.Br.28. But the State, not the federal, government resolved that strike. *See* DANIEL ROSENBERG, NEW ORLEANS DOCKWORKERS 112-67 (1988).

As suggested by the fact that the federal government played a role in the first, but not the second, strike, in 1925, Congress did not have clear authority over the employment contracts of local delivery drivers like Brock. Pet.Br.31-35. Brock

asserts that Congress had such authority because, in his view, drivers like Brock "are engaged in interstate transportation." Resp.Br.45. That, however, is the question that was open in 1925—a point Flowers has explained in detail, but Brock ignores. *See* Pet.Br.31-34. Regardless, speculation about Congress' awareness, Resp.Br.28-29, is improper. *Circuit City*, 532 U.S. at 120.

B. Brock wrongly claims that Flowers' interpretation would have disrupted the Transportation Act's dispute-resolution regime. The Railway Labor Board ("RLB") cases Brock cites fail to discuss the Board's jurisdiction or contain no ruling at all.[4] With respect to the RLB's authority over "express company" employees (Resp.Br.29-30), those companies transported valuable articles "from one state to another." *U.S. Exp. Co. v. Hemmingway*, 39 F. 60, 62 (C.C.S.D. Miss. 1889); *see, e.g.*, *Barrett v. City of N.Y.*, 232 U.S. 14, 28-29 (1914) (describing interstate shipments). And two RLB decisions purportedly involving "last-mile drivers" for a national express company (Resp.Br.30) that lack factual detail cannot overcome § 1's plain terms.

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[4] *See Bhd. of Locomotive Eng'rs v. Louisville & Nash. R.R. Co.*, Interp. No. 9, 1 R.L.B. Dec. 83, 83 (1920) (no ruling); *Ferry Boatman's Union of Cal. v. S. Pac. Co.*, Dec. No. 1885, 4 R.L.B. Dec. 485, 487 (1923) (same); *Bhd. of Ry. & S.S. Clerks, Freight Handlers, Express & Station Emps. v. Balt. & Ohio R.R. Co.*, Dec. No. 1040, 3 R.L.B. Dec. 459, 460 (1922) (resolving dispute without addressing jurisdiction); *see also Bhd. of Locomotive Eng'rs v. Tex. & Pac. Ry.*, Dec. No. 1906, 4 R.L.B. Dec. 526, 528 (1923) (same); *cf. also, e.g.*, *Piedmont & N. Ry. Co. v. ICC*, 286 U.S. 299, 307 (1932) (company conceded engagement in interstate commerce).

In addition, by 1925, it was universally accepted that the RLB would be significantly changed or eliminated. *See, e.g.*, HARRY D. WOLF, THE RAILROAD LABOR BOARD 397-416 (1927). And it was—eighteen months after the FAA's passage. *See* Railway Labor Act of 1926, 44 Stat. 577. It is not plausible that Congress was concerned with—and silently relied upon—the granular nuances of a system it imminently planned to change.[5]

Brock's suggestion that excluding him from the FAA "could" "conflict" with the modern Railway Labor Act is meritless. *See* Resp.Br.30-31. Brock has not identified any actual conflict, and to the extent there might be one (and there is none), the Railway Labor Act would control as the more comprehensive and specific regime governing the proper forum for railroad-related disputes. *See Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 514 (2018).

C. Brock's arguments regarding the Shipping Commissioner's Act likewise lack merit. Brock does not dispute that coastal travel involved entering federal waters (and thus border crossings) even between ports in the same State. *See* Pet.Br.27. He contends that coastwise voyages were not limited to the coast and included shipping between any ports. Resp.Br.40. This interpretation of "coastwise" is inconsistent with its common meaning in 1925 and numerous contemporaneous federal cases. *See, e.g.*,

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[5] Brock's Interstate Commerce Act cases, which did not involve arbitration, *see, e.g.*, *Tex. & New Orleans R.R. Co. v. Sabine Tram Co.*, 227 U.S. 111, 113 (1913) (cited at Resp.Br.40), are likewise unpersuasive, as the RLB's jurisdiction was narrower than the ICA's coverage. *See* Pet.Br.28-30.

Coastwise, WEBSTER'S INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (1907) ("By way of, or along, the coast."); *see also Coastwise*, OXFORD ENGLISH DICTIONARY (2026) ("Following the coast; carried on along the coast; as 'a coastwise trade.'"); *Huus v. New York & Porto Rico S.S. Co.*, 182 U.S. 392, 395-96 (1901) (dividing vessels into "either interior commerce, or coastwise" and recognizing that latter included "ports upon the Atlantic or Pacific coasts, or upon islands so near thereto … as properly to constitute a part of the coast"); Pet.Br.26 (citing cases).

Brock's contrary authorities improperly conflate "coastwise" with "coasting trade." *See Ravesies v. United States*, 37 F. 447, 447 (C.C.S.D. Ala. 1889); *City & Cnty. of S.F. v. Cal. Steam Navigation Co.*, 10 Cal. 504, 507 (1858); *Gordon v. Blackton*, 186 A. 689, 690 (N.J. 1936). In 1925, "coasting trade" had a well-defined meaning and was distinct from "coastwise." *Coasting Trade*, WEBSTER'S INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (1907) ("Trade carried on by water between neighboring ports of the same country, as distinguished from foreign trade or trade involving long voyages.").

Finally, while arbitration under the Shipping Commissioner Act is voluntary, Resp.Br.41, the same is true under the FAA. Brock offers no reason why the difference between pre-dispute and post-dispute agreements should matter to § 1's meaning.

IV. BROCK'S INTERPRETATION IS UNWORKABLE AND UNDERMINES THE FAA.

A. Finally, Brock cannot solve the practical difficulties of his position. Indeed, Brock admits that

the Tenth Circuit's analysis was overly complicated and declines to defend it *three times*. Resp.Br.3, 15, 44. While Brock assures the Court that all the required line drawing was done in the pre-1925 "final destination" jurisprudence (Resp.Br.42, 44), the Court abandoned that precedent due to its complexity. It has proven no more workable a century later, as the First, Ninth, and Tenth Circuits' decisions prove. Pet.Br.37-39.

Courts adopting Brock's interpretation end up "consider[ing] myriad factors, including the perceived 'practical, economic continuity in the generation of goods and services, as well as considerations such as where goods 'come to rest.'" *Nair v. Medline Indus. LP*, 2024 WL 4144070, at *2 (9th Cir. Sept. 11, 2024) (Nelson, J., concurring) (quoting *Rittman*, 971 F.3d at 913, 916); *see* Pet.Br.40-41. Perhaps for that reason, Brock cites *none* of the lower court decisions adopting his interpretation—aside from the one below, which he disclaims. They make plain the chaos his interpretation creates.

B. Brock has no response to the numerous cases showing that his supposedly simple and cabined interpretation has already greatly stretched § 1's narrow exemption. Pet.Br.43-44 & nn.6-8. Under Brock's interpretation, § 1 extends into almost every corner of the economy. *See, e.g.*, DRI Ctr. for L. & Pub. Pol'y & Atl. Legal Found. Amicus Br.12 (highlighting effect on pharmacies, grocers, restaurants, hardware co-ops, car dealerships, office suppliers, and beverage distributors, among others); Amazon Amicus Br.8-9 & n.3 (discussing cases holding that "moving packages to and from storage racks and preparing packages for

their subsequent movement" falls within § 1).[6] Indeed, adopting Brock's approach would render grocery store clerks who move out-of-State goods from delivery vehicles to store shelves transportation workers under § 1 (Pet.Br.40-41)—a result the Court disclaimed in *Bissonnette*. 601 U.S. at 256.

Brock responds that work done after a good "arrives at its destination" (Resp.Br.45 (quoting *Gen. Oil Co. v. Crain*, 209 U.S. 211, 229 (1908))) is not exempt, but that argument yields questions like: What is a good's final destination? The store? The shelf? The ultimate consumer? What does it mean for a good to arrive at its final destination? What if there is a break in its journey? What if goods are removed from their original package along the way? This mode of analysis inevitably spawns judge-made balancing factors, which give way to costly mini-trials. No need to take Flowers' word for it—look to the final destination cases from a century ago, or the § 1 decisions in the First, Ninth, and Tenth Circuits today. *See, e.g.*, Chamber of Com. of the U.S. Amicus Br.25-26 (collecting cases where discovery needed to assess § 1's applicability).

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[6] *See also, e.g.*, CWI Amicus Br.3 (highlighting "recent litigation involving local food delivery and transportation"); Missouri et al. Amicus Br.6-7 (similar). Brock's own amici prove the point. *See, e.g.*, Illinois et al. Amicus Br.24-25 (implying that local food delivery and rideshare drivers are exempt); AFL-CIO Amicus Br.12-13 & n.5 (exemption should mirror the FLSA and highlighting impacted workers); Nat'l Acad. of Arbs. Amicus Br.4 (asserting the exemption should apply to drivers who "work … for national companies such as Amazon, Wal-Mart, Target, and others").

Brock responds that Flowers' rule generates its own questions, about "car wash attendants at truck stops" and "gas station attendants." Resp.Br.43. But these questions arise from *Saxon*'s holding that § 1 reaches some classes of workers who directly and actively engage with interstate vehicles but do not cross borders. They remain regardless of the Court's ruling here—except that if Flowers prevails, one need not answer them for attendants washing or providing gas to purely intrastate vehicles. By contrast, adopting Brock's position will also spawn litigation over "arcane riddles," *Bissonnette*, 601 U.S. at 254. Courts and parties will endure costly, complex disputes over the FAA's applicability, and the result will be more "litigation from a statute that seeks to avoid it." *Circuit City*, 532 U.S. at 123.

Nothing in § 1's text or the Court's § 1 precedent compels that result.

CONCLUSION

The Court should reverse the judgment below.

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Respectfully submitted,

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