No. 23-51

In the Supreme Court of the United States

NEAL BISSONNETTE, ET AL.,
Petitioners,

v.

LEPAGE BAKERIES PARK ST., LLC, ET AL.,
Respondents.

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

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL RETAIL FEDERATION, AND AMERICAN BAKERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the Nation's business community.[1]

The National Retail Federation (NRF) is the world's largest retail trade association and the voice of retail worldwide. The NRF's membership includes retailers of all sizes, formats and channels of distribution, as well as restaurants and industry partners from the United States and more than 45 countries abroad. NRF has filed briefs in support of the retail community on dozens of topics.

The American Bakers Association (ABA) is the Washington D.C.-based voice of the wholesale baking industry. Since 1897, ABA has worked to increase protection from unduly costly government regulations, build the talent pool of skilled workers with specialized training programs, and forge industry alignment by establishing a more receptive environment to grow

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no entity or person other than *amici*, their members, or their counsel made a monetary contribution intended to fund its preparation or submission.

the baking industry. ABA's membership has grown to represent more than 300 companies that together have at least 1,600 facilities. ABA advocates on behalf of more than 1,000 baking facilities and baking company suppliers. The baking industry generates more than $153 billion in economic activity annually and provides work for approximately 800,000 highly skilled individuals.

Many of *amici*'s members and affiliates regularly rely on arbitration agreements in their contractual relationships. Arbitration allows them to resolve disputes promptly and efficiently while avoiding the costs associated with litigation in court—because arbitration is speedy, fair, inexpensive, and less adversarial than litigation. Based on the policy reflected in the Federal Arbitration Act (FAA), *amici*'s members and affiliates have structured millions of contractual relationships around the use of arbitration to resolve disputes.

Amici therefore have a strong interest in affirmance of the judgment below. The Second Circuit's holding that the Section 1 exemption to the FAA applies only to certain classes of workers within the transportation industry comports with the text and historical context of the FAA. Moreover, a contrary decision threatens to diminish the FAA's protections, a result that will harm both businesses and workers.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted the FAA in 1925 "in response to judicial hostility to arbitration." *Viking River Cruises, Inc.* v. *Moriana*, 596 U.S. 639, 649 (2022). For nearly a century, the FAA has embodied Congress's strong

commitment to ensuring the enforceability of arbitration agreements.

To that end, Section 2 of the FAA broadly protects arbitration agreements "evidencing a transaction involving commerce." 9 U.S.C. § 2. This Court has held that the phrase "involving commerce" in Section 2 "signals an intent to exercise Congress' commerce power to the full." *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 277 (1995).

In recent years, opponents of arbitration increasingly have tried to avoid the FAA's protections by advancing expansive constructions of the limited exemption in Section 1, which excludes from the Act's coverage "contracts of employment of seamen, railroad employees, or any *other class of workers engaged in foreign or interstate commerce*." 9 U.S.C. § 1 (emphasis added).

This case is one among many recent examples of that growing phenomenon. Petitioners resisted enforcement of their arbitration agreement by asserting that they fall within the Section 1 exemption. The Second Circuit rejected this contention, holding that Petitioners are not covered by the residual clause because they do not perform work within the "transportation industry"; instead, their work is in the baked-goods industry. Pet. App. 40a.

That result, and the interpretive path that the Second Circuit followed to reach it, are correct.

Petitioners frame the question as whether Section 1 contains an "atextual" requirement that a class of workers engaged in interstate commerce must also perform work within the transportation industry. Pet. Br. 3. But that framing bakes in a flawed premise. The actual question for this Court's decision is what it

means under Section 1's residual clause for a "class of workers" to be "engaged in foreign or interstate commerce" *in a similar way* to the enumerated terms "seamen" and "railroad employees."

Over two decades ago, this Court instructed that Section 1's exemption must be given a "narrow construction" and "precise reading." *Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 118, 119 (2001). Recently, the Court reaffirmed that Section 1 must be interpreted according to its "contemporary, common meaning" at the time the FAA was enacted in 1925. *Southwest Airlines Co.* v. *Saxon*, 596 U.S. 450, 455 (2022) (quotation marks omitted). And, most relevant to this case, the Court has repeatedly made clear that the relevant language in Section 1—"other class of workers engaged in foreign or interstate commerce"—is cabined by "the application of the maxim *ejusdem generis*" because it is a "residual phrase, following, in the same sentence, explicit reference to 'seamen' and 'railroad employees.'" *Circuit City*, 532 U.S. at 112, 114; see *Saxon*, 596 U.S. at 458.

The Second Circuit's interpretation rightly applies these principles, especially to the terms "seamen" and "railroad employees" that precede Section 1's residual clause. A "common attribute" (*Saxon*, 596 U.S. at 458) of the seamen and railroad employees of 1925 is that they performed work within the transportation industry. The Second and Eleventh Circuits have therefore correctly held that performing work within the transportation industry is necessary—although not sufficient—for a class of workers to be "engaged in foreign or interstate commerce" within the meaning of Section 1's residual clause. Pet. App. 38a-40a; see *Hamrick* v. *Partsfleet, LLC*, 1 F.4th 1337,

1349 (11th Cir. 2021); *Hill* v. *Rent-A-Center*, 398 F.3d 1286, 1288 (11th Cir. 2005).

The class of workers to which Petitioners belong does not meet that requirement, and that is enough to resolve this case.

Of course, working in the transportation industry is necessary, but certainly not sufficient, to trigger the Section 1 exemption, because any potential class of workers also has to perform work that qualifies as being "engaged in foreign or interstate commerce." That important issue continues to percolate among the lower courts, and it is not encompassed within the question presented as this case comes to the Court. The Court should reject any invitation to go beyond the question presented, just as it did in *Saxon* in recognizing that the answer to the question of whether a class of workers is engaged in interstate commerce "will not always be so plain" and declining to resolve issues unnecessary to the disposition of the case. 596 U.S. at 457 n.2.

Finally, Petitioners' approach, if adopted, would create significant practical problems. A virtue of the Second and Eleventh Circuits' approach, in addition to its adherence to the text and this Court's precedents, is that it provides a clear, bright-line rule that is easy for workers and businesses to understand and for courts to apply when determining whether workers throughout wide sectors of the economy are covered by arbitration agreements protected by the FAA.

Petitioners' interpretation of the Section 1 exemption, by contrast, would significantly increase litigation over when and whether the FAA applies. That is contrary to Congress's fundamental purpose "to move the parties to an arbitrable dispute out of court and

into arbitration as quickly and easily as possible." *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983).

Unless the decision below is affirmed, more businesses and workers will face uncertainty and litigation over whether the FAA governs their arbitration agreements, contrary to that purpose. And some of them could be deprived of the benefits secured by the FAA, including lower costs and greater efficiency in dispute resolution.

ARGUMENT

I. Section 1's Narrow Residual Clause Is Limited To Classes Of Workers Within The Transportation Industry.

A. The Residual Clause Must Be Interpreted Based On Its Plain Meaning When Enacted And The Structure Of The FAA.

The FAA's principal substantive provision, Section 2, provides that an arbitration agreement in "a contract evidencing a transaction *involving commerce* * * * shall be valid, irrevocable, and enforceable[.]" 9 U.S.C. § 2 (emphasis added). This Court has instructed that "involving commerce" must be read "expansively" to reach all arbitration agreements within Congress's commerce power. *Allied-Bruce,* 513 U.S. at 274.

Section 1 creates a limited exception to this broad coverage, providing that the FAA's protections for arbitration agreements do not apply to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. In contrast to the expansive reach of Section 2, the Section 1 exemption requires a

"narrow construction" and "precise reading." *Circuit City*, 532 U.S. at 118-19.

This Court's prior decisions specify several interpretive principles that apply in determining the proper "narrow" and "precise reading."

First, the Section 1 exemption must be interpreted based on the "ordinary meaning" of the statutory text "at the time" Congress enacted the statute "in 1925." *Saxon*, 596 U.S. at 455 (quotation marks omitted); accord *New Prime, Inc.* v. *Oliveira*, 139 S. Ct. 532, 539 (2019) (also recognizing the "reliance interests in the settled meaning of a statute").

Second, "'the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *Saxon*, 596 U.S. at 455 (quoting *Parker Drilling Mgmt. Servs., Ltd.* v. *Newton*, 139 S. Ct. 1881, 1888 (2019); *Roberts* v. *Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012)). In *New Prime*, for example, this Court looked to "a neighboring term in the statutory text" to inform its interpretation of the phrase "contract of employment" in Section 1. 139 S. Ct. at 540-41.

Third, with respect to Section 1's residual clause in particular, the Court has instructed that the clause also should be read narrowly because of "the maxim *ejusdem generis*, the statutory canon that where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Saxon*, 596 U.S. at 458 (quoting *Circuit City*, 532 U.S. at 114-15); cf. *Epic Sys. Corp.* v. *Lewis*, 138 S. Ct. 1612, 1625 (2018) ("[W]here, as here, a more general term follows more specific terms in a list, the general term is usually

understood to 'embrace only objects similar in nature to those objects enumerated by the preceding specific words.'") (quoting *Circuit City*, 532 U.S. at 115).

Here, the phrase "any other class of workers engaged in foreign or interstate commerce" is the final, catchall entry in a list, following the enumerated terms "seamen" and "railroad employees." 9 U.S.C. § 1. As *Circuit City* explains, the residual clause "should be read to give effect to the terms 'seamen' and 'railroad employees,' and should itself be controlled and defined by reference to the enumerated categories of workers which are recited just before it." 532 U.S. at 115. In other words, the residual clause must be construed narrowly to reach only classes of workers that engage in work that is similar to that of the enumerated groups of "seamen" and "railroad employees."

One of Petitioners' supporting *amici* notes that some lower courts have looked to the use of the phrase "engaged in commerce" in other statutes to interpret Section 1 of the FAA. See Public Justice Br. 12; see also *id.* at 12 n.2. (citing statutes). But that ignores this Court's conclusion that context matters in interpreting Section 1. None of these other statutes locates the phrase in a residual clause that must be interpreted by reference to the terms that precede it—and none has the same preceding terms as the FAA. Accordingly, the *ejusdem generis* canon confirms that these different statutes' use of similar terms should not be interpreted "*pari passu*." See *Yates* v. *United States*, 574 U.S. 528, 545 (2015) ("[W]here general words follow specific words in a statutory enumeration, the general words are [usually] construed to embrace *only* objects similar in nature to those objects enumerated by the preceding specific words.") (emphasis added). As the Eleventh Circuit concluded, "We

don't give 'in commerce' or 'engaged in commerce' the same meaning it has in the other statutes just because Congress used the same terms in the Federal Arbitration Act." *Hamrick*, 1 F.4th at 1348.

B. The Text And Structure Of The FAA Demonstrate That The Residual Clause Requires Workers To Perform Work Within The Transportation Industry.

This Court reaffirmed in *Saxon* that Section 1 exempts "only those contracts involving 'transportation workers.'" 596 U.S. at 457 (quoting *Circuit City*, 532 U.S. at 109). While the Court has "not provide[d] a complete definition of 'transportation worker[]'" (*id.* at 458), the text and structure of the FAA support limiting the residual clause to reach only certain classes of workers in the transportation industry.

"[T]he inference embodied in *ejusdem generis* is that Congress remained focused on some common attribute shared by the preceding list of specific items when it used the catchall phrase." *Saxon*, 596 U.S. at 461-62 (alterations and quotation marks omitted). As Respondents' brief details (at 16-28), Congress in 1925 understood "seamen" and "railroad employees," as classes, to have a "common attribute" of being workers within the transportation industry.

This Court recognized in *Saxon* that "seamen" refers to a subset of transportation workers in the "*maritime shipping industry*." *Saxon*, 596 U.S. at 460 (emphasis added). That conclusion is bolstered by Congress's prior regulation of seamen on board "merchant vessels"—as opposed to "fishing or whaling vessels, or yachts." See Seamen's Act of 1915, 38 Stat. 1164; see also, *e.g.*, Shipping Commissioners Act of 1872, 17 Stat. 262, 267, §§ 4, 25 (creating a dispute-resolution

process for "merchant seamen and merchant ships" in interstate and foreign commerce).

Similarly, "railroad employees" by definition work for railroads, which are within the transportation industry. As Petitioners concede (at Br. 30 n.11), the Interstate Commerce Act and other statutes preceding the FAA's enactment were limited to public railroads in the transportation industry. See also Resp. Br. 26 (listing statutes).

The type of work performed by the classes of seamen and railroad employees in 1925 confirms that Congress's focus was the transportation industry. At the time of the FAA's enactment, railroad employees and maritime workers routinely and typically moved goods across long distances and state or national borders. See Paul Stephen Dempsey, *Transportation: A Legal History*, 30 Transp. L.J. 235, 275 (2003).

For example, one study reported that in 1920, the average freight haul by railroad was 308 miles. See L.E. Peabody, *Forecasting Future Volume of Railway Traffic*, in 66 Railway Age 899, 900 (Samuel O. Dunn et al. eds., 1924); see also, *e.g.*, Thirty-Third Annual Report on the Statistics of Railways in the United States 37 (Interstate Commerce Comm., Bureau of Statistics 1933) (in 1919, the average freight haul of a Class I railroad traveled 178.29 miles). Another study reported that the average freight ship haul shortly after the Act's enactment was 660 miles. Harold Barger, *The Transportation Industries, 1889-1946: A Study of Output, Employment and Productivity* 128 (1951).

The "typical 'seamen' and 'railroad employees'" of the 1920s thus "actually engage[d] in interstate or international commercial transportation." *Hamrick*, 1 F.4th at 1351. And "[a]s for the residual exclusion[s]

of 'any other class of workers engaged in foreign or interstate commerce,' Congress' demonstrated concern with transportation workers and their necessary role in the free flow of goods explains the linkage to the two specific enumerated types of workers identified in the preceding portion of the sentence." *Circuit City*, 532 U.S. at 121.

In other words, it is "apparent [that] Congress was concerned only with giving the arbitration exemption to 'classes' of transportation workers within the transportation industry." *Hill*, 398 F.3d at 1290; accord *Hamrick*, 1 F.4th at 1345.

Of course, any potential class of workers in the transportation industry must also, "in the main, actually engage[] in interstate commerce" in order to fall within the Section 1 exemption. *Hamrick*, 1 F.4th at 1340 (framing the inquiry as a two-part test); see also Pet. App. 47a-48a (similar). Then-Judge Barrett has explained that, for a class of workers to perform work analogous to "seamen" and "railroad employees," "interstate movement of goods" must be "a central part of the class members' job description." *Wallace* v. *Grubhub Holdings, Inc.*, 970 F.3d 798, 801 (7th Cir. 2020). Other courts of appeals that have reached the issue agree.[2]

In other words, while Section 1 should have no application to workers outside of the transportation industry, the converse is not always true. Lower courts continue to grapple with what is required to show that a class of transportation industry workers is engaged

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[2] See, *e.g.*, *Singh* v. *Uber Techs., Inc.*, 67 F.4th 550, 557 (3d Cir. 2023); *Cunningham* v. *Lyft, Inc.*, 14 F.4th 244, 252-53 (1st Cir. 2021); *Capriole* v. *Uber Techs., Inc.*, 7 F.4th 854, 864 (9th Cir. 2021).

in interstate commerce, although the lower court here was able to avoid reaching the issue. See Pet. App. 50a-52a.

Limiting the residual clause to workers *in the transportation industry* for whom engaging in interstate or foreign commerce is a central part of their job description—like seamen and railroad employees—ensures that Section 1's narrow exemption does not threaten to deny the FAA's protection of arbitration agreements to countless workers outside that industry "who incidentally transport[] goods interstate." *Hill*, 398 F.3d at 1289-90. This is particularly important in our increasingly interconnected economy, with goods often being transported across state lines for sale. Focusing solely on the "central part" of a class of workers' duties may not be enough to ensure that workers are not unduly swept up into an exemption that would never have been understood to apply to them at the time the FAA was enacted.

No reasonable person reading the FAA in 1925 would have considered "a pizza delivery person who delivered pizza across a state line to a customer in a neighboring town," or the account manager in *Hill* who occasionally crossed the border between Georgia and Alabama in delivering furniture and other items to customers as akin to "seamen" or "railroad employees." *Id*. at 1290. Thus, as another court put it, citing *Hill*, "[n]otwithstanding the fact that pizzas are crossing state lines, no pizza delivery person belongs to a 'class of workers engaged in foreign or interstate commerce.'" *Rogers* v. *Lyft, Inc.*, 452 F. Supp. 3d 904, 916 (N.D. Cal. 2020), *aff'd*, 2022 WL 474166 (9th Cir. Feb. 16, 2022).

Petitioners' interpretation, however, would muddy the waters and potentially lead to expansive

(and incorrect) interpretations of Section 1. As noted above, in our modern economy, virtually any business that manufactures or produces goods will employ or contract with workers whose job is to market, sell, and distribute those goods. Treating all such workers, no matter how far removed from the transportation industry, as potentially subject to the Section 1 exemption threatens to give Section 1 an enormous sweep that is contrary to the "narrow construction" mandated by this Court. *Circuit City*, 532 U.S. at 118.

Finally, one *amicus*, the American Association for Justice, urges this Court to overrule *Circuit City* and exempt all workers' arbitration agreements from the FAA. AAJ Br. 3-18. That request should be rejected out of hand; after all, Petitioners do not advocate for that result. But AAJ's argument is also meritless, and AAJ does not even try to explain how its interpretation could be reconciled with Congress's use of the enumerated terms "seamen" and "railroad employees," which would be rendered mere surplusage.

Moreover, this Court has enforced workplace arbitration agreements under the FAA in a long line of cases stretching back nearly four decades. See *Viking River*, 596 U.S. at 662-63; *Lamps Plus, Inc.* v. *Varela*, 139 S. Ct. 1407, 1419 (2019); *Epic Sys.*, 138 S. Ct. at 1632; *Nitro-Lift Techs., LLC* v. *Howard*, 568 U.S. 17, 22 (2012) (per curiam); *Rent-A-Center W., Inc.* v. *Jackson*, 561 U.S. 63, 67-72 (2010); *Perry* v. *Thomas*, 482 U.S. 483, 491 (1987). As the Court has noted, private parties have entered into arbitration agreements "relying upon" this Court's interpretation of FAA. *Allied-Bruce*, 513 U.S. at 272. There is no reason for this Court to undermine decades of reliance and "reconsider what is by now well-established law." *Ibid.*; see also *Kimble* v. *Marvel Entm't, LLC*, 576 U.S. 446, 447

(2015) (for decisions implicating "contract law . . . considerations favoring stare decisis are at their acme because parties are especially likely to rely on such precedents when ordering their affairs") (citation and quotation marks omitted).

C. Historical Context Further Confirms That The Residual Clause Applies Only To Workers Within The Transportation Industry.

The context in which Congress enacted Section 1 points in the same direction as the statutory text: limiting Section 1's exemption to classes of workers within the transportation industry—just like the "seamen" and "railroad employees" of 1925.

This Court has recognized that "seamen" and "railroad employees" were excluded from the Act because "[b]y the time the FAA was passed, Congress had already enacted federal legislation providing for the arbitration of disputes between seamen and their employers"; "grievance procedures existed for railroad employees under federal law"; "and the passage of a more comprehensive statute providing for the mediation and arbitration of railroad labor disputes was imminent." *Circuit City*, 532 U.S. at 121 (citing, respectively, the Shipping Commissioners Act of 1872, 17 Stat. 262; Transportation Act of 1920, 41 Stat. 456; and Railway Labor Act of 1926, 44 Stat. 577).

Those statutes were all limited to workers in the transportation industry. See Resp. Br. 23-27.

Although "the legislative record on the § 1 exemption is quite sparse," what little there is "suggest[s] that the exception may have been added in response to the objections of [Andrew Furuseth,] the president of the International Seamen's Union of

America." *Circuit City*, 532 U.S. at 119; see also *United Elec., Radio & Mach. Workers* v. *Gen. Elec. Co.*, 233 F.2d 85, 99 (1st Cir. 1956); *Tenney Eng'g, Inc.* v. *United Elec. Radio & Mach. Workers*, 207 F.2d 450, 452 (3d Cir. 1953); Sales and Contracts to Sell in Interstate and Foreign Commerce, and Federal Commercial Arbitration: Hearing on S. 4213 and S. 4214 Before a Subcomm. of the Senate Comm. on the Judiciary, 67th Cong., 9 (1923) (statement of W.H.H. Platt, Am. Bar Ass'n). Furuseth argued in part that seamen's contracts should be excluded because they "constitute a class of workers as to whom Congress had long provided machinery for arbitration." *Tenney,* 207 F.2d at 452.[3]

Congress's inclusion of "railroad employees" in Section 1 appeared to stem from the same concerns. Congress had previously enacted special dispute-resolution procedures for workers in that transportation industry, too, in response to a long history of labor disputes. Indeed, by the time the FAA was enacted, mediation and arbitration had been central features of the railroad dispute resolution process for nearly forty years.[4]

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[3] While this Court recognized in *Circuit City* that "the fact that a certain interest group sponsored or opposed particular legislation" is not a basis for discerning the meaning of a statute, it pointed to the history as context for its conclusion that the "residual exclusion" of "'any other class of workers engaged in foreign or interstate commerce'" is "link[ed] to the two specific, enumerated types of workers identified in the preceding portion of the sentence." *Circuit City*, 532 U.S. at 120-21.

[4] See, *e.g.*, Act of October 1, 1888, 25 Stat. 501 (providing for voluntary arbitration); Erdman Act of June 1, 1898, 30 Stat. 424, ch. 370, §§ 2, 3 (establishing a more detailed procedure involving both mediation and arbitration); Newlands Act of July 15, 1913,

Congress thus decided to carve out narrow classes of workers so as not to "unsettle established or developing statutory dispute resolution schemes covering specific workers." *Circuit City*, 532 U.S. at 120-21. The residual category of other transportation workers was included for a similar reason. That is, Congress contemplated extending similar legislation to other categories of workers *in the transportation industry*: "Indeed, such legislation was soon to follow, with the amendment of the Railway Labor Act in 1936 to include *air carriers* and [certain of] their employees." *Id.* at 121 (emphasis added); accord *Hill*, 398 F.3d at 1289 (quoting same).

This history supports interpreting Section 1's residual clause in accordance with its plain meaning and requiring a close link to the enumerated terms that proceed it. Doing so reflects Congress's decision "to ensure that workers in general would be covered by the provisions of the FAA, while reserving for itself" the ability to regulate separately workers "engaged in transportation" in the same manner as seamen and railroad employees; in other words, engaged in foreign or interstate commerce within the transportation industry. *Circuit City*, 532 U.S. at 121.

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38 Stat. 103, 45 U.S.C. § 101 *et seq.* (establishing a permanent Board of Mediation and Conciliation); Title III of the Transportation Act of 1920, 41 Stat. 456, 469 (establishing a Railroad Labor Board and more detailed provisions for resolution of railroad labor disputes); see also *Gen. Comm. of Adjustment of Bhd. of Locomotive Eng'rs for Missouri-Kansas-Texas R.R.* v. *Missouri-Kansas-Texas R. Co.*, 320 U.S. 323, 328 n.3 (1943) (summarizing the "fifty years of evolution" of the railroad dispute resolution framework).

D. The Decision Below Is Consistent With *Saxon*.

Petitioners' assertion that *Saxon* decided the question presented here (Pet. Br. 33-35) is wrong.

This Court's holding that Saxon is "a member of a 'class of workers' based on what she does at Southwest, not what Southwest does generally" (596 U.S. at 456) was answering a different question. That question was how to define the relevant "class of workers" for purposes of Section 1—and the Court rejected Saxon's overbroad "industrywide approach" because it elided differences among the actual work performed by workers within that industry. *Ibid.*

This Court had no occasion to address whether Section 1's application can extend to workers *outside* of the transportation industry: "That point needed no elaboration in *Saxon* because there the plaintiff worked for an airline." Pet. App. 48a.

If anything, *Saxon*'s rejection of an industry-wide approach to defining the class of workers shows only that working within the transportation industry is not *sufficient* to trigger the Section 1 exemption. *Amici* agree that it is not sufficient (see pages 5, 11-12, *supra*), but that is a separate question from the one presented here—whether working in the transportation industry is a *necessary* requirement.

II. An Improperly Expansive Construction Of The Residual Clause Exemption Will Harm Businesses And Workers And Burden Courts.

Failing to cabin Section 1's residual clause in accordance with its text and structure will produce two

significant adverse consequences. It will generate considerable uncertainty, requiring time-consuming and costly litigation over the FAA's application—thereby undermining one of Congress's key goals in enacting the FAA. And it threatens to prevent businesses and individuals from securing the benefits of arbitration protected by the FAA.

1. This Court has long recognized "Congress' clear intent, in the [Federal] Arbitration Act, to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone*, 460 U.S. at 22. Straightforward, easily administrable rules are therefore especially important in the context of the FAA.

The *Circuit City* Court therefore emphasized that Section 1 should not be interpreted in a manner that introduces "considerable complexity and uncertainty * * *, in the process undermining the FAA's proarbitration purposes and 'breeding litigation from a statute that seeks to avoid it.'" 532 U.S. at 123 (quoting *Allied-Bruce*, 513 U.S. at 275); cf. *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94-95 (2010) (recognizing that simple and predictable jurisdictional rules allow parties and courts to avoid wasteful litigation ancillary to the merits of the parties' dispute).

Requiring the class of workers to perform work within the transportation industry—just like seamen and railroad employees—produces an easy-to-apply test that can swiftly resolve many cases, like this one, in which opponents of arbitration seek to extend Section 1 well beyond its limits. In the mine run of cases,

it should not be difficult or factually complex to determine whether a class of workers performs work within the transportation industry.[5]

By contrast, as one of Petitioners' supporting *amici* acknowledges, courts have taken various approaches to deciding whether and to what extent work can qualify as engagement in foreign or interstate commerce. See Nat'l Academy of Arbitrators Br. 10-12. As this Court noted in *Saxon*, "the answer will not always be so plain when the class of workers carries out duties further removed from the channels of interstate commerce or the actual crossing of borders" than the airline cargo loaders in that case. 596 U.S. at 457 n.2.

This case underscores how the threshold transportation-industry requirement can more simply and efficiently resolve disputes about the FAA's application. For example, the Second Circuit noted that the district court waded through a list of indeterminate factors to discern whether a worker is a member of a class that performs work "so closely related to interstate commerce that he or she fits within the § 1 exemption." Pet. App. 40a, 50-51a.

"Undertaking such confounding inquiries in the context of the FAA is particularly undesirable when the result will inevitably mean more complex civil lit-

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[5] Some of Petitioners' supporting *amici* assert that this test will add complexity to the Section 1 analysis, rather than reducing it. See Illinois Br. 4-15; Nat'l Academy of Arbitrators Br. 12. But that assertion is wholly unpersuasive. For example, the States suggest that in some circumstances it can be hard to figure out the identity of a worker's "employer," such as in a joint-employer situation. Illinois Br. 6-11. But if none of the possible options involves the transportation industry, that inquiry is beside the point.

igation over the availability of a private dispute resolution mechanism that is supposed to itself reduce costs." *Rittmann* v. *Amazon.com, Inc.*, 971 F.3d 904, 937 (9th Cir. 2020) (Bress, J., dissenting) (citing *Circuit City*, 532 U.S. at 123; *Allied-Bruce*, 513 U.S. at 275).

As the Second Circuit explained, determining that Petitioners "do not work in a transportation industry" is far "more straightforward." Pet. App. 40a, 51a.

Further compounding the costs and delays associated with resolving the FAA's application under an overly-expansive reading of the Section 1 exemption is the risk of court-ordered discovery that threatens to drag on for months or even years. See *Aleksanian* v. *Uber Techs. Inc.*, 2023 WL 7537627, at *2 (2d Cir. Nov. 14, 2023); *Singh* v. *Uber Techs., Inc.*, 939 F.3d 210, 227-28 (3d Cir. 2019); *Golightly* v. *Uber Techs., Inc.*, 2021 WL 3539146, at *3-4 (S.D.N.Y. Aug. 11, 2021); see also *Singh* v. *Uber Techs., Inc.*, 571 F. Supp. 3d 345, 365 (D.N.J. 2021) (concluding, over two years after the Third Circuit's initial remand and after months of discovery, that rideshare drivers "are not exempt from the FAA" under the residual clause), *aff'd*, 67 F.4th 550 (3d Cir. 2023). Indeed, after more than four years of litigation, the Second Circuit recently determined in *Aleksanian* that discovery was required to determine whether the drivers at issue belonged to a class of workers engaged in interstate commerce under Section 1 and remanded the case to the district court for that purpose. 2023 WL 7537627, at *3-4.

Under some lower courts' interpretations of Section 1, such inquiries might be necessary, but only if a lower court determines that a class of workers is in

the transportation industry. Allowing Section 1 to potentially sweep in classes of workers who are removed from the transportation industry would spread these types of burdensome threshold disputes about application of the FAA across wide sectors of the economy that lack even an arguable resemblance to the maritime and railroad industries.

Even if some of the parties' disputes are eventually compelled to arbitration, the intervening litigation over the FAA's application would severely undermine the FAA's purpose of ensuring speedy and efficient dispute resolution. And this expensive and time-consuming litigation would burden courts as well.

In sum, "[t]he problem" presented by overly expansive readings of Section 1 like the one Petitioners urge the Court to adopt "is the frustration of the congressional preference for arbitration by expanding the exemption beyond its purpose and any definable limits, and requiring that motions to compel arbitration run a gauntlet of expensive and uncertain litigation." Pet. App. 88a-89a (Jacobs, J., supporting denial of rehearing en banc).

2. The failure to give Section 1 the proper construction also threatens to deny businesses and individuals the benefits of arbitration secured by the FAA. Without the FAA's protection, whether businesses and workers could invoke arbitration agreements would turn on state law and vary state by state. That variability would push more disputes out of arbitration into court because the FAA's protection against state-law rules that disfavor arbitration would no longer apply.

This Court has repeatedly recognized the "real benefits" of "enforcement of arbitration provisions,"

Circuit City, 532 U.S. at 122-23, which include "'lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes,'" *Lamps Plus*, 139 S. Ct. at 1416 (quoting *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010)); accord *Allied-Bruce*, 513 U.S. at 280 (one of the "advantages" of arbitration is that it is "cheaper and faster than litigation"); *14 Penn Plaza LLC* v. *Pyett*, 556 U.S. 247, 257 (2009) ("Parties generally favor arbitration precisely because of the economics of dispute resolution.").

These advantages extend to agreements between businesses and workers. This Court has been "clear in rejecting the supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context." *Circuit City*, 532 U.S. at 123. To the contrary, the lower costs of arbitration compared to litigation "may be of particular importance in employment litigation, which often involves smaller sums of money than disputes concerning commercial contracts." *Ibid.*

Empirical research confirms those observations. Scholars and researchers agree, for example, that the average employment dispute is resolved up to twice as quickly in arbitration as in court. See Lewis L. Maltby, *Private Justice: Employment Arbitration and Civil Rights*, 30 Colum. Hum. Rts. L. Rev. 29, 55 (1998) (average resolution time for employment arbitration was 8.6 months—approximately half the average resolution time in court); see also, *e.g.*, Nam D. Pham, Ph.D. & Mary Donovan, *Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration*, NDP Analytics 5-6, 15 (March 2022), https://bit.ly/3yiU23A (reporting that average resolution for arbitration was approximately

two months faster than litigation); Michael Delikat & Morris M. Kleiner, *An Empirical Study of Dispute Resolution Mechanisms: Where Do Plaintiffs Better Vindicate Their Rights?*, 58 Disp. Resol. J. 56, 58 (Nov. 2003–Jan. 2004) (reporting findings that arbitration was 33% faster than analogous litigation); David Sherwyn, Samuel Estreicher, & Michael Heise, *Assessing the Case for Employment Arbitration: A New Path for Empirical Research*, 57 Stanford L. Rev. 1557, 1573 (2005) (collecting studies reaching similar conclusions).

Further, "there is no evidence that plaintiffs fare significantly better in litigation." Sherwyn, 57 Stanford L. Rev. at 1578. To the contrary, a 2022 study released by the Chamber's Institute for Legal Reform found that employees were nearly *four times* more likely to win in arbitration than in court. Pham, *supra*, at 4-5, 12, 17 (surveying more than 25,000 employment arbitration cases and 260,000 employment litigation cases resolved between 2014 to 2021 and reporting a 37.7% win rate in arbitration versus 10.8% in litigation). The same study found that the median monetary award for employees who prevailed in arbitration was over double the award that employees received in cases won in court. *Id.* at 4-15, 14 ($142,332 in arbitration versus $68,956 in litigation); see also Theodore J. St. Antoine, *Labor and Employment Arbitration Today: Mid-Life Crisis or New Golden Age?*, 32 Ohio St. J. on Disp. Resol. 1, 16 (2017) (arbitration is "favorable to employees as compared with court litigation").

Earlier scholarship likewise reports a higher employee-win rate in arbitration than in court. See Sherwyn, 57 Stanford L. Rev. at 1568-69 (observing that, after accounting for dispositive motions, the

actual employee-win rate in court is "only 12% [to] 15%") (citing Maltby, 30 Colum. Hum. Rts. L. Rev. at 47) (of dispositive motions granted in court, 98% are granted for the employer); Nat'l Workrights Inst., *Employment Arbitration: What Does the Data Show?* (2004), https://bit.ly/3IVddnP (concluding that employees were 19% more likely to win in arbitration than in court).

Thus, "there is no evidence that plaintiffs fare significantly better in litigation [than in arbitration]." St. Antoine, 32 Ohio St. J. on Disp. Resol. at 16 (quotation marks omitted; alterations in original). Rather, arbitration is generally "favorable to employees as compared with court litigation." *Ibid.*; see also Maltby, 30 Colum. Hum. Rts. L. Rev. at 46.

In sum, Petitioners' overbroad reading of Section 1 would impose real costs on businesses and workers—because of the complex litigation that will be needed to determine the applicability of the Section 1 exemption—and deprive workers of a fair, cheaper, and speedier forum for resolving disputes.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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