No. 21-36048

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JENNIFER MILLER; EMAD AL-KAHLOUT; JOSE GRINAN; KELLY KIMMEY; JUMA LAWSON; HAMADY BOCOUM; PHILIP SULLIVAN; KIMBERLY HALO; CHRISTOPHER CAIN; GARY GLEESE; CLARENCE HARDEN; STEVEN MORIHARA; SHARON PASCHAL,

Plaintiffs-Appellees,

v.

AMAZON.COM, INC.; AMAZON LOGISTICS, INC.,

Defendants-Appellants.

On Appeal from the U.S. District Court for the Western District of Washington, No. 2:21-cv-00204 (Hon. Barbara J. Rothstein)

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

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INTEREST OF THE *AMICUS CURIAE*[1]

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, including cases involving the enforceability of arbitration agreements and interpretation of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16.

Many of the Chamber's members and affiliates regularly rely on arbitration agreements in their contractual relationships. Arbitration allows them to resolve disputes promptly and efficiently while avoiding

[1] No counsel for a party authored this brief in whole or in part, and no person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(c)(5). All parties consented to the filing of this brief.

the costs associated with traditional litigation in court. Arbitration is speedy, fair, inexpensive, and less adversarial than litigation. Based on the policy embodied in the FAA, the Chamber's members and affiliates have structured millions of contractual relationships around the use of arbitration to resolve disputes.

The district court's decision holding that the FAA does not apply to local delivery drivers whose work is several steps removed from the actual movement of goods in interstate commerce cannot be squared with the text and structure of the statute or the Supreme Court's recent interpretation of it in *Southwest Airlines Co. v. Saxon*, 142 S. Ct. 1783 (2022). And the district court's decision improperly limits the FAA's protections and introduces uncertainty that will engender costly and protracted disputes over the application of the FAA, harming both businesses and workers. The Chamber therefore has a significant interest in the proper interpretation of the FAA and in reversal of the decision below.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Congress enacted the Federal Arbitration Act (FAA) in 1925 "in response to judicial hostility to arbitration." *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906, 1917 (2022). For nearly a century, the FAA has embodied Congress's strong commitment to protecting 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. The Supreme Court has held that the phrase "involving commerce" "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 invoking 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).

In this case, the district court accepted the plaintiffs' invitation to expand that narrow exception. As Amazon's brief explains (at 19-24),

plaintiffs belong to a class of workers that makes purely local deliveries—work that takes place predominantly within a single state. Notwithstanding the intrastate character of these workers' responsibilities, the district court held that they are exempt under Section 1, based largely on this Court's pre-*Southwest Airlines* opinion in *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904 (9th Cir. 2020). ER 9-13.

But *Rittmann*'s approach to what it means to be "engaged in . . . commerce" has since been rejected by the Supreme Court. More than two decades ago, the Supreme 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). In *Southwest Airlines*, the Court reaffirmed that Section 1 must be interpreted according to its "contemporary, common meaning" at the time the FAA was enacted in 1925—which included a circumscribed view of what it meant to be "engaged in . . . commerce." 142 S. Ct. at 1788 (quotation marks omitted). The relevant language in Section 1—"other class of workers engaged in foreign or interstate commerce"—is also 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 114; *see also Southwest Airlines*, 142 S. Ct. at 1790.

Under these precedents, what matters is "the actual *work*" performed by the "class of workers" rather than the broader movement of the goods. *Southwest Airlines*, 142 S. Ct. at 1788 (emphasis added). Following *Rittmann*'s lead, the district court failed to focus on the work, looking instead to Amazon's overall business activities and the fact that many of the *goods* previously crossed state lines. But the Supreme Court rejected that approach, which would result in Section 1's residual clause sweeping far beyond *workers* "*directly involved* in transporting goods across state or international borders." *Id.* at 1789 (emphasis added); *see also*, *e.g.*, *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337, 1350 (11th Cir. 2021); *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir. 2020) (Barrett, J.).

Indeed, the residual clause is limited to classes of workers whose duties *center* on interstate movement. Then-Judge Barrett 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*, 970 F.3d at 801 (emphasis added). And the Supreme Court agreed in *Southwest Airlines* that the word "engaged" in Section 1 "emphasizes the actual work that the members of the class, as a whole, *typically* carry out." 142 S. Ct. at 1788 (emphasis added).

The district court thus erred in relying heavily on this Court's divided opinion in *Rittmann*. To start, *Rittmann* is factually distinguishable: as Amazon's brief details (at 19-29), the workers here all perform local deliveries of groceries, restaurant meals, and same-day merchandise orders, which bear little resemblance to the "last mile" package deliveries at issue in *Rittmann*. But even if one thought *Rittmann* applied, one need not agree with the Chamber that *Rittmann* was erroneous when it was decided to conclude that *Rittmann*'s reasoning cannot stand after *Southwest Airlines*. This Court should clear up this confusion by recognizing that the Supreme Court has authoritatively interpreted Section 1 in this context as applying only when the class of workers at issue is typically and directly involved in carrying goods across state lines.

Nor can distinct workers be lumped into a single class for this analysis merely because a company uses a standard form contract, as Amazon does here. The same was true in *Southwest Airlines*, yet the Supreme Court defined the relevant "class of workers" by reference to the actual work performed by the plaintiff Saxon and other ramp supervisors like her. 142 S. Ct. at 1788.

This Court should reject the district court's expansive approach to what counts as being "engaged in foreign or interstate commerce." If adopted, that approach would generate significant litigation over whether the FAA applies to a broad and indeterminate array of workers. Businesses and workers would face uncertainty over whether the FAA protects their arbitration agreements and delay in referring disputes to arbitration even if the FAA ultimately does protect those agreements. As a result, wide sectors of the economy could be deprived of the benefits secured by the FAA, including lower costs and greater efficiency. And the increased costs of litigating both the applicability of the Section 1 exemption, and, if necessary, the merits in court would be passed on in the form of decreased payments to workers or increased costs to consumers.

The district court's order should be reversed.

ARGUMENT

I. The Text And Structure Of The FAA Demonstrate That Plaintiffs Are Not Included Within A "Class Of Workers Engaged In . . . Interstate Commerce."

A. Section 1's Residual Clause Is Limited To Classes Of Workers Directly Involved In Transporting Goods Across State Or International Borders As A Central Part Of Their Job Description.

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). The Supreme Court has instructed that *Section 2's* "involving commerce" language must be read "expansively" to reach all arbitration agreements within Congress's commerce power. *Allied-Bruce*, 513 U.S. at 274.

Section 1, by contrast, creates a very limited exception to Section 2's broad coverage, providing that the FAA's federal-law 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 (emphasis added). The Supreme Court has instructed that the Section 1 "engaged in . . .

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

The Supreme Court's recent decision in *Southwest Airlines* reaffirms three interpretive principles that inform the proper "narrow" and "precise reading."

First, the Section 1 exemption must be interpreted based on the "ordinary, contemporary, common meaning" of the statutory text at the time Congress enacted the FAA in 1925. *Southwest Airlines*, 142 S. Ct. at 1788 (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 the statutes must be interpreted "'in their context.'" *Southwest Airlines*, 142 S. Ct. at 1788 (quoting *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1888 (2019)).

Third, with respect to Section 1's residual clause in particular, the Court has instructed that under "the *ejusdem generis* canon," the clause should be "'controlled and defined by reference' to the specific classes of 'seamen' and 'railroad employees' that precede it." *Southwest Airlines*, 142 S. Ct. at 1789-90 (quoting *Circuit City*, 532 U.S. at 115). In other

words, the residual clause must be construed narrowly to reach only classes of workers that are similar—in terms of their engagement with foreign or interstate commerce—to the enumerated groups of "seamen" and "railroad employees."

Applying these three principles, the Court in *Southwest Airlines* held that a class of workers must be "typically" and "directly involved in transporting goods across state or international borders" to be "engaged in foreign or interstate commerce" within the meaning of Section 1's residual clause. *Southwest Airlines*, 142 S. Ct. at 1788-89. "Put another way, transportation workers must be actively engaged in transportation of those goods across borders via the channels of foreign or interstate commerce." *Id.* at 1790 (quotation marks omitted).

In addition, the exemption's residual clause applies only if transportation of goods across state or national borders is *central* to the work performed by the relevant class of workers. As the Seventh Circuit has explained, Congress viewed seamen and railroad employees as workers "whose occupations [we]re *centered* on the transport of goods in interstate and foreign commerce." *Wallace*, 970 F.3d at 802 (emphasis added). Under the residual clause, therefore, a party seeking

to avoid the FAA's coverage must also "demonstrate that the interstate movement of goods is a *central part* of the job description of the class of workers to which they belong." *Id.* at 803 (emphasis added).

Applying this standard, this Court and the First Circuit have agreed, for example, that rideshare drivers (such as those who use the Uber and Lyft platforms to offer rides) do not fall within the Section 1 exemption because they overwhelmingly provide local, intrastate rides, even if they occasionally cross state lines by happenstance of geography. *See Capriole v. Uber Techs., Inc.*, 7 F.4th 854, 865-66 (9th Cir. 2021); *Cunningham v. Lyft, Inc.*, 17 F.4th 244, 252-53 (1st Cir. 2021). Rideshare drivers (and other local workers) stand in stark "contrast" to "seamen and railroad workers," for whom "the interstate movement of goods and passengers over long distances and across national or state lines is an indelible and 'central part of the job description.'" *Capriole*, 7 F.4th at 865 (quoting *Wallace*, 970 F.3d at 803). Or, as the First Circuit similarly put it, it "cannot even arguably be said" that such workers belong to a class of "workers primarily devoted to the movement of goods and people beyond state boundaries." *Cunningham*, 17 F.4th at 253. That is why the Supreme Court has instructed courts

to look at "the actual work that the members of the class, as a whole, *typically* carry out" and noted that Saxon belonged to a class of workers "who physically load and unload cargo on and off airplanes on a *frequent* basis." *Southwest Airlines*, 142 S. Ct. at 1788-89 (emphasis added).

The class of workers that includes plaintiffs here does not satisfy these standards. As Amazon's brief details (at 19-24), these workers make purely local deliveries, typically within a single state. And unlike the cargo loaders in *Southwest Airlines*, these workers are not typically and directly involved in the goods' crossing of state borders, which ordinarily occurs before the goods come into the workers' hands, separate and apart from the workers' local deliveries. Opening Br. 31-38; *cf. Southwest Airlines*, 142 S. Ct. at 1790 (comparing the act of loading cargo to "wharfage," which Section 1 refers to as a "matter[] in foreign commerce") (quoting 9 U.S.C. § 1).

B. This Court's Decision In *Rittmann* Does Not Support Affirmance.

The district court relied heavily on *Rittmann* in concluding that the Section 1 exemption applies. But for two reasons, *Rittmann* does not support that conclusion.

First, *Rittmann* is factually distinguishable. As Amazon's brief details (at 19-29), the plaintiffs in this case all performed local deliveries of groceries, restaurant orders, and items available for same-day delivery under a program distinct from the last-mile package delivery program at issue in *Rittmann*.

The district court acknowledged this distinction but held that it was irrelevant because the same standard-form contract governs drivers making deliveries under either program. ER 12. The fundamental error in the district court's reasoning is that the "Amazon Flex contract[]" is not a single "'contract[] of employment'" between Amazon and *all* workers participating in the Amazon Flex program. *Id.* (quoting 9 U.S.C. § 1). Rather, there is a separate contract between Amazon and *each* worker, and whether the Section 1 exemption applies to that specific worker's contract turns on whether the worker belongs to a class of workers engaged in interstate commerce. Application of the Section 1 exemption to Amazon Flex workers is not an all-or-nothing proposition.

Southwest Airlines confirms the overbreadth of the district court's reasoning. As the record in that case makes clear, Southwest's non-

unionized employees, like Saxon, all agreed to the same standard-form alternative-dispute-resolution program. *See Saxon v. Southwest Airlines Co.*, 993 F.3d 492, 494 (7th Cir. 2021) ("[Saxon], like other excluded [*i.e.*, non-union] Southwest employees, agreed annually as part of her contract of employment—not separately—to arbitrate wage disputes."); Dkt. No. 14-5, *Saxon v. Southwest Airlines Co.*, No. 19-cv-403 (Apr. 8, 2019) (describing "Southwest's ADR Program," which "applies to all employees who are not covered by a collective bargaining agreement").

But the identical contract terms did not support a company- or industry-wide approach to applying the Section 1 exemption. On the contrary, the Supreme Court expressly *rejected* such an approach, instead agreeing with Southwest that "the relevant class therefore includes only those airline employees who are actually engaged in interstate commerce in their day-to-day work." 142 S. Ct. at 1788; *see id.* ("Saxon is therefore a member of a 'class of workers' based on what she does at Southwest, not what Southwest does generally."). The Court therefore defined the class of workers as "airplane cargo loaders" based not on the language of the standard-form contract, which applied

to a wide variety of Southwest employees (such as those who work at the ticket counter or their supervisors), but instead on the fact that "ramp supervisors like Saxon frequently load and unload cargo." *Id.* at 1788-89.

Accordingly, reversal is warranted because *Rittmann* is readily distinguishable.

Second, *Rittmann* is no longer good law after *Southwest Airlines*. The focus in *Rittmann* on what Amazon does generally and on the transported goods' prior movement across state lines cannot be squared with the Supreme Court's recent direction in *Southwest Airlines* to assess the actual work performed by the class of workers at issue.

That direction follows from Section 1's use of the word "workers," which "directs the interpreter's attention to 'the *performance* of work.'" *Southwest Airlines* 142 S. Ct. at 1788 (quoting *New Prime*, 139 S. Ct. at 540-41). In addition, "the word 'engaged'" "similarly emphasizes the *actual work* that the members of the class, as a whole, typically carry out." *Id.* (emphasis added).

Moreover, given the Supreme Court's instruction that Section 1 be given a "narrow construction" (*Circuit City* , 532 U.S. at 118), each of

Section 1's relevant terms—including "workers," "engaged," and "commerce"—must be interpreted based on their ordinary meanings at the time of the FAA's enactment, rather than any expansive modern conceptions of what qualifies as interstate commerce. *Southwest Airlines*, 142 S. Ct. at 1788-89 (collecting contemporary dictionary definitions); *see also*, *e.g.*, Black's Law Dictionary 651 (2d ed. 1910) (defining "interstate commerce" as "commerce between two states," specifically—"traffic, intercourse, commercial trading, or [] transportation" "between or among the several states of the Union, or from or between points in one state and points in another state"); *Hamrick*, 1 F.4th at 1350 (relying on this contemporary definition of "interstate commerce" to conclude that the class of workers must "actually engage[]" in cross-border transportation).

While it might be possible to determine from a business's activities that its workers do *not* perform certain types of work—for example, a business that engages in no interstate commerce will not have any employees engaged in interstate commerce—the inverse is not true. That is why the Court specifically analyzed whether the Southwest Airlines workers who loaded cargo onto planes traveling

interstate fell within the Section 1 exemption, rather than relying upon those workers' mere employment by Southwest Airlines. 142 S. Ct. at 1788.

Pre-*Southwest* decisions from other circuits are in accord and underscore why *Rittmann* should be jettisoned in light of *Southwest*. In addressing the applicability of Section 1 to "drivers who make local deliveries of goods and materials that have been shipped from out-of-state to a local warehouse," the Eleventh Circuit held that the district court had erred by "focus[ing] on the movement of the goods" rather than whether the class of workers, "in the main, actually engages in interstate commerce," meaning the transportation of goods "across state lines." *Hamrick*, 1 F.4th at 1340, 1346, 1350-52. It held that workers who move goods from one in-state location to another do not fall within the Section 1 exemption just because the goods "had been previously transported interstate." *Id.* at 1349 (quotation marks omitted). That is because, "in the text of the exemption, 'engaged in foreign or interstate commerce' modifies 'workers' and not 'goods.'" *Id.* at 1350.

Writing for the Seventh Circuit, then-Judge Barrett likewise rejected the plaintiffs' argument that the Section 1 "exemption is not so

much about what the worker does as about where the goods have been." *Wallace*, 970 F.3d at 802. Instead, engaging in foreign or interstate commerce requires "workers [to] be connected not simply to the goods but to the *act of moving those goods across* state or national borders." *Id.* (emphasis added). Indeed, focusing on the origin and movement of the goods "would sweep in numerous categories of workers whose occupations have nothing to do with interstate transport—for example, dry cleaners who deliver pressed shirts manufactured in Taiwan and ice cream truck drivers selling treats made with milk from an out-of-state dairy." *Id.* The Seventh Circuit therefore held that local food delivery drivers who deliver meals and packaged items from restaurants to diners are not "engaged in . . . interstate commerce" within the meaning of Section 1 of the FAA, because "the interstate movement of goods" was not "a central part of the job description of the class of workers." *Id.* at 803.

The same is true of the work performed by the local delivery drivers in this case—many of whom also deliver groceries and restaurant meals locally—and the result should be the same as in the Seventh and Eleventh Circuits.

Thus, although the Supreme Court in *Southwest Airlines* had no occasion to rule on whether the Section 1 exemption applies to last-mile delivery drivers, it effectively abrogated the reasoning in *Rittmann*, which focused on Amazon's business activities and the broader interstate movement of the delivered goods. And the Court did observe that the applicability of the exemption to even such drivers was not "so plain" as its applicability to cargo loaders because last leg delivery drivers "carr[y] out duties further removed from the channels of interstate commerce or the actual crossing of borders." 142 S. Ct. at 1789 n.2.; *see* Opening Br. 34-35.

II. The District Court's Erroneous Reading Of Section 1 Harms Businesses And Workers.

This Court's failure to revisit *Rittmann*—and indeed, its extension of it to the workers at issue here—would produce at least two significant practical consequences. First, it would only increase the time-consuming and costly litigation over the FAA's application—thereby undermining one of Congress's key goals in enacting the FAA. Second, it would deprive businesses and individuals alike of the benefits of arbitration protected by the FAA.

1. The Supreme 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 Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983). Straightforward, easily administrable rules are thus especially important in the context of the FAA. Indeed, the *Circuit City* Court 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).

Interpreting the residual clause in accordance with its plain meaning—requiring that the class of workers be "typically" and "*directly* involved in transporting goods across state or international borders" (*Southwest Airlines*, 142 S. Ct. at 1788-89 (emphasis added))—produces a simple test that should be easy to apply. It should not be difficult or factually complex in the mine-run of cases to determine whether a class of workers is directly involved in the movement of goods across state lines or national boundaries as a central part of their job.

Under the district court's approach, by contrast, even when classes of workers carry out purely local work primarily within a single state, courts will have to decide whether those workers are nevertheless somehow sufficiently bound up with interstate movement of goods to fall under the residual clause. And the court below offered no clear or workable standard for making that determination.

Interpreting Section 1's residual clause to require such an inquiry produces "serious problems of practical application." *Rittmann*, 971 F.3d at 936 (Bress, J., dissenting). And "[u]ndertaking such confounding inquiries in the context of the FAA is particularly undesirable when the result will inevitably mean more complex civil litigation over the availability of a private dispute resolution mechanism that is supposed to itself reduce costs." *Id.* at 937 (citing *Circuit City*, 532 U.S. at 123; *Allied-Bruce*, 513 U.S. at 275).

In sum, the district court's extension of *Rittmann*, if adopted in spite of the Supreme Court's contrary reasoning in *Southwest Airlines*, will generate countless, expensive disputes over the enforceability of arbitration agreements with workers whose jobs are several steps removed from the actual interstate transportation of goods. Even if some of the parties' underlying disputes are ultimately 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.

2. The approach, if adopted, also would deprive businesses and individuals alike of the benefits of arbitration secured by the FAA. Without that uniform federal protection, whether businesses and workers can invoke arbitration agreements will turn on state law and vary state by state. And the overall result will be that more disputes are resolved in court rather than in arbitration, because the FAA's protection against state-law rules that disfavor arbitration will no longer apply.

The Supreme 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, Inc. v. Varela*, 139 S. Ct. 1407, 1416 (2019) (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") (quotation

marks omitted); *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. *See Circuit City*, 532 U.S. at 123 (rejecting the "supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context"). 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." *Id.*

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, *supra*, 57 Stanford L. Rev. at 1578. To the contrary, a recent 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 similarly found a higher employee-win rate in arbitration than in court. *See* Sherwyn, *supra*, 57 Stanford L. Rev. at 1568-69 (observing that, once dispositive motions are taken into account, the actual employee-win rate in court is "only 12% [to] 15%") (citing Maltby, *supra*, 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, *supra*, 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." *Id.*; *see also* Maltby, *supra*, 30 Colum. Hum. Rts. L. Rev. at 46.

In sum, reaffirming and expanding *Rittmann* would impose real costs on businesses and workers. Not only is litigation more expensive than arbitration for businesses and workers alike, but the uncertainty stemming from the district court's approach would engender additional expensive disputes over the enforceability of arbitration agreements with workers. And these increased litigation costs would not be borne by businesses alone. Businesses would, in turn, pass on these litigation expenses to consumers (in the form of higher prices) and to workers (in the form of lower compensation).

CONCLUSION

The district court's order denying Amazon's motion to compel arbitration should be reversed.

Dated: August 3, 2022

Respectfully submitted,

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/s/ *Archis A. Parasharami*
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 3, 2022. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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