No. 24-935

IN THE

Supreme Court of the United States

FLOWERS FOODS, INC., ET AL.,

Petitioners,

v.

ANGELO BROCK,

Respondent.

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

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES -- cont'd

Page(s)

TABLE OF AUTHORITIES -- cont'd

Page(s)

TABLE OF AUTHORITIES -- cont'd

Page(s)

TABLE OF AUTHORITIES -- cont'd

Page(s)

Statutes

TABLE OF AUTHORITIES -- cont'd

Page(s)

Other Authorities

TABLE OF AUTHORITIES -- cont'd

Page(s)

INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC has a strong interest in protecting meaningful access to the courts, in accordance with the text and history of the Constitution and important federal statutes, and therefore has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Enacted in 1925, the Federal Arbitration Act (FAA) made agreements to arbitrate disputes outside of litigation enforceable. *See* 9 U.S.C. § 2. But that Act contains a key exemption for arbitration clauses in "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." *Id.* § 1. As this Court has explained, the residual clause in Section One's exemption covers transportation workers who are actively "engaged in transportation" of goods from one state to another. *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022) (quoting *Cir. City Stores Inc. v. Adams*, 532 U.S. 105, 121 (2001)).

The court below correctly held that the exemption covered Angelo Brock, a truck driver who transported baked goods that had been shipped from other states to various retail stores in Colorado. *See* Pet. App. 2a-3a. As the court explained, Mr. Brock belonged to a

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

class of workers who "deliver Flowers goods in trucks to their customers," *id.* at 11a (internal citation omitted), and their deliveries formed the "last leg of the products' continuous interstate route" to their intended destinations, *id.* at 26a. The deliveries were thus "an integral part of a single, unbroken stream of interstate commerce." *Id.* (internal citation omitted).

Flowers Foods resists this straightforward conclusion, insisting that last-mile delivery drivers like Mr. Brock are not "engaged in . . . interstate commerce" because they do not "cross borders" or "directly participate in transporting goods across borders." Pet'rs Br. 14. According to Flowers, Section One's residual clause trains on the "workers' work," *id.* at 23, and Mr. Brock's "work starts and ends in Colorado," *id.* at 21. But no one disputes that Section One's residual clause focuses on the actual work an employee performs. *See Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 252-54 (2024). The question in this case is whether the actual work that drivers like Mr. Brock perform renders them "engaged in . . . interstate commerce." Standard modes of statutory interpretation establish that it does.

To start, legal dictionaries contemporaneous with the FAA's passage did not narrowly limit "interstate commerce" to the immediate transportation of goods across state lines. Rather, they defined the term to include a "shipment from one state to another under a contract for continuous carriage," even "*as to so much of the journey as is within the limits of a single state*." *The Cyclopedic Law Dictionary* 547-48 (2d ed. 1922) (emphasis added). That understanding is also evident from definitions of the analogous term, "foreign commerce," which included purely domestic transportation that formed one "stage" in the importation of a good from a foreign country to a destination inside the

United States. *Black's Law Dictionary* 359 (3d ed. 1933). Flowers selectively quotes from legal dictionaries, *see* Pet'rs Br. 19, but the full context of the definitions from those very dictionaries establishes that purely local transportation workers like Mr. Brock were "engaged in" interstate commerce when their deliveries formed part of a chain of transit that had "begun" in a different state and was intended to terminate at a local destination. *Black's Law Dictionary* 359, 661 (3d ed. 1933).

This Court's contemporaneous cases confirm that understanding. Throughout the early twentieth century, this Court interpreted statutes with materially similar language to that of Section One's residual clause, like the Federal Employers' Liability Act (FELA), the Interstate Commerce Act (ICA), and trade regulation statutes like the Sherman Act and the Federal Trade Commission Act (FTC Act). In doing so, it consistently held that purely local movement "in the course of [a good's] transportation" to an "originally intended" destination in "another state" constituted interstate commerce. *Phila. & Reading Ry. Co. v. Hancock*, 253 U.S. 284, 286 (1920); *see also United States v. Union Stock Yard & Transit Co. of Chi.*, 226 U.S. 286, 304 (1912) (transportation "performed wholly in one state" was in interstate commerce if "a part of interstate carriage"). Workers responsible for that transportation were thus engaged in interstate commerce.

Accordingly, this Court concluded, for example, that carriers transporting coal between two mines in Pennsylvania were "engaged in . . . transportation . . . from one State . . . to any other State" within the meaning of the ICA, Pub. L. No. 49-41, § 1, 24 Stat. 379, 379 (1887), when the movement formed part of a greater transit of the coal to an out-of-state purchaser,

see Pa. R.R. Co. v. Clark Bros. Coal Mining Co., 238 U.S. 456 (1915). Similarly, this Court held that lumber transported between two points in Texas was in foreign commerce because the transit "was but a step in its transportation to its real and ultimate destination in foreign countries." *Tex. & New Orleans R.R. Co. v. Sabine Tram Co.*, 227 U.S. 111, 126 (1913). Likewise, in interpreting the Commerce Clause, this Court explained that goods were "in interstate commerce" when their purely intrastate deliveries formed one link in a chain of "continuous transportation" from the place of origin to the destination in another state. *People's Nat. Gas Co. v. Pub. Serv. Comm'n*, 270 U.S. 550, 554 (1926).

In short, under the ordinary meaning of the text of the FAA at the time Congress passed it, workers like Mr. Brock were plainly "engaged in . . . interstate commerce." This Court should affirm.

ARGUMENT

I. Under Its Ordinary Meaning at the Time of the FAA's Enactment, Section One's Residual Clause Applies to Workers Like Mr. Brock.

When interpreting Section One's residual clause, this Court has repeatedly relied upon the "fundamental canon of statutory construction" that statutes are generally given the "ordinary meaning" of the text "at the time Congress enacted the statute." *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (alteration omitted) (quoting *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018)). In *Saxon*, the Court considered the ordinary meaning of the terms "engaged" and "[c]ommerce" to interpret Section One's residual clause. 596 U.S. at 456-57 (quoting *Webster's New International Dictionary* 448, 725 (1922); *Black's Law*

Dictionary 220 (2d ed. 1910); *Black's Law Dictionary* 661 (3d ed. 1933)); *see generally New Prime*, 586 U.S. at 114 (using dictionaries as evidence of the meaning of the term "contracts of employment" in Section One). It held that a worker must at least "play a direct and 'necessary role in the free flow of goods' across borders" to be covered by that clause. *Saxon*, 596 U.S. at 458 (quoting *Cir. City*, 532 U.S. at 121). Anyone whose work was, "as a practical matter, part of the interstate transportation of goods" could form "a class of workers engaged in foreign or interstate commerce." *Id.* at 457.

Here, there is no question that Mr. Brock is "engaged in" "commerce." As the driver of a truck carrying goods, he is clearly and "directly involved in" their transportation. *Id.*; *see also* Resp. Br. 4-5. The only question, therefore, is whether his last-mile deliveries—the movement that he was "engaged in"—were in "*interstate* commerce."

A. "Interstate commerce" is a "term of art bearing some specialized meaning." *New Prime*, 586 U.S. at 114; *see United States v. Am. Bldg. Maint. Indus.*, 422 U.S. 271, 280 (1975) (holding that "the phrase 'engaged in commerce' had long since become a term of art" by 1950). And in construing terms of art, this Court looks to their "ordinary legal meaning" at the time of the statute's enactment, Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 76 (2012), typically by consulting contemporaneous legal dictionaries, *see, e.g.*, *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res.*, 532 U.S. 598, 603 (2001).

Legal dictionaries contemporaneous to the FAA's enactment defined "interstate commerce" to include "the transportation of persons or property between or among the several states of the Union, or from or between points in one state and points in another state."

Black's Law Dictionary 651 (2d ed. 1910); *see also Black's Law Dictionary* 1001 (3d ed. 1933) (same); *Ballentine's Law Dictionary* 247 (1st ed. 1916) ("The transportation of persons, property or intelligence from one state to another.").

Importantly, those dictionaries explicitly recognized that "interstate commerce" included purely local transportation when that transportation formed part of a greater interstate journey. The Cyclopedic Law Dictionary, for example, defined "interstate commerce" as "[c]ommerce between persons or places in different states," explaining that a "shipment from one state to another under a contract for continuous carriage is interstate commerce, *even as to so much of the journey as is within the limits of a single state*." *The Cyclopedic Law Dictionary*, *supra*, at 547-48 (emphasis added). Similarly, Black's Law Dictionary defined "[c]ommerce among the states" as consisting of "all commercial intercourse between the different states," including "[t]ransportation from one state to another," and "*all [its] component parts*." *Black's Law Dictionary* 359 (3d ed. 1933) (emphasis added).

Flowers argues that legal dictionaries defined "interstate commerce" to require "cross-border transportation," Pet'rs Br. 19, but the very dictionaries it cites establish otherwise. Black's Law Dictionary, for example, contrasted "interstate commerce" with "*intra*-state commerce," highlighting that the former was not limited to transit that immediately crossed state lines. It defined "intrastate commerce" as commerce "*begun, carried on, and completed wholly within* the limits of a single state." *Black's Law Dictionary* 359 (3d ed. 1933) (emphasis added); *see also Black's Law Dictionary* 221 (2d ed. 1910) (same). By contrast, last-mile deliveries would be considered part of interstate commerce because they were part of a chain of commerce that had

"begun" in a different state. *Black's Law Dictionary* 359 (3d ed. 1933). Similarly, Ballentine's Law Dictionary defined "intrastate commerce" as "[c]ommerce *wholly within* a similar state," *Ballentine's Law Dictionary*, *supra*, at 248 (emphasis added), establishing that commerce begun in a *different* state maintained its interstate character until the goods had reached their intended destination in another state.

B. Legal dictionaries similarly defined the conceptually analogous term "foreign commerce"—which neighbors "interstate commerce" in Section One, *see* 9 U.S.C. § 1 (exempting workers "engaged in foreign or interstate commerce")—to include purely domestic transportation that formed part of a good's shipment to a foreign country.

Black's Law Dictionary, for example, treated "foreign commerce" interchangeably with "[c]ommerce with foreign nations," and defined the term as "commerce which, either immediately or *at some stage of its progress*, is extraterritorial." *Black's Law Dictionary* 359 (3d ed. 1933) (emphasis added); *see also Black's Law Dictionary* 221 (2d ed. 1910) (same). In other words, "foreign commerce" included purely domestic transportation when it formed a "stage" in the "progress" of foreign commerce. *See Black's Law Dictionary* 359 (3d ed. 1933); *see also Black's Law Dictionary* 221 (2d ed. 1910) (same). Indeed, Black's Law Dictionary expressly "distinguish[ed]" "foreign commerce" from "domestic commerce" (just as it "contrast[ed]" "interstate commerce" and "intrastate commerce"), defining "domestic commerce" as "commerce carried on *wholly within* the limits of the United States," among other things. *Black's Law Dictionary* 359 (3d ed. 1933) (emphasis added); *see also Black's Law Dictionary* 221 (2d ed. 1910) (same). So just as "foreign commerce" included purely domestic transportation that formed

part of a good's importation from a foreign country to a local destination, so too its sister term "interstate commerce" included purely local transportation that formed one leg of a good's transit from a state to its destination in another state.

* * *

In short, contemporary legal dictionaries establish that Mr. Brock was "engaged in . . . interstate commerce" because his last-mile deliveries were part of the "continuous carriage" of goods from one state terminating at destinations in another state. *The Cyclopedic Law Dictionary*, *supra*, at 547-48. Lest there be any doubt, judicial precedent contemporaneous to the FAA's enactment confirms this interpretation, as the next Section explains.

II. Judicial Precedent Contemporaneous to the FAA's Enactment Establishes that Last-Mile Delivery Drivers Like Mr. Brock Are Engaged in "Interstate Commerce."

The late-nineteenth century witnessed a proliferation of industrialization in the United States, precipitated by the nationwide expansion of the railroad industry. *See* Paul Stephen Dempsey, *Transportation: A Legal History*, 30 Transp. L.J. 235, 247-51 (2003). That commerce also presented new categories of harms, from injuries to railroad workers, *see* Lester P. Schoene & Frank Watson, *Workmen's Compensation on Interstate Railways*, 47 Harv. L. Rev. 389, 389-90 (1934), to unfair price gouging, rate charge discrimination, and anti-competitive collusion, *see* Dempsey, *supra*, at 253-55, 260. Congress responded by enacting several statutes, including FELA, the ICA, the Sherman Act, and the FTC Act. All of these statutes contain language materially similar to Section One's residual clause.

By 1925, then, this Court had many occasions to ascertain when "interstate" transportation stopped and started, and had held that such transportation could "[u]ndoubtedly" include "a single act of carriage or transportation wholly within a state." *New York ex rel. Pa. R.R. Co. v. Knight*, 192 U.S. 21, 26 (1904). This Court should presume Congress was "aware of [this] relevant judicial precedent" when it enacted Section One of the FAA. *Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 648 (2010); *see also* Resp. Br. 16-23.

A. Federal Employers' Liability Act

FELA was designed to compensate railroad workers for injuries sustained due to hazards of the railroad industry. *See* Schoene & Watson, *supra*, at 394. By 1925, the operative version of FELA subjected railroads "engaging in commerce between any of the several States" to negligence suits by those injured while "employed by such carrier in such commerce." Federal Employers' Liability Act, Pub. L. No. 60-100, § 1, 35 Stat. 65, 65 (1908). Indeed, the plain text of FELA so closely tracks that of Section One's residual clause that this Court has turned to cases interpreting FELA to understand the scope of Section One. *See, e.g.*, *Saxon*, 596 U.S. at 455, 457 (citing *Balt. & Ohio Sw. R.R. Co. v. Burtch*, 263 U.S. 540, 544 (1924)).

By 1925, it was well-understood that, to establish liability under FELA, covered workers need not have crossed state borders or engaged with cars that had "cross[ed] a state line." W.W. Thornton, *A Treatise on the Federal Employers' Liability Act and Safety Appliance Acts* 58 (3d ed. 1916). Rather, workers engaged in transporting goods "wholly within" a state were also within FELA's purview when those goods originated from another state and were in the course of transportation to a local destination. *Id.* at 56.

This Court's cases confirm as much. In *Hancock*, for example, this Court concluded that a trainman whose duties involved transporting coal solely within Philadelphia was covered by FELA. 253 U.S. at 285-86. In reaching that result, this Court rejected a contention strikingly similar to Flowers's here: that the worker was engaged in interstate commerce only if he drove the carriage across state lines. *Id.* at 286. The Court explained that the extracted coal was "originally intended" for "transportation to another state when the cars left the mine," and the trainman's "shipment was but a step in the transportation of the coal to [its] real and ultimate destination[]" in another state. *Id.* Because the "coal was in the course of transportation to another state," the worker's purely local movement was in interstate commerce too. *Id.*

Flowers wrongly suggests that *Hancock* turned on "whether the railcar, itself, was on a local or interstate journey." Pet'rs Br. 39. But the Court in *Hancock* explained that a worker was "employed in commerce between the states," and hence covered by FELA, if "any of the cars in" the "train contained interstate *freight*." 253 U.S. at 285 (emphasis added). Indeed, in interpreting FELA, this Court consistently held that the goods' interstate movement determined whether a given worker was engaged in interstate commerce. In *St. Louis, San Francisco & Texas Railway Co. v. Seale*, 229 U.S. 156 (1913), for example, this Court held that a yard clerk who was struck and killed by a train was covered by FELA because the train was "not only an interstate train, but [also] was engaged in the movement of interstate freight," and the "duty which the deceased was performing" was "directly and immediately" connected "with that movement." *Id.* at 161.

Similarly, in *North Carolina Railway Co. v. Zachary*, 232 U.S. 248 (1914), this Court held that a worker

who inspected, oiled, and fired engines for a train which was scheduled to travel purely within the state was covered by FELA. *Id.* at 261. That was because the carriages likely "contained interstate freight"—indeed, all parties agreed that the presence of such freight would have rendered the worker engaged in interstate commerce. *Id.* at 259; *see also* Annotation, *What Employees Are Engaged in Interstate Commerce Within the Federal Employers' Liability Act*, 10 A.L.R. 1184, 1221 (1921) ("The employee is engaged in interstate commerce if he is assisting in the operation of a train hauling cars or freight destined for another state.").

Even when this Court held that a given worker was not covered by FELA, it indicated that employees like Mr. Brock would have been. In *McCluskey v. Marysville & Northern Railway Co.*, 243 U.S. 36 (1917), a train transported lumber within the state of Washington to the Puget Sound, where a portion was sold and sent to out-of-state businesses. *Id.* at 38. This Court held that a worker responsible for operating the train's brakes was not "engaged at the time of the accident in interstate or foreign commerce," and hence not covered by FELA, because the lumber was not moving in interstate commerce at the time of the injury. *Id.* at 37. As the Court explained, "[t]he movement" only acquired an interstate character when the lumber was "started on [its] way to [its] destination in another state or country." *Id.* at 39-40. As the rail company only transported the lumber "to a market" at the Puget Sound, "where it [later] sold and delivered" the lumber to out-of-state purchasers, the worker had not engaged in interstate commerce at the time of injury. *Id.* at 39-40. Here, by contrast, "Brock serves as Flowers's last-mile driver," Pet'rs Cert. Reply 8 (quoting Pet. App. 22a), and Flowers has "committed" its

goods to Mr. Brock "for transportation to the state of [their] destination," *McCluskey*, 243 U.S. at 40.

Likewise, *Illinois Central Railroad Co. v. Behrens*, 233 U.S. 473 (1914), which Flowers relies upon heavily, actually supports Mr. Brock's position. There, the Court held that FELA did not cover an employee who was "engaged in moving several cars, all loaded with intrastate freight, from one part of the city to another" when he was injured, *id.* at 478, even though he often "handled interstate . . . traffic," *id.* at 476. As the Court explained, the employee was not performing "a service in interstate commerce" at the time of the injury, and it was "immaterial," *id.* at 478, that the employee's *other* tasks—which involved moving railcars "as a step or link in their transportation to various destinations within and without the state," *id.* at 476—were clearly "part of interstate commerce," *id.* at 478. Here, it is undisputed that Flowers's baked goods are interstate freight, sent from one state to another, and workers like Mr. Brock are engaged in interstate commerce because they perform "a step or link" of that transportation. *Id.* at 476.

B. Interstate Commerce Act

Passed in 1887 to eliminate rate discrimination by railroads and undue preferences in charges, the ICA applied, *inter alia*, to common "carriers engaged in the transportation of passengers or property wholly by railroad . . . from one State . . . to any other State," or property "shipped from a foreign country to any place in the United States." An Act to Regulate Commerce, § 1, 24 Stat. at 379; Hepburn Act, § 1, Pub. L. No. 59-337, 34 Stat. 584, 584 (1906) (amending other components of the ICA). As with FELA, this Court has relied on case law interpreting that language to determine the scope of Section One's residual clause. *See Saxon*, 596 U.S. at 458-59 (quoting *Erie R. Co. v. Shuart*, 250

U.S. 465, 468 (1919) (interpreting ICA post-Hepburn Act amendments)).

By its terms, the ICA did not cover transportation "wholly within one State." § 1, 24 Stat. at 380. Yet carriers "with a line confined wholly within a single state" were considered to be "engaged in interstate commerce" if they "assist[ed] to any extent" with interstate transportation. 1 Maurice G. Roberts, *The Federal Liabilities of Carriers* 210 (1929). And that "interstate transportation commenc[ed] with the delivery [of goods] to the carrier" in one state and "end[ed] with delivery by the carrier at [the] point of destination" in another state. *Id.* at 208. Last-mile deliveries were "treated as" part of that "entirety" of "continuous" interstate transit, and workers responsible for it were thus understood to be engaged in interstate commerce. *Id.* at 208-210.

This Court's cases confirm as much. In *Clark Brothers*, for example, this Court held that the movement of coal between two mines in Pennsylvania was in interstate commerce and hence within the regulatory jurisdiction of the Interstate Commerce Commission (ICC), an agency created to enforce the ICA's provisions. *See* 238 U.S. at 468. The Court explained that the coal was transported for "the purpose of filling contracts with purchasers in other states." *Id.* at 458-60, 468. It concluded that the purely local "movement thus initiated" was in fact "an interstate movement" within the meaning of the ICA. *Id.* at 468.

Likewise, in *Baer Brothers Mercantile Co. v. Denver & Rio Grande Railroad Co.*, 233 U.S. 479 (1914), this Court held that a shipment of goods between two cities in Colorado (Leadville and Pueblo) was in interstate commerce. *Id.* at 491. The Court explained that the goods had started from Missouri and were in "a through shipment" to their actual destination in

Pueblo. *Id.* at 490. That was true even though they had been transported by one carrier from Saint Louis to Leadville and by another under a separate contract of carriage from Leadville to Pueblo. *Id.* at 480. As the Court explained, the "interstate character" of the good's movement "could not be destroyed by ignoring the points of origin and destination, separating the rate into its component parts, and by charging local rates and issuing local waybills." *Id.* at 490.

The Court reaffirmed these principles in *Pennsylvania Railroad Co. v. Mitchell Coal & Coke Co.*, 238 U.S. 251 (1915), where it explained that purely local transportation of goods that "was in fact . . . part of an intended and connected transportation beyond the state" comprised interstate commerce subject to the ICC's regulatory authority. *Id.* at 253. In that case, however, the Court rejected the ICC's assertion of jurisdiction because the purely intrastate shipment was not actually intended for an out-of-state destination. *Id.* Likewise, in *Bracht v. San Antonio & Aransas Pass Railway Co.*, 254 U.S. 489 (1921), the Court reiterated that "carriage between points in the same state which was really but part of an interstate or foreign movement" was covered by the ICA. *Id.* at 491. But it again held that the ICA did not govern because "neither [the] shipper nor [the] respondent [purchaser] had in contemplation any movement beyond the [intrastate] point specified." *Id.*

And this rule makes sense. As this Court explained in *Baltimore & Ohio Southwestern Railroad Co. v. Settle*, 260 U.S. 166 (1922), any other conception of interstate commerce would empower railway companies to evade the provisions of the ICA by "convert[ing] an interstate shipment into intrastate transportation" simply by breaking the journey into its component parts. *Id.* at 170. Such a result would be

untenable. Accordingly, this Court declined to sanction the redescription of a "through interstate movement" by such formalities as "separating the rate [for interstate carriage] into its component parts, charging local rates, and issuing local waybills." *Id.* (citing *Baer Bros.*, 233 U.S. at 490).

Under very similar logic, foreign commerce, too, was understood to extend beyond movement that immediately crossed international borders. *Contra* Pet'rs Br. 19. As with interstate commerce, the transportation of imported goods in a "continuous carriage" from "a port of entry to the point of destination in the same state" also comprised foreign commerce. *See* Roberts, *supra*, at 408.

In *Sabine Tram Co.*, for example, this Court held that the transportation of lumber destined for export between two points in Texas was in foreign commerce. 227 U.S. at 111. The Court explained that the "determining circumstance" was "that the shipment of the lumber" within Texas "was but a step in its transportation to its real and ultimate destination in foreign countries." *Id.* at 126; *see also id.* (it would be "extremely artificial" to classify the lumber as being in domestic or foreign commerce based on "the steps in its transportation," rather than "its real and ultimate destination"). Accordingly, the transit fell within the ICC's jurisdiction over "carriers engaged in" foreign transportation. ICA § 1, 24 Stat. at 379.

Similarly, in *Railroad Commission v. Texas & Pacific Railway Co.*, 229 U.S. 336 (1913), this Court held that companies transporting wood between points in Louisiana were engaged in foreign commerce because the wood was "subsequently loaded on board ships and transported to foreign ports and countries." *Id.* at 338. Rejecting the argument that the transportation was "wholly within the state and [thus] had 'no contractual

or necessary relation to foreign transportation,'" this Court explained that a shipment of goods "takes character as interstate or foreign commerce when it is actually started in the course of transportation to another state or to a foreign country." *Id.* at 340-41. Accordingly, the companies were engaged in "foreign commerce," even though their "local movement of freight" "necessarily terminated at the seaboard," because the wood was "intended by the shippers to be exported to foreign countries." *Id.*

Again, in *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498 (1911), this Court held that the shipment of cotton oil cake and meal between two points in Texas was in foreign commerce because the cake and meal were "destined for export." *Id.* at 527. The Court explained that "goods are in interstate, and necessarily as well in foreign, commerce when they have 'actually started in the course of transportation to another state or been delivered to a carrier for transportation.'" *Id.* (quoting *Coe v. Town of Errol*, 116 U.S. 517, 525 (1886)). Because the cake and meal had been "delivered to a carrier for transportation to their foreign destination," the purely local shipment comprised foreign commerce. *Id.* "To hold otherwise would be to disregard" the "substance of things, and make evasions of the" ICA "quite easy." *Id.* at 526-27.

C. Trade Regulation Statutes

Congress also enacted several trade regulation statutes with materially similar language to Section One's residual clause. For example, the Sherman Act of 1890 prohibited, *inter alia*, conspiracies to "monopolize any part of the trade or commerce among the several States." The Sherman Act of 1890, Pub. L. No. 51-647, § 2, 26 Stat. 209, 209. Decades later, Congress passed the FTC Act, which at the time prohibited

"[u]nfair methods of competition in commerce," defined as "commerce among the several States or with foreign nations." FTC Act, Pub. L. No. 63-203, §§ 4, 5, 38 Stat. 717, 719 (1914).

This Court understood the references to interstate commerce in these statutes to include behavior regarding purely local transportation that was one leg of a product's greater interstate journey to its destination in another state. In *Swift & Co. v. United States*, 196 U.S. 375 (1906), for example, this Court held that the transportation of fresh meat in carts to railroads where it was ultimately shipped to out-of-state consumers was in interstate commerce, because that delivery formed "a part of the contemplated transit" of meat to purchasers in other states. *Id.* at 401. Rejecting the contention that the purely local transportation was *intra*state commerce, *id.* at 390, 392, 398-99, 401, this Court explained that "commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business," *id.* at 398. Under the "typical" and "constantly recurring" course of business there, "cattle . . . sent for sale from a place in one state" were expected to "end their transit, after purchase, in another" state. *Id.* at 398-99. Thus, the purely local movement in carts that did not cross state borders by workers who did not cross state lines formed part of a "current of commerce among the states" and was covered by the Sherman Act's provisions. *Id.*; *see also* W.W. Thornton, *A Treatise on the Sherman Anti-Trust Act* 173-75 & n.2 (1913).

Courts adhered to these principles when interpreting the phrase "in commerce" in the FTC Act. For example, in *Pacific States*, the Ninth Circuit had held that agreements to fix paper prices were not "in commerce" because they only addressed deliveries to in-state retailers. *See Pac. States Paper Trade Ass'n v.*

Fed. Trade Comm'n, 4 F.2d 457, 461 (9th Cir. 1925). It distinguished *Swift* on the ground that there was no contract between the paper manufacturers and eventual out-of-state purchasers. *Id.* This Court reversed, explaining that "what is or is not interstate commerce is to be determined upon a broad consideration of the substance of the whole transaction," and interstate commerce could include intrastate sales that were an "initial step in the business completed by the interstate transportation," even on separate contracts. *Fed. Trade Comm'n v. Pac. States Paper Trade Ass'n*, 273 U.S. 52, 64 (1927); *cf. Canfield Oil Co. v. Fed. Trade Comm'n*, 274 F. 571, 573-74 (6th Cir. 1921) (FTC had no jurisdiction over equipment leasing practices, but only because "the transportation of these pumps and tanks in interstate commerce has been fully accomplished and ended before they are applied to the purposes of the petitioners' business"); *Fed. Trade Comm'n v. Claire Furnace Co.*, 285 F. 936, 941 (D.C. Cir. 1923) (citing *Swift* to ascertain whether the complainant was "engaged in commerce" for the purposes of Section 6 of the FTC Act).[2]

D. Commerce Clause

Much of this Court's contemporaneous understanding of "interstate commerce" originally developed in disputes implicating the Commerce Clause. During the late nineteenth and early twentieth century, for

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[2] In 1941, this Court held that the FTC Act's "in commerce" requirement—much like Section One's residual clause, *see Cir. City*, 532 U.S. at 114—did not encompass the full scope of Congress's Commerce Clause power. *Fed. Trade Comm'n v. Bunte Bros.*, 312 U.S. 349, 355 (1941). But these cases remain probative of Congress's understanding of "commerce" in 1925. Indeed, in *Bunte Bros.*, this Court validated the FTC's prior practices and recognized its jurisdiction over the "current of interstate commerce." *Id.* at 352 n.3.

example, this Court repeatedly enforced the negative implications of that clause to strike down state regulations, particularly those targeting the rapidly expanding national railroad industry. Those cases confirm what the statutory cases establish: that purely local transportation was not necessarily considered intrastate commerce. As this Court illustrated by example, "[g]oods shipped from Albany to Philadelphia may be carried by the New York Central Railroad only within the limits of New York, and yet that service [would be] in interstate carriage." *Knight*, 192 U.S. at 26. Local transportation workers like Mr. Brock, who were "employed in transporting goods" brought from "without the limits of" a state that were "destined to places within that State," were thus understood to be "engaged in commerce between the States." *The Daniel Ball*, 77 U.S. 557, 565 (1870).

Early on, this Court rejected a crabbed conception of "interstate commerce" akin to the one now proposed by Flowers. In *Coe*, considered the "leading case" on the concept of interstate commerce, *Carson Petroleum Co. v. Vial*, 279 U.S. 95, 101 (1929), this Court explained that the transportation of goods acquires an interstate character when the goods have "commence[d] their final movement for transportation from the state of their origin to that of their destination," *Coe*, 116 U.S. at 525. Once they "have started on th[is] ultimate passage," "goods in [the] course of transportation through a state" are still in interstate commerce because that purely local carriage simply forms part of their "continuous [interstate] route or journey." *Id.* at 525, 527. Accordingly, interstate commerce begins when one party "commit[s] to the common carrier" goods for "transportation out of the state," *id.* at 525, and "completely terminate[s]" once the goods came to "a[] rest" by "reach[ing] their" intended "destination,"

Am. Steel & Wire Co. v. Speed, 192 U.S. 500, 519-22 (1904); *see also Ill. Cent. R.R. Co. v. De Fuentes*, 236 U.S. 157, 163 (1915) ("[G]enerally when this interstate character has been acquired it continues, at least, until the load reaches the point where the parties originally intended that the movement should finally end."); *Brown v. Houston*, 114 U.S. 622, 632 (1885) (interstate commerce terminates when goods "arrive[] at [their] destination" and "come to [their] place of rest").

In the years following *Coe*, this Court consistently applied *Coe* in a variety of circumstances to conclude that last-mile deliveries formed part of the "stream" of transit of a good from one state to its destination in another state and hence constituted interstate commerce. *Stafford v. Wallace*, 258 U.S. 495, 519 (1922). For example, in *Caldwell v. North Carolina*, 187 U.S. 622 (1903), a case with facts closely resembling the ones here, this Court held that a worker in North Carolina who "received" packages shipped from Illinois at a local railroad depot and "delivered them" locally to purchasers in North Carolina was engaged in interstate commerce. *Id.* at 632. The Court explained that it made no difference to the outcome that the articles had been "sent to an agent of the vendor" who "delivered them to the purchasers," instead of being "directly [shipped] to each individual purchaser," because the vendor controlled the entire transportation, including the last-mile delivery. *Id.* Accordingly, the employee was not subject to a license charge imposed by the state of North Carolina, even though he—like Mr. Brock—never crossed state lines. *Id.* at 632-33. This Court again considered closely analogous facts in *Rearick v. Pennsylvania*, 203 U.S. 507 (1906), where a company employee retrieved goods shipped from another state at a train station in Pennsylvania and then transported them to customers within the same state.

Id. at 510. And again, this Court held that this last-mile "transport[ation] of the" goods was "protected [interstate] commerce." *Id.* at 512-13.

Likewise, in *Railroad Commission v. Worthington*, 225 U.S. 101 (1912), this Court held that coal transported by rail from a mine in eastern Ohio to ports in the same state on Lake Erie, from where it was then carried to other states, was "from the beginning to the end of its transportation" in interstate commerce. *Id.* at 109. As the Court phrased it, "[b]y every fair test the transportation of this coal from the mine to the upper lake ports is an interstate carriage, intended by the parties to be such." *Id.* at 108. Thus, the purely intrastate leg of the journey was not subject to regulation by Ohio's railroad commission. *Id.* at 111; *see also Eureka Pipe Line Co. v. Hallanan*, 257 U.S. 265, 271-72 (1921) (transportation of oil within West Virginia was interstate commerce when the oil was destined for other states); *United Fuel Gas Co. v. Hallanan*, 257 U.S. 277, 281 (1921) (same).

This Court continued to adhere to these principles at the time of the FAA's enactment. In *Hughes Brothers Timber Co. v. Minnesota*, 272 U.S. 469 (1926), decided the very year the FAA went into effect, the Court held that logs transported via the Swamp River in Minnesota to Lake Superior, where they were loaded onto different vessels and carried to their "intended interstate destination" in Michigan, were in "continuous interstate transportation" throughout their transit. *Id.* at 475-76. Therefore, they were exempt from Minnesota taxes, even as to that portion of the journey that occurred solely within Minnesota in vessels that did not cross state lines. *Id.*; *see also People's Nat. Gas Co.*, 270 U.S. at 554-55 (gas that was in "continuous transportation from the places of production" in West Virginia to its "intended destinations" in Pennsylvania

was in interstate commerce during last-mile "delivery to purchasers").

To be sure, this Court has cautioned against assuming that the breadth of Congress's regulatory power at the time of the FAA's enactment determines the scope of Section One's exemption from arbitration, explaining that Congress did not "regulate to the full extent of its commerce power" in Section One. *Cir. City*, 532 U.S. at 114. But that instruction relied on the meaning of the phrase "engaged in." *See id.* at 115 (noting that "engaged in commerce" is "understood to have a more limited reach" than "involving" commerce). This Court's contemporaneous Commerce Clause cases remain highly probative in understanding the meaning of "interstate commerce" when the FAA was enacted. Indeed, this Court has repeatedly turned to Commerce Clause cases to interpret that phrase in statutes like FELA, the ICA, the Sherman Act, and the FTC Act, *see, e.g.*, *Hancock*, 253 U.S. at 284 (citing *Coe* to interpret FELA); *Clark Bros.*, 238 U.S. at 456 (citing *Worthington* to interpret the ICA); *Binderup v. Pathe Exch.*, 263 U.S. 291 (1923) (citing *Western Oil Co. v. Lipscomb*, 244 U.S. 346 (1917) to interpret the Sherman Act); *Bunte Bros.*, 312 U.S. at 352 n.3 (citing *Board of Trade v. Olsen*, 262 U.S. 1 (1923), to describe the FTC's jurisdiction over the "current of interstate commerce").

III. Flowers's Interpretation of Section One's Residual Clause Is at Odds with the Clause's Text and History.

The ordinary meaning of Section One's text and contemporaneous judicial precedent foreclose Flowers's insistence that only workers who cross state borders or directly participate in transporting goods across borders are engaged in interstate commerce.

See Pet'rs Br. 14. Flowers's remaining arguments are without merit.

A. As an initial matter, Flowers incorrectly insists that "the FELA cases shed no light on the meaning of § 1" because the text and purposes of FELA differ from those of the FAA. *Id.* at 39. To be sure, FELA's purpose is different: it imposes liability on "common carrier[s]" "engaging in commerce between" the states. FELA § 1. But in words closely resembling Section One's residual clause, it limits coverage to persons "suffering injury while he is *employed* by such carrier *in such commerce*." *Id.* (emphasis added). Thus, the FELA cases provide insight into the meaning of the term "interstate commerce" at the time of the FAA's enactment. Surely, when interstate commerce was understood to begin and end did not turn on the nature of the entity engaging in such commerce, whether common carrier or human worker.

"Having lost on text," "Flowers turns to policy," *Bissonnette*, 601 U.S. at 256, arguing that "FELA's purpose was broad and remedial," whereas Section One's scope "is narrow, not open-ended or remedial," Pet'rs Br. 40 (internal quotation marks omitted). But FELA's breadth informs the extent of liability for an employer's negligent conduct, *see Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 562 n.8 (1987) (explaining that "in the spirit of broad construction, the FELA has been construed to cover some intentional torts even though its text only mentions negligence"), not the Act's scope. And in any event, where similarities in the "plain text" of a statute abound, this Court has "no warrant to elevate vague invocations of statutory purpose over the words Congress chose." *Saxon*, 596 U.S. at 463. Perhaps that is why this Court has, in the face of similar objections, cited FELA cases to determine the meaning of Section One's terms. *See*

id. at 455, 459; Pet'r Br. 36-38, *Saxon*, 596 U.S. at 450 (No. 21-309) (positing that "FELA is a remedial law" and therefore "irrelevant").

B. Flowers is also wrong to contend that Congress could not regulate employment contracts of workers engaged in purely intrastate transportation in 1925 and therefore that Section One's residual clause does not cover employees like Mr. Brock today. *See* Pet'rs Br. 31-34. To be sure, this Court in 1925 had held unconstitutional Congress's attempts to regulate workers engaged in "purely local transportation," *id.* at 33, but this only begs the question of when "purely local transportation" ended and interstate transportation began. And by 1925, this Court had repeatedly clarified that Congress could regulate employees engaged in intrastate transportation that was part of an interstate journey as a component of its power to regulate interstate commerce. *See Hancock*, 253 U.S. at 285-86 (FELA properly applied to railroad employee who was engaged in "commerce between states" because his movement of coal within Pennsylvania formed "a step in the transportation of the coal to" its "ultimate destination[] in another state"); *see generally supra* Section II.A.

C. Finally, Flowers contends that "whether the goods Brock transports were part of an interstate transaction is irrelevant" because the "*transaction* prompting the goods' movement is of no concern to § 1 at all." Pet'rs Br. 22-23. Yet in case after case, this Court has held that the transaction was critical in determining when interstate commerce began and ended—and hence when workers were engaged in it. In *Binderup*, for example, this Court held that the instate delivery of films from a distributor to a local cinema owner "was clearly interstate" commerce for purposes of the Sherman Act. 263 U.S. at 309. The Court

explained that "[t]he general rule is that where transportation has acquired an interstate character it continues at least until the load reaches the point where the parties" to the transaction "originally intended that the movement should finally end." *Id.* (internal citation omitted). Accordingly, the "interstate character of the transaction" between the cinema owner and film distributor persisted throughout the films' transportation: from their departure in one state, through their temporary storage at a local agency, and until the completion of their last-mile delivery in another state. *Id.*

Similarly, in *Hancock*, this Court explained that a worker's purely local transportation of coal rendered him engaged in interstate commerce when the coal was "originally intended" for purchasers in "another state." 253 U.S. at 286. Again, in *Clark Brothers*, this Court held that coal transported between two mines in Pennsylvania comprised interstate transportation because the movement was for "the purpose of filling contracts with purchasers in other states." 238 U.S. at 468. And in *People's Natural Gas Co.*, this Court held that the transportation of gas for "delivery to purchasers"—the "intended destinations" of the gas—comprised interstate transit. 270 U.S. at 554; *see also Mitchell Coal*, 238 U.S. at 253 (purely local transportation that "was in fact . . . part of an intended and connected transportation beyond the state" comprised interstate commerce); *United Fuel Gas Co.*, 257 U.S. at 281 (goods were in interstate commerce if they were in "a steady flow" of transportation "ending as contemplated from the beginning" at their destinations); 1 Clyde Aitchison, *Interstate Commerce Acts Annotated* 170 (1930) (explaining that courts looked to a journey's "ultimate destination"—or "where the parties

intended the movement should finally end"—to assess a shipment's "interstate character" under the ICA).

* * *

Flowers insists that workers like Mr. Brock cannot invoke Section One's residual clause because they do not directly move goods across borders via the channels of foreign or interstate commerce. But this Court has long rejected such a "technical" conception of interstate commerce. *See Savage v. Jones*, 225 U.S. 501, 520 (1912). Indeed, Flowers's rule is plainly at odds with the ordinary meaning of the term "interstate commerce" at the time the FAA was enacted. This Court should reject it.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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