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 ILLINOIS, CALIFORNIA, COLORADO, DELAWARE, DISTRICT OF COLUMBIA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEW JERSEY, NEW YORK, OREGON, RHODE ISLAND, AND VERMONT AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTERESTS OF AMICI CURIAE

Illinois, California, Colorado, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon, Rhode Island, and Vermont ("amici States") submit this brief in support of respondent Angelo Brock to urge affirmance of the court of appeals, which correctly held that the transportation-worker exemption in Section 1 of the Federal Arbitration Act ("FAA") for "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," 9 U.S.C. § 1, applies to last-mile truck drivers like Brock, who are responsible for completing the final, intrastate portion of a product's interstate delivery.

Amici States have an interest in ensuring that disputes involving transportation workers are resolved in public and transparent proceedings that allow States to monitor such disputes and respond as necessary, as opposed to private and confidential arbitration proceedings. Petitioners' unduly narrow reading of the Section 1 exemption interferes with this interest because when workers are subject to arbitration agreements—which typically include confidentiality provisions—it is more difficult for States to gather information about the pervasiveness of unlawful practices and any potential disruptions to the transport of goods.

By contrast, the interpretation of the Section 1 exemption set forth by the lower court and Brock—which would cover transportation workers delivering goods that remain in an interstate journey, including last-mile truck drivers—supports the States' efforts to

ensure smooth functioning of commerce within their borders and to protect their residents from unlawful working conditions. Accordingly, the Court should affirm the lower court's decision.

SUMMARY OF ARGUMENT

At issue in this case is whether the FAA requires transportation workers like Brock—last-mile drivers who complete the final, intrastate leg of a product's interstate journey—to raise claims against their employer in private arbitration proceedings or whether they fall within the scope of the FAA's Section 1 exemption for "contracts of employment of . . . workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. As this Court recognized in *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022), this exemption is not limited to workers who cross state borders. *Id.* at 463. On the contrary, it includes workers, such as airline ramp supervisor Latrice Saxon, who "handle goods traveling in interstate and foreign commerce." *Ibid.* Like Saxon, Brock's work is "part of the interstate transportation of goods" for Flowers Foods, Inc., even though he does not "physically accompany [the goods] across state or international boundaries." *Id.* at 457, 461. That is because, as Brock explains, he transports baked goods that are in nearly continuous transit from Flowers Foods' out-of-state bakeries to its retail customers in Colorado. Resp. Br. 7-8.

Petitioners, however, assert that Brock is differently situated in several respects, including that his work is wholly intrastate and, in petitioners' view, does not closely relate to interstate transportation. *E.g.*, Pet. Br. 21-23. As part of this argument, petitioners repeatedly refer to the fact that Brock does not

have a contractual relationship with Flowers Foods or any of its subsidiaries; rather, Brock "is the owner and operator of Brock, Inc.," which "is a party to a distribution agreement with the Flowers Denver subsidiary." *Id.* at 9. And under that agreement, petitioners note, Brock, Inc.'s operations are "limited to local services." *Ibid.* In other words, petitioners suggest that the existence of a corporate intermediary between Flowers Foods and Brock is relevant to determining the scope of the Section 1 exemption. *Ibid.*[1] And at least one coalition of amici would take this argument a step further, asserting that this Court should adopt a rule applying the Section 1 exemption based solely on "the [distribution] agreement as written." Br. of Coalition for Workforce Innovation at 12.

But as this Court's recent decisions make clear, whether workers qualify for the Section 1 exemption turns on "what they do," *e.g.*, *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 255 (2024), not the legal structures surrounding their work. And the materials the Court has relied on provide additional support for this conclusion. In particular, the materials cited in *New Prime v. Oliveira*, 586 U.S. 105 (2019)—early twentieth-century cases and statutes—

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[1] Petitioners concede that they did not present the existence of a corporate intermediary as an independent reason for reversal. Pet. Br. 12 n.1. Notwithstanding that concession, however, petitioners repeatedly reference the distribution agreement between Flowers Foods and Brock, Inc. See Pet. Br. 2, 9-10 (contending that Brock's corporation, Brock Inc., orders baked goods from petitioners); see also *id.* at 2, 9, 21 (claiming that Brock, Inc. "takes title" to the goods).

focused on the nature of the work rather than any corporate or contractual formalities governing the relationship between the worker and employer. Additionally, the principle underlying these modern and historical sources—that one looks to the nature of the work rather than any legal formalities—is consistent with state employment laws governing the classification of workers. Thus, notwithstanding any suggestion otherwise, resolution of the question presented does not turn on the fact that a Flowers Foods subsidiary entered into distribution agreement with Brock, Inc., rather than a legal relationship with Brock himself.

Moreover, petitioners' view of the scope of the Section 1 exemption, if accepted, would impede efficient access to information involving the transportation of goods within state borders by requiring that transportation workers like Brock arbitrate their claims. As amici States know from their experience in this area, such information is critical to ensuring States are able to monitor the smooth operation of commerce within their borders and ensure safe and lawful workplace conditions for their residents. These interests are furthered by allowing transportation workers to resolve complaints in public proceedings. When workers are subject to the FAA, they must maintain confidentiality and present their claims in private proceedings. If exempted from the FAA, however, workers may bring their claims in more transparent and public fora, such as a federal or state court.

For these reasons and those discussed in respondent's brief, amici States agree with Brock that the lower court's decision should be upheld.

ARGUMENT

I. Legal Formalities Are Irrelevant To The Scope Of The Section 1 Exemption.

Petitioners' repeated references to the distribution agreement between a Flowers Foods subsidiary and Brock, Inc. as support for their characterization of Brock's work as "delivering goods intrastate" and therefore within the FAA's Section 1 exemption, *e.g.*, Pet. Br. 3, should be disregarded for at least two reasons. First, this Court's recent opinions, as well as the legal materials from the early twentieth century (when the FAA was enacted) that the Court relied on, make clear that resolving questions about the availability of the Section 1 exemption requires focusing on the work performed, and not the contractual arrangements or other corporate formalities established by the employer. Second, these precedents are consistent with broader employment law principles governing the classification of workers, which are typically established by state law and likewise look to the nature of the work rather than any legal formalities.

A. The scope of the Section 1 exemption is determined by the nature of the work performed, not the legal formalities established by the employer.

Petitioners imply that the contracts and corporate entities they have set up to govern their relationship with last-mile drivers can dictate the nature of the

work done by those drivers for purposes of the Section 1 exemption, and one set of petitioners' amici argue that the terms of the distribution agreements petitioners require should control whether the exemption applies. On the contrary, this Court's recent opinions addressing the scope of Section 1, and the historical materials the Court relied on, show that the substance of the work, not legal formalities, determines whether someone is a worker engaged in interstate commerce and thus entitled to the exemption.

1. To start, the Court's recent opinions addressing the Section 1 exemption have consistently focused on the nature of the work, not the legal arrangements that surround it. For instance, in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), the Court noted that the exemption focuses on "transportation workers and their necessary role in the free flow of goods." *Id.* at 121. And in *Saxon*, the Court explained that "[t]he word 'workers' directs the interpreter's attention to 'the *performance* of work.'" 596 U.S. at 456 (quoting *New Prime*, 586 U.S. at 116) (emphasis in original). Indeed, the Court added, to qualify for the exemption, "transportation workers must be actively 'engaged in transportation' of . . . goods across borders via the channels of foreign or interstate commerce." *Id.* at 458 (quoting *Circuit City*, 532 U.S. at 121). Accordingly, the Court again relied on the nature of the work, and not any contractual or corporate formalities surrounding it, to decide the availability of the exemption.

This Court has also made clear that an employer cannot avoid the conclusion that a worker fits within the Section 1 exemption through contractual or corporate formalities that do not align with the work actually being performed. In *New Prime*, the Court held that the Section 1 exemption is not limited to "agreements between employers and employees" but rather encompasses any "contract for the performance of *work* by *workers*," including agreements that label the worker as an independent contractor. 586 U.S. at 114, 116 (emphasis in original). In fact, *New Prime* concerned a strikingly similar arrangement to the one between Flowers Foods and Brock. The employer in *New Prime* had arranged a putatively arms-length agreement between itself and a corporate entity—not the individual plaintiff Dominic Oliveira but rather his company Hallmark Trucking LLC. See *Oliveira v. New Prime, Inc.*, 141 F. Supp. 3d 125, 128 (D. Mass. 2015). Although not expressly addressed by the Court, this arrangement did not affect the result. As noted, the Court focused on the substance of Oliveira's work—not the contractual label given to him by New Prime—in concluding that it entitled him to exemption. See *New Prime*, 586 U.S. at 116.

2. Not only do the Court's recent opinions demonstrate that the contractual and corporate formalities do not dictate the applicability of the Section 1 exemption, but the legal materials the Court relied on, as well as similar sources of the same kind, provide additional support for this conclusion. In *New Prime*, the Court cited cases and statutes from the early

twentieth century (when the FAA was enacted) to assess whether independent contractors had "contracts of employment . . . of workers" within the meaning of the Section 1 exemption. 586 U.S. at 115-116. And these cases and statutes placed no weight on the existence or non-existence of an intermediary corporate entity to determine the nature of the relationship between the worker and the employer.

To begin, as part of its analysis, the Court evaluated the nature of the employment relationships for the enumerated categories of workers identified in the Section 1 exemption—specifically, "seamen" and "railroad employees." *New Prime,* 586 U.S. at 119-120. As to "seamen," the Court cited cases holding that independent contractors could be "seamen" within the meaning of the exemption. *Id.* at 119 & n.10. In one such case, *The Buena Ventura*, 243 F. 797 (S.D.N.Y. 1916), the injured seaman "was a 'wireless operator' who came on board the Buena Ventura in pursuance of a contract between her owners and the Marconi Wireless Telegraph Company of America." *Id.* at 798. In other words, he was not employed by the ship's owners. *Ibid.* This Court rejected the owners' argument that this made a difference to the wireless operator's status as a seaman. *Id.* at 800. Rather, his rights depended "on the fact of service." *Ibid.*; see also *Hoof v. Pac. Am. Fisheries*, 284 F. 174, 176 (W.D. Wash. 1922) (the fact the seaman in *The Buena Ventura* was "employed by another" made no difference to the result), *aff'd,* 291 F. 306 (9th Cir. 1923).

Other contemporary courts adopted similar reasoning. According to one decision, "[t]he crew . . . is naturally and primarily thought of as those who are on board and aiding in the navigation without reference to the nature of the arrangement under which they are on board." *Seneca Washed Gravel Corp. v. McManigal*, 65 F.2d 779, 780 (2d Cir. 1933); see also *The Bound Brook*, 146 F. 160, 164 (D. Mass. 1906) (cited at *The Buena Ventura*, 243 F. at 799) (same); *The Hurricane*, 2 F.2d 70, 73 (E.D. Pa. 1924), *aff'd*, 9 F.2d 396 (3d Cir. 1925) (wage liens allowed against the ship on behalf of seamen in the employ of a third party).

In addition, *New Prime* cited the Erdman Act of 1898 and the Transportation Act of 1920 to reach its conclusion that "railroad employees" may include independent contractors. 586 U.S. at 120. The Erdman Act expressly disregarded contractual and corporate formalities by defining "employees" to include "all persons actually engaged in any capacity in train operation or train service of any description, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract." Ch. 370, § 1, 30 Stat. 424, 424. And although the Transportation Act left the term "employee" undefined, ch. 91, § 300, 41 Stat. 456, 469, shortly after its enactment, the Railroad Labor Board ruled that "employee" should be defined without regard to corporate formalities. In Decision 982, which this Court cited in *New Prime*, 586 U.S. at 120 n.11, a railroad had fired its repair shop employees

and contracted the shop work to the Burnham Car Repair Co. See *Ry. Emps.' Dep't v. Ind. Harbor Belt R.R. Co.*, Decision No. 982, 3 R.L.B. 332, 336 (1922). The Board held that the repair company's workers were railroad employees within the scope of the Transportation Act because for "all intents and purposes, the contractor's operations constitute a department of the carrier." *Id.* at 339.

Finally, *New Prime* looked to state-court cases to determine the meaning of "employment" at the time. See 586 U.S. at 115 & n.3. As those cases explain, a contract's terms did not control the nature of an employment relationship if the facts pointed in a different direction: "the nature of [the] relation to defendant . . . , whether that of an independent contractor or servant, must be determined not alone from the terms of the written contract of employment, but from the subsequent conduct of each, known to and acquiesced in by the other." *Luckie v. Diamond Coal Co.*, 183 P. 178, 182 (Cal. Dist. Ct. App. 1919); see also, *e.g.*, *Semper v. Am. Press*, 273 S.W. 186, 190 (Mo. Ct. App. 1925); *Chi., R.I. & P. Ry. Co. v. Bennett*, 128 P. 705, 707 (Okla. 1912); *Decola v. Cowan*, 62 A. 1026, 1028 (Md. 1906).

More specifically, state-court decisions contemporaneous to the enactment of the FAA disregarded the existence of intermediary corporations and held the ultimate employer liable for workplace injuries if it retained control. For instance, in *Smith v. Donald Coal Co.*, 115 S.E. 477 (W. Va. 1922), the court addressed whether an engineering company was an employee of a coal mining company to determine liability in a personal injury suit. *Id.* at 480. The court held that the

fact "[t]hat the engineering company is a corporation does not change the relation." *Ibid.* Similarly, as another court explained, the corporate form did not alter the ordinary analysis: "Giving orders is the roll of the master. The relation of master and servant may exist between corporations as between individuals." *Ala. Power Co. v. Bodine*, 105 So. 869, 871 (Ala. 1925); see also *D. Dierssen, Inc. v. May Valley Logging Co.*, 244 P. 564, 565 (Wash. 1926) (principals were liable because corporation "was but the creature of [the principals] acting under their direction and with their consent").

3. The facts of this case only underscore why the Court should not credit the mere existence of the corporate intermediary (Brock, Inc.) as a reason to disregard the nature of the work that Brock performs and the relationship between Brock and Flowers Foods. Indeed, there are many indications that Flowers Foods retains an inordinate amount of control over the purportedly distinct corporate entity.

For instance, the record here shows that Flowers Foods designed the distribution arrangements to serve its interests and has facilitated the use of corporate intermediaries by the truck drivers. *E.g.*, Doc. 29-5, at 1-2 (Flowers Foods instituted incorporation requirement for last-mile truck drivers); *id.* at 1 (Flowers Foods finances distributorships through its "subsidiary Flowers Finance Inc."). The terms in these agreements further confirm that there is no real distinction between Brock and Brock, Inc. Although the primary purpose of the corporate form is to limit liability for owners and directors, see, *e.g.*, *Moore v.*

United States, 602 U.S. 572, 616 n.4 (2024) (Barrett, J., concurring), the distribution agreement requires Brock to personally "pay any amounts due and owing due to [Brock, Inc.'s] breach of the Distributor Agreement," JA 55. Similarly, while the arbitration clause is executed between Flowers Foods and Brock, Inc., JA 63, Brock "acknowledges he/she is subject to" the clause via the "personal guaranty," JA 55-56. Finally, the day-to-day work is both performed by Brock himself and tightly controlled by Flowers Foods. Flowers Foods requires Brock to arrive at its warehouse around 10:00 p.m., Doc. 29-6 ¶ 3, pick up baked goods that just arrived from out-of-state bakeries, *id.* ¶ 2, and immediately deliver the goods to its retail customers, *id.* ¶ 4. No additional employees perform these deliveries for Brock, Inc. beyond Brock himself. *Ibid.*[2]

All told, this Court's recent opinions interpreting Section 1 and the legal materials they cite, as well as similar sources of the same kind, focus on the nature of the nature of the work performed rather than any contractual or corporate formalities. Petitioners' re-

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[2] This fact distinguishes cases cited by petitioners, Pet. Br. 12 n.1, where the corporate entity in fact employed dozens or hundreds of employees in its own name, see *Fli-Lo Falcon, LLC v. Amazon.com, Inc.*, 97 F.4th 1190, 1192 (9th Cir. 2024) ("multiple individuals"); *Amos v. Amazon Logistics, Inc.*, 74 F.4th 591, 596 (4th Cir. 2023) ("450 delivery drivers").

peated references to the distribution agreement between a Flowers Foods subsidiary and Brock, Inc. should be disregarded.

B. State laws similarly do not allow legal formalities to control the nature of an employment relationship.

The principle underlying this Court's recent decisions interpreting Section 1 and the materials cited therein—that to determine the nature of an employment relationship, one looks to the substance of work performed rather than any contractual provisions or corporate formalities—is consistent with state employment laws governing the classification of workers. And these state employment laws, in turn, further demonstrate that the fact that Flowers Foods entered into a distribution agreement with Brock, Inc. rather than a legal relationship with Brock himself is irrelevant to determining whether the Section 1 exemption applies.

1. Many States apply statutory tests to determine employment status, looking beyond contractual labels to the actual facts and circumstances of the work performed. See, *e.g.*, *Johnson v. Diakon Logistics, Inc.*, 44 F.4th 1048, 1053 (7th Cir. 2022) ("The test for employee status under the [Illinois Wage Payment and Collections Act] does not depend on (and often disregards) contractual designations."); *Myers v. Reno Cab Co., Inc.*, 492 P.3d 545, 550 (Nev. 2021) ("[A] worker is not necessarily an independent contractor solely because a contract says so. Instead, the court must determine employee status under the applicable legal

test . . . .”). States thus recognize that contractual language may not accurately capture the nature of the employment relationship and can instead reflect “the artifice of mislabeling what is truly employment.” *Ware v. Industrial Comm’n*, 743 N.E.2d 579, 586 (Ill. App. Ct. 2000); see also *Myers*, 492 P.3d at 550 (“Courts must not allow contractual recitations to be used as subterfuges to avoid mandatory legal obligations.” (internal quotations omitted)).

Indeed, reflecting a concern about subterfuge, Illinois has established a statutory scheme for evaluating the legitimacy of a corporate intermediary—an entity like Brock, Inc.—before classifying the worker operating under that intermediary as an independent contractor. Specifically, to prevent improper classification of individuals performing services as corporate entities in the construction industry, Illinois requires an assessment of whether that entity bears the hallmarks of a bona fide corporation. To be deemed a “legitimate sole proprietor or partnership,” the individual must have “a substantial investment of capital . . . beyond ordinary tools and equipment and a personal vehicle,” “own[ ] the capital goods and gains the profits and bears the losses,” and have “the right to perform similar services for others,” among other factors. 820 Ill. Comp. Stat. 185/10; see also Ill. Admin. Code tit. 56, § 240.110 (listing factors for determining whether a limited liability company is bona fide).

Other States use a more general test to evaluate whether a legal arrangement properly reflects the employment relationship. Many States, for instance, have enacted statutes that follow the three-pronged

"ABC" test, which assesses whether (a) an individual has been and will be free from control or direction over the performance of their service, (b) such service is outside the usual course of business, and (c) such individual is customarily engaged in an independently established business.[3] Alternately, some States use common-law tests, assessing factors like the right to control work, whether the worker is engaged in a distinct occupation, the skills required for the work; whether the worker supplies the instrumentalities, and whether the work is part of the regular business of the employer.[4]

Regardless of the specifics of each test, state law presumes that contractual provisions or corporate formalities do not control; rather, a fact-intensive inquiry into the nature of the work determines employment status. See, *e.g.*, *Steinert v. Ark. Workers' Comp. Comm'n*, 361 S.W.3d 858, 864 (Ark. Ct. App. 2009) (applying common-law test to conclude, "despite the labels given by the parties," that truck drivers were employees); *W. Ports Transp., Inc., v. Emp. Sec.*, 41 P.3d 510, 516 (Wash. Ct. App. 2002) (noting that "[c]ontractual language, such as a provision describing drivers as independent contractors, is not dispositive" and instead applying ABC test and "consider[ing] all the facts related to the work situation").

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[3] *E.g.*, Cal. Lab. Code § 2775(b)(1); Conn. Gen. Stat. § 31-222(a)(1)(B); 820 Ill. Comp. Stat. 115/2; N.J. Stat. Ann. § 43:21-19(i)(6).

[4] *E.g.*, Ariz. Admin. Code § R6-3-1723; Cal. Code Regs. tit. 22, § 4304-1.

2. Some States have gone further and codified tests to determine whether workers like Brock, specifically—that is, truck drivers who operate under a corporate intermediary—qualify as employees regardless of any legal formalities suggesting otherwise. For instance, Minnesota classifies an "agent driver" (or "salesperson who drives a truck in selling and delivering bread . . . or similar services") as an employee if the driver "is assigned a route and required to cover it at regular intervals," "[p]rices are set by the company," and the driver "reports to the company office at specified times to load trucks, return unsold goods, and report on activities as requested," among other criteria. Minn. R. 5224.0190.

Other States, such as Connecticut, Florida, Illinois, Iowa, New Jersey, Texas, and Virginia, consider factors including whether the truck driver owns the vehicle or "holds it under a bona fide lease arrangement,"[5] whether the driver is responsible for maintenance and operating costs of the vehicle,[6] whether the

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[5] Conn. Gen. Stat. § 31-222(a)(5)(P)(ii); 820 Ill. Comp. Stat. 405/212.1(4); N.J. Stat. Ann. § 43:21-19(i)(7)(X); Va. Code Ann. § 60.2-212.1(1).

[6] Fla. Stat. § 440.02(18)(d)(4); 820 Ill. Comp. Stat. 405/212.1(5); Iowa Code § 85.61(12)(c)(3)(b)(i)-(ii); Tex. Lab. Code Ann. § 201.073(1)(E); Va. Code Ann. § 60.2-212.1(2)-(3).

driver may decide the means of performing the services,[7] whether compensation is based on performance-related factors,[8] and whether the driver may refuse work or accept work from other entities without consequence.[9] Illinois also makes relevant whether the driver "[m]aintains a separate business identity."[10]

And while a minority of States take into consideration whether the contract between the driver and the employer "specifies the relationship to be that of an independent contractor and not that of an employee,"[11] that factor is only one of several that must be "substantially present" to classify the driver as an independent contractor under these statutes.[12] In any event, state courts have generally found that the absence of any one factor means the driver is not an independent contractor. See *Reynolds v. CSR Rinker Transp.*, 31 So. 3d 268, 271 (Fla. Dist. Ct. App. 2010);

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[7] 820 Ill. Comp. Stat. 405/212.1(3); Iowa Code § 85.61(12)(c)(3)(b)(v); Tex. Lab. Code Ann. §§ 201.073(1)(B), (F); Va. Code Ann. § 60.2-212.1(6).

[8] Conn. Gen. Stat. § 31-222(a)(5)(P)(iii); Fla. Stat. § 440.02(d)(4); Iowa Code § 85.61(12)(c)(3)(b)(iv); N.J. Stat. § 43:21-19(7)(X); Tex. Lab. Code Ann. § 201.073(1)(C); Va. Code Ann. § 60.2-212.1(5).

[9] Conn. Gen. Stat. § 31-122(a)(5)(P)(iv); 820 Ill. Comp. Stat. 405/212.1(2); Tex. Lab. Code Ann. § 201.073(1)(A).

[10] 820 Ill. Comp. Stat. 405/212.1(6).

[11] Iowa Code § 85.61(12)(c)(3)(b)(vi); Tex. Lab. Code Ann. § 201.073(1)(H); Va. Code Ann. § 60.2-212.1(7).

[12] Iowa Code § 85.61(12)(c)(3)(b); Va. Code Ann. § 60.2-212.1.

C.R. Eng., Inc. v. Dep't of Emp. Sec., 7 N.E.3d 864, 881 (Ill. App. Ct. 2014).

Thus, petitioners' suggestions that the fact that Flowers Foods entered into a distribution agreement with Brock, Inc. is relevant to the question whether Brock falls within the scope of the Section 1 exemption cannot be reconciled with the broader principles articulated in state employment laws. Nor can the argument by petitioners' amici that the terms of that agreement should dictate the availability of the exemption. By contrast, Brock's position, which looks to the nature of the work rather than the legal formalities surrounding it, is supported not only by this Court's decisions and the materials cited but also by the States' recognition that contractual language and corporate formalities may not accurately describe employment relationships.

II. States Have An Interest In Maintaining Transparent Dispute Resolution Procedures For Transportation Workers.

Amici States also know from their experience that resolving disputes involving transportation workers in arbitration interferes with their interests in ensuring the smooth operation of commerce within their borders and protecting their residents from unlawful working conditions. Whereas arbitration compelled by the FAA typically occurs in confidential proceedings, dispute resolution proceedings for exempted transportation workers are conducted in a more transparent and regulated manner. These transparent proceedings serve important state interests by allowing

States to monitor disputes within their borders and more efficiently perform their investigatory and enforcement duties.

A. Unlike typical arbitration proceedings under the FAA, the processes available to exempted transportation workers are transparent.

Determining whether a transportation worker is exempted from the FAA has significant practical implications, including for States, given the differences between the nature and purpose of private arbitration proceedings, on the one hand, and the procedures governing public dispute resolution processes, on the other. Specifically, the public processes allow States to better monitor any burgeoning disputes that might disrupt their economies and to better perform their investigative and enforcement duties. The confidential nature of private arbitration proceedings, by contrast, does not serve those interests.

As this Court has explained, "[t]he principal purpose of the FAA is to ensure that private arbitration agreements are enforced according to their terms." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011) (cleaned up). In other words, the FAA focuses on honoring the intent of private parties, and not the public implications of their agreements. To that end, parties may agree "to arbitrate according to specific rules," *ibid.*, including that "proceedings be kept confidential," *id.* at 345, or that they proceed on an individualized, as opposed to a collective, basis, *Epic Sys. Corp. v. Lewis*, 583 U.S. 497, 506 (2018).

In fact, "the promise of confidentiality" has become "a linchpin" of private arbitration's appeal.[13] The leading arbitration associations not only highlight the confidentiality of their services, but also structure their governing rules to allow parties to elect nearly complete opacity in the proceedings. For instance, the American Arbitration Association's commercial arbitration rules—which petitioners have selected to govern their arbitration proceedings, JA 63—provide that the "arbitrator shall keep confidential all matters relating to the arbitration or the award" and "may make orders concerning the confidentiality of the arbitration proceedings."[14] The JAMS Comprehensive Arbitration Rules contain a similar provision.[15] A JAMS arbitrator has authority to issue orders to protect the confidentiality of sensitive information, sanction parties for violating the rules, and exclude nonparties from hearings.[16]

In practice, then, "[a]rbitration is frequently conducted pursuant to confidentiality rules and agreements that can conceal the existence and substance of

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[13] Judith Resnik, *The Privatization of Process: Requiem for and Celebration of the Federal Rules of Civil Procedure at 75,* 162 U. Pa. L. Rev. 1793, 1821 (2014).

[14] Am. Arbitration Ass'n, Commercial Arbitration Rules and Mediation Procedures, Rule 45 (Sept. 1, 2022), https://bit.ly/40FAQuw.

[15] JAMS Comprehensive Arbitration Rules & Procedures, Rule 26 (June 1, 2021), https://bit.ly/3ueL6O9.

[16] *Id.* at Rules 26, 29.

a dispute, the identities of the parties, and the resolution of the controversy."[17] Indeed, under the arbitration agreement in this case, which would apply to Brock if he were not exempted by Section 1 of the FAA, the "arbitration proceedings are to be treated as confidential," and no counsel or party may disclose "the substance of the arbitration proceedings, or the result, except as required by subpoena, court order, or other legal process." JA 67-68.

By contrast, the public dispute resolution procedures for transportation workers exempted from the FAA are considerably more transparent, and the resulting settlements, judgments, or awards are typically made public. Indeed, many transportation workers, including Brock, can present their claims directly in state or federal court. See, *e.g.*, *Fairbairn v. United Air Lines, Inc.*, 250 F.3d 237, 241-242 (4th Cir. 2001). Unlike proceedings under the FAA, court proceedings are typically open to the public, and filings and decisions are available to all on a public docket. *E.g.*, *Union Oil Co. of Cal. v. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000) ("People who want secrecy should opt for arbitration. When they call on the courts, they must accept the openness that goes with subsidized dispute resolution by public (and publicly accountable) officials."). Any judgments entered are available for members of the public (and state regulators) to view, as are transcripts of relevant proceedings and the

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[17] Laurie Kratky Doré, *Public Courts Versus Private Justice: It's Time to Let Some Sun Shine in on Alternative Dispute Resolution*, 81 Chi.-Kent L. Rev. 463, 466 (2006).

court's reasoning underlying its decision. When a case settles, the agreements remain accessible "if filed in court."[18] And even if the agreement itself remains private, the docket and "court file must remain accessible to the public." *Brown v. Advantage Eng'g, Inc.*, 960 F.2d 1013, 1016 (11th Cir. 1992).

B. States are better able to protect their economies and exercise their investigatory and enforcement powers when transportation disputes are resolved in a transparent manner.

The procedures associated with court proceedings are better suited for transportation disputes than arbitrations conducted pursuant to the FAA, in large part because of their transparent and public-facing nature. Disruptions in transportation due to unresolved disputes between employers and employees have a significant negative impact on States, their economies, and their residents. *E.g.*, *Bhd. of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 381 (1969) ("A strike in one State often paralyzes transportation in an entire section of the United States, and transportation labor disputes frequently result in simultaneous work stoppages in many States."). States thus have an interest in preparing for any possible transportation disruptions, which is made more difficult when disputes are heard in confidential proceedings and resolved by opaque judgments.

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[18] Resnik, *supra* note 13, at 1818.

The private nature of arbitration proceedings pursuant to the FAA can also interfere with States' investigatory and enforcement duties. Courts have long recognized that the States' traditional police powers extend to regulating working conditions. *E.g.*, *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 397-398 (1937). Accordingly, States have not only established minimum standards on a wide range of working conditions, but also granted state agencies and officials the authority to investigate and enforce violations of those standards.[19] In many States, the legislature has designated multiple agencies or officials as responsible for investigating such violations. In Illinois, for example, both the Illinois Department of Labor and the Illinois Attorney General have the power and duty to investigate potential violations and initiate enforcement actions on behalf of employees and the public. *E.g.*, 15 Ill. Comp. Stat. 205/6.3(b); 820 Ill. Comp. Stat. 115/11. Similarly, California has vested several agencies with such authority, including a Labor Commissioner tasked with establishing a field enforcement unit that investigates "industries, occupations, and areas in which . . . there has been a history of violations." Cal. Lab. Code § 90.5(a)-(c).

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[19] *E.g.*, Ala. Code § 25-2-2(a); Ark. Code Ann § 11-2-108(1); Colo. Rev. Stat. § 8-4-111(1)-(2); Conn. Gen. Stat. § 31-3; Del. Code Ann. tit. 19, §§ 107, 1111; D.C. Code § 32-1306(a); Ga. Code Ann. § 34-2-3(e); Kan. Stat. Ann. § 44-636; Ky. Rev. Stat. Ann. § 337.990; Me. Rev. Stat. tit. 26, § 42; Md. Code Ann., Lab. & Empl. § 3-103; Mass. Gen. Laws ch. 149, § 3; N.H. Rev. Stat. Ann. §§ 273:9, 275:51(I); N.J. Stat. Ann. § 34:1A-1.12; N.M. Stat. Ann. § 50-4-8(A)-(B); N.D. Cent. Code § 34-06-02; Ohio Rev. Code Ann. § 4111.04(A)-(B); Or. Rev. Stat. § 651.060(1); S.D. Codified Laws § 60-5-15; Utah Code Ann. § 34-28-9.

States use this authority to investigate and bring enforcement actions against companies that employ transportation workers. For example, the New York Department of Labor established in court that app-based delivery drivers were employees entitled to unemployment insurance benefits. See *In re Vega*, 149 N.E.3d 401, 405 (N.Y. 2020). Additionally, both the Massachusetts Attorney General and the New Jersey Attorney General obtained restitution and penalties for ride-share drivers who were misclassified as independent contractors and deprived of minimum wage, overtime pay, sick leave, and other employee entitlements.[20] And the New Jersey Department of Labor and Workforce Development successfully argued that delivery drivers working for a furniture company were not exempt from overtime law under an exception for "trucking industry employers." *In re Raymour & Flanigan Furniture*, 964 A.2d 830, 841 (N.J. Super. Ct. App. Div. 2009).

Arbitration agreements enforceable under the FAA cannot supersede this authority or prevent state investigations into potential violations. *E.g.*, JA 67 (recognizing that arbitration agreement does not preclude relief from state or federal agencies). But the confidentiality provisions that typically govern arbitration

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[20] Press Release, *AG Campbell Reaches Nation-Leading Settlement with Uber and Lyft, Secures Landmark Wages, Benefits and Protections for Drivers* (June 27, 2024), https://bit.ly/4jupKSF; Press Release, *Uber Pays $100 M in Driver Misclassification Case with NJ Department of Labor and Workforce Development and Attorney General's Office* (Sept. 13, 2022), http://bit.ly/3N94cik.

proceedings can make it more difficult for state investigatory and enforcement bodies to become aware of potential systemic violations in their States. Specifically, contractual provisions that require confidentiality affect States' ability to efficiently conduct investigations and determine whether enforcement actions are warranted. As a practical matter, state agencies are often dependent on constituent complaints, third-party information, and publicly available information when determining whether to open an investigation into an employer. Accordingly, when employee complaints, and any resultant awards, are shrouded in secrecy, it is more challenging for state agencies to assess whether violations are occurring on a widespread basis and thus would warrant an investigation or enforcement action. When such matters are resolved in public-facing fora, by contrast, States are better able to track employee claims, search public databases, and identify troubling trends in workplace conditions.

For these reasons, States have an interest in ensuring that the FAA's Section 1 exemption covers transportation workers like Brock, who deliver goods that remain in the stream of interstate commerce. Narrowing the class of workers who fall within the exemption would not only hinder the States' ability to monitor disputes among transportation workers, but also make the States' investigatory and enforcement duties more difficult.

CONCLUSION

The decision below should be affirmed.

Respectfully submitted,

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