No. 17-340

In the Supreme Court of the United States

NEW PRIME, INC.,
Petitioner,

v.

DOMINIC OLIVEIRA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF MASSACHUSETTS, CALIFORNIA, CONNECTICUT, THE DISTRICT OF COLUMBIA, ILLINOIS, MARYLAND, MINNESOTA, NEW JERSEY, NEW YORK, NORTH CAROLINA, OREGON, PENNSYLVANIA, VERMONT, VIRGINIA, AND WASHINGTON AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTERESTS OF *AMICI CURIAE*

State *amici* enforce laws that protect the public interest, including those that set fair labor standards and promote the health and safety of all working people. We also share a responsibility to protect workers who are susceptible to exploitation, and to foster a level playing field for businesses who abide by the laws. Employees who are misclassified as independent contractors are often denied many basic workplace protections and benefits that they are entitled to receive—and employers who fail to properly classify and pay their workers gain an unfair competitive advantage by avoiding payroll costs including tax contributions to federal and state governments.[1] As the U.S. Department of Labor explains, "[e]mployee misclassification generates substantial losses to the federal government and state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds." U. S. Department of Labor, Wage & Hour Division, *Misclassification of Employees as Independent Contractors*, https://www.dol.gov/whd/workers/misclassification (July 17, 2018).

We have taken steps to combat employment misclassification and its resulting harms. However, because States have limited resources, we rely on individual employees to supplement our efforts

[1] *See*, *e.g.*, National Employment Law Project, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries* (July 2015) at 2-6, https://www.nelp.org/wp-content/uploads/Independent-Contractor-Costs.pdf.

through private enforcement actions. *Amici* accordingly recognize that workers must have a meaningful role in vindicating their own rights and ensuring compliance in the business community, not only to protect themselves, but also to expand enforcement of workplace protections across entire industries.

Employment misclassification has become particularly prevalent among drivers in the transportation industry.[2] For decades, businesses in the transportation sector (among others) have imposed "take-it-or-leave-it" independent contractor agreements with mandatory arbitration provisions on their workers[3]—more than half of the companies in this sector now require them.[4] And many

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[2] *See*, *e.g.*, *Alexander v. FedEx Ground Package Sys., Inc.*, 765 F.3d 981 (9th Cir. 2014); *Valadez v. CSX Intermodal Terminals, Inc.*, 2017 WL 1416883 (N.D. Cal. April 10, 2017); *Taylor v. Shippers Transp. Express, Inc.*, 2014 WL 7499046 (C.D. Cal. Sept. 30, 2014); *Anderson v. Homedeliveryamerica.com, Inc.*, 2013 WL 6860745 (D. Mass. Dec. 30, 2013); *Martins v. 3PD, Inc.*, 2013 WL 1320454 (D. Mass. Mar. 28, 2013); *Dynamex Operations W., Inc. v. Superior Court*, 416 P.3d 1 (Cal. 2018); *Amero v. Townsend Oil*, 2008 WL 5609064 (Mass. Super. Ct. Dec. 3, 2008).

[3] *See* Leberstein and Ruckelshaus, National Employment Law Project, *Independent Contractor vs. Employee: Why independent contractor misclassification matters and what we can do to stop it* (May 2016), https://nelp.org/content/uploads/Policy-Brief-Independent-Contractor-vs-Employee.pdf.

[4] *See* Alexander Colvin, Economic Policy Institute, *The Growing Use of Mandatory Arbitration*, at 1, 3, 8 (April 6, 2018), https://www.epi.org/publication/the-growing-use-of-mandatory-

transportation companies engage in exploitative labor practices while at the same time using mandatory arbitration agreements with unreasonable forum selection clauses to attempt to prevent their misclassified drivers from pursuing otherwise available legal remedies.[5] As workers are increasingly forced to submit their employment disputes to arbitration, overall claim volume has significantly decreased and the few claims brought are removed from public view.[6] This hampers the effectiveness of States' enforcement efforts. Accordingly, *amici* have a strong interest in ensuring

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arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/.

[5] *See, e.g.*, *Montoya v. CRST Expedited, Inc.,* 2018 WL 627372 (D. Mass. Jan. 30, 2018) (striking forum selection clause requiring litigation in Iowa for unpaid-wage putative class action by Massachusetts-residing truck driver); *Chebotnikov v. LimoLink, Inc.*, 150 F. Supp. 3d 128 (D. Mass. 2015) (denying employer's motion to dismiss misclassification-wage action on venue grounds, where Massachusetts chauffeurs' independent contractor arbitration agreements specified Iowa as forum). Oftentimes drivers are not even signatories to these agreements. *See*, *e.g.*, *Ouadani v. TF Final Mile, LLC,* 876 F.3d 31 (1st Cir. 2017) (arbitration clause unenforceable in wage and hour class action, where drivers, paid through a subcontractor, were not actually parties to, nor even knew of, the arbitration agreement between subcontractor and putative employer); *Espinal v. Bob's Discount Furniture, LLC*, 2018 WL 2278106 (D.N.J. May 18, 2018) (same); *Hayes v. XPO Last Mile, Inc.*, 2017 WL 4900387 (W.D. Mich. Aug. 21, 2017) (denying motion to compel individual arbitration where drivers were non-signatories).

[6] *The Growing Use of Mandatory Arbitration*, *supra* n.4, at 11, 12.

that workers not subject to compulsory arbitration have the ability to bring their claims in court.

Now, in a new variant on this unfortunate trend, Petitioner New Prime, Inc. ("New Prime") argues that only "employees" in the transportation industry may avail themselves of the exemption Congress specifically extended to all transportation "workers" in Section 1 of the Federal Arbitration Act (FAA). Yet, just like traditional employees, many of the nation's independent truck drivers have experienced abusive economic practices at the hands of large motor carriers. *See Global Van Lines, Inc. v. ICC*, 627 F.2d 546, 547-58 (D.C. Cir. 1980).

Indeed, although Congress formerly provided drivers with an administrative dispute resolution process to address their claims, Congress subsequently replaced that process in recognition of the disparities in the bargaining positions between motor carriers and truck drivers. *See Owner-Operator Indep. Drivers Ass'n, Inc. v. New Prime, Inc.*, 398 F. 3d 1067, 1070 (8th Cir. 2005). In 1995, Congress expressly gave truck drivers the right to bring private civil actions in court for certain violations of the Truth–in–Leasing Act and its regulations. Interstate Commerce Commission Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803; 49 U.S.C. § 14704. This private right of action applies to owner-operators and traditional "employees" alike. 49 C.F.R. § 376.12(c)(1), (4). New Prime's theory would deprive not only true owner-operators, but also employees who have been misclassified as independent contractors, of their rights under that statute.

New Prime's position is thus at odds with the FAA's "worker"-protecting text, and, if accepted, would harm the interests of *amici* in seeing extensive private enforcement of both state and federal workplace protection laws. It was for Congress to decide when arbitration agreements should be enforced and who should be able to seek redress in court, and Congress chose to exempt transportation workers from the scope of the Act. State *amici* have an interest in seeing that transportation sector workers such as Respondent Dominic Oliveira get their day in court, as Congress intended.

SUMMARY OF ARGUMENT

The language of the FAA's transportation workers exemption excludes interstate truck drivers from the FAA's scope—regardless of whether they are employees or independent owner-operators. This conclusion becomes especially clear in light of the history surrounding Congress's regulation of leases between independent truck drivers and authorized motor carriers.

A. When Congress passed the FAA in 1925, the phrase "class of workers" appearing in Section 1's transportation exemption was commonly understood to include both employees and independent contractors. That phrase has continually been used by several federal agencies to signify categories of workers based on their income source, including the self-employed, *i.e.*, independent contractors working on their "own account," as well as traditional hourly and salaried employees. This meaning is consistent

with the reality of the trucking industry at that time (and now): an industry comprised of both employees and independent owner-operator truck drivers—and more of the latter than the former. Moreover, if Congress had wanted to limit the transportation exemption only to conventional employer-employee relationships, it could easily have done so by simply repeating the word "employee" in Section 1's residual clause. Instead, as written, the FAA's transportation exemption applies to all interstate truck drivers—regardless of whether they are classified as employees or independent contractors.

B. Congress chose to exempt transportation workers from the FAA to avoid conflicts with either existing or developing statutory dispute resolution mechanisms. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 121 (2001). And, by passing the Motor Carrier Act of 1935, Pub. L. 74-255, 49 Stat. 543, Congress began its regulation of the emerging trucking industry, including an administrative dispute resolution process similar to legislation Congress adopted for interstate transport by water, rail, and air. But, unlike the other regulated transportation sectors, the interstate trucking industry was mostly composed of independent truck drivers—known as "owner operators"—rather than conventional employees. Congress recognized this distinction by expressly regulating the relationships between for-hire carriers and owner-operators. In other words, as this Court recognized in *Circuit City*, Congress would act soon after passing the FAA to regulate other transportation workers beyond those spelled out in Section 1—and it did so in 1935 for

truckers, including independent contractors. Accordingly, independent drivers who contract with trucking firms, such as through the leases at issue here between New Prime and Oliveira, are excluded from the FAA.

ARGUMENT

Section 1 exempts truck drivers from the FAA regardless of whether they are employees or independent contractors.

Statutory interpretation is always to some extent a historical inquiry. This Court recently reaffirmed the "fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary, contemporary, common meaning ... at the time Congress enacted the statute." *Wisconsin Cent. Ltd. v. United States*, 585 U.S. __, 2018 WL 3058014, at *6 (June 21, 2018) (citation and internal quotation marks omitted). With respect to the FAA, history is relevant in a second way: this Court in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), looked to the nature and extent of congressional regulation of the existing and emerging transportation industries near the time of the FAA's enactment to inform the Court's interpretation of the Section 1 exemption. Both historical inquiries lead to the conclusion that with respect to truck drivers, Congress meant to exempt from the FAA employees *and* independent contractors.

The FAA excludes from its scope "contracts of employment" of any "class of workers" in interstate transportation. 9 U.S.C. § 1; *see Circuit City*, 532

U.S. at 109 (interpreting Section 1's exemption as "confine[d] . . .to transportation workers"). Congress thus stated a clear policy that federal courts may not require such "workers" in the transportation sector to arbitrate their disputes. New Prime seeks to undo Congress's policy choice in two ways: by allowing an arbitrator to decide the scope of the exemption in the first instance, and by preventing truck drivers treated as independent contractors from invoking it.

Both of New Prime's arguments are foreclosed by the FAA's plain language, read in its proper historical context. *Amici* agree with Oliveira's compelling argument on the first question presented, *see* Resp. Br. 15-23, and will not repeat it. On the second, *amici* here show that, at the time of the FAA's enactment, Congress would have understood the term "class of workers" to include both employees and independent contractors, thus indicating that the exemption applies to both types of transportation workers. Moreover, soon after the FAA's enactment, Congress began considering legislation covering conditions in the emerging trucking industry. This Court recognized in *Circuit City* that Congress wanted to exclude transportation workers from the FAA so as not to interfere with "established or developing dispute resolution" legislation affecting these "specific workers." 532 U.S. at 121. As explained below, the trucking industry meets that description: Congress repeatedly considered and finally enacted legislation that applies to both independent contractors and employees, demonstrating the full scope of "workers" in the industry exempted from the FAA.

A. The Congress that enacted the FAA would have understood the phrase "class of workers" in Section 1 to include independent truck drivers.

Section 1 excludes from the FAA'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). As Oliveira convincingly shows, the Congress that enacted the FAA would have understood the term "contracts of employment" to mean "agreements to perform work"—a phrase that readily encompasses agreements with independent contractors. *See* Resp. Br. 23-31, 37. The historical understanding of the term "class of workers" in Section 1's residual clause is equally clear, and equally supportive of Oliveira. Had Congress intended to limit the residual clause to conventional employer-employee relationships, it could easily have done so in terms that were widely used at the time. Instead, as written, the FAA transportation workers exemption applies to all interstate truck drivers—including independent owner-operators.

Although the FAA does not define it, the phrase "class of workers" has been in continual use since as early as 1910 by several federal agencies to signify various categories of workers—including those working as independent contractors. For example, the Census Bureau required its enumerators to place individuals into a "class of worker" category, including traditional employees, unpaid family workers, and self-employed persons "[w]orking on

own account" (referred to as "independent workers"). *See* U.S. Dep't of Commerce, Fifteenth Bureau of the Census, Instructions to Enumerators, at 37-38 (1930) (instructions regarding "class of worker"), https://www.census.gov/history/pdf/1930instructions.pdf; *Morales v. Daley*, 116 F. Supp. 2d 801, 808 (S.D. Tex. 2000) (noting that "[q]uestions on the class of worker, that is, type of employment, whether private, governmental, self employed [sic], or working as an unpaid family worker, have appeared on the census form since 1910").

The phrase "class of worker" has also long been used by the U.S. Department of Labor's Bureau of Labor Statistics to encompass both employees and independent contractors. *See*, *e.g.*, Bureau of Labor Statistics, Bull. No. 817 at pp. 8, 10, 12-13, 15, 19, 32 (Feb. 1945) (making "class of worker" comparisons between hourly/salaried workers and self-employed "own-account workers," based on census data from 1940), https://lccn.loc.gov/l45000048; Bull. No. 968 at p. 75 (May 1949) (reporting on self-employed independent consultants), https://fraser.stlouisfed.org/files/docs/publications/bls/bls_0968_1950.pdf.[7]

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[7] The Bureau of Labor Statistics also used this phrase around the time of the passage of the FAA when making comparisons between skilled and unskilled groups of workers within the same or similar industries, without distinguishing between employees and independent contractors in that context. *See*, *e.g.*, BLS Monthly Labor Rev., Vol. 15, No. 3 at p. 129 (Sept. 1922); Monthly Labor Rev., Vol. 16, No. 6 at p. 131 (June 1923); Monthly Labor Rev., Vol. 34, No. 1 at p. 179 (Jan. 1932); Monthly Labor Rev., Vol. 34, No. 3 at pp. 669-670 (Mar. 1932); Monthly Labor Rev., Vol. 35 at p. 1300 (July-Dec. 1932).

Cf. Bureau of Labor Statistics, Economic News Release, Table A-8, "Employed persons by class of worker and part-time status," (May 4, 2018) (categorizing workers by wage and salary, unincorporated self-employed, unpaid family workers, government, private industries, and private households), https://www.bls.gov/news.release/empsit.t08.htm.[8] Thus, at the time it enacted the FAA, Congress would have understood the phrase "class of workers" to include independent contractors.

Had Congress intended to limit Section 1's residual clause only to traditional common law employer-employee relationships, it would likely have chosen more specific language to do so. For example, Congress could easily have written the clause to exempt "contracts of employment of seamen, railroad employees, or any other *class of employees* engaged in foreign or interstate commerce." That phrasing would have made grammatical sense and would have been perfectly consistent with contemporary usage. Indeed, after

[8] The same meaning for the phrase has also been used in the context of categorizing workers for federal employment tax purposes. *See* Committee on Ways & Means, H. Rep. 95-1748, at 3 (1978), 1978-3 C.B. (Vol. 1) at 631 (explaining that "the classification of particular workers or classes of workers as employees or independent contractors (self-employed persons) for purposes of Federal employment taxes must be made under common law rules"). And this Court used the phrase in referring to the Social Security Act Amendments of 1950, which "extend[ed] coverage to *specified classes of workers* irrespective of their common-law status." *United States v. W.M. Webb, Inc.,* 397 U.S. 179, 186 n.12 (1970) (emphasis added) (citing S. Rep. 1669, 81st Cong., 2d Sess. (1950), 1950–2 C.B. 302, 346–347).

enacting the FAA, Congress used the phrase "class of employees" in another transportation-related context—the Railway Labor Act, 45 U.S.C. § 152, Fourth (as amended by Act of June 21, 1934, Pub. L. 73-442, 48 Stat. 1185)—to refer to collective bargaining groups for related occupational categories of employees: "The majority of any craft or *class of employees* shall have the right to determine who shall be the representative of the craft or class for the purposes of this [Act]." *Id*. (emphasis added). Congress also—both before and after the FAA's enactment—used the phrase "class of employees" when comparing employees within similar industries, occupations, or employing units. *See*, *e.g.*, Hearing on H.R. No. 11019, 62nd Cong., 1st Sess., 2060 (1911) (using "class of employee" as the title for occupational wage comparison chart); H.R. No. 388, 62nd Cong., 2d Sess., 5199 (1912) (using "class of employees" in reference to mail clerks, letter carriers, and other postal employees); Hearing on H.R. No. 11133, 70th Cong., 1st Sess., 3380 (1928) (using phrase "class of employees" in summary chart comparing pension and retirement laws for police, fire fighters, and civil clerks).

The Congress that enacted the FAA selected the phrase "class of workers" rather than limiting Section 1's residual clause to employees. As this evidence shows, Congress would have understood the phrase to include both traditional employees and self-employed independent truck drivers. This Court, too, should follow the phrase's "ordinary, contemporary, common meaning ... at the time Congress enacted the

statute," *Wisconsin Cent.*, 585 U.S. at __, 2018 WL 3058014, at *6, in interpreting Section 1.

B. Congress exempted certain workers from the FAA because it wished to "reserv[e] for itself more specific legislation for those engaged in transportation"—including independent truck drivers.

The regulatory development of the nation's interstate transportation sectors further supports the statutory construction described above. Similar to legislation Congress adopted for interstate transport by water, rail, and air, Congress also created an administrative dispute resolution process for the trucking industry.

In *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), this Court looked to "Congress' demonstrated concern with transportation workers and their necessary role in the free flow of goods" as the basis for its interpretation of the Section 1 exemption. 532 U.S. at 121. The Court noted that federal regulation of grievance procedures for seamen and railroad employees—the two types of workers specifically referenced in Section 1—already "existed" when Congress enacted the FAA in 1925. *Id.* (citing the Shipping Commissioners Act of 1872, 17 Stat. 262, and the Transportation Act of 1920, §§ 300-316, Pub. L. 66-152, 41 Stat. 456). The Court thus inferred that Congress exempted such employees from the FAA "for the simple reason that it did not wish to unsettle established or developing statutory dispute resolution schemes covering specific workers." *Id.* at

121. The Court then explained the residual clause by noting that specific legislation for transportation workers other than the "two specific, enumerated types" in Section 1 "was soon to follow," citing as an example "the amendment of the Railway Labor Act in 1936 to include air carriers and their employees." *Id.* (citing Pub. L. 74-487, 49 Stat. 1189, 45 U.S.C. §§ 181-188). The Court concluded that "[i]t would be rational for Congress to ensure that workers in general would be covered by the provisions of the FAA, while reserving for itself more specific legislation for those engaged in transportation"—even those working in transportation fields not yet covered by federal legislation. *Id.*

Just as the air carrier sector was emerging when the FAA was enacted, so too was the trucking industry. Shortly after the FAA's passage, Congress began contemplating "more specific legislation" to address the emerging trucking industry through what ultimately became the Motor Carrier Act of 1935 (MCA), Pub. L. 74-255, 49 Stat. 543, https://www.loc. gov/law/help/statutes-at-large/74th-congress/session-1/c74s1ch498.pdf. Through the first several decades of the twentieth century, the nation's trucking system was "rapidly changing," *Maurer v. Hamilton*, 309 U.S. 598, 615 (1940). Improved roadways, as well as mechanical inventions such the pneumatic tire and the internal combustion engine, brought "sensational growth to the industry." Paul Stephen Dempsey, *Transportation: A Legal History*, 30 Transp. L.J. 235, 274 (2003). Before long, Congress recognized that it needed to regulate this expanding transportation sector. *See* John J. George, *Federal Motor Carrier Act of 1935*, 21 Cornell L. Rev.

249, 251 (1936).[9] Proposals for federal regulation emerged in 1926, shortly after the FAA's passage, and were introduced each session, *id.* at 251-52, until 1935, when Congress passed the Motor Carrier Act. Congress thus undertook a similar path in the regulation of the trucking industry as it had with other interstate transportation sectors.

The MCA was Congress's first regulation of interstate commercial motor vehicle traffic. At that time, truck drivers were predominantly small independent owner-operators who often contracted with motor carriers through leasing arrangements. *See, e.g., Am. Trucking Ass'ns, Inc. v. United States*, 344 U.S. 298, 303-304, 312 (1953). Through the MCA, Congress sought to oversee this new form of interstate traffic "whose regulatory problems bear little resemblance" to other systems of transportation previously subjected to Congressional control, and that presented challenges "far exceeding those of any earlier regulations of interstate commerce." *Maurer*, 309 U.S. at 604. Indeed, although jurisdiction over the motor carrier industry was given to the ICC—the same agency responsible for regulating the railroads—the two transportation industries "could hardly have been more dissimilar." *Federal Regulation of Trucking: The Emerging Critique*, 63

[9] Among the forces prompting congressional action were "the magnitude of interstate motor transportation, inability of the states to control it adequately, the resulting injurious effects of unregulated interstate motor activity on regulated intrastate operation, on railroads, their employees, and shippers, on highway taxpayer-users, and on the increasing urgency of problems of public safety on the highways." *Id.*

Colum. L. Rev. 460, 468 (1963). Distinctions between them were mainly due to significant differences in start-up costs, which directly affected competition: the railroad system was dominated by only a few large companies due to the expense needed to gain entry, but the trucking industry was made up of many thousands of small firms owing to the minor initial investment required.[10] *Id.* (citing Eastman, *Regulation of Transportation Agencies, Second Report of the Federal Coordinator of Transportation*, S. Doc. No. 152, 73rd Cong. 2d Sess. 28 (1934)).

"A down payment on a truck and a driver's license were all it took to get into the industry." *Transportation: A Legal History*, 30 Transp. L.J. at 281. As a result, when the MCA was enacted, a substantial portion of the nation's truck drivers were independent owner-operators with just one vehicle. *See, e.g.,* Harold Barger, National Bureau of Economic Research, *The Transportation Industries, 1889-1946: A Study of Output, Employment, and Productivity*, Appendix F: Highways—The Motor Trucking Industry, at 223-24 (1951) (reporting American Trucking Associations' estimate that "82 percent of all for-hire trucking enterprises operated

[10] It was estimated that such firms had on average only 2.55 trucks each. Senate Committee Hearings on Interstate Commerce, on S. 1629, S. 632, and S. 1635, 74th Cong., 1st Sess., Part I, 325 (1935); Hearings on H.R. 5262 and H.R. 6016 before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess. 175 (1935). Less than two per cent of trucking firms had more than 10 workers. 1935 *Senate Hearings* at 212-13; 1935 *House Hearings* at 162-63.

just one vehicle in 1935."), http://www.nber.org/chapters/c3200.pdf. Often such drivers were unsophisticated entrepreneurs unable to estimate adequately their own operating costs, and many fell victim to carriers' exploitative practices. *See Transportation: A Legal History*, 30 Transp. L.J. at 281, 285. Although many went bankrupt, the Great Depression created a steady pool of new entrants willing to purchase vehicles and repeat the cycle. *Id*. at 284-85.

Thus, as this Court has observed, at the time of the MCA's enactment, "the industry was unstable economically, dominated by ease of competitive entry and a fluid rate picture. And, as a result, it became overcrowded with small economic units which proved unable to satisfy even the most minimal standards of safety or financial responsibility." *Am. Trucking Ass'ns, Inc.*, 344 U.S. at 312. Congress intended to address these problems by enacting the MCA, which extensively regulated the relationships between owner-operators and authorized motor carriers. *See* Senate Committee Hearings on Interstate Commerce, on S. 1629, S. 1632, and S. 1635, 74th Cong., 1st Sess., Part I, 78-80 (1935) (testimony of ICC Commissioner Eastman, whose proposed legislation was largely adopted as the MCA).

The MCA significantly affected owner-operators' lease agreements with carriers by setting leasing standards. *See Am. Trucking Ass'ns, Inc. v. U.S.*, 344 U.S. at 309 n.10 (upholding the Interstate Commerce Commission's regulations of owner-operator leases by explaining that "[t]he Act as originally drafted included regulation of all carriers engaged in

transportation 'whether directly or by a lease,'" and citing MCA § 203(a)(14)-(15).[11] Importantly, the MCA also created what *Circuit City* calls a "statutory dispute resolution scheme[]," 532 U.S. at 121, for regulatory violations.[12] *See* MCA § 218(c); 1 Fed. Reg. 619, 620 *et seq*. (June 20, 1936), https://www.loc.gov/item/fr001071/.

The Act's dispute resolution process authorized the ICC to conduct administrative review proceedings on its own initiative or upon "complaint of interested parties" to resolve disputes arising from the Commission's determinations as well as those between affected parties. MCA § 218(c); *see also* 1 Fed. Reg. at 620-44 (containing detailed rules of practice and procedure for resolution of complaints brought before the ICC, applicable not only to the MCA but also for disputes arising from transportation by water and rail service providers). Early on, these proceedings often involved challenges to the Commission's entry control determinations that turned on the permissible scope of the agreements between owner-operator drivers and

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[11] Congress amended this language in 1940 for clarity, but without any change in the legislative intent. *See Thomson v. United States*, 321 U.S. 19, 23-24 (1944) (citing 86 Cong. Rec. 11546 (1940)).

[12] Section 203(b) of the MCA provided a number of exemptions from its economic controls, including certain types of intrastate trucking, terminal area operations, private carriage, newspapers, farm-owned equipment, and for-hire trucking of agricultural products, but not for matters affecting safety.

motor carriers.[13] Over time even more comprehensive regulation developed affecting independent truck drivers' leases with motor carriers. *See* Ex Parte No. MC-43, 13 Fed. Reg. 359, 369-372 (Jan. 27, 1948) (requiring that carriers' leases with owner-operators be reduced to writing, disclose the compensation to be paid, and set the minimum duration for leases). The enhanced rules also vested the carrier with control over equipment operations—notwithstanding the truck driver's actual ownership—by requiring the carrier to inspect non-owned equipment, create records on its use, and test the driver's familiarity with safety regulations. *Am. Trucking Ass'ns*, 344 U.S. at 308.[14]

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[13] *See* Comment, *Truck Leasing under the Motor Carrier Act: The Owner-Operator and the ICC*, 30 U. Chi. L. Rev. 358, 361-62 (1963). In such cases, whether parties were subject to ICC authority was based on whether the owner-operator merely leased equipment or provided both the vehicle and his driving services. *See*, *e.g.*, *Consol. Trucking, Inc.*, 41 M.C.C. 737, 738-39 (1943); *Columbia Terminals Co.*, 18 M.C.C. 662, 665-66 (1939). When independent truckers were under a motor carrier's direction and control, their operations fell within the ICC's regulatory authority. Douglas C. Grawe, *Have Truck, Will Drive: The Trucking Industry and the Use of Independent Owner-Operators Over Time*, Vol. 35:2 Transp. L. J. 116, 120 (Sept. 2008).

[14] In a further effort to protect owner-operators from motor carriers' well-known exploitative leasing practices, the ICC promulgated additional Truth-in-Leasing regulations in 1979, enforced through an administrative dispute resolution program initiated with a trucker's petition. *See Owner–Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co.*, 632 F.3d 1111, 1113 (9th Cir. 2011). Later, as part of the deregulation of the trucking industry, Congress chose to provide truckers with a

From its inception, the MCA's driver safety rules applied to employees and owner-operators alike. MCA §§ 204(a) and 206; 1 Fed. Reg. 735, 739 (July 8, 1936). The Act's limits on maximum hours of service for independent truck drivers and employees resemble how other transportation workers are regulated, including railroad employees, seamen, and air pilots. *See United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 545 & n.28 (1940) (citing the Hours of Service Act of 1907, Pub. L. 59-274, 34 Stat. 1415, 49 U.S.C. §§ 21101-21108 (formerly 45 U.S.C. §§ 61-64 (repealed)) (restricting hours of service for employees engaged in movement of trains); the Seamen's Act of 1915, Pub. L. 63-302, 38 Stat. 1164, 1169, 1170-1184 (prescribing maximum hours of service for sailors, firemen, oilers and others); and the Civil Aeronautics Act of 1938, § 601(a)(5), Pub. L. 75-706, 52 Stat. 973, 1007 (repealed), granting authority to regulate employees "in the interest of safety").

Some years later, Congress imposed "statutory employment status" on carriers, notwithstanding the parties' characterization of their relationship to the contrary. Specifically, in response to motor carriers' widespread practice of designating drivers as "independent contractors" to avoid liability for the negligence of drivers they hired, Congress amended the MCA to make motor carriers responsible for their independent drivers' negligent operation "as if" the carriers were the owners of such vehicles. 49 U.S.C. § 14102(a)(4) (formerly 49 U.S.C. § 11107(a)(4) (1982) and 49 U.S.C. § 304(e) (1956)). As a result, all

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private right of action to address such violations in court. 49 U.S.C. § 14704(a).

drivers engaged by a motor carrier became the carrier's statutory employees to the extent necessary to ensure the carrier's responsibility for public safety. *See White v. Excalibur Ins. Co.,* 599 F.2d 50, 52-53 (5th Cir. 1979).

In sum, by passing the Motor Carrier Act, Congress recognized that independent truck drivers were a vital part of the trucking industry and that their relationships with motor carriers needed to be regulated. The Act controlled the relationships between independent owner-operators and authorized motor carriers by imposing leasing standards and by making carriers responsible for overseeing drivers' safe operations. And similar to legislation Congress adopted for the waterways, railroad, and air industries, an adjudicatory process applicable to independent owner-operators was put in place to resolve disputes arising under the MCA. Thus, the Congress of 1935 enacted the provisions it had evidently anticipated when it passed the FAA in 1925: legislation regulating the emerging trucking industry applicable to all workers and not just "employees," because such limited legislation would have been particularly ineffective given the structure of the trucking business.

In other words, the "class of workers" later to be covered by the MCA's dispute resolution process was "excluded" from the FAA under Section 1 "for the simple reason that [Congress] did not wish to unsettle established *or developing* statutory dispute resolution schemes covering specific workers" at or near the time of the FAA's enactment. 532 U.S. at 121 (emphasis added). That exempted "class of

workers" included, and continues to include today, interstate independent truckers who contracted with trucking firms to provide their services.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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