BISSONNETE V. LEPAGE BAKERIES BRINGS A TEMPORARY CONSENSUS IN TRANSPORTATION EVOLUTIONARY LAW

Maureen Onyelobi
Exam ID# 6054
Professor Davis
April 2, 2025

Certification of Word Length: 4357 words

Outside sources substantively cited: 8

I. INTRODUCTION

Bissonnette v. LePage Bakeries provides a temporary framework to help lower courts apply the transportation worker exemption in future cases.[i] The transportation worker exemption stems from the understanding of Section 1 of the Federal Arbitration Act (FAA). Section 1 exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."[ii] This paper engages with the residual clause of Section 1: "any other class of workers engaged in foreign or interstate commerce." The idea that the Supreme Court's interpretation of that residual clause has the potential for continual change and expansion is a concept I term as transportation evolutionary law.

This paper will briefly examine how transportation evolutionary law has progressed over the last twenty-four years, starting in 2001, with *Circuit City Stores v. Adams* where the Court limited the residual clause of Section 1 to apply as an exemption to "transportation workers."[iii] When the Court recently considered the scope of Section 1 in *Southwest Airlines Co. v. Saxon*, it declined to adopt an industrywide approach which left circuit courts desperately in search of a consensus.[iv] The Court found that an employee's claim is evaluated by what the employee does at the airline, not what the airline does generally, which only brought more confusion to the different tests the circuits were using to decide transportation worker exemption cases.[v]

In *Bissonnette*, the Court considered the other side of the issue: is an employee who works outside the transportation industry, in this case, for a producer and marketer of baked goods, automatically excluded from this exemption.[vi] The Court answered "no" and resolved a circuit split involving the same employer.[vii] This paper explores the concept that *Bissonnette* only temporarily resolved the circuit split because transportation evolutionary law is ever changing to match the political efforts of the current time. The first section of this paper is an

introduction to the topic. The second section provides a brief background of the FAA, employment arbitration, and transportation workers. The third section is a discussion of transportation evolutionary law, the circuit split, and the discourse surrounding transportation evolutionary law. The fourth section discusses a reflection of this topic. Lastly, the paper's conclusion provides final impressions on the topic.

II. BACKGROUND

A. History of FAA

Since the 1920s, the laws surrounding arbitration changed drastically from what they are today. Back then, if disputing parties in the United States took a case to arbitration and an arbitrator rendered an award, the award would generally be enforceable in the courts.[viii] However, there was a loophole in the arbitration process where a defendant could ignore the plaintiff's demand for arbitration and refuse to participate in the process.[ix] All of this changed when Congress enacted the FAA because it altered the judicial atmosphere and changed the trajectory of arbitration law in the U.S.[x] The FAA was originally enacted in 1925 and then reenacted and codified in 1947 as Title 9 of the United States Code.[xi] Its purpose was to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and adopted by American courts, and to place arbitration agreements upon the same footing as other contracts.[xii]

Initially, the FAA was adopted as a response to the reluctance of some judges to enforce commercial arbitration agreements between merchants with relatively equal bargaining power.[xiii] As noted in *Gilmore*, the Court was reluctant to conclude that plaintiffs met their burden of showing that Congress, in enacting other federal statutes, intended to preclude employment arbitration of claims under Section 1 of the FAA.[xiv] In *Gilmer v. Interstate/Johnson Lane Corp.*,

the Court determined that arbitration was a valid mechanism for resolving claims under the Age Discrimination in Employment Act (ADEA).[xv] Reasoning that "the FAA's purpose was to place arbitration agreements on the same footing as other contracts," the Court held that arbitration agreements in the employment context are enforceable "save upon such grounds as exist at law or in equity for the revocation of any contract."[xvi]

B. Employment Arbitration

Employment arbitration arises out of an employer agreement between the employer and an individual employee .[xvii] During the early 1990s through the mid-2000s multiple surveys show a "prolific growth of arbitration in the employment context."[xviii] In 1995 surveys found that 7.6% of employers with 100 or more employees practiced mandatory arbitration.[xix] However, in 2007, an alarming survey of 757 U.S.-based non-union companies stretching across multiple industries reported that 46.8% of firms reported using employment arbitration.[xx] Further empirical studies reveal that employee rights are likely to be affected negatively because employment arbitrators are the least likely to rule in favor of the employee.[xxi] These results create a problem in employment arbitration and for transportation employees who are not exempt from arbitration under Section 1 of the FAA.

The FAA provides that arbitration provisions "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," which allows any party subject to the arbitration agreement to request a court order to proceed with the arbitration process.[xxii] Additionally, the FAA provides for constrained exceptions to compulsory arbitration. In particular, Section 1 of the FAA exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."[xxiii]

However, if a dispute arises a court must determine whether a "transportation worker exemption" applies before ordering arbitration.[xxiv]

C. Transportation Workers

Transportation workers are more prevalent in our society today than ever before. Transportation is defined as an act, process, or instance of transporting or being transported or a means of conveyance or travel from one place to another.[xxv] Therefore, it is completely logical to conclude that seamen, railroad employees, and any class of workers engaged in commerce are transportation workers. Simply put, these three categories of workers are considered transportation workers because they all utilize a public conveyance of passengers or goods in a commercial setting. Nevertheless, the courts cannot agree on a consensus of how to define a transportation worker, which is problematic. Indeed, lack of consensus is problematic for transportation workers who enlist to become last-mile drivers or members of the gig economy because they may not be exempted from the FAA. Last-mile delivery drivers transport goods from warehouses or production centers to final customers.[xxvi] The term gig economy pertains to a collection of markets that match customers with providers to complete on-demand jobs (or gigs) that the customer requested.[xxvii]

In 2021, there were approximately 14.9 million Americans employed in the transportation industry - which includes industries in the transportation and warehousing sector, such as air, rail, water, and truck transportation.[xxviii] Because the number of transportation workers in the U.S. is steadily increasing, the transportation workers exemption of the FAA is needed to provide certain workers with perhaps one of the sole remaining tools to circumvent compulsory arbitration.[xxix] The transportation workers exemption relieves workers directly engaged in interstate commerce from mandatory arbitration.[xxx] However, the issue becomes

complicated when a worker is only tangentially related to interstate commerce.[xxxi] Due to a lack of clarity from the Supreme Court, circuit courts have differed in terms of the proper standards to use when determining the applicability of the transportation workers exemption.[xxxii]

III. DISCUSSION

A. Decades Ago, Circuit City Defines the Scope for Transportation Worker Exemption

Undeniably, there has been debate over whether Section 1 of the FAA excludes all employment workers or just a certain type of employment workers. Twenty-four years ago, the Supreme Court attempted to settle the debate.[xxxiii] *Circuit City* is the first case to put a definitive term to the class of workers named in Section 1 of the FAA.[xxxiv] In *Circuit City*, the Court held that the exemption provided from the residual clause of Section 1 of the FAA is limited to transportation workers and is not to be applied to all contracts of employment.[xxxv] In that case, the plaintiff, Adams, applied for a job as a sales counselor and signed and employment application with the defendant, Circuit City Stores, Inc., a retailer of consumer electronics.[xxxvi] The employment application contained a provision that included an arbitration clause.[xxxvii] Adams was subsequently hired, but two years later filed an employment discrimination lawsuit against Circuit City in California state court. Circuit City subsequently filed suit in the United States District Court to enjoin the state-court action and to compel arbitration of respondent's claim pursuant to the FAA.[xxxviii] After the district court compelled arbitration, Adams appealed to the Ninth Circuit.[xxxix]

Coincidentally, while Adams was awaiting a decision from his appeal, the Ninth Circuit ruled in an unrelated case that the FAA did not apply to contracts of employment.[xl] As a result of this decision, the Ninth Circuit reversed the district court's holding and ruled that the arbitration agreement between Adams and Circuit City was not subject to the FAA because it was a contract

of employment.[xli] Circuit City did not agree with this decision and sought certiorari from the Supreme Court to determine whether all, or just certain, employment contacts were offered exemption from the FAA.[xlii] Certiorari was granted and the Court closely examined the residual clause "any other class of workers engaged in...commerce."[xliii] In the Court's reasoning, they artfully applied the rule of *ejusdem generis* to conclude that Congress' use of the phrases "seamen" and "railroad employees" followed by the specific phrase "any other class of workers engaged in... commerce" provided a linkage that Congress intended these categories to be enumerated together.[xliv] Ultimately, the Court found that construing the residual clause to preclude all employment contracts would fail to "give independent effect" to the specific categories of workers that precedes the phrase.[xlv] Thus, the residual clause is to be limited to transportation workers.[xlvi]

B. Four-Way Circuit Split Resulting from Circuit City Decision

Although the decision in *Circuit City* came from the highest court, the lower circuit courts still decided transportation workers' cases incongruent to each other because the Justices refrained from addressing the exemption's scope.[xlvii] Without a clear-cut analysis of how to apply the transportation workers exemption, the lower courts were left with the task of deciding which workers fall into the scope of the residual clause of Section 1.[xlviii] As a result of this decision-making power, the courts drew lines in different directions that caused a four-way circuit split.[xlix] The circuit courts split their decisions into four different tests: (1) the “flow of commerce test,” (2) the “job description test,” (3) the “multifactor test,” and (4) the “industry test.” [l]

First, the flow of commerce test is used by the First and Ninth Circuits. These circuits focus their inquiry on "the inherent nature of the work performed and whether

the nature of the work primarily implicates interstate or intrastate commerce."[li] The First and Ninth Circuits note that the specific enumerated categories of covered workers, seamen and railroad employees, are defined by the industries in which they work; employing the *ejusdem generis* canon.[lii] The critical factor in this test is "not the nature of the item transported in interstate commerce (person or good) or whether the plaintiffs themselves crossed state lines," but rather the factor to consider is the "nature of the business" for which a class of workers performed their activities.[liii]

Second, the job description test is used by the Fifth, Seventh, and Eleventh Circuits. These circuit courts focus on "whether the interstate movement of goods is a central part of the class member's job description."[liv] In 2020, the Fifth Circuit determined that an employee that supervised and managed the loading of airplanes was not engaged in interstate commerce because the employee was not engaged in an aircraft's actual movement in interstate commerce.[lv] Then in 2022, the Court affirmed a Seventh Circuit decision in *Southwest Airlines Co. v. Saxon*.[lvi] In that case, the Court determined a ramp supervisor who loaded and unloaded cargo from airplanes belonged to a "class of workers engaged in foreign or interstate commerce."[lvii] Put another way, the Court held that a class of workers is properly defined based on what a worker does for an employer rather than what an employer does generally.[lviii] Likewise, "incidental" engagement in the transportation industry is not sufficient, like employment as an account manager for a business that uses a truck to make deliveries to customers out of state.[lix]

Third, the multifactor test is used by the Third and Eighth Circuits. These circuits hold that actual "transporters of goods" are indisputably exempt under Section 1, but a more difficult question arises when an employee works for a transportation company but is not a truck driver or transporter of goods.[lx] The factors each circuit considers differ; however, they agree that a court need not look solely to "what the contract of employment between the parties contemplates as determinative on the engage-in-interstate commerce inquiry," nor "must its analysis hinge on any one particular factor, such as the local nature of the work."[lxi]

Lastly, as opposed to the other tests previously described, the industry test only dates back to 2022. In *Bissonnette*, two years before the Supreme Court's decision, the Second Circuit declared that working in the transportation industry is necessary, but not sufficient, for a worker to qualify for the exemption's protections.[lxii] An individual worker has the exemption's protections only if "the industry in which the individual works pegs its charges chiefly to the movement of goods or passengers, and the industry's predominant source of commercial revenue is generated by that movement."[lxiii] It is unclear which test of the exemption's applicability the lower circuit courts will employ in the wake of the recent *Bissonnette* decision.

C. Bissonnette and Discourse of its Decision

1. Bissonnette

In *Bissonnette*, the Court made a decision that brought a temporary consensus to the circuit split. In *Bissonnette*, the Court held that a transportation worker need not work in the transportation industry to fall within the exemption from Section 1 of the FAA .[lxiv] The plaintiffs,

Bissonnette and Wojnarowski, worked as distributors for the defendants, Flower Foods, Inc., the second largest producer and marketer of baked goods in the United States.[lxv] Defendants' flagship product is Wonder Bread and they also make and market other baked goods like tortillas, bagels, and Jumbo Honey Buns.[lxvi] The plaintiffs were franchisees who owned the rights to distribute the defendants' products and spent at least forty hours a week delivering those products in their respective territories.[lxvii] In purchasing the rights to their territories, the plaintiffs signed a distribution agreement that required "any claim, dispute, and/or controversy" to be arbitrated under Section 1 of the FAA.[lxviii]

As expected when working with a multi-billion-dollar company, the plaintiffs brought a putative class action alleging that Defendants underpaid them, had taken unlawful deductions from their wages, neglected to pay them overtime, and unjustly enriched themselves by requiring them to pay for distribution rights and operating expenses.[lxix] The defendants moved to dismiss and compel arbitration.[lxx] A month after the Second Circuit affirmed the district court's decision in *Bissonnette*, the Court decided *Southwest Airlines Co v. Saxon*, 596 U.S. 450, 463 (2022), where the focus was on "whether the interstate movement of goods is a central part of the class member's job description.[lxxi]. In the end, the Court ruled in favor of the plaintiffs and reasoned that the decision in *Circuit City* and *Saxon* provide that any exempt transportation worker "must at least play a direct and necessary role in the free flow of goods" and is not only limited to the industry of the employer.[lxxii]

2. Discourse after the Bissonnette Decision

It is argued that *Bissonnette* is a case where a "polarized" Court of nine Justices "found common ground in their interpretation of the FAA."[lxxiii] Legal scholars believe that in deciding *Bissonnette*, the Court resolved a longstanding circuit split on whether district courts can dismiss

rather than stay a motion to compel arbitration, clarified the framework for applying the transportation worker exemption, and answered the question of "who decides" whether the parties' prior arbitration agreement was superseded by a subsequent agreement.[lxxiv]

On the other hand, multiple scholars in the legal community propose solutions that will aid in clarifying transportation evolutionary law, but these solutions are without merit. For instance, three legal scholars offer deficient solutions. First, one legal scholar argues that clarifying the proper scope of the "transportation workers exemption" is a necessary first step to ensure that last-mile delivery drivers in the current digital economy are entitled to uniform procedural protections, regardless of the jurisdictions in which they file.[lxxv] The scholar contends that resolving this issue requires a comprehensive solution that accepts the endpoint of the "overgrown FAA."[lxxvi] However, the author does not specifically propose how this comprehensive solution will come to fruition, and is thus, meritless.

Second, another legal scholar argues a new approach is necessary, but an approach that "will better protect workers seems unlikely to come from the federal judiciary."[lxxvii] The scholar argues that instead of a judicial test for determining which workers qualify as transportation workers under the section 1 exemption, "the only effective way to treat last-mile delivery drivers under the FAA is for Congress to establish a voluntary dispute resolution scheme for them."[lxxviii] The scholar reasons that Congress must, in developing this separate voluntary dispute resolution scheme for the gig economy, exhibit an emphasis on fairness and the unique vulnerabilities of these workers.[lxxix] Although this voluntary dispute resolution scheme sounds reasonable, there is nothing in this analysis that will stop different jurisdictions from deciding Alternative Dispute Resolution (ADR) cases in a way that is inconsistent and comparable to the circuit split dilemma that transportation workers continue to face. Thus, this solution also lacks merit.

Lastly, another scholar argues that the inconsistent application of Section 1 of the FAA has "cast a shadow of uncertainty over gig economy drivers, leaving them in a state of ambiguity when pursuing legal action."[lxxx] The scholar contends that to "ensure a fair and predictable resolution for gig economy drivers navigating arbitration challenges," the circuit courts should adopt the Ninth Circuit's approach in *Capriole v. Uber Tech*, *Inc.*, which assesses "whether an individual is part of a class of workers that frequently engages in interstate commerce."[lxxxi] The scholar argues this worker-based approach aligns with the legislative history of the FAA, complies with the historical understanding of its text, and is consistent with Supreme Court precedent. Although this solution is sound and reasonable, until there is a clear Supreme Court precedent there would be no mechanism in place to stop other circuits from deciding cases that do not follow this approach. Therefore, this solution too lacks merit.

IV. REFLECTION

The idea that the Supreme Court's interpretation of the residual clause is limited to transportation workers is aspirational, yet impermanent. I agree with scholars that *Bissonnette* has brought a consensus to a four-way circuit split. However, I predict that this consensus is only temporary and the holding in *Bissonnette* will eventually change because the Supreme Court Justices are subject to change. For example, society held onto the belief that abortion would always be legal as a fundamental right, but the overturning of *Roe v. Wade* by a conservative Court erased the last fifty years of precedent. This suggest rules of law are not permanent, but malleable to the political times.

Transportation evolutionary law is the idea that the Supreme Court's interpretation of the residual clause has the potential for continual change and expansion. This theory of transportation evolutionary law is comparable to the living Constitution doctrine. Generally, the

living constitution provides that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values. Transportation workers are more prevalent in our society today than they were in 1925. In 1925, Congress could not have fathomed the magnitude of how transportation workers would have evolved a century later. When the FAA was enacted there were no Uber drivers or at home delivery services that you could order from with the click of a cell phone button, which means there is no way Congress's intent included the protections of last-mile drivers or gig economy workers.

Another century later in 3025, we will likely have flying cars that enable transportation workers to go from state to state in minutes and country to country in hours. This paper argues that Section 1 of the FAA will have to keep changing with the circumstances of our time. *Bissonnette* only offers a temporary consensus because evolution of the law is inevitable. The Court's opinion will keep changing and even if Congress adopts another Act to ensure fairness in transportation evolutionary law, the Court of the political time can still interpret that Act differently than what was intended by Congress. The solution is there is no solution. The law is a living, breathing organism that looks at the totality of the circumstances and adapts to the political climate of its time.

CONCLUSION

Statutory misconstruction proponents argue that over the last twenty-five years, the Justices have shown an "ability to misuse both legislative history and textualism to reach their desired result, rather than to interpret the FAA statute that was enacted."[lxxxii] It is also argued that this misuse has been true of Justices across the board, liberal or conservative, and "all of the Justices at various points in time in history lost sight of the purpose and scope of the legislation or deferred to faulty precedent, creating a far different statute from the one enacted by Congress

in 1925."[lxxxiii] This is a very harsh view and one with which I cannot totally agree. I agree that various points in history have led Justices to make decisions that go against the original enactment of the FAA. However, I disagree that this happenstance is statutory misconstruction, but rather this migration from the original intended meaning of the FAA is a living constitutional themed progression of transportation evolutionary law.

Instead of focusing on the conflict between circuit courts, we as a legal profession need to embrace transportation evolutionary law because precedent proves that the standard for determining transportation workers will continue to change with the times. Although many scholars argue that Congress should create new statutory language to clarify the meaning of the residual clause in Section 1 of the FAA, this paper argues that Congress did their full work in 1925 and transportation evolutionary law is better suited to interpret what the provision means in any particular time in history.

---

[i] *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 256. (2024).

[ii] 9 U.S.C. § 1.

[iii] *Circuit City Stores v. Adams,* 532 U.S. 105, 109 (2001).

[iv] *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 456 (2022).

[v] *Id*.

[vi] *Bissonnette*, 601 U.S. at 256.

[vii] *Circuit City Stores*, 532 U.S. at 109.

[viii] Stephen Ware & Alan Ra, Arbitration, 120 (4th. ed. 2020).

[ix] *Id*.

[x] *Id*. at 122.

[xi] *Gilmer v. Interstate/Johnson Lane Corp*., 500 U.S. 20, 24 (1991).

[xii] *Id*. at 24.

[xiii] *DIRECTV, Inc v. Imburgi*a, 577 U.S. 47, 70 (2015).

[xiv] *Gilmer*, 500 U.S. at 23 (holding employee's age discrimination claim subject to arbitration agreement).

[xv] *Id*. at 35.

[xvi] *Id*.

[xvii] Stephen, *supra* note 8, at 69.

[xviii] *Id*. at 70.

[xix] *Id*.

[xx] *Id*.

[xxi] *Id*. at 73–74.

[xxii] 9 U.S.C. § 2

[xxiii] *Id*. at § 1.

[xxiv] *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 537 (2019).

[xxv] *Transportation*, MERRIAM-WEBSTER DICTIONARY (Online. 2025).

[xxvi] Ella K. Bunnell, *Article: How the Federal Arbitration Act's "Transportation Workers Exemption" Protects Last-Mile Delivery Drivers*, U. ILL. REV. ONLINE 37, 37 (2024).

[xxvii] DeCurtis, J. *Note: The Federal Arbitration Act's Section 1 Exemption and Last-Mile Delivery Drivers of the Gig Economy: Why a New Approach is Necessary*, 54 SUFFOLK U. L. REV. 521, 525 (2021).

[xxviii] Employment in Transportation: Employment in Transportation and Related Industries, U.S. Dep't of Transp. Bureau of Transp. Stat., https://data.transportation.gov/stories/s/caxh-t8jd [https://perma.cc/CRR4-P383].

[xxix] *Notes: Full Speed Ahead: Compulsory Employment Arbitration and the Transportation Workers Exemption to the Federal Arbitration Act*, 70 DRAKE L. REV. 901, 952 (2003).

[xxx] *Id*. at 952.

[xxxi] *Id*.

[xxxii] *Id*. at 952–53.

[xxxiii] *Circuit City Stores*, 532 U.S. 105, 109 (2001).

[xxxiv] *Id*. at 109.

[xxxv] *Id*.

[xxxvi] *Id*.

[xxxvii] *Id*. at 109–10.

[xxxviii] *Id*. at 110.

[xxxix] *Id*.

[xl] *Id*.

[xli] *Id.*

[xlii] *Id*. at 111.

[xliii] *Id*. at 114.

[xliv] *Id*. at 114–15.

[xlv] *Id*. at 115.

[xlvi] *Id*. at 118.

[xlvii] *Bissonnette*, 601 U.S. at 256.

[xlviii] Notes: Full Speed Ahead: Compulsory Employment Arbitration and the Transportation Workers Exemption to the Federal Arbitration Act, *supra* note 29, at 940.

[xlix] Bunnell, *supra* note 26, at 46.

[l] *Id*. at 47–52.

[li] C*apriole v. Uber Tech*., Inc., 7 F.4th 854, 862 (9th Cir. 2021).

[lii] *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 23 (1d Cir. 2020); *Rittmann v. Amazon.com, Inc., 971 F.3d 904, 918 (9th Cir. 2020)*.

[liii] *In re Grice*, 974 F.3d 950, 956 (9th Cir. 2020).

[liv] *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 98, 801 (7th Cir. 2010).

[lv] *Eastus v. ISS Facility Servs., Inc*, 960 F.3d 207, 211 (5th Cir. 2020).

[lvi] *Southwest Airlines Co.*, 596 U.S. 450, 463 (2022).

[lvii] *Id*. at 463.

[lviii] *Id*. at 456.

[lix] *Hill v. Rent-A-Center,* 398 F3d 1286, 1288–89 (11th Cir. 2005).

[lx] *Lenz v. Yellow Transp., Inc.*, 431 F.3d 348, 352 (8th Cir. 2005).

[lxi] *Singh v. Uber Tech. Inc, Inc.*, 939 F.3d 210, 227–27 (3rd Cir. 2019).

[lxii] *Bissonnette*, 49 F.4th at 661.

[lxiii] *Id*. at 651.

[lxiv] *Bissonnette,* 601 U.S. at 256.

[lxv] *Id*. at 248–49.

[lxvi] *Id*. at 249.

[lxvii] *Id*. at 249.

[lxviii] *Id*.

[lxix] *Id*. at.at 250.

[lxx] *Id*.

[lxxi] *Southwest Airlines Co.*, 596 U.S. at 463.

[lxxii] *Id*. at 254–56.

[lxxiii] Hua, J. *Feature: Selected Reentry Supreme Court Decisions From 2024: The Court Finds Common Ground in its Arbitration Cases*. 66 Orange County Lawyer 37 (2024).

[lxxiv] *Id*. at 38; Bunnell, *supra* note 26, at 39.

[lxxv] Bunnell, *supra* note 26, at 59.

[lxxvi] Id.

[lxxvii] DeCurtis, *supra* note 27, at 546.

[lxxviii] *Id*.

[lxxix] *Id*.

[lxxx] John D. Dufort*, Navigating the Arbitration Speedway: Gig Economy Driers Blindly Swerve Through Obstacles Created by the Uneven Application of the Federal Arbitration Act*, 69 VILL. L. REV. 439, 465 (2024).

[lxxxi] *Capriole v. Uber Techs., Inc.*, 7 F.4th 854, 862 (9th Cir. 2021).

[lxxxii] Margaret L. Moses, *Statutory Misconstruction: How the Supreme Court Created A Federal Arbitration Law Never Enacted by Congress*, 34 FLA. ST. U. L. REV. 99, 156 (2006).
[lxxxiii] *Id*. *at* 157.