

LEGAL UPDATES

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## SCOTUS Takes Up Key FAA Case That Could Significantly Reshape Last-Mile Delivery

The Supreme Court of the United States heard oral argument this week in *Flowers Foods, Inc. v. Brock*, No. 24-935. The central issue is whether a last-mile delivery driver who picks up products and delivers them within the same state qualifies as a "transportation worker engaged in interstate commerce" and is therefore exempt from the Federal Arbitration Act (FAA) under Section 1. The outcome will have significant implications for companies in the transportation and logistics sector that rely on arbitration agreements with their drivers and delivery contractors.

While Flowers Foods advocated for a bright-line rule: a delivery driver is in interstate commerce only if they cross state borders or interact with vehicles that cross state borders, Brock argued that workers who transport goods traveling in interstate commerce are engaged in that commerce regardless of whether they personally cross state lines or interact with cross-border vehicles. Both sides agreed the Court need only resolve whether Flowers' proposed bright-line rule is the correct standard.

The most significant lines of questioning by the Justices included:

**The Relay Hypothetical:** Justice Jackson posed a scenario involving three workers at different legs of the same good's journey, one driving bread from Kansas toward the border, a second crossing the border into Colorado, and a third (like Brock) delivering within Colorado. Under Flowers's test, only the second worker would be covered, which Justice Jackson found difficult to justify given that all three workers are participating in the same interstate journey.

**The Arbitrage Hypothetical:** Justice Alito asked whether, if a company structured its deliveries so that Driver 1 handled 10 intrastate hours, Driver 2 crossed the border for one minute, and Driver 3 completed another 10-hour intrastate leg using a different vehicle, only Driver 2 would be covered. Flowers's counsel confirmed that under their test, only Driver 2 would be covered. This exchange highlighted concerns about the potential for companies to engineer their delivery structures to avoid the exemption.

**The Uber Eats Question:** Justice Alito asked whether an Uber Eats driver who picks up a grocery item that was produced in one state and shipped across state lines to a grocery store would be exempt. Brock's counsel said no because the parties to that commerce are a local consumer, a local store, and a local driver, making it an independent, local journey separate from the interstate shipment.

**The Final Destination Question:** Chief Justice Roberts questioned why the ultimate consumer, rather than the retail store, is not the final destination, particularly given modern delivery services like Instacart. Brock's counsel responded that courts in 1925 answered this question by looking at the intent of the shipper and the parties to the commerce, and that the Flowers-to-retail-store journey and a subsequent retail-to-consumer journey involve different parties and constitute separate journeys.

**Workability Concerns:** Justice Gorsuch pressed Brock's counsel on whether the "intended final destination" test would become unworkable, noting that manufacturers often retain significant control over downstream distribution without that necessarily reflecting the end of the interstate journey, and asked whether the analysis would result in a world where "everything's relevant and nothing's dispositive." Justice Barrett similarly noted that questions such as how to determine intent, whether by looking at title passage, declarations, or profit, could prove very complicated, and confirmed with Brock's counsel that those were questions for another day.

### **What this means to you?**

If the Court adopts Flowers' bright-line test, last-mile delivery drivers operating entirely within a single state will generally not qualify for the Section 1 exemption, even when delivering goods that originated out of state, making arbitration agreements with such workers enforceable. This would provide significant operational certainty for transportation and logistics companies that rely on arbitration programs with their driver and contractor workforces. If the Court instead rejects the bright-line test and rules for Brock, the scope of the exemption will be determined case by case. In

that event, companies whose internal records and contracts characterize retail stores as the intended destination of out-of-state goods may find their driver arbitration agreements unenforceable, and businesses operating through complex, multi-tier distribution networks should anticipate costly threshold litigation over whether any given driver falls within the exemption before any underlying dispute is addressed on its merits.

### **Contact us**

If you have questions about how this case may affect your business, please contact Julie Maurer, Alyssa Goehring, or your Husch Blackwell attorney.