

STEVENS, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 99–1379

CIRCUIT CITY STORES, INC., PETITIONER *v.*
SAINT CLAIR ADAMS

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

[March 21, 2001]

JUSTICE STEVENS, with whom JUSTICE GINSBURG and JUSTICE BREYER join, and with whom JUSTICE SOUTER joins as to Parts II and III, dissenting.

JUSTICE SOUTER has cogently explained why the Court’s parsimonious construction of §1 of the Federal Arbitration Act (FAA or Act) is not consistent with its expansive reading of §2. I join his opinion, but believe that the Court’s heavy reliance on the views expressed by the Courts of Appeals during the past decade makes it appropriate to comment on three earlier chapters in the history of this venerable statute.

I

Section §2 of the FAA makes enforceable written agreements to arbitrate “in any maritime transaction or a contract evidencing a transaction involving commerce.” 9 U. S. C. §2. If we were writing on a clean slate, there would be good reason to conclude that neither the phrase “maritime transaction” nor the phrase “contract evidencing a transaction involving commerce” was intended to encompass employment contracts.¹

¹Doing so, in any event, is not precluded by our decision in *Allied-Bruce Terminix Cos. v. Dobson*, 513 U. S. 265 (1995). While we held that §2 of the FAA evinces Congress’ intent to exercise its full Commerce

STEVENS, J., dissenting

The history of the Act, which is extensive and well-documented, makes clear that the FAA was a response to the refusal of courts to enforce commercial arbitration agreements, which were commonly used in the maritime context. The original bill was drafted by the Committee on Commerce, Trade, and Commercial Law of the American Bar Association (ABA) upon consideration of “the further extension of the principle of *commercial* arbitration.” Report of the Forty-third Annual Meeting of the ABA, 45 A. B. A. Rep. 75 (1920) (emphasis added). As drafted, the bill was understood by Members of Congress to “simply provid[e] for one thing, and that is to give an opportunity to enforce an agreement in *commercial* contracts and *admiralty* contracts.” 65 Cong. Rec. 1931 (1924) (remarks of Rep. Graham) (emphasis added).² It is

Clause power, *id.*, at 277, the case did not involve a contract of employment, nor did it consider whether such contracts fall within either category of §2’s coverage provision, however broadly construed, in light of the legislative history detailed *ante*, at 2–5.

²Consistent with this understanding, Rep. Mills, who introduced the original bill in the House, explained that it “provides that where there are *commercial* contracts and there is disagreement under the contract, the court can [en]force an arbitration agreement in the same way as other portions of the contract.” 65 Cong. Rec., at 11080 (emphasis added). And before the Senate, the chairman of the New York Chamber of Commerce, one of the many business organizations that requested introduction of the bill, testified that it was needed “to enable *business men* to settle their disputes expeditiously and economically, and will reduce the congestion in the Federal and State courts.” Hearing on S. 4213 and S. 4214 before a Subcommittee of the Senate Committee on the Judiciary, 67th Cong., 4th Sess., 2 (1923) (Hearing) (emphasis added). See also *id.*, at 14 (letter of H. Hoover, Secretary of Commerce) (“I have been, as you may know, very strongly impressed with the urgent need of a Federal *commercial* arbitration act. The American Bar Association has now joined hands with the business men of this country to the same effect and unanimously approved” the bill drafted by the ABA committee and introduced in both Houses of Congress (emphasis added)).

STEVENS, J., dissenting

no surprise, then, that when the legislation was first introduced in 1922,³ it did not mention employment contracts, but did contain a rather precise definition of the term “maritime transactions” that underscored the commercial character of the proposed bill.⁴ Indeed, neither the history of the drafting of the original bill by the ABA, nor the records of the deliberations in Congress during the years preceding the ultimate enactment of the Act in 1925, contains any evidence that the proponents of the legislation intended it to apply to agreements affecting employment.

Nevertheless, the original bill was opposed by representatives of organized labor, most notably the president of

³S. 4214, 67th Cong., 4th Sess. (1922) (S. 4214); H. R. 13522, 67th Cong., 4th Sess. (1922) (H. R. 13522). See 64 Cong. Rec. 732, 797 (1922).

⁴ “[M]aritime transactions” was defined as “charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, seamen’s wages, collisions, or any other matters in foreign or interstate commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction.” S. 4214, §1; H. R. 13522, §1. Although there was no illustrative definition of “contract evidencing a transaction involving commerce,” the draft defined “commerce” as “commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.” S. 4214, §1; H. R. 13522, §1. Considered together, these definitions embrace maritime and nonmaritime commercial transactions, and with one possible exception do not remotely suggest coverage of employment contracts. That exception, “seamen’s wages,” was eliminated by the time the bill was reintroduced in the next session of Congress, when the exclusions in §1 were added. See Joint Hearings on S. 1005 and H. R. 646 before the Subcommittees of the Committees on the Judiciary, 68th Cong., 1st Sess., 2 (1924) (Joint Hearings); see also *infra*, at 4. These definitions were enacted as amended and remain essentially the same today.

STEVENS, J., dissenting

the International Seamen's Union of America,⁵ because of their concern that the legislation might authorize federal judicial enforcement of arbitration clauses in employment contracts and collective-bargaining agreements.⁶ In response to those objections, the chairman of the ABA committee that drafted the legislation emphasized at a Senate Judiciary Subcommittee hearing that "[i]t is not intended that this shall be an act referring to labor disputes at all," but he also observed that "if your honorable committee should feel that there is any danger of that, they should add to the bill the following language, 'but nothing herein contained shall apply to seamen or any class of workers in interstate and foreign commerce.'" Hearing 9. Similarly, another supporter of the bill, then Secretary of Commerce Herbert Hoover, suggested that "[i]f objection appears to the inclusion of workers' contracts in the law's scheme, it might be well amended by stating 'but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in interstate or foreign commerce.'" *Id.*, at 14. The legislation was reintroduced in the next session of Congress with Secretary Hoover's exclusionary language

⁵He stated:

"[T]his bill provides for reintroduction of forced or involuntary labor, if the freeman through his necessities shall be induced to sign. Will such contracts be signed? Esau agreed, because he was hungry. It was the desire to live that caused slavery to begin and continue. With the growing hunger in modern society, there will be but few that will be able to resist. The personal hunger of the *seaman*, and the hunger of the wife and children of the *railroad man* will surely tempt them to sign, and so with *sundry other workers in Interstate and Foreign Commerce.*" Proceedings of the 26th Annual Convention of the International Seamen's Union of America 203-204 (1923) (emphasis added).

⁶See Hearing 9. See also *Textile Workers v. Lincoln Mills of Ala.*, 353 U. S. 448, 466-467, n. 2 (1957) (Frankfurter, J., dissenting).

STEVENS, J., dissenting

added to §1,⁷ and the amendment eliminated organized labor's opposition to the proposed law.⁸

That amendment is what the Court construes today. History amply supports the proposition that it was an uncontroversial provision that merely confirmed the fact that no one interested in the enactment of the FAA ever intended or expected that §2 would apply to employment contracts. It is particularly ironic, therefore, that the amendment has provided the Court with its sole justification for refusing to give the text of §2 a natural reading. Playing ostrich to the substantial history behind the amendment, see *ante*, at 12 (“[W]e need not assess the legislative history of the exclusion provision”), the Court reasons in a vacuum that “[i]f all contracts of employment are beyond the scope of the Act under the §2 coverage provision, the separate exemption” in §1 “would be pointless,” *ante*, at 5. But contrary to the Court's suggestion, it is not “pointless” to adopt a clarifying amendment in order to eliminate opposition to a bill. Moreover, the majority's reasoning is squarely contradicted by the Court's approach in *Bernhardt v. Polygraphic Co. of America*, 350 U. S. 198, 200, 201, n. 3 (1956), where the Court concluded that an employment contract did not “evidence ‘a transaction involving commerce’ within the meaning of §2 of the Act,” and therefore did not “reach the further question whether in any

⁷See Joint Hearings 2.

⁸Indeed, in a postenactment comment on the amendment, the Executive Council of the American Federation of Labor reported:

“Protests from the American Federation of Labor and the International Seamen's Union brought an amendment which provides that ‘nothing herein contained shall apply to contracts of employment of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce.’ This exempted labor from the provisions of the law, although its sponsors denied there was any intention to include labor disputes.” Proceedings of the 45th Annual Convention of the American Federation of Labor 52 (1925).

STEVENS, J., dissenting

event petitioner would be included in ‘any other class of workers’ within the exceptions of §1 of the Act.”

The irony of the Court’s reading of §2 to include contracts of employment is compounded by its cramped interpretation of the exclusion inserted into §1. As proposed and enacted, the exclusion fully responded to the concerns of the Seamen’s Union and other labor organizations that §2 might encompass employment contracts by expressly exempting not only the labor agreements of “seamen” and “railroad employees,” but also of “*any other class of workers* engaged in foreign or interstate commerce.” 9 U. S. C. §1 (emphasis added). Today, however, the Court fulfills the original— and originally unfounded— fears of organized labor by essentially rewriting the text of §1 to exclude the employment contracts *solely* of “seamen, railroad employees, or any other class of *transportation* workers engaged in foreign or interstate commerce.” See *ante*, at 11. In contrast, whether one views the legislation before or after the amendment to §1, it is clear that it was not intended to apply to employment contracts at all.

II

A quarter century after the FAA was passed, many Courts of Appeals were presented with the question whether collective-bargaining agreements were “contracts of employment” for purposes of §1’s exclusion. The courts split over that question, with at least the Third, Fourth, and Fifth Circuits answering in the affirmative,⁹ and the

⁹*Lincoln Mills of Ala. v. Textile Workers*, 230 F. 2d 81, 86 (CA5 1956), rev’d on other grounds, 353 U. S. 448 (1957); *Electrical Workers v. Miller Metal Products, Inc.*, 215 F. 2d 221, 224 (CA4 1954); *Electric R. & Motor Coach Employees v. Pennsylvania Greyhound Lines, Inc.*, 192 F. 2d 310, 313 (CA3 1951). Apparently, two other Circuits shared this view. See *Mercury Oil Refining Co. v. Oil Workers*, 187 F. 2d 980, 983 (CA10 1951); *Shirley-Herman Co. v. Hod Carriers*, 182 F. 2d 806, 809 (CA2 1950).

STEVENS, J., dissenting

First and Sixth Circuits answering in the negative.¹⁰ Most of these cases neither involved employees engaged in transportation nor turned on whether the workers were so occupied. Indeed, the general assumption seemed to be, as the Sixth Circuit stated early on, that §1 “was deliberately worded by the Congress to exclude from the [FAA] all contracts of employment of workers engaged in interstate commerce.” *Gatliff Coal Co. v. Cox*, 142 F. 2d 876, 882 (1944).

The contrary view that the Court endorses today—namely, that only employees engaged in interstate transportation are excluded by §1—was not expressed until 1954, by the Third Circuit in *Tenney Engineering, Inc. v. Electrical Workers*, 207 F. 2d 450, 452 (1953). And that decision, significantly, was rejected shortly thereafter by the Fourth Circuit. See *Electrical Workers v. Miller Metal Products, Inc.*, 215 F. 2d 221, 224 (1954). The conflict among the Circuits that persisted in the 1950’s thus suggests that it may be inappropriate to attach as much weight to recent Court of Appeals opinions as the Court does in this case. See *ante*, at 1, 3, 4.

Even more important than the 1950’s conflict, however, is the way in which this Court tried to resolve the debate. In *Textile Workers v. Lincoln Mills of Ala.*, 353 U. S. 448 (1957), the Court granted certiorari to consider the union’s claim that, in a suit brought under §301 of the Labor Management Relations Act, 1947 (LMRA), a federal court may enforce the arbitration clause in a collective-bargaining agreement. The union argued that such authority was implicitly granted by §301 and explicitly granted by §2 of the FAA. In support of the latter argu-

¹⁰*Electrical Workers v. General Elec. Co.*, 233 F. 2d 85, 100 (CA1 1956), *aff’d* on other grounds, 353 U. S. 547 (1957); *Hoover Motor Express Co., Inc. v. Teamsters*, 217 F. 2d 49, 53 (CA6 1954).

STEVENS, J., dissenting

ment, the union asked the Court to rule either that a collective-bargaining agreement is not a “contrac[t] of employment” within the meaning of the exclusion in §1, or that the exclusion is limited to transportation workers.¹¹ The Court did not accept either argument, but held that §301 itself provided the authority to compel arbitration. The fact that the Court relied on §301 of the LMRA, a statutory provision that does not mention arbitration, rather than the FAA, a statute that expressly authorizes the enforcement of arbitration agreements, strongly implies that the Court had concluded that the FAA simply did not apply because §1 exempts labor contracts. That was how Justice Frankfurter, who of course was present during the deliberations on the case, explained the disposition of the FAA issues. See 353 U. S., at 466–468 (dissenting opinion).¹²

Even if Justice Frankfurter’s description of the majority’s rejection of the applicability of the FAA does not suffice to establish *Textile Workers* as precedent for the meaning of §1, his opinion unquestionably reveals his own interpretation of the Act. Moreover, given that Justice Marshall and I have also subscribed to that reading of

¹¹See Brief for Petitioner in *Textile Workers v. Lincoln Mills of Ala.*, O.T. 1956, No. 211, pp. 53–59.

¹²In Justice Frankfurter’s words, “Naturally enough, I find rejection, though not explicit, of the availability of the Federal Arbitration Act to enforce arbitration clauses in collective-bargaining agreements in the silent treatment given that Act by the Court’s opinion. If an Act that authorizes the federal courts to enforce arbitration provisions in contracts generally, but specifically denies authority to decree that remedy for ‘contracts of employment,’ were available, the Court would hardly spin such power out of the empty darkness of §301. I would make this rejection explicit, recognizing that when Congress passed legislation to enable arbitration agreements to be enforced by the federal courts, it saw fit to exclude this remedy with respect to labor contracts.” *Textile Workers v. Lincoln Mills of Ala.*, 353 U. S., at 466 (dissenting opinion).

STEVENS, J., dissenting

§1,¹³ and that three more Members of this Court do so in dissenting from today's decision, it follows that more Justices have endorsed that view than the one the Court now adopts. That fact, of course, does not control the disposition of this case, but it does seem to me that it is entitled to at least as much respect as the number of Court of Appeals decisions to which the Court repeatedly refers.

III

Times have changed. Judges in the 19th century disfavored private arbitration. The 1925 Act was intended to overcome that attitude, but a number of this Court's cases decided in the last several decades have pushed the pendulum far beyond a neutral attitude and endorsed a policy that strongly favors private arbitration.¹⁴ The strength of that policy preference has been echoed in the recent Court of Appeals opinions on which the Court relies.¹⁵ In a sense, therefore, the Court is standing on its own shoulders when it points to those cases as the basis for its narrow construction of the exclusion in §1. There is little doubt that the Court's interpretation of the Act has given it a scope far beyond the expectations of the Congress that

¹³See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U. S. 20, 36, 38–41 (1991) (dissenting opinion).

¹⁴See, e.g., *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U. S. 20 (1991); *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U. S. 477 (1989); *Shearson/American Express Inc. v. McMahon*, 482 U. S. 220 (1987); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614 (1985); *Southland Corp. v. Keating*, 465 U. S. 1 (1984); *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U. S. 1 (1983); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U. S. 395 (1967).

¹⁵See, e.g., *O'Neil v. Hilton Head Hosp.*, 115 F. 3d 272, 274 (CA4 1997) ("The circuit courts have uniformly reasoned that the strong federal policy in favor of arbitration requires a narrow reading of this section 1 exemption. Thus, those courts have limited the section 1 exemption to seamen, railroad workers, and other workers actually involved in the interstate transportation of goods").

STEVENS, J., dissenting

enacted it. See, e.g., *Southland Corp. v. Keating*, 465 U. S. 1, 17–21 (1984) (STEVENS, J., concurring in part and dissenting in part); *id.*, at 21–36 (O’CONNOR, J., dissenting).

It is not necessarily wrong for the Court to put its own imprint on a statute. But when its refusal to look beyond the raw statutory text enables it to disregard counter-vailing considerations that were expressed by Members of the enacting Congress and that remain valid today, the Court misuses its authority. As the history of the legislation indicates, the potential disparity in bargaining power between individual employees and large employers was the source of organized labor’s opposition to the Act, which it feared would require courts to enforce unfair employment contracts. That same concern, as JUSTICE SOUTER points out, see *post*, at 6–7, n. 2, underlay Congress’ exemption of contracts of employment from mandatory arbitration. When the Court simply ignores the interest of the unrepresented employee, it skews its interpretation with its own policy preferences.

This case illustrates the wisdom of an observation made by Justice Aharon Barak of the Supreme Court of Israel. He has perceptively noted that the “minimalist” judge “who holds that the purpose of the statute may be learned only from its language” has more discretion than the judge “who will seek guidance from every reliable source.” *Judicial Discretion* 62 (Y. Kaufmann transl. 1989). A method of statutory interpretation that is deliberately uninformed, and hence unconstrained, may produce a result that is consistent with a court’s own views of how things should be, but it may also defeat the very purpose for which a provision was enacted. That is the sad result in this case.

I respectfully dissent.