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The Federal Arbitration Act and Individual Employment Contracts: A Better Means to an Equally Just End

William F. Kolakowski III

INTRODUCTION

To fulfill our traditional obligation means that we should provide mechanisms that can produce an acceptable result in the shortest possible time, with the least possible expense, and with a minimum of stress on the participants. That is what justice is all about.

— Warren E. Burger¹

In a 1982 speech, Chief Justice Warren Burger argued that arbitration represented one of the most promising mechanisms for the efficient achievement of justice and that its use “ha[d] been neglected”² in the private sector. Today, growing enthusiasm for all forms of alternative dispute resolution is replacing the neglect to which Burger referred. The increasing number of cases arbitrated in recent years reflects this enthusiasm.³

The many advantages that arbitration offers over typical courtroom litigation helps to explain this increase. Arbitration typically resolves claims more quickly and with less expense than traditional litigation.⁴ Moreover, arbitration provides increased flexibility, which allows parties to adapt it to their particular situation.⁵ Although arbitration does have several weaknesses⁶ — notably, the

1. Warren E. Burger, *Isn't There a Better Way?*, 68 A.B.A. J. 274, 274 (1982).

2. *Id.* at 276.

3. See Linda R. Hirshman, *The Second Arbitration Trilogy: The Federalization of Arbitration Law*, 71 VA. L. REV. 1305, 1305 n.7 (1985) (citing 1985 Caseload Figures of the American Arbitration Association (AAA), which showed a 70% increase in the number of labor cases submitted to arbitration under the AAA since 1972).

4. BETTE J. ROTH ET AL., *THE ALTERNATIVE DISPUTE RESOLUTION PRACTICE GUIDE* §§ 1:2, :19 (1993).

5. See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 633 (1985) (maintaining that adaptability is a “hallmark[]” of arbitration). Parties to arbitration hearings can often choose their own “judge” and procedures. See ROTH ET AL., *supra* note 4, §§ 3:7, 4:6. By allowing parties to choose their own adjudicator, arbitration provides litigants with the opportunity to choose an individual who possesses a greater level of expertise regarding the dispute than a typical trier of fact might have. See *Mitsubishi*, 473 U.S. at 633 (citing “access to expertise” as another hallmark of arbitration).

6. Besides the lack of a jury, courts have also criticized the absence of standard rules of evidence and a complete record of proceedings. Arbitration also places limitations on rights and procedures available in civil trials, such as discovery and cross-examination. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 57-58 (1974). *Alexander* recognized, however, that “it is the informality of arbitral procedure that enables it to function as an efficient, inexpensive, and expeditious means for dispute resolution.” 415 U.S. at 58. The Supreme Court has also recently stated that “[g]eneralized attacks on arbitration . . . are ‘far out of step with our current strong endorsement of the federal statutes favoring [arbitration].’” *Gilmer v. Inter-*

lack of a jury — many litigants now see arbitration as a superior option to otherwise long and costly resolutions of their claims in court.⁷

In practice, most arbitrations have the following characteristics in common:

- (1) [T]he parties choose to have a dispute or disputes decided by a third party, called an arbitrator; (2) the parties choose the arbitrator or a method for his or her selection; (3) the arbitrator hears the dispute; (4) the arbitrator makes a binding award; (5) the arbitrator's decision is, subject to very limited grounds of review, final and enforceable . . . in the same manner as a judgment.⁸

Arbitration in this form was not uncommon at the turn of the century,⁹ but federal courts generally refused to enforce arbitral agreements until the passage of the Federal Arbitration Act of 1925 (FAA).¹⁰ In addition to making arbitration agreements "valid, irrevocable, and enforceable,"¹¹ the FAA provides for stays of proceedings pending arbitration¹² and orders to compel arbitration.¹³ In recent years the Supreme Court has stated that, by enacting the FAA, Congress declared a national policy favoring arbitration.¹⁴ The Court has expressed further support for arbitration by stating that federal courts should resolve doubts about the scope of arbitration agreements in favor of arbitration.¹⁵

state/Johnson Lane Corp., 500 U.S. 20, 30 (1991) (*quoting* Rodriguez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477, 481 (1989)).

Arbitration can be inappropriate in some situations. Some statutes grant enforcement powers to administrative agencies to act in the public interest in addition to granting individual causes of action. Arbitration of the individual claims can prevent the administrative agency from carrying out its mandates. Mark Berger, *Can Employment Law Arbitration Work?*, 61 UMKC L. Rev. 693, 718-19 (1993). Other statutes, such as Title VII of the Civil Rights Act, create individual employment rights that Congress never intended to submit to arbitration or that simply may be better protected in a court of law. See generally Jeffrey R. Knight, *Enforcing Arbitration Agreements Between Employers and Employees*, 61 DEF. COUNS. J. 251 (1994).

7. Arbitration has proven useful in resolving a wide variety of disputes. A glance at the table of contents of the 1978 publication *Wide World of Arbitration* reflects arbitration's utility in disputes involving labor, U.S. and international commercial agreements, insurance, medical malpractice, health care, and more. AMERICAN ARBITRATION ASSN., *WIDE WORLD OF ARBITRATION* at iii-v (Charlotte Gold & Susan Mackenzie eds., 1978).

8. IAN R. MACNEIL, *AMERICAN ARBITRATION LAW* 7 (1992).

9. *Id.* at 15.

10. Ch. 213, 43 Stat. 883 (1925) (codified as amended at 9 U.S.C. §§ 1-16 (1988 & Supp. V 1993)). The Act was originally cited to as the United States Arbitration Act and many early sources, including materials referenced in this Note, refer to it as such. Today it is more commonly known as the Federal Arbitration Act and this Note uses this common term.

11. 9 U.S.C. § 2 (1988).

12. 9 U.S.C. § 3 (1988).

13. 9 U.S.C. § 4 (1988).

14. *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984).

15. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983) ("The [FAA] establishes that, as a matter of federal law, any doubts concerning the scope of

Although arbitration could be useful in resolving individual employment contract disputes, confusion in the federal courts about the applicability of the FAA is hampering arbitration's development in this context.¹⁶ The FAA can be used to enforce arbitration provisions in individual employment contracts because its coverage extends to all arbitration agreements in "contract[s] evidencing . . . transaction[s] involving commerce."¹⁷ Some courts have been reluctant to use the Act to enforce arbitral provisions in individual employment contracts, however, because the definition of "commerce" in section 1 of the Act contains language exempting certain employment contracts. This language reads: "but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any class of workers engaged in foreign or interstate commerce."¹⁸ Courts have split over whether they should read this exception broadly¹⁹ — effectively excluding all employment contracts from its coverage — or narrowly²⁰ — exempting only employment contracts of railroad employees, seamen, and analogous classes of workers in the transportation industries.²¹

arbitrable issues should be resolved in favor of arbitration . . ."); see also *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960).

16. Arbitration provisions in collective bargaining agreements are enforceable under the Labor-Management Relations Act of 1947 (LMRA), 29 U.S.C. § 141-188 (1988 & Supp. V 1993). See *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 451 (1957) (allowing parties to a collective bargaining agreement to bring a breach of contract action under § 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185(a) (1988), for failure to adhere to an arbitration provision in the agreement). But because the LMRA's coverage only extends to collective bargaining agreements, individual employee contracts must be enforced under the FAA if the federal courts are to have jurisdiction over them.

17. 9 U.S.C. § 2 (1988).

18. 9 U.S.C. § 1 (1988). This Note will refer to this language as the "employment contract exception."

19. See *United Elec., Radio & Mach. Workers v. Miller Metal Prods. Inc.*, 215 F.2d 221, 224 (4th Cir. 1954) (reading the exception broadly in light of Congress's authority under the commerce power). Other courts have reached the same conclusion in dictum. See *Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 7 F.3d 1110, 1120 (3d Cir. 1993); *Willis v. Dean Witter Reynolds, Inc.* 948 F.2d 305, 310-11 (6th Cir. 1991).

20. See, e.g., *Miller Brewing Co. v. Brewery Workers Local Union No. 9*, 739 F.2d 1159, 1162 (7th Cir. 1984) (limiting the exception's coverage to workers in the transportation industries), cert. denied, 469 U.S. 1160 (1985); *Erving v. Virginia Squires Basketball Club*, 468 F.2d 1064, 1069 (2d Cir. 1972) (same); *Dickstein v. duPont*, 443 F.2d 783, 785 (1st Cir. 1971) (same); *Tenney Engg., Inc. v. United Elec., Radio & Mach. Workers, Local 437*, 207 F.2d 450, 452-53 (3d Cir. 1953) (en banc) (same); *Kropf v. Snap-On Tools Corp.*, 859 F. Supp. 952, 957-58 (D. Md. 1994) (same); *Crawford v. West Jersey Health Sys.*, 847 F. Supp. 1232, 1240-42 (D.N.J. 1994) (same).

21. The confusion among the lower courts regarding the scope of the employment contract exception is perhaps best symbolized by two recent decisions that rejected authoritative precedent in their respective courts. In *Pritzker*, a Third Circuit panel stated its support for a broad reading of the exception in dictum. 7 F.3d at 1120. *Pritzker* contradicted the Third Circuit's earlier decision in *Tenney Engineering*, which was one of the first decisions to adopt a narrow reading. *Tenney Engg.*, 207 F.2d at 452-53.

The decision of a Maryland district court provides an ironic counterpart to *Pritzker*. In *Kropf v. Snap-On Tools Corp.*, the district court stated its support for a narrow reading of the exception. 859 F.

Despite this split — and despite the fact that the Supreme Court has frequently heard disputes concerning the FAA over the past two decades²² — the Court has yet to rule on the issue of the exception's scope.²³ *Gilmer v. Interstate/Johnson Lane Corp.*²⁴ presented

Supp. at 957-58. This district court is within the jurisdiction of the Fourth Circuit, which was one of the first courts to adopt a broad reading of the exception. See *Miller Metal Prods.*, 215 F.2d at 224. The court in *Kropfelter* responded to the *Miller Metal* decision by stating its belief that the Fourth Circuit would adopt a narrow reading if faced with the same issue today. *Kropfelter*, 859 F. Supp. at 958.

22. See, e.g., *Allied-Bruce Terminix Cos. v. Dobson*, 115 S. Ct. 834 (1995); *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); *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213 (1985); *Southland Corp. v. Keating*, 465 U.S. 1 (1984); *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983); *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974).

23. In a dissent to *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957), Justice Frankfurter argued that the Supreme Court implicitly addressed the exception's scope and adopted a broad reading. The majority in *Lincoln Mills* elected to enforce an agreement to arbitrate between an employer and a labor union by utilizing § 301(a) of the LMRA instead of the FAA. 353 U.S. at 451. Frankfurter, however, believed that the FAA was a more appropriate mechanism for enforcing arbitration rights since the LMRA was silent on arbitration. Therefore, he argued that courts could infer a "rejection, though not explicit" of a narrow reading of the FAA's employment contract exception because the majority had chosen to use the LMRA in lieu of the FAA. He reasoned that, if the FAA — which "authorizes the federal courts to enforce arbitration provisions in contracts generally" — could be utilized to enforce arbitration provisions in employment contracts, "the Court would hardly spin such power out of the empty darkness of [the LMRA]," 353 U.S. at 466 (Frankfurter, J., dissenting). Frankfurter concluded by saying that he would make the majority's implicit rejection of the narrow reading explicit. 353 U.S. at 466 (Frankfurter, J., dissenting).

Contrary to Frankfurter's bold assertions, *Lincoln Mills* has hardly been the harbinger of courts adopting a broad reading of the FAA. Several lower courts have addressed his arguments and explicitly rejected them in the process of adopting a narrow view of the employment contract exception. See, e.g., *International Assn. of Machinists v. General Elec. Co.*, 406 F.2d 1046, 1049 (2d Cir. 1969) (refusing to overrule the narrow interpretation promulgated in *Signal-Stat Corp. v. Local 475, United Elec., Radio & Mach. Workers*, 235 F.2d 298 (2d Cir. 1956), cert. denied, 354 U.S. 911 (1957), even in light of the Frankfurter dissent); *Newark Stereotypers Union No. 18 v. Newark Morning Ledger Co.*, 397 F.2d 594, 596 n.2 (3d Cir. 1968), cert. denied, 393 U.S. 954 (1968). Because the LMRA's coverage is limited to collective bargaining agreements and does not reach individual employment contracts, one could argue that the Supreme Court did not make any implicit judgment in *Lincoln Mills* about the FAA's utility in the area of individual employment contracts. The Court simply felt it did not need to utilize the FAA in the area of collective bargaining. Cf. *Pietro Scalzitti Co. v. International Union of Operating Engrs., Local No. 150*, 351 F.2d 576, 579-80 (7th Cir. 1965) (arguing that Frankfurter's view regarding the majority decision in *Lincoln Mills* was correct with regard to collective bargaining agreements).

24. 500 U.S. 20 (1991). In *Gilmer*, an employee brought an age discrimination claim against his employer under the Age Discrimination in Employment Act of 1987 (ADEA), 29 U.S.C. §§ 621-34 (1988). As a condition of his employment, the employee had registered with the New York Stock Exchange (NYSE) as a securities representative. The registration application contained a provision requiring the employee to arbitrate any dispute with his employer relating to the termination of employment. 500 U.S. at 23. The employer thus moved to compel arbitration when the employee brought suit. 500 U.S. at 24. The Court held that the FAA applied and granted the motion to compel arbitration. 500 U.S. at 24-35. The employee argued that he fell within the employment contract exception to the FAA, but the Court said that the exception was inapplicable because the agreement to arbitrate was contained in the NYSE registration application rather than the employment contract with *Interstate/Johnson Lane*. 500 U.S. at 25 n.2.

the most recent opportunity to address the issue. In a footnote in *Gilmer*, the Court took note of the fact that several amici curiae had argued that the employment contract exception in section 1 of the FAA excluded *all* contracts of employment from the coverage of the FAA.²⁵ The Court left the issue "for another day," however, because the parties did not raise the issue in the courts below or in the petition for certiorari and because it was beyond the scope of the case.²⁶ In his dissent, Justice Stevens decided to address the scope of the employment contract exception anyway and argued for a broad interpretation.²⁷ Stevens, however, is the only sitting Justice who has articulated an opinion on the subject.

This Note argues that courts should adopt a narrow reading of the employment contract exception to the FAA, thus making arbitration agreements in most individual employment contracts enforceable under the Act. Part I argues that a textual analysis of the FAA supports a narrow interpretation of the exception. Because some courts and commentators have argued that the text favors a broad interpretation, Part II examines the legislative history of the exception and demonstrates that no firm conclusions can be drawn about congressional intent regarding the exception's scope. Finally, Part III demonstrates that a narrow reading of the exception best serves the purposes behind the FAA by overriding judicial hostility toward arbitration, placing arbitration agreements on an equal footing with other contract provisions, and providing a more efficient method of adjudication in the workplace.

I. SUPPORTING A NARROW INTERPRETATION THROUGH TEXTUAL ANALYSIS

Courts begin interpreting a statute by first examining the statute's text.²⁸ In studying the text, courts "assume that the legislative purpose is expressed by the ordinary meaning of the words used."²⁹ Once a court is satisfied that the text of a statute mandates a partic-

25. 500 U.S. at 25 n.2.

26. 500 U.S. at 25 n.2. One commentator has argued that the majority decision actually reflects support for a narrow interpretation of the exception, despite the Court's express reluctance to address it. See Knight, *supra* note 6. This belief results from the fact that the NYSE registration form at issue in *Gilmer* was, for all practical purposes, the employment contract. *Id.* at 253.

27. 500 U.S. at 39-41 (Stevens, J., dissenting). Stevens argued that the primary concern of the FAA was a desire by the business community to overturn the common law rule that denied specific enforcement of arbitration agreements in business contracts. 500 U.S. at 39. It does not appear that Congress viewed the Act as so limited, however. See *infra* note 101.

28. *United States v. James*, 478 U.S. 597, 604 (1986); *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring).

29. *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982) (quoting *Richards v. United States*, 369 U.S. 1, 9 (1962)) (analyzing the text of § 703(h) of the Civil Rights Act of 1964).

ular interpretation, an inquiry into the text's meaning is generally finished.³⁰ In examining the text of the employment contract exception of the FAA, it becomes apparent that the text justifies only a narrow³¹ interpretation of the exception.

The FAA only applies to maritime transactions and those "contract[s] evidencing . . . transaction[s] involving commerce."³² The language in section 1 of the FAA defining "commerce" is thus especially significant because "commerce" plays a key role in defining the scope of the FAA: "[C]ommerce", as herein defined, means commerce among the several States or with foreign nations . . . *but 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.*"³³ A cursory reading of this text allows at least two possible interpretations of the employment contract exception. First, the language of the final part — "other class of workers engaged in foreign or interstate commerce" — may be construed broadly as referring to the entire class of workers within the scope of Congress's power over interstate commerce.³⁴ Under this interpretation the exception would cover almost all employment contracts. A second, narrower interpretation results from reading "other class of workers" to reach only those classes of workers similar in kind to seamen and railroad employees.³⁵

An analysis of the text of the FAA produces three textually based arguments in favor of a narrow interpretation as the only reasonable reading of the exception. First, section I.A argues that Congress understood the words *engaged in interstate commerce* as referring only to those classes of workers involved in the *transportation* of commerce. Second, section I.B argues that the statutory interpretation canon *ejusdem generis* supports a narrow interpretation by limiting the general language of the exception. Third, section I.C argues that the traditional maxim that every part of a statute must be given effect also supports a narrow interpretation. Section I.D then responds to the argument that a narrow interpretation of the exception will result in inconsistent definitions of *commerce* in sections 1 and 2 of the FAA. This section first con-

30. *Reves v. Ernst & Young*, 113 S. Ct. 1163, 1169 (1993) (stating that unambiguous statutory language can only be overcome by clearly expressed legislative intent to the contrary); *Freytag v. Commissioner*, 501 U.S. 868, 873 (1991) (stating that, when the text is clear, judicial inquiry is complete except in "rare and exceptional circumstances" (citing *Demarest v. Manspeaker*, 498 U.S. 184, 190 (1991))).

31. A definition of the word "narrow" in relation to the employment contract exception appears *infra* in the text accompanying note 35.

32. 9 U.S.C. § 2 (1988).

33. 9 U.S.C. § 1 (1988) (emphasis added).

34. For courts adopting this interpretation, see cases cited *supra* note 19.

35. For courts adopting this interpretation, see cases cited *supra* note 20.

tends that no such inconsistency exists and then argues that any inconsistency that might exist is explicable by analyzing the statute's text.

A. *Engaged in Interstate Commerce vs. Affecting Interstate Commerce*

An understanding of Congress's use of the word *engaged* in other contemporaneous legislation, along with the more limited view of the commerce power that prevailed at the time of the FAA's passage, indicates that a narrow interpretation of the employment contract exception in the FAA is the correct one. At the time of the FAA's passage in 1925, "Congressional power over individuals whose activities affected interstate commerce had not developed to the extent to which it was expanded in the succeeding years."³⁶ In fact, the Supreme Court routinely struck down federal statutes that sought to regulate economic activity beyond the interstate movement of goods.³⁷ It was not until the 1937 decision *NLRB v. Jones & Laughlin Steel Corp.*³⁸ that the Court held that Congress was able to regulate activity that had a "serious effect upon interstate commerce."³⁹

The limited reach of the commerce power was reflected in a distinction Congress made between those workers who were *engaged* in interstate commerce and those who *affected* interstate commerce.⁴⁰ The Federal Employers' Liability Act of 1908 (FELA)⁴¹ provides a good example of this distinction. Initially, section 1 of the FELA contained language similar to section 1 of the FAA: "[E]very common carrier by railroad while *engaging* in commerce between any of the several States or Territories . . . shall be liable in damages to any person suffering injury while he is employed by

36. *Tenney Engg., Inc. v. United Elec., Radio & Mach. Workers, Local 437*, 207 F.2d 450, 453 & n.9 (3d Cir. 1953) (en banc) (comparing Child Labor Tax Case, 259 U.S. 20 (1922) and *Hammer v. Dagenhart*, 247 U.S. 251 (1918), *overruled by* *United States v. Darby*, 312 U.S. 100 (1941) with *United States v. Darby*, 312 U.S. 100 (1941) and *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937)).

37. See, e.g., *Carter v. Carter Coal Co.*, 298 U.S. 238, 303 (1936) (holding unconstitutional the Bituminous Coal Conservation Act of 1935 in part because the Act regulated incidents "of production, not of trade"); *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 543 (1935) (holding part of the National Industrial Recovery Act unconstitutional in part because the Poultry Code regulated activities taking place after "the flow in interstate commerce had ceased"); *Railroad Retirement Bd. v. Alton R.R.*, 295 U.S. 330, 363 (1935) (holding unconstitutional a compulsory retirement and pension system for all interstate railroads in part because the objectives of the pension system had "no reasonable relation to the business of interstate transportation").

38. 301 U.S. 1 (1937).

39. 301 U.S. at 41 (emphasis added).

40. *Tenney Engg.*, 207 F.2d at 452-53.

41. Employers' Liability Act of 1908, ch. 149, 35 Stat. 65 (1908) (codified as amended at 45 U.S.C.A. §§ 51-60 (1988)).

such carrier in such commerce"⁴² In the 1916 case *Shanks v. Delaware, Lackawanna & Western Railroad Co.*⁴³ the Supreme Court construed this language to apply only to workers "engaged in interstate transportation or in work so closely related to it as to be practically a part of it."⁴⁴ Courts construed *affecting* interstate commerce, on the other hand, to encompass not only workers engaged in the interstate transportation of commerce, but also all workers involved in the manufacture or production of interstate goods.⁴⁵

The difference in interpretation between engaged in interstate commerce and affecting interstate commerce — as reflected in the text of the FELA and the 1916 *Shanks* decision — indicates that when Congress later used the word *engaged* in the FAA of 1925, and incorporated language substantially similar to the FELA, it likely intended that the language would be interpreted in the same manner as the language had in the FELA.⁴⁶

In 1939 Congress amended section 1 of the FELA, adding:

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, *affect* such commerce as above set forth shall, for the purposes of this Act, be considered as being employed by such carrier in such commerce⁴⁷

Congress had two purposes in amending the FELA: to enable the statute to reflect the Supreme Court's decision in *Jones & Laughlin* that the commerce power extended to activity that *affected* interstate commerce,⁴⁸ and to settle a frequent subject of litigation under the FELA — the location of the line between interstate and

42. Employers' Liability Act of 1908, ch. 149, § 1, 35 Stat. 65, 65 (1908) (emphasis added) (codified as amended at 45 U.S.C. § 51 (1988)).

43. 239 U.S. 556 (1916).

44. 239 U.S. at 558. *Shanks* describes a number of situations in which the Court found employees to be engaged in commerce or so closely related to it as to be a part of it. These situations predominantly involved employees who repaired transportation vehicles involved in interstate commerce. The Court held that workers engaged in repairs on trains carrying only intrastate commerce and employees who mined coal for use in locomotives carrying only intrastate freight fell outside of the "engaged in commerce" definition. 299 U.S. at 558-59.

45. See *McLeod v. Threlkeld*, 319 U.S. 491, 493-94, 494 n.2 (1943) (construing the language *affecting commerce*, which was rejected by Congress for the Fair Labor Standards Act, as extending to the furthest reaches of the commerce power and stating that the differences between *engaging in* and *affecting* were "well known to Congress"); *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148, 151 (1942) (describing the commerce power as extending not only to transportation of interstate goods, but to all activities that *affect* commerce).

46. *Tenney Engg., Inc. v. United Elec., Radio & Mach. Workers, Local 437*, 207 F.2d 450, 453 (3d Cir. 1953) (en banc) (using the FELA to interpret *commerce* in the FAA of 1925).

47. Act of Aug. 11, 1939, ch. 685, § 1, 53 Stat. 1404, 1404 (codified at 45 U.S.C. § 51 (1988)) (emphasis added).

48. See *Ermin v. Pennsylvania R.R.*, 36 F. Supp. 936, 940 (E.D.N.Y. 1941) (discussing comments made in a subcommittee hearing indicating that the language was added to reflect the extent of the commerce power under *Jones & Laughlin*).

intrastate commerce — by removing the need to determine that line.⁴⁹ The amendment, by using the word *affect* and expanding the reach of the FELA, further demonstrates that Congress believed *engaged* in interstate commerce covered only a limited class of workers.

The limited scope of *engaged* in interstate commerce is also reflected in the Fair Labor Standards Act of 1928 (FLSA).⁵⁰ The FLSA, passed three years after the FAA, applied to employees “engaged in commerce,” but it also applied to those engaged “in the production of goods for commerce.”⁵¹ This language further indicates that Congress understood the words *engaged in interstate commerce* to be limited to those workers in the transportation industries.

B. *Ejusdem Generis*

The statutory interpretation canon *ejusdem generis* provides a second textual argument in support of a narrow interpretation. The canon counsels that general words that follow more specific words should be limited to the same general class as the specific words.⁵² Thus, for example, the word “other” in “grapefruits, oranges, and other fruits” should be limited to citrus fruits. The primary justification for the canon is that Congress has no need to mention specific words or examples if it intends that the most general word or example be used in its unrestricted sense.⁵³ The canon does have its

49. *Prader v. Pennsylvania R.R.*, 49 N.E.2d 387, 390 (Ind. Ct. App. 1943) (en banc) (“One of the main purposes of [the 1939 amendment to the FELA] was to eliminate the necessity of establishing that at the moment of his injury the employee was actually engaged in the movement of interstate traffic. Its effect was to . . . include . . . all of a carrier’s employees, any part of whose duties were in the furtherance of interstate commerce.” (citation omitted)); *Pritt v. West Virginia N.R.R.*, 51 S.E.2d 105, 112 (W. Va. 1948) (arguing that the amendment was added to settle the location of the line between interstate and intrastate commerce because some railroads were engaged in both), *cert. denied*, 336 U.S. 961 (1949).

50. Fair Labor Standards Act of 1928, ch. 676, 52 Stat. 1060 (codified as amended at 29 U.S.C. §§ 201-19 (1988 & Supp. V 1993)).

51. 29 U.S.C. § 206(a) (1988 & Supp. V 1993).

52. See *Cleveland v. United States*, 329 U.S. 14, 18 (1946) (concluding that because the phrase “other immoral purpose” in the Mann Act follows specific prohibitions of interstate prostitution and debauchery, “other immoral purpose” therefore includes polygamy); *Samuels, Kramer & Co. v. Commissioner*, 930 F.2d 975, 980-81 & n.2 (2d Cir. 1991), *cert. denied*, 502 U.S. 957 (1991) (arguing that the canon could not be used to determine the scope of “other proceeding” in a list of situations in which the chief judge of the U.S. Tax Court could appoint a special trial judge); *Tenney Engg., Inc. v. United Elec., Radio & Mach. Workers, Local 437*, 207 F.2d 450, 452-53 (3d Cir. 1953) (en banc) (applying the canon to the employment contract exception of the FAA); 2A NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 47.17 (5th ed. 1992) (discussing the canon).

53. 2A SINGER, *supra* note 52, § 47.17.

limits⁵⁴ and its critics,⁵⁵ but many courts have found it to be a valuable aid.

The language of the employment contract exception embraces three groups of workers: "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."⁵⁶ The dispute regarding the scope of the exception has revolved, of course, around the final group labeled "any other class of workers." Seamen and railroad workers are classes of workers involved in the interstate transportation of commerce.⁵⁷ Under the canon *ejusdem generis*, therefore, "any other class of workers" should be read as encompassing only those workers involved in the interstate transportation of commerce.

C. Every Part of a Statute Must Be Given Effect

A second traditional maxim of statutory interpretation holds that every part of a statute must be given effect. Nothing in the statute should be "meaningless or superfluous."⁵⁸ Courts justify this maxim by explaining that Congress does not place words in a statute without a purpose.⁵⁹ Application of this maxim to the employment contract exception demonstrates that only a narrow reading of the exception utilizes all of the exception's language.

A broad interpretation of the employment contract exception would make the two specific classes of workers mentioned in the exception superfluous. Reading "any other class of workers engaged in foreign or interstate commerce"⁶⁰ to include all workers subject to Congress's commerce power would mean that "other" encompasses seamen and railroad workers and eliminates the need for their specific enumeration. If Congress had intended for the

54. Like all intrinsic aids, courts should only apply the canon when a statute is subject to more than one interpretation. *Garcia v. United States*, 469 U.S. 70, 74 (1984) (citing *Harrison v. PPG Indus.*, 446 U.S. 578, 588 (1980)). Courts can also override the canon when the "whole context dictates a different conclusion." *Norfolk & W. Ry. v. American Train Dispatchers Assn.*, 499 U.S. 117, 129 (1991). Using *ejusdem generis* is also inappropriate when the result would be contrary to a statute's legislative history or when the specific words "embrace all the persons or objects of the class designated by the enumeration." 2A SINGER, *supra* note 52, §§ 47.21-22.

55. See 2A SINGER, *supra* note 52, § 47.18 (mentioning that some courts and commentators have seen the canon as a remnant of strict constructionism and thus heir to strict constructionism's shortcomings).

56. 9 U.S.C. § 1 (1988).

57. See *supra* section I.A.

58. *Fulps v. City of Springfield*, 715 F.2d 1088, 1093 (6th Cir. 1983); see also *National Insulation Transp. Comm. v. ICC*, 683 F.2d 533, 537 (D.C. Cir. 1982); 2A SINGER, *supra* note 52, § 46.06.

59. *Platt v. Union Pac. R.R.*, 99 U.S. 48, 58 (1878) ("Congress is not to be presumed to have used words for no purpose."); *Adler v. Northern Hotel Co.*, 175 F.2d 619, 621 (7th Cir. 1949).

60. 9 U.S.C. § 1 (1988).

exception to be read to encompass *all* employment contracts, it would have said so rather than enumerating specific classes of workers.⁶¹ Because Congress elected to enumerate two specific groups of workers, however, and insert a more general clause following them, courts can infer that the exception is supposed to be read narrowly.

It could be argued that a narrow interpretation also violates the statutory maxim because, by defining “any other classes of workers” as referring to classes of workers in the transportation of interstate commerce, “any other classes of workers” also encompasses the specific enumerations of seamen and railroad employees. In fact, however, under a narrow interpretation the specific enumerations provide a context for defining the general class. Therefore, a narrow interpretation of the exception, unlike a broad interpretation, does not violate the maxim that every part of a statute be given effect.

D. *Inconsistent Definitions of Commerce in the FAA*

Some courts and commentators have argued that a narrow interpretation of the employment contract exception produces inconsistent definitions of commerce within sections 1 and 2 of the FAA. Section 2 of the FAA makes all arbitration provisions in “contract[s] evidencing . . . transaction[s] involving commerce . . . valid, irrevocable, and enforceable.”⁶² The Supreme Court has indicated that this section’s mandates extend as broadly as the commerce power on which it is based.⁶³ Therefore, a narrow interpretation of “workers engaged in interstate commerce” in section 1 of the Act might seem inconsistent because it is limited to only a small segment of the employees affecting interstate commerce.

There are two responses to this argument. The first is to deny the inconsistency. Unlike section 2 of the FAA, the section 1 exception relates to workers *engaged* in interstate commerce. As mentioned in section I.A, Congress understood the word *engaged* to indicate a particular subset of workers who affect interstate commerce — those workers in the transportation industries. Therefore, the word *commerce* in section 1 does not have a different meaning than *commerce* in section 2 of the Act.

Even if an inconsistency did exist between the section 1 *commerce* and the section 2 *commerce*, the text of the statute provides

61. *DiCrisci v. Lyndon Guar. Bank*, 807 F. Supp. 947, 953 (W.D.N.Y. 1992).

62. 9 U.S.C. § 2 (1988).

63. See *Allied-Bruce Terminix Cos. v. Dobson*, 115 S. Ct. 834, 839-40 (1995); *Perry v. Thomas*, 482 U.S. 483, 490 (1987) (describing the FAA as “embod[y] Congress’ intent to provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause”).

two justifications for this inconsistency. First, exceptions traditionally are construed narrowly.⁶⁴ By defining the scope of the section 1 exception as including all employment contracts affecting interstate commerce, the exception may be given a much broader reach than Congress intended. In fact, the Supreme Court has indicated that the FAA reflects Congress's desire to expand and support arbitration.⁶⁵ A broad exception, therefore, might undercut this goal.

A second justification for maintaining the inconsistency relies upon a distinction between the two placements of the word *commerce* in the text of the FAA. The word *commerce* in section 2 of the Act takes its meaning from the previously quoted⁶⁶ definition of *commerce* in section 1 of the Act. The word *commerce* in section 1 of the Act is located within the section 1 definition of *commerce* — in the part of the definition this Note labels the employment contract exception. The word *commerce within* the definition of *commerce*, however, obviously cannot be defined by referring to the definition that contains it. Therefore, an alternative and narrower, although inconsistent, definition becomes possible for the word *commerce* in section 1 as well as the employment contract exception.

II. LEGISLATIVE HISTORY OF THE EXCEPTION

When a statute permits only one reasonable interpretation, inquiry into the statute's meaning is generally finished because courts will look outside of the statute's text only when the statute can be interpreted in more than one way.⁶⁷ Although Part I concluded that the text mandates a narrow interpretation of the employment contract exception, some courts have reached the opposite conclusion and held that a broad interpretation is proper.⁶⁸ Therefore, this Part examines the legislative history of the FAA.⁶⁹ Although the legislative history of the FAA does not affirmatively support a

64. *United States v. J.E. Mamiye & Sons*, 665 F.2d 336, 339-40 (C.C.P.A. 1981) (construing a statutory exception from custom duties narrowly); *Israel-British Bank (London), Ltd. v. FDIC*, 536 F.2d 509, 513 (2d Cir. 1976) (holding that the words of exceptions should be strictly construed to limit the exception), *cert. denied*, 429 U.S. 978 (1976); *United States v. California*, 504 F.2d 750, 754 (Temp. Emer. Ct. App. 1974), *cert. denied*, 421 U.S. 1015 (1975); 2A SINGER, *supra* note 52, § 47.08 (stating that provisos should be strictly construed).

65. *See generally* *Southland Corp. v. Keating*, 465 U.S. 1 (1984).

66. *See supra* text accompanying note 33.

67. *See* cases cited *supra* note 30.

68. *See* cases cited *supra* note 19.

69. Courts frequently resort to the legislative history of a statute if the statute's text can be interpreted in more than one way. *See, e.g.*, *United States v. McLemore*, 28 F.3d 1160, 1163 (11th Cir. 1994) (arguing that courts should look to the statute's legislative history when the text of the statute can be interpreted in more than one way); *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 805 (9th Cir. 1994) (same), *affd. sub nom.* *City of Edmonds v. Oxford House, Inc.*, 115 S. Ct. 1776 (1995).

narrow reading, it does not — as some have claimed⁷⁰ — provide clear support for a broad reading either.

As Part I demonstrated, Congress recognized a distinction between the scope of the words *engaged in interstate commerce* and *affecting interstate commerce*. Besides Congress's choice of words in contemporaneous statutes, the distinction is shown in a brief submitted to the Joint Committee of Subcommittees on the Judiciary during hearings on the FAA.⁷¹ This brief, which one commentator has cited as the most important authority on the FAA,⁷² made a similar distinction between the interstate movement of goods and *affecting commerce*:

It is not only the actual and physical interstate shipment of goods which is subject to the interstate commerce powers of the Federal Government, but these powers govern every agency or act which bears so close a relationship to interstate commerce that they can reasonably be said to affect it.⁷³

This brief is perhaps the most persuasive evidence that in passing the FAA Congress understood *engaged in interstate commerce* to encompass only those workers involved in the transportation of interstate commerce, while Congress understood *affecting interstate commerce* to reach those workers who produced the goods for transportation as well.

The legislative history of the FAA is short and contains little mention of the employment contract exception. The FAA is somewhat unusual in that Congress had a limited role in drafting the statute. Instead, the American Bar Association (ABA) drafted the initial language and some of the amendments to the Act.⁷⁴

In December 1922, Senator Sterling and Congressman Mills introduced the first draft of the bill that was to become the FAA.⁷⁵

70. See, e.g., *Willis v. Dean Witter Reynolds Inc.*, 948 F.2d 305, 311 (6th Cir. 1991).

71. *Arbitration of Interstate Commercial Disputes: Joint Hearings on S. 1005 and H.R. 646 Before the Subcomms. of the Comms. on the Judiciary*, 68th Cong., 1st Sess. 33-41 (1924) [hereinafter *Hearings Before 68th Congress*].

72. MACNEIL, *supra* note 8, at 97 ("If there were ever any doubt about congressional understanding as to what it was doing respecting the applicability of the act, this brief would remove that doubt.").

73. *Hearings Before 68th Congress*, *supra* note 71, at 38 (emphasis added).

74. See MACNEIL, *supra* note 8, at 107 ("[T]he role of Congress in enacting the [FAA] was the limited one of making a few modest changes in what the A.B.A. presented to it, and, finally, of putting its stamp of approval on the bar association's product.").

75. See *Sales and Contracts to Sell in Interstate and Foreign Commerce, and Federal Commercial Arbitration: Hearings on S. 4213 and S. 4214 Before a Subcomm. of the Senate Comm. on the Judiciary*, 67th Cong., 4th Sess. 2 (1923) [hereinafter *Hearings Before 67th Congress*]. The FAA was a response to the general unenforceability and revocability of agreements to arbitrate during the era. The American Bar Association (ABA) drafted the statute, see *Proceedings of the American Bar Association*, 45 A.B.A. REP. 19, 75 (1920) (directing the Committee on Commerce, Trade and Commercial Law to "consider and report . . . upon the further extension of the principle of commercial arbitration"), and based it on the 1920 New York Arbitration Law, 1920 N.Y. LAWS ch. 275 (current version codified at

This draft did not contain the employment contract exception. In response to concerns raised at a subcommittee hearing on the bill, the ABA made several revisions in the bill — including the addition of the employment contract exception — before reintroducing it in the next Congress. This draft, with minor changes, became the FAA.⁷⁶

The ABA added the language comprising the employment contract exception in response to fears raised by the Seamen's Union. The union argued that "seamen's wages came within admiralty jurisdiction and should not be subject to an agreement to arbitrate."⁷⁷ During the initial hearing on the FAA before a Senate subcommittee, W.H.H. Piatt, the chairman of the ABA committee that drafted the FAA, responded to this criticism:

It was not the intention of this bill to make an industrial arbitration [sic] in any sense; and so I suggest 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." It is not intended that this shall be an act referring to labor disputes at all.⁷⁸

Piatt's statement could be construed to indicate that it was not the intention of the drafters to include employment contracts — or at least collective bargaining agreements — within the scope of the statute. As such, this statement probably furnishes the strongest argument in favor of a broad interpretation of the exception.⁷⁹

N.Y. CIV. PRAC. L. & R. §§ 7501-7514 (McKinney 1980 & Supp. 1995)). The New York Arbitration Law carried forward existing legal provisions regarding arbitration but also made written contracts for *future* disputes "valid, enforc[e]able, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." 1920 N.Y. LAWS ch. 275, § 2 (current version at N.Y. CIV. PRAC. L. & R. § 7501 (McKinney 1980)).

76. MACNEIL, *supra* note 8, at 91. After resubmission of the draft, Congress held a joint hearing, *Hearings Before 68th Congress*, *supra* note 71, regarding the draft on January 9, 1924. MACNEIL, *supra* note 8, at 92. The House submitted a favorable report on January 24, H.R. REP. NO. 96, 68th Cong., 1st Sess., pt. 1 (1924), and the Senate followed on May 14, S. REP. NO. 536, 68th Cong., 1st Sess., pt. 2 (1924). The Senate added several minor amendments and passed the bill on January 31, 1925. The House then considered and passed the Senate version on February 4 of the same year. MACNEIL, *supra* note 8, at 100-01. Finally, President Coolidge signed the FAA into law on February 12, 1925. *Id.* at 101.

77. *Tenney Engg., Inc. v. United Elec., Radio & Mach. Workers*, 207 F.2d 450, 452 (3d Cir. 1953) (en banc) (quoting *Report on the Committee on Commerce, Trade and Commercial Law*, 48 A.B.A. REP. 284, 287 (1923)).

78. *Hearings Before 67th Congress*, *supra* note 75, at 9.

79. Statements made by draftsmen like Mr. Piatt at hearings concerning the nature and effect of a proposed statute have been accepted as an indication of legislative intent. *See, e.g.*, *Jefferson County Pharmaceutical Assn. v. Abbott Lab.*, 460 U.S. 150, 160 (1983); *Zuber v. Allen*, 396 U.S. 168, 181-83, 186 (1969); *Florida Power Corp. v. Federal Power Commn.*, 425 F.2d 1196, 1202 (5th Cir. 1970), *rev'd sub nom. Gainesville Utils. Dept. v. Florida Power Corp.*, 402 U.S. 515 (1971); 2A SINGER, *supra* note 52, § 48.10 ("Similarly, if the legislature adopts an amendment urged by a witness, it may be assumed that the intent voiced was adopted by the legislature."). Oddly, however, courts advocating the broad interpretation

Nevertheless, there are reasons to doubt the utility of Piatt's statement as a basis for a broad interpretation.

First, Piatt's statement that the FAA was not an "industrial arbitration" intended to cover "labor disputes,"⁸⁰ could be construed — with equal plausibility — to reflect a belief that the FAA would not cover collective bargaining agreements, as opposed to individual employment contracts. Seamen and railroad workers — the particular classes mentioned in the employment contract exception — were unionized workforces and were already subject to arbitration by other statutes.⁸¹ In addition, the exception was added directly in response to the Seamen's Union.⁸² Both of these factors indicate that even the draftsmen of the FAA may not have intended the exception to extend to individual employment contracts.

Second, an exchange between Piatt and Senator Walsh, the committee chair, demonstrates that the draftsmen's interpretation of the bill's language may have differed from that of Congress. The exchange, which followed Piatt's statement, indicates that the Senator may not have understood the insertion of the language comprising the employment contract exception to exclude all employment contracts. After Piatt's statement, Senator Walsh responded by asserting: "I see no reason at all . . . why, when two men voluntarily agree to admit their controversy to arbitration, they should not be compelled to have it decided that way."⁸³ Piatt responded simply "Yes, sir."⁸⁴ Senator Walsh then reflected: "The trouble about the matter is that a great many of these contracts that are entered into are really not voluntary things at all. . . . It is the same with a good many contracts of employment."⁸⁵ This exchange, including Senator Walsh's remark about adhesion contracts, indicates that it was not clear from Piatt's original statement that *all* employment contracts should be excluded from the FAA.

Finally, determining congressional intent is difficult in normal circumstances,⁸⁶ but determining intent is even more difficult in the

have only recently cited this statement. See, e.g., *Willis v. Dean Witter Reynolds, Inc.*, 948 F.2d 305, 311 (6th Cir. 1991).

80. See *supra* text accompanying note 78.

81. Transportation Act of 1920, ch. 91, tit. III, 41 Stat. 456, 469-74 (repealed 1926) (railroad workers); Act of June 7, 1872, ch. 322, § 25, 17 Stat. 262, 267 (repealed 1983) (seamen). The Seamen's Union was concerned that the FAA would make its members' wages subject to arbitration — a condition of employment that was not then arbitrable. See *Tenney Engg.*, 207 F.2d at 452.

82. See *supra* text accompanying note 77.

83. *Hearings Before 67th Congress*, *supra* note 75, at 9.

84. *Id.*

85. *Id.*

86. See, e.g., 2A SINGER, *supra* note 52, § 45.05 (stating that many methods have been used to determine legislative intent, including examining a statute's language and legislative history, and applying notions of fairness, but no single method can truly reach what is in-

case of the FAA, because the ABA, rather than Congress, drafted the statute. As one commentator has noted, "When [Congress] simply enacts legislation presented to it, the proper question is how Congress understood what was presented and upon which it put its stamp of approval."⁸⁷ Furthermore, there was almost no debate on the FAA when it was brought to the House and Senate floors — making it even more dangerous to impute the intentions of the bill's drafters to the entire Congress.⁸⁸

Although these arguments regarding the legislative history of the FAA do not necessarily support a narrow interpretation of the employment contract exception, they do demonstrate that no clear message regarding the scope of the exception can be derived from that legislative history. In light of the textual analysis of Part I, which demonstrated that a narrow interpretation is the only reasonable reading of the exception, the absence of any clear, contrary message in the legislative history means that courts should give effect to this reasonable reading.

III. EFFECTUATING THE PURPOSES OF THE FEDERAL ARBITRATION ACT

Part I demonstrated that the text of the FAA favors a narrow interpretation of the employment contract exception and Part II showed that the legislative history does not support a contrary reading. Many courts might find it appropriate to stop here. In general, however, statutes must be construed to effectuate their purposes, and courts should avoid constructions that defeat those purposes.⁸⁹ This Part examines the purposes of the FAA and argues that a narrow interpretation of the employment contract exception best effectuates these purposes. Section III.A identifies the three principal purposes behind passage of the FAA: overriding the longstanding judicial hostility toward arbitration, placing agreements to arbitrate on an equal footing with other contract provisions, and providing

tended because "[t]he question of meaning lies deeper than the law"). Some commentators have even argued that "legislative intent" is somewhat of a fallacy due to the differing motives and understandings of the many members making up a legislature. See, e.g., Kenneth A. Shepsle, *Congress Is a "They," Not an "It": Legislative Intent as Oxymoron*, 12 INTL. REV. L. & ECON. 239, 244 (1992).

87. MACNEIL, *supra* note 8, at 108.

88. Because so few members of Congress are likely to have had a chance to hear Piatt's understanding of the legislation's scope, most would have been likely to form their own opinions about the bill when, and if, they personally read the bill before voting on it. *But cf.* 2A SINGER, *supra* note 52, § 48.06 (arguing that, when parts of a bill pass without change, one can infer legislative intent for a bill from the intentions of the committee that drafted it).

89. *Commissioner v. Engle*, 464 U.S. 206, 217 (1984) (arguing that a court's duty is to "find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and with the general purposes that Congress manifested") (quoting *NLRB v. Lion Oil Co.*, 352 U.S. 282, 297 (1957) (Frankfurter, J., concurring in part and dissenting in part)).

for more speedy and cost-effective adjudication. Section III.B then argues that a narrow interpretation of the exception serves these purposes because: (i) a broad interpretation would maintain the effect of the former judicial hostility to arbitration; (ii) a narrow interpretation will make agreements to arbitrate in individual employment contracts irrevocable and enforceable in the federal court system; (iii) and a narrow interpretation will result in more efficient adjudication of employment-related disputes.

A. *The Purposes of the Federal Arbitration Act*

Congress had three purposes in enacting the FAA. The first of these was to override a longstanding judicial hostility to arbitration agreements.⁹⁰ At the time Congress passed the FAA, judges had developed a disdain for arbitration. Judges were primarily reacting to fear that they would be ousted from much of their jurisdiction,⁹¹ although they may have had more noble reasons as well.⁹²

The second purpose behind the FAA's passage was to place agreements to arbitrate on an equal footing with other contract provisions.⁹³ At the time of the Act's passage, arbitration agreements were largely ineffective because, unlike other contract provisions, no law prevented a party to an arbitration agreement from revoking that agreement at any time.⁹⁴ The FAA sought to correct this deficiency by making arbitration agreements "valid, irrevocable, and enforceable save upon such grounds as exist at law or in equity for the revocation of any contract."⁹⁵

The third and final purpose for the passage of the FAA was to provide for more speedy and cost-effective adjudication. Congress believed that arbitration could alleviate the overcrowding of court dockets, result in quicker decisions, and remove the burden of costly litigation.⁹⁶ The Supreme Court has acknowledged that Con-

90. *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 219 (1984); *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510-11 (1974); *Hearings Before 68th Congress*, *supra* note 71, at 14-15, 26, 38; *Hearings Before 67th Congress*, *supra* note 75, at 3; S. REP. NO. 536, *supra* note 76, at 2; H.R. REP. NO. 96, *supra* note 76, at 1-2.

91. S. REP. NO. 536, *supra* note 76, at 2-3 (stating that one of the primary reasons for not enforcing arbitration agreements was the fear among judges that "courts would be ousted of much of their jurisdiction" and that this may have had "much to do with inspiring the fear that arbitration tribunals could not do justice between the parties"); *Hirshman*, *supra* note 3, at 1310-11.

92. *Hearings Before 68th Congress*, *supra* note 71, at 15 (statement of Julius Henry Cohen stating that judges were concerned with the bargaining power of individuals in agreeing to arbitrate rather than with losing fees obtained from litigants).

93. See sources cited *supra* note 90.

94. MACNEIL, *supra* note 8, at 20.

95. 9 U.S.C. § 2 (1988).

96. S. REP. NO. 536, *supra* note 76, at 3 ("The desire to avoid the delay and expense of litigation persists."). H.R. REP. NO. 96 *supra* note 76, at 2 states:

gress recognized the efficiency benefits that arbitration would bring⁹⁷ and lower courts have continued to emphasize these benefits as an important goal of the Act.⁹⁸ The congressional hearings⁹⁹ and the committee reports¹⁰⁰ for the FAA also emphasize Congress's recognition of the efficiency benefits of the Act.¹⁰¹

[T]he party willing to perform his contract for arbitration is not subject to the delay and cost of litigation.

... It is practically appropriate that the action should be taken at this time when there is so much agitation against the costliness and delays of litigation. These matters can be largely eliminated by agreements for arbitration. . . .

97. *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 219 (1985).

98. *See, e.g., Saturn Distribution Corp. v. Williams*, 905 F.2d 719, 722 (4th Cir. 1990), *cert. denied*, 498 U.S. 983 (1990); *Tepper Realty Co. v. Mosaic Tile Co.*, 259 F. Supp. 688, 693 (S.D.N.Y. 1966).

99. *Hearings Before 68th Congress*, *supra* note 71, at 7 ("[A]rbitration saves time, saves trouble, saves money."), 13 (The Act would "make the disposition of business in the commercial world less expensive and more expeditious."), 34-35 ("The evils at which arbitration agreements in general are directed are . . . (1) The long delay usually incident to a proceeding at law . . . [and] (2) The expense of litigation."); *Hearings Before 67th Congress*, *supra* note 75, at 2 ("It will reduce litigation. It will enable business men to settle their disputes expeditiously and economically, and will reduce the congestion in the Federal and State courts.").

100. *See supra* note 96.

101. The context of the FAA's enactment might lead one to believe that the aforementioned purposes might apply only to *commercial* contracts. Support for the enactment of an arbitration statute arose first in New York, where the commercial and financial centers relied extensively on arbitration despite the lack of legal support. *MACNEIL*, *supra* note 8, at 26. Out of this support came the New York Arbitration Law of 1920, 1920 N.Y. LAWS ch. 275 (current version codified at N.Y. CIV. PRAC. L. & R. §§ 7501-14 (McKinney 1980 & Supp. 1995)), which served as a model for the draftsmen of the FAA. *MACNEIL*, *supra* note 8, at 41. In addition, there are many references in the FAA's committee hearings that emphasize arbitration's value in commercial settings. *See, e.g., Hearings Before 68th Congress*, *supra* note 71, at 11-12 ("[W]e are very much in favor of the objectives of an arbitration in commercial matters."), 13 ("[T]o make the disposition of business in the commercial world less expensive and more expeditious."); *Hearings Before 67th Congress*, *supra* note 75, at 2 ("The commercial bodies of the country have been urging the adoption of this . . . legislation throughout the country. . . ."), 3 ("The foundation of our commercial structure is a contract in which is an arbitration clause."), 9 ("It is not intended that this shall be an act referring to labor disputes, at all. It is purely an act to give the merchants the right or the privilege of sitting down and agreeing with each other. . . .").

The purposes of the Act, however, were not so limited. Statements in the committee hearings and in the committee reports indicate that, although the draftsmen may have written the Act with an emphasis on commercial disputes, Congress contemplated something much broader. *See Hearings Before 68th Congress*, *supra* note 71, at 1; *Hearings Before 67th Congress*, *supra* note 75, at 2 ("The second section provides that a written provision in any contract or maritime transaction or transaction involving commerce to settle a controversy by arbitration . . . shall be valid, enforceable, and irrevocable." (emphasis added)); S. REP. NO. 536, *supra* note 76, at 3 ("The settlement of disputes by arbitration appeals to . . . corporate interests as well as to individuals."); H.R. REP. NO. 96, *supra* note 76, at 2 ("The purpose of this bill is to make valid and enforceable agreements for arbitration contained in contracts involving interstate commerce . . . or which may be the subject of litigation in the Federal Courts." (emphasis added)). *But see* S. REP. NO. 536, *supra* note 76, at 1 (removing the words "contract or" from section 2 of the FAA and amending the section to read "maritime transaction or contract evidencing a transaction involving commerce").

Senator Walsh questioned speakers in one hearing about the Act's utility in labor agreements, insurance contracts, and construction contracts, indicating that he viewed the Act's language as reaching beyond commercial disputes. *See Hearings Before 67th Congress*, *supra* note 75, at 9-10. In response to the questioning about labor agreements, Piatt stated that it

B. Fulfilling the Goals of the FAA

A narrow interpretation of the employment contract exception best effectuates each of the purposes behind the FAA's passage. Unlike a broad interpretation of the employment contract exception, a narrow interpretation effectuates the congressional purpose of overriding judicial hostility towards arbitration. Prior to the FAA, the hostility toward arbitration manifested itself in a refusal by judges to enforce agreements to arbitrate.¹⁰² Yet, a broad interpretation of the employment contract exception could also result in the nonenforcement of agreements in individual employment contracts.¹⁰³ A narrow interpretation, by contrast, will require courts

was not the draftsmen's intention that the FAA extend to labor disputes and suggested to Senator Walsh that the language of the employment contract exception be added. *Id.* at 9. As has previously been demonstrated, however, the language comprising this exception encompassed only a few distinct classes of labor contracts and not all employment contracts. *See supra* Part I. Significantly, when Senator Walsh next questioned Piatt about insurance agreements, Piatt stated similarly that "it is not the intention of this bill to cover insurance cases," but offered no similar exempting language. *Hearings Before 67th Congress, supra* note 75, at 9-10. This exchange demonstrates that Senator Walsh contemplated that the Act would reach more than commercial disputes — even if the draftsmen did not.

Moreover, the insertion of the employment contract exception does not limit the FAA's purposes to commercial transactions. Instead, it simply indicates a desire to exempt certain classes of workers from the scope of these general purposes. As noted previously, the draftsmen created the exception in direct response to the desire of the Seamen's Union that issues such as wages remain under admiralty jurisdiction. *See supra* text accompanying note 77. This context indicates that the purpose of the exception was not to limit the scope of the Act to purely commercial transactions, but to placate certain classes of workers who wished to remain exempt from the provisions of the Act.

102. Judicial hostility toward arbitration agreements is largely a relic of the past. *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 480-81 (1989) (describing a steady erosion of hostility beginning in the lower federal courts). *But cf.* *Securities Indus. Assn. v. Connolly*, 883 F.2d 1114, 1119 (1st Cir. 1989) ("[C]ourts must be on guard for artifices in which the ancient suspicion of arbitration might reappear."), *cert. denied*, 495 U.S. 956 (1990). The hostility has disappeared primarily because judges have observed the benefits of the arbitration system including a reduction of the burden on the court system. In addition, respect for arbitration has increased as the competence of the arbitrators has grown and their utility in complex, technical cases has become apparent. John C. Norling, Note, *The Scope of the Federal Arbitration Act's Preemption Power: An Examination of the Import of Saturn Distribution Corp. v. Williams*, 7 OHIO ST. J. ON DISP. RESOL. 139, 144-45 (1991) (stating that the competence of arbitral tribunals is higher than ever and that they are better suited to handle highly technical cases).

103. *Cf. Erving v. Virginia Squires Basketball Club*, 468 F.2d 1064, 1068 (2d Cir. 1972) (stating that the FAA should "be implemented in such a way as to make arbitration effective and not to erect technical and unsubstantial barriers" such as those created in the time when courts viewed arbitration "with suspicion and hostility"). Although judicial hostility toward arbitration is largely a thing of the past, *see supra* note 102, there is no statutory enforcement mechanism other than the FAA for agreements to arbitrate in individual employment contracts. Under a broad interpretation, federal judges would have to resort to the federal common law of contracts — which is still largely undeveloped and rife with constitutional difficulties, *see Arturo Gandera, Contracts in Wonderland: A Fable Regarding the Administrative Adjudication of Qualifying Facility Contracts in California*, 31 SAN DIEGO L. REV. 307, 366-97 (1994) (detailing the difficulties of applying federal law to adjudicate contract disputes involving utilities) — or, more likely, borrow from state statutes and common law regarding contracts and arbitration. Under the latter approach, local differences could "cause unequal treatment, vitiate the national purpose underlying the Act, and undermine the pre-emptive

to enforce these agreements in individual employment contracts by making them "valid, irrevocable, and enforceable."¹⁰⁴

A narrow interpretation of the employment contract exception also better serves the purpose of placing arbitration agreements on an equal footing with other contract provisions. Under a broad interpretation, parties would continue to be able to repudiate voluntary agreements to arbitrate in individual employment contracts, even though other contract provisions would remain enforceable. A broad interpretation would thus deal a serious blow to the equality of arbitration provisions vis-a-vis other contract provisions that courts are not free to disregard. A narrow interpretation, however, would enable courts to enforce arbitration provisions in individual employment contracts just like any other contractual arrangement, which was what Congress sought to achieve.¹⁰⁵

The Fourth Circuit has already shown a determination to fulfill the purpose of equal treatment of arbitration provisions under the FAA in another situation. In *Saturn Distribution Corp. v. Williams*,¹⁰⁶ the court stated that the FAA preempted a Virginia law prohibiting mandatory arbitration.¹⁰⁷ The court felt that the FAA prohibited states from placing greater restrictions upon arbitration provisions than other contractual provisions.¹⁰⁸ A broad interpretation of the employment contract exception would have an effect similar to that of the rejected Virginia law — it would subject arbitration provisions in individual employment contracts to a different standard than other contract provisions by rendering them unenforceable.¹⁰⁹

Finally, a narrow interpretation of the employment contract exception would best serve the purposes of reducing costly courtroom

effect accorded the Act." Jeffrey W. Stempel, *A Better Approach to Arbitrability*, 65 *TUL. L. REV.* 1377, 1452 (1991).

104. 9 U.S.C. § 2 (1988).

105. See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 (1985) ("The 'liberal federal policy favoring arbitration agreements,' manifested by this . . . Act . . . is at bottom a policy guaranteeing the enforcement of private contractual arrangements. . . .") (quoting *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)); 473 U.S. at 626 ("[A]s with any contract, the parties' intentions [should] control. . . .").

106. 905 F.2d 719 (4th Cir. 1990), *cert. denied*, 498 U.S. 983 (1990).

107. 905 F.2d at 723 ("We hold today that § 2 does preempt state rules of contract formation which single out arbitration clauses and unreasonably burden the ability to form arbitration agreements.").

108. 905 F.2d at 722 (citing *Webb v. R. Rowland & Co.*, 800 F.2d 803, 806-07 (8th Cir. 1986); see also 905 F.2d at 723 ("[A] state may not refuse to enforce and may not revoke an existing arbitration agreement on the ground that the contract did not comply with rules of contract formation applicable only to arbitration provisions.")).

109. Cf. 905 F.2d at 723 (arguing that legislatures should not "circumvent Congressional intent by enacting special rules to discourage or prohibit the formation of agreements to arbitrate").

litigation and expediting resolutions of controversies.¹¹⁰ A broad interpretation, by permitting courts to ignore arbitration provisions, would send a continuous stream of employment related disputes to the already overburdened court system. In contrast, a narrow interpretation will allow arbitrators to resolve most of these disputes more quickly and with less cost to the parties by utilizing the benefits of arbitration to their fullest.

CONCLUSION

When Congress enacted the FAA, it viewed arbitration as a better means to an equally just end. The members realized that, in many situations, arbitration is a better method of dispute resolution than courtroom litigation. Nowhere is this more true than in the employment context, as demonstrated by the increasing number of individual employment contracts containing arbitration clauses.¹¹¹ Further, employees often lack the financial means to pursue even the strongest of claims in a court of law. Employers, meanwhile, cannot afford the loss of productivity and morale that long employment disputes often create. Arbitration allows these parties to resolve their disputes more quickly and with less expense than typical courtroom litigation. Perhaps even more important, arbitration's less adversarial nature offers each side a chance to sit down, face each other, and communicate. These advantages would be lost, however, if the FAA's employment contract exception were read too broadly. Courts should recognize these compelling justifications and construe the provision narrowly, allowing employees and employers to enforce arbitration agreements. In so doing, courts will fulfill the purposes of the FAA: to strengthen and encourage the use of arbitration in dispute resolution.

110. See *supra* text accompanying notes 4-5.

111. See S. Gale Dick, Feature, *ADR at the Crossroads*, 49 DISP. RESOL. J. 47, 52 (1994) ("More and more firms in certain industries are inserting mandatory arbitration clauses into their employment contracts [E]mployment disputes promise to be one of the biggest growth areas for ADR in the coming years.").