SUPREME COURT OF THE UNITED STATES

No. 93–1001

ALLIED-BRUCE TERMINIX COMPANIES, INC., AND TERMINIX INTERNATIONAL COMPANY, PETITIONERS *v.* G. MICHAEL DOBSON ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

[January 18, 1995]

JUSTICE O'CONNOR, concurring.

I agree with the Court's construction of §2 of the Federal Arbitration Act. As applied in federal courts, the Court's interpretation comports fully with my understanding of congressional intent. A more restrictive definition of "evidencing" and "involving" would doubtless foster prearbitration litigation that would frustrate the very purpose of the statute. As applied in state courts, however, the effect of a broad formulation of §2 is more troublesome. The reading of §2 adopted today will displace many state statutes carefully calibrated to protect consumers, see, *e. g.*, Mont. Code Ann. §27–5–114(2)(b) (1993) (refusing to enforce arbitration clauses in consumer contracts where the consideration is $5,000 or less), and state procedural requirements aimed at ensuring knowing and voluntary consent, see, *e. g.*,
S. C. Code Ann. §15–48–10(a) (Supp. 1993) (requiring that notice of arbitration provision be prominently placed on first page of contract). I have long adhered to the view, discussed below, that Congress designed the Federal Arbitration Act to apply only in federal courts. But if we are to apply the Act in state courts, it makes little sense to read §2 differently in that context. In the end, my agreement with the Court's construction of §2 rests largely on the wisdom of maintaining a uniform standard.

I continue to believe that Congress never intended the Federal Arbitration Act to apply in state courts, and that this Court has strayed far afield in giving the Act so broad a compass. See *Southland Corp.* v. *Keating*, 465 U. S. 1, 21–36 (1984) (O'CONNOR, J., dissenting); see also *Perry* v. *Thomas*, 482 U. S. 483, 494–495 (1987) (O'CONNOR, J., dissenting); *York International* v. *Alabama Oxygen Co.*, 465 U. S. 1016 (1984) (O'CONNOR, J., dissenting from remand). We have often said that the pre-emptive effect of a federal statute is fundamentally a question of congressional intent. See, *e. g.*, *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. ___, ___ (1992) (slip op., at 8–10); *English* v. *General Electric Co.*, 496 U. S. 72, 78–79 (1990); *Schneidewind* v. *ANR Pipeline Co.*, 485 U. S. 293, 299 (1988); *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). Indeed, we have held that "`[w]here . . . the field which Congress is said to have pre-empted' includes areas that have `been traditionally occupied by the States,' congressional intent to supersede state laws must be `clear and manifest.'" *English*, *supra*, at 79, quoting *Jones* v. *Rath Packing Co.*, 430 U. S. 519, 525 (1977). Yet, over the past decade, the Court has abandoned all pretense of ascertaining congressional intent with respect to the Federal Arbitration Act, building instead, case by case, an edifice of its own creation. See *Perry* v. *Thomas*, *supra*, at 493 (STEVENS, J., dissenting) ("It is only in the last few years that the Court has effectively rewritten the statute to give it a pre-emptive scope that Congress certainly did not intend"). I have no doubt that Congress could enact, in the first instance, a federal arbitration statute that displaces most state arbitration laws. But I also have no doubt that, in 1925, Congress enacted no such statute.

Were we writing on a clean slate, I would adhere to that view and affirm the Alabama court's decision. But, as the Court points out, more than 10 years have

passed since *Southland*, several subsequent cases have built upon its reasoning, and parties have undoubtedly made contracts in reliance on the Court's interpretation of the Act in the interim. After reflection, I am persuaded by considerations of *stare decisis*, which we have said "have special force in the area of statutory interpretation," *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172–173 (1989), to acquiesce in today's judgment. Though wrong, *Southland* has not proved unworkable, and, as always, "Congress remains free to alter what we have done." *Ibid.*

Today's decision caps this Court's effort to expand the Federal Arbitration Act. Although each decision has built logically upon the decisions preceding it, the initial building block in *Southland* laid a faulty foundation. I acquiesce in today's judgment because there is no "special justification" to overrule *Southland*. *Arizona* v. *Rumsey*, 467 U. S. 203, 212 (1984). It remains now for Congress to correct this interpretation if it wishes to preserve state autonomy in state courts.