so. Prime offers no reason why Congress would want to disadvantage law-abiding companies in this way.

3. Prime makes the astounding claim—entirely unsupported by any evidence—that simply enforcing the transportation-worker exemption in accordance with its terms will "have profound, deleterious consequences for both the trucking industry and the wider economy." Pet. Br. 28. This claim is meritless.

For one thing, the exemption is narrow. It applies only to arbitration clauses in transportation worker's employment contracts—it doesn't apply to other kinds of contracts or other kinds of workers. And, even then, it doesn't bar a single arbitration clause. The exemption merely means that state law—rather than federal—applies to their enforcement. *See* Edward J. Brunet, et al., Arbitration Law in America: A Critical Assessment 56 (2006) ("Every state has enacted a comprehensive arbitration law."); *Diaz v. Michigan Logistics Inc.*, 167 F. Supp. 3d 375, 380-81 (E.D.N.Y. 2016) (holding FAA's transportation-worker exemption was irrelevant because the plaintiffs' claims were "subject to mandatory arbitration under New York arbitration law").[10]

[10] In fact, in proceedings that are currently stayed before the district court, Prime is seeking to compel arbitration of the class claims *in this case* under Missouri law. *See* Prime's Mot. to Deny Certification of Class/Collective Action at 8-9, *Oliveira v. New Prime, Inc.*, Civ. No. 15-10603 (D. Mass. Jan. 23, 2018), ECF No. 118.

Prime's sky-is-falling rhetoric is also belied by the fact that the trucking industry existed long before arbitration clauses in employment contracts became widespread, yet Prime points to no evidence—none—that the industry was unduly burdened (or, indeed, burdened at all) without them.[11] Nor does it point to any evidence that the industry has done any better because arbitration has become more prevalent. Thus, Prime's contention that enforcing the FAA's narrow exemption for transportation workers' employment agreements would somehow devastate the industry and "the wider economy" has no basis in reality.

4. Equally meritless is Prime's reliance on general platitudes about the federal policy favoring arbitration. The policy in favor of arbitration was established by the FAA—it therefore applies only where the FAA applies. Thus, "to rest this case on the general policy of treating arbitration agreements as enforceable as such would be to beg the question, which is whether the FAA has textual features at odds with" applying the law in this case. *See Hall St.*, 552 U.S. at 586. All of the textual features of the FAA are at odds with applying the law in this case: The statute explicitly states that it does not apply.

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[11] The trucking industry was substantially deregulated in 1980. *See* Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793. But the empirical literature on arbitration suggests that arbitration provisions in employment contracts were relatively uncommon until the early 2000s. *See, e.g.*, Mark D. Gough, *The High Costs of an Inexpensive Forum*, 35 Berkeley J. Emp. & Lab. L. 91, 95-96 (2014).

As this Court has recently reiterated, it would be "quite mistaken to assume . . . that whatever might appear to further the statute's primary objective must be the law"—regardless of what the actual text of the statute says. *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017) (alterations and quotation marks omitted). "Legislation is, after all, the art of compromise, the limitations expressed in statutory terms often the price of passage, and no statute yet known pursues its stated purpose at all costs." *Id.* (alterations and quotation marks omitted).

This principle is particularly important in construing statutory exemptions, for "exemptions are as much a part" of the statute as the statute's affirmative commands. *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142 (2018); *see Henson*, 137 S. Ct. at 1725. The text of the transportation-worker exemption cannot be disregarded simply because doing so might better suit the FAA's overall goals. The whole point of the exemption is to *exclude* transportation workers' employment contracts from those goals.

This Court's decision in *Circuit City* does not hold otherwise. *Circuit City* held that courts interpreting the exemption should not go "*beyond* the meaning of the words Congress used." 532 U.S. at 119 (emphasis added). It did not hold that they should ignore that meaning entirely. Courts must "presume . . . that the legislature says what it means and means what it says." *Henson*, 137 S. Ct. at 1725 (quotation marks and alterations omitted).

Here, Congress said that transportation workers' agreements to perform work are exempt. This Court should "presume" it meant what it said. *Id.*

III. THE OPERATING AGREEMENT IS A TRANSPORTATION WORKER'S CONTRACT OF EMPLOYMENT EXEMPT FROM THE FAA.

There's no dispute that Oliveira is a transportation worker engaged in interstate commerce. J.A. 160 n.9. Nor could there be any dispute that the Operating Agreement is an agreement to perform work. It is, therefore, a transportation worker's "contract of employment" exempt from the FAA.

Prime asserts, in passing, that the Operating Agreement is not between Oliveira and Prime, but rather between Prime and Hallmark Trucking—a company Prime set up for Oliveira. Pet. Br. 33; *id.* at 4 (asserting that though Oliveira signed the contract, he signed it on behalf of Hallmark). But throughout this litigation, Prime has "treated the contract as one between Prime and Oliveira." J.A. 156 n.4; *see* J.A. 171 n.15 (quoting Prime briefing stating that "*Oliveira* entered into an" agreement with Prime). It continues to do so before this Court. *See, e.g.*, Pet. Br. 34 (discussing the rights and responsibilities the contract "provides *respondent*"—i.e., Oliveira, not Hallmark (emphasis added)). Prime cannot now argue otherwise. *See New Hampshire v. Maine*, 532 U.S. 742, 749 (2001).

And, in any event, these technicalities are irrelevant here. Regardless of who is technically party to the

Operating Agreement, the Agreement is indisputably an agreement to perform work, and therefore a "contract of employment." And Prime has long conceded that if its Operating Agreement is a "contract of employment" at all, it is a contract of employment of a transportation worker exempt from the FAA. *See* J.A. 160, 172.

Nor could it argue otherwise. Technicalities aside, the Agreement is obviously a contract for Oliveira *himself* to perform work. There are numerous contractual provisions that could not possibly apply to a company—they could only apply to a driver himself. *See, e.g.*, J.A. 67 (referring to "the next driver following You," making clear that "You" is a driver, not a company); J.A. 70 ("You shall (i) drive the Equipment Yourself[.]"); J.A. 72 (providing requirements for the purchase of insurance "against injuries sustained while in pursuit of Your business, for Yourself").

The Operating Agreement is an agreement of a long-haul truck driver to haul freight for a trucking company—a quintessential transportation worker's agreement to perform work. It is, therefore, exempt from the FAA.

CONCLUSION

The judgment for the Court of Appeals for the First Circuit should be affirmed.

Respectfully submitted,

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