No. S25A1139

In the Supreme Court of Georgia

Lucid Group USA, Inc.,

Appellant,

v.

State of Georgia,

Appellee,

v.

Georgia Automobile Dealers' Association

Intervenor-Appellee

On Appeal from the Superior Court of Fulton County, Civil Action No. 24CV008318

BRIEF OF LEGAL AND ECONOMIC SCHOLARS IN SUPPORT OF APPELLANT LUCID GROUP USA

John J. Park, Jr.
Counsel for *Amici*
Ga. Bar No. 547812
P.O. Box 3073
Gainesville, GA 30503
(703) 888-8329
jackparklaw@gmail.com

TABLE OF CONTENTS

Table of Contents....ii

Table of Authorities....iv

List of *Amici*....1

Statement of *Amici* Interest....3

Summary of Argument....3

Argument....5

I, Direct Sales Prohibitions were intended to protect dealers from intraband competition from their franchising manufacturers, not interbrand competition from non-franchising manufacturers....5

A. Direct sales prohibitions arose from the perception of franchisee exploitation by franchising manufacturers....5

B. Courts have recognized that direct sales prohibitions were not intended to prevent interbrand competition by non-franchising manufacturers....10

II. There is no consumer protection basis for prohibiting direct sales to consumers....14

A. There is no consumer protection justification for prohibiting direct sales by non-franchising manufacturers....14

B. Prohibiting non-franchising manufacturers from selling directly will diminish consumer choice, impede innovation, and slow the penetration of EV technology....19

Conclusion....21

Certification of Word Count.....21

Certificate of Service.....23

TABLE OF AUTHORITIES

Cases:

Celotex Corp. v. St. Joseph Hosp., 259 Ga. 108 (1989).....3

Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36 (1977).....17

Greater New York Automobile Dealers Ass'n v. Department of Motor Vehicles, 96x9 N.Y.S 2d 721 (N.Y.S.C. 2013).....12

Leegin Creative Leather Prods. v. PSKS, Inc., 551 U.S. 877 (2007).....13

Massachusetts State Automobile Dealers Ass'n, Inc, v. Tesla Motors, M.A., Inc., 15 N.E. 3d 1152 (Mass, 2014).....10,11,12

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc. 473 U.S.614 (1985).....8

Raffensperger v. Jackson, 316 Ga. 383 (2023).....3

Statutory and Administrative Authorities:

California Vehicle Code, VEH. § 11713.3.....10

Federal Trade Commission, Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30 (1939).

Letter to Senator Darwin L. Booher from Directors, Federal Trade Commission's Office of Policy Planning, Bureau of Competition and Bureau of Economics (May 7, 2015).....15

S. Rep. No. 2073 (1956).....7

Other Authorities:

Cynthia Barmore, *Tesla Unplugged: Automobile Franchise Laws and the Threat to the Electric Vehicle Market*, 18 Va. J.L. & Tech (2013).....9

Gerald R. Bodisch, Economic Effects of State Bans on Direct Manufacturer sales to Car Buyers.....17

Daniel A. Crane, *Direct Hit: How Tesla Went Straight to Consumers and Smashed the Car Dealers' Monopoly*, (Cambridge University Press forthcoming 2025).....6

Daniel Crane, *Why Intra-Brand Competition is Irrelevant to the Price Effects of Tesla's Vertical Integration*, 165 Penn L. Rev. Online 179 (2017).....16

Daniel A. Crane, *Tesla, Dealer Franchise Laws, and the Politics of Crony Capitalism*, 101 Iowa L. Rev. 573 (2016).....6

Fiona Scott Morton & Ann McDermot, *Retail Auto Sales: Tesla v. State Vehicle Franchise Laws*, in John E. Kwoka & Lawrence J. White, The Antitrust Revolution: Economics, Competition, and Policy (7th ed. 2018).....20

Francine Lafontaine & Fiona Scott Morton, *Markets: State Franchise Laws, Dealer Terminations, and the Auto Crisis*, 24 J. Econ Persp. 233 (2010).....5

Friedrich Kessler, *Automobile Dealer Franchises: Vertical Integration by Contract*, 66 Yale L.J. 1135 (1957).....6,7

Thomas G. Marx, *The Development of the Franchise Distribution System in the U.S. Automobile Industry*, 59 Bus. Hist. rev. 465 (1985).....6

Bedros Peter Pashigian, The Distribution of Automobiles, an Economic Analysis of the Franchise System (1961).....7

James Surowiecki, Dealer's Choice, The New Yorker (Sept. 4, 2006).....7

Jean Tirole, The Theory of Industrial Organization (1988).....17

John Voelcker, "Michigan Anti-Tesla Law 'Unnecessary Protectionism': AutoNation CEO," Yahoo, November 10, 2014.....14

LIST OF *AMICI*[1]

Roger D. Blair, Professor, Department of Economics, University of Florida

- Steve Calandrillo, Jeffrey & Susan Brotman Professor of Law, University of Washington Law School
- Daniel A. Crane, Richard W. Pogue Professor of Law, University of Michigan
- Michael DeBow, Stephen Wells Professor of Municipal Law, Samford University (Retired)
- Nicholas Economides, Professor of Economics, Leonard N. Stern School of Business, New York University
- Kathryn Judge, Harvey J. Goldschmid Professor of Law, Columbia Law School
- Max Huffman, Samel R. Rosen Professor of Law, Indiana University McKinney School of Law
- Francine Lafontaine, William Davidson Professor of Business Economics and Public Policy, Professor of Economics, LSA, University of Michigan
- Marina Lao, Professor of Law, Seton Hall Law School
- Mark A. Lemley, William H Neukom Professor, Stanford Law School
- Stanley Liebowitz, Ashbel Smith Professor of Economics, University of Texas at Dallas
- Geoffrey A. Manne, President and Founder, International Center for Law and Economics
- Scott Masten, Professor of Business Economics and Public Policy, University of Michigan
- A. Douglas Melamed, Visiting Fellow, Stanford Law School
- Michael Sykuta, Associate Professor, Division of Applied Social Sciences at the University of Missouri

[1] *Amici* join this brief solely in their individual capacities and express only their individual views. Institutional affiliations are listed for identification purposes only.

- Alex T. Tabarrok, Bartley J. Madden Chair in Economics at the Mercatus Center and Professor of Economics, George Mason University
- Alexander "Sasha" Volokh, Professor of Law, Emory Law School
- Samuel Weinstein, Professor of Law and Faculty Co-Director Heyman Center on Corporate Governance, Benjamin N. Cardozo School of Law
- Lawrence J. White, Robert Kavesh Professor of Economics, Leonard N. Stern School of Business, New York University

STATEMENT OF *AMICI* INTEREST

Amici are law professors, economists, or other academics with expertise in competition law and economic regulation. *Amici* do not work for Lucid, nor have they been compensated in any way for their participation in this brief.

SUMMARY OF ARGUMENT

Amici understand that the question before the Georgia Supreme Court is the question of whether Georgia's ban on direct sales of automobiles by automobile manufacturers, subject to a one-company exception that excludes only Tesla from the reach of the law, violates the Georgia Constitution's Due Process, Equal Protection Clauses, and Uniformity clauses. *Amici* further understand that the Georgia Due Process and Equal Protection clauses prevent the state from "burden[ing] the ability to practice a lawful protection" to protect a private interest group, like franchised dealers. *See Raffensperger v. Jackson*, 316 Ga. 383, 392 (2023). They further understand that the Uniformity Clause further prohibits legislation affording special treatment to a group based on arbitrary or unreasonable classifications. *See Celotex Corp. v. St. Joseph Hosp.,* 259 Ga. 108, 110 (1989).

Amici take no position on the proper interpretation of the Georgia Constitution. However, considering the history and economics of state automobile dealer franchise regulation, *Amici* submit that there is no legitimate basis in economic theory or public policy to prohibit an automobile manufacturer that does

not have independent franchisees to sell its own cars to the consuming public, and that such direct sales bans represent nothing other than special interest group protectionism for the benefit of car dealers. *Amici* make two points in support of their position.

First, the history of direct sales prohibitions in state dealer franchise laws unequivocally demonstrates that the only public policy rationale for prohibiting direct sales was to protect dealers in existing contractual relationships with franchising manufacturers from unfair intrabrand exploitation by the manufacturer. These laws were not intended to restrict *interbrand* competition by manufacturers that chose not to franchise at all. *Amici* take no position on whether the dealer protection rationales that ungirded direct sales prohibitions in the mid-twentieth century remain valid today, but those *dealer protection* rationales clearly do not support restricting competition by manufacturers that do not have franchisees.

Second, there is no legitimate *consumer protection* justification for prohibiting a non-franchising manufacturer from selling its own cars to consumers. Allowing manufacturers and consumers freely to choose whether they transact directly or through middlemen intensifies competition, and expands consumer choice and innovation. There is no merit to any claim that prohibiting direct sales will result in lower prices or other benefits to consumers. The only viable understanding of a prohibition on direct sales by a non-franchising manufacturer is

that it is intended to prevent competition that would threaten the protected economic status of existing car dealers.

ARGUMENT

I. DIRECT SALES PROHIBITIONS WERE INTENDED TO PROTECT DEALERS FROM INTRABRAND COMPETITION FROM THEIR FRANCHISING MANUFACTURERS, NOT INTERBRAND COMPETITION FROM NON-FRANCHISING MANUFACTURERS

The history of dealer protection laws unequivocally shows a single rationale for direct sales prohibitions: protecting dealers from exploitation by their franchising manufacturers. These statutes had nothing at all to do with restricting sales by non-franchising manufacturers, which would not have threatened the kinds of exploitations about which the dealers successfully complained in the mid-twentieth century when the dealer protection laws arose.

A. Direct Sales Prohibitions Arose from the Perception of Franchisee Exploitation by Franchising Manufacturers

Automotive manufacturer franchising of dealers began in 1898 with a franchise by General Motors to sell steam automobiles. *See* Francine Lafontaine & Fiona Scott Morton, *Markets: State Franchise Laws, Dealer Terminations, and the Auto Crisis*, 24 J. ECON. PERSP. 233, 234 (2010). However, for the first few decades of the 20th century, franchising was not the predominant distribution model. Rather, manufacturers employed a variety of distribution methods including direct distribution through factory-owned stores and traveling salesmen, and sales through

wholesalers, retail department stores, and consignment arrangements. *See* Thomas G. Marx, *The Development of the Franchise Distribution System in the U.S. Automobile Industry*, 59 BUS. HIST. REV. 465, 465-66 (1985). As automobile consumption intensified, however, the manufacturers moved increasingly toward an independent franchised dealer model in order to focus on their core competency in manufacturing and find additional sources of capital to fund their distribution operations. *See generally* Daniel A. Crane, *Tesla, Dealer Franchise Laws, and the Politics of Crony Capitalism*, 101 Iowa L. Rev. 573, 578-80 (2016).[2]

The dealer-franchise system that has largely prevailed since the mid-twentieth century grew out of lobbying efforts by automobile dealers from the 1930s to the 1950s in response to perceived abuses of the franchise relationship by car manufacturers. *See* Crane, *supra at* 577-79. At that time, General Motors, Ford, and Chrysler ("the Big Three") dominated the market. Dealers were largely family-owned "mom and pop" shops. Manufacturers were perceived as having grossly unequal bargaining power and were able to secure contracts that imposed draconian terms on the dealers. See Friedrich Kessler, *Automobile Dealer Franchises: Vertical Integration by Contract*, 66 YALE L.J. 1135, 1155 (1957); CHARLES

[2] A fuller history of the state dealer franchise laws, and the fact that they were solely intended to protect franchised dealers from contractual abuses by their franchising manufacturers, is set forth a forthcoming book by Professor Crane: Daniel A. Crane, *Direct Hit: How Tesla Went Straight to Consumers and Smashed the Car Dealers' Monopoly* (Cambridge University Press, forthcoming 2025).

MASON HEWITT, JR., AUTOMOBILE FRANCHISE AGREEMENTS 23-40 (1956); BEDROS PETER PASHIGIAN, THE DISTRIBUTION OF AUTOMOBILES, AN ECONOMIC ANALYSIS OF THE FRANCHISE SYSTEM (1961). For example, during the Depression, Henry Ford kept his factories running at "full tilt" and allegedly was able to "force" dealers to buy inventories of Model Ts that they would be unable to sell, under threat of not getting any more inventory in the future if they refused delivery. See James Surowiecki, Dealer's Choice, NEW YORKER (Sept. 4, 2006), http://www.newyorker.com/magazine/2006/09/04/dealers-choice-2. General Motors was similarly perceived to be exploitative of its dealers. According to a 1956 Senate Committee report, franchise agreements of the 1950s typically did not require the manufacturer to supply the dealer with any inventory and allowed the manufacturer to terminate the franchise relationship at will without any showing of cause. S. REP. NO. 2073, at 3 (1956). Conversely, the manufacturers could often force dealerships to accept cars whether the dealer could sell them or not. Thus, the franchise agreements were perceived as shifting risk downward to dealers and reward upwards to the manufacturers.

During the 1930s to 1950s, the dealers pressured Congress to enact a statutory scheme protecting them from the power of the Big Three. They obtained relatively little of what they wanted from the federal government. A 1939 report by the Federal

Trade Commission ("FTC") found some franchising abuses by manufacturers, but also that the use of manufacturer power to squeeze the dealers actually created intensive retail competition to the benefit of consumers. FED. TRADE COMM'N, ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION FOR THE FISCAL YEAR ENDED JUNE 30, 1939, at 24-25 (1939), https://www.ftc.gov/sites/default/files/documents/reports_annual/annual-report-1939/ar1939_0.pdf. The FTC also accused the dealers themselves of employing various anti-consumer practices, such as "padding" new car prices, price fixing, and "packing" finance charges. Eventually, the dealers secured a modest federal victory with the Automobile Dealers' Day in Court Act of 1956, Pub. L. No. 84-1026, 70 Stat. 1125, which allows dealers to bring a federal suit against a manufacturer who, without good faith, fails to comply with the terms of a franchise agreement or terminates, cancels, or refuses to renew a franchise. *See generally Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc*., 473 U.S. 614 (1985).

The dealers secured more significant victories in state legislatures. During the same time period, states began to pass statutes governing automotive franchise relations. Today, all 50 states have such laws. Their terms vary, but they commonly include prohibitions on forcing dealers to accept unwanted cars, protections against termination of franchise agreements, and restrictions on granting additional franchises in a franchised dealer's geographic market area. Crane, *supra at* 578-79.

One of the typical provisions in these dealer protection statutes—which is reflected in Georgia's dealer protection law—is a prohibition on direct sales by a franchising manufacturer. *See* Cynthia Barmore, *Tesla Unplugged: Automobile Franchise Laws and the Threat to the Electric Vehicle Market*, 18 Va. J. L. & Tech. 185, 189 (2013). The rationale for these direct sales prohibitions was that it was unfair for a manufacturer to induce its franchised dealer to make significant investments in promoting the manufacturer's brand and then open up its own retail store in competition with its franchised dealer. Crane, *supra*. The manufacturer could ostensibly sell below its dealer's price (by keeping the wholesale price to the dealer high) and unfairly siphon off the benefits of the dealer's investment in the brand. To prevent such exploitation of their superior bargaining power, manufacturers would be prohibited from competing against their own franchised dealers. [3]

Since at the time of these statutes the three relevant manufacturers—General Motors, Ford, and Chrysler—were all in the franchising business, most state statutes did not specifically spell out that the statutory prohibition was intended to apply to franchising manufacturers. That was simply assumed. However, the structure of many of these statutes makes clear that manufacturer competition against its own franchisees was the exclusive concern. For example, the California statute prohibits

[3] *Amici* take no position on whether any of the original justifications for direct sales prohibitions as applied to franchising manufacturers were or remain viable.

a manufacturer from opening a retail store within a ten-mile radius of its franchised dealer. California Vehicle Code - VEH § 11713.3.

This historical context reveals the purpose animating statutory prohibitions on manufacturer-direct sales. Direct sales prohibitions arose as part of a larger package of protections for dealers from the perception of unfair exploitation by their franchising manufacturer. These statutes were not intended to protect franchisees from interbrand competition from manufacturers that did not franchise at all.

B. Courts Have Recognized that Direct Sales Prohibitions Were Not Intended to Prevent Interbrand Competition by Non-Franchising Manufacturers.

Judicial decisions addressing other states' motor vehicle franchise acts reflect the historical context discussed above. The decision of the Massachusetts Supreme Court in *Massachusetts State Automobile Dealers Ass'n, Inc. v. Tesla Motors, M.A., Inc.*, 15 N.E.3d 1152 (Mass. 2014), is the leading precedent. The Massachusetts car dealers' association sued Tesla for unfair trade practices for opening a gallery in the state. The legal question presented was whether the dealers had standing to sue another electric vehicle manufacturer—Tesla—under amendments to the Massachusetts franchise dealer statute. Although the court only addressed the issue of standing—finding that the dealers lacked it—its reasoning showcases the importance of historical context in understanding the legislative rationale for direct sales prohibitions.

As the court explained, the direct sales prohibition "was enacted in recognition of the potentially oppressive power of automobile manufacturers and distributors in relation to their affiliated dealers." *Id.* at 679 (citing *Beard Motors, Inc. v. Toyota Motor Distribs., Inc*., 480 N.E.2d 303, 303 (Mass. 1985)). The direct sales prohibition was part of a "Dealers' 'Bill of Rights' Provision," that "was intended to protect franchised dealerships from specific types of abuses by their manufacturers." *Id.* (citation omitted).

The statute created a private right of action for "any motor vehicle dealer" injured by a violation of the statute, and the dealers argued that they were such parties under a literal reading of the statute. *Id.* at 681. After casting doubt on whether the statute even applied to Tesla, the court came to what it thought the more significant point: The statute had to be read in the context of the "cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished." *Id.* at 682 (citations omitted). The dealers argued that they were intended beneficiaries of the statute, since direct sales would permit Tesla to save costs and sell at a lower price to consumers, thus competing unfairly with the dealers. *Id.* The court rejected this argument. "The type of competitive injury" the dealers described "between unaffiliated entities" was "not within the statute's area of concern." *Id.* at 684. Historically, the statute was intended "to protect motor vehicle dealers from a host of unfair acts and practices historically directed at them ***by their***

own brand manufacturers and distributors." *Id.* at 684-85 (emphasis added). "It would be anomalous to find, within this detailed list of rights and protections that are conferred on dealers vis-à-vis their manufacturers and distributors, a lone provision giving dealers protection against competition from an unaffiliated manufacturer." *Id.* at 685. The court concluded that the direct sales prohibition "was intended and understood only to prohibit manufacturer-owned dealerships when, unlike Tesla, the manufacturer already had an affiliated dealer or dealers in Massachusetts." *Id.* at 688.

The Massachusetts Supreme Court got the history exactly right. So did the New York Supreme Court in *Greater New York Automobile Dealers Ass'n v. Department of Motor Vehicles*, 969 N.Y.S.2d 721 (N.Y. S. Ct. 2013), another decision denying the dealers standing to challenge Tesla's opening of a retail operation. Like the Massachusetts court, the New York court understood the state's direct sales prohibition to regulate the relationship between a franchising manufacturer and its franchised dealer, not interbrand competition by non-franchising manufacturers:

> The Franchised Dealer Act regulates the relationship between a car company (manufacturer) and its franchised dealers. In order to commence an action for a violation of Article 17–A of the VTL Law, there must be a franchise relationship between the franchisor and the franchisee. Manufacturers and dealers cannot utilize the Franchised Dealer Act as a means to sue their competitors.

Id. at 726.

The United States Supreme Court has long recognized the critical distinction between the regulation of intrabrand competition—competition among separate sellers of the same brand of product—and interbrand competition—competition between sellers in different brands. *See, e.g., Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 878 (2007). Since Lucid does not have any franchised dealers, its eligibility to open a dealership solely concerns interbrand competition—competition between Lucid and dealers who sell different brands of cars. There is no historical evidence that the direct sales prohibitions in dealer protection statutes were motivated by concerns regarding interbrand competition. They were solely concerned with protecting dealers from exploitation by their own franchising manufacturers. And that concern has no application to non-franchising manufacturers.

Indeed, a few of the more honest car dealers have publicly recognized that the dealer franchise laws were intended to govern the contractual relationship between franchising manufacturers and their franchises, not to regulate car companies that do not sell through franchisees, and that direct sales prohibitions are therefore nothing but dealer protectionism. In 2014, AutoNation CEO Mike Jackson made a speech at the Detroit Economic Club in which he admitted that direct sales prohibitions are "unnecessary protectionism," and that the franchise dealer laws were intended to

govern relationships between manufacturers and their franchisees, not interbrand competition.[4] Mr. Jackson had both the history of these laws, and their current misuse to block direct sales by companies like Lucid, exactly right.

II. THERE IS NO CONSUMER PROTECTION BASIS FOR PROHIBITING DIRECT SALES TO CONSUMERS.

As noted in the previous section, the historical concern with allowing car manufacturers to open their own retail stores—that they might unfairly undermine their own franchised dealers—simply does not apply to a manufacturer that does not employ dealers. Nor is there any other plausible justification for such a prohibition. To the contrary, prohibiting direct sales by non-franchising manufacturers will only harm consumer choice, impede innovation, and slow the penetration of EV technology.

A. There Is No Consumer Protection Justification for Prohibiting Direct Sales by Non-Franchising Manufacturers.

As noted in the previous section, the only historically grounded legislative purpose for direct sales prohibitions was protecting dealers from exploitation by their franchising manufacturer. Nonetheless, in recent years lobbyists for existing car dealers have sought to recast the direct sales bans as consumer protection measures. These arguments have no basis in history, public policy, or economics.

First, the arguments are entirely contrary to the history of the dealer franchise

[4] John Voelcker, "Michigan Anti-Tesla Law 'Unnecessary Protectionism': AutoNation CEO," Yahoo!, November 10, 2014.

acts. As noted above, the vehicle franchise acts of the mid-twentieth century, from which contemporary state statutes descend, were solely concerned with protecting *dealers*, not *consumers.* There is not a whiff of consumer-protection sentiment in these statutes.

Second, it is notable that the arguments in favor of consumer protection are being advanced by dealers who stand to gain financially from the limitation of competition rather than by consumer advocates. The consumer advocates are all on the side of permitting direct sales. For example, the senior leadership of the Federal Trade Commission—the preeminent federal consumer protection organization—has expressed the view that direct sales prohibitions "operate as a special protection for dealers—a protection that is likely harming both competition and consumers."[5] Similarly, the Consumer Federation of America, Consumer Action, Consumers for Auto Reliability and Safety, and the American Antitrust Institute have argued that direct sales prohibitions are harmful to consumer choice and should be repealed.[6]

---

[5] Letter to Senator Darwin L. Booher from Directors of FTC's Office of Policy Planning, Bureau of Competition, and Bureau of Economics (May 7, 2015), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-regarding-michigan-senate-bill-268-which-would-create-limited-exception-current/150511michiganautocycle.pdf (statement by Directors of Bureaus of Economics and Competition and Office of Policy Planning).

[6] https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjdk6rEhIH7AhXirYkEHTfVAF0QFnoECA4QAQ&url=https%3A%2F%2Fwww.autonews.com%2Fassets%2FPDF%2FCA98362217.PDF&usg=AOvVaw2q-aEMuK_w6Dcepj_A27AP.

Not a single consumer organization has joined the dealers' self-serving claim that protecting them from interbrand competition will benefit consumers.

Finally, there is simply no plausible economic merit to the argument that prohibiting consumers from choosing to buy directly from a manufacturer is in consumers' interest. Such arguments have been repeatedly debunked by leading economists, including past senior leaders of the Justice Department's Antitrust Division and Federal Trade Commission.[7]

Under no viable economic theory would forcing manufacturers to sell through dealers decrease prices to consumers by eliminating the manufacturer's power to charge a monopoly retail mark-up. Any claim that forcing car manufacturers to sell through independent franchised dealers reduces prices to consumers would rest on the erroneous view that a manufacturer that vertically integrates into distribution can charge a monopoly mark-up by eliminating intrabrand retail competition for its cars. *See* Daniel A. Crane, *Why Intra-Brand Dealer Competition Is Irrelevant to the Price Effects of Tesla's Vertical Integration*, 165 U. Pa. L. Rev. Online 179 (2017). As the Supreme Court has long recognized, manufacturers would earn lower, not higher, profits if the retail mark-up increased. *See Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 56 & n. 24 (1977).

[7] https://pluginamerica.org/wp-content/uploads/2021/04/Direct-Sales-Nationwide-Organizations-Open-Letter-4.13.pdf.

By contrast, direct sales could lead to lower prices to consumers, for at least two reasons. *First*, vertical integration may allow the manufacturer to achieve marginal cost savings that could be passed on to consumers. *See*, *e.g.*, Gerald R. Bodisch, *Economic Effects of State Bans on Direct Manufacturer Sales to Car Buyers* (justice.gov). *Second*, if there is market power in the distribution chain, vertical integration might eliminate double marginalization—the successive monopoly mark-ups that can occur when separate economic actors in a vertical distribution chain set their prices to maximize their profits. See, e.g., JEAN TIROLE, THE THEORY OF INDUSTRIAL ORGANIZATION 174-75 (1988).

Indeed, existing-dealer groups have frankly admitted that direct sales will lead to *lower*, not higher, prices to consumers. In the previously discussed Massachusetts litigation, the dealers argued that "[u]nless the defendants are enjoined, they will be allowed to compete unfairly with the dealers as their model of manufacturer owned dealerships with remote service centers will allow Tesla and Tesla MA financial savings which would not be available to Massachusetts dealers who must spend considerably to conform to Massachusetts law. This could cause inequitable pricing which also [could] cause consumer confusion and the inability to fairly consider the various automobiles offered." 15 N.E. at 1159. In order for the dealers to have injury, "financial savings" leading to "inequitable pricing" must mean *lower* prices—precisely what economic theory would predict.

The dealers have also argued that prohibiting manufacturers to run their own retail operations would protect consumers from unfair manufacturer denial of warranty reimbursement for repair services. That argument is economically erroneous, but in any event has no relevance to the Georgia regulatory scheme, which does not prohibit a manufacturer from opening its own service centers.

In sum, there is no viable consumer protection reason for prohibiting direct sales. Moreover, this fact is confirmed by the exemption in the Georgia legislation allowing just one company—Tesla—to sell its electric vehicles directly to consumers. Clearly, the Legislature did not believe that Tesla selling directly to consumers posed a threat to consumer welfare. Tesla has sold over two million automobiles directly to consumers in the United States, and *Amici* are unaware of any evidence that the direct sales model has led to systematic abuse of consumers. The availability of a direct sales approach should not be limited to a single company. There is no legitimate public policy reason to deny it to other, similarly situated electric vehicle manufacturers.

B. Prohibiting Non-Franchising Manufacturers from Selling Directly Will Diminish Consumer Choice, Impede Innovation, and Slow the Penetration of EV Technology.

Not only is there no viable justification for prohibiting direct sales by non-franchising manufacturers, but there are important reasons for allowing direct sales, particularly as applied to the new field of electric vehicles. Prohibiting consumers

from buying directly from manufacturers limits consumer freedom and choice, impedes innovation, and retards the penetration of EV technology.

To *Amici's* knowledge, almost every EV start-up that has announced its plans to sell EVs in the United States has announced that it will pursue a direct sales model because selling through franchised dealers would be a significant competitive disadvantage. This list includes a large and diverse set of American companies—not just Lucid, but well-known manufacturers like Tesla, newer EV companies like Rivian, medium and heavy-duty truck manufacturers like Arrival, and solar-powered car makers like Aptera. These companies have uniformly argued that the franchise dealer model is not suitable for EV sales by start-up companies that do not already have an established dealer network.

The argument that direct sales are critical to the success of EV start-ups runs as follows: The traditional dealer model is based on high-pressure sales tactics to sell existing inventory to customers who already understand the technology, and then to earn the majority of the dealership's profits when the customer returns for service on the car. None of those assumptions work for EV sales. Customers need to be educated about the new technology, and most customers interact with an EV company a number of times before deciding to buy its product. *See* Fiona Scott Morton & Ann McDermot, *Retail Auto Sales: Tesla v. State Vehicle Franchise Laws*, in John E. Kwoka & Lawrence J. White, The Antitrust Revolution:

Economics, Competition, and Policy (7th ed. 2018), at 408 (explaining that indpendent franchised dealers "lack the incentive to invest the time to educate a consumer" about electric vehicle technologies). There is no existing inventory sitting on the lot; EVs are typically build-to-order. And the profits dealers can expect from service are significantly lower than with internal combustion cars, since an EV's service needs tend to be much lower. Not surprisingly, secret shopper studies of EV by dealers by the Sierra Club and Consumer Reports have found that existing dealers are ill-motivated and ill-prepared to sell EVs.[8]

If the EV start-ups' arguments are correct, then prohibiting direct sales by non-franchising EV start-ups could have serious, negative consequences for innovation and EV market penetration. To be clear, *Amici* take no position on whether these EV start-ups are correct, or have the right distribution strategy. Which distribution strategies work for which companies and which consumers can be ascertained only in a competitive market when companies and consumers can freely experiment and choose. Unless there is some rational public policy reason to prohibit non-franchising manufacturers from pursuing a direct sales strategy, that strategy should be permitted. As noted throughout this brief, there is no such rational policy reason. Neither the original justification for direct sales prohibitions, nor any more

[8] Sierra Club Releases First Ever Nationwide Investigation into Electric Vehicle Shopping Experience | Sierra Club; Dealership Survey | Electric Cars - Consumer Reports News.

recent arguments by car dealers, support a prohibition on direct sales as applied to non-franchising manufacturers.[9]

CONCLUSION

Amici respectfully submit that there is no rational basis for prohibiting a non-franchising manufacturer like Lucid from selling its cars directly to consumers and that applying Georgia law to bar Lucid from direct sales can only be understood as a measure to protect car dealers from economic competition.

CERTIFICATION OF WORD COUNT

This submission does not exceed the word-count limitation of 7,000 words imposed by Rule 20

July 10, 2025

Respectfully submitted,

/s/ John J. Park, Jr.

John J. Park, Jr.
Counsel for Amici
GA. Bar No. 547812
P.O. Box 3073
Gainesville, GA 30503
(703) 888-8329
jackparklaw@gmail.com

[9] *Amici* take no position on whether any of the original justifications for direct sales prohibitions as applied to franchising manufacturers are still viable.

CERTIFICATE OF SERVICE

I certify that I have this day served a true and correct copy of the foregoing Brief of Legal and Economic Scholars in Support of Appellant Lucid Group USA on all counsel of record by electronic mail. I certify that there is a prior agreement with all appellant's and appellees' counsel of record listed below of documents in a PDF format sent via email to suffice for service under Supreme Court Rule 14.

KEITH R. BLACKWELL
ALSTON & BIRD LLP
One Atlantic Center
1201 W. Peachtree St., Suite 4900
Atlanta, GA 30309

ANDREW M. GROSSMAN
KRISTIN A. SHAPIRO
BAKER & HOSTETLER LLP
Washington Square, Suite 1100
1050 Connecticut Ave., NW

keith.blackwell@alston.com

Washington, DC 20036
agrossman@bakerlaw.com
kshapiro@bakerlaw.com

S. DEREK BAUER
JEFFREY R. BAXTER
BAKER & HOSTETLER LLP
1170 Peachtree Street, Suite 2400
Atlanta, GA 30309
dbauer@bakerlaw.com
jbaxter@bakerlaw.com

BILLY M. DONLEY
BAKER & HOSTETLER LLP
811 Main Street, Suite 1100
Houston, TX 77002
bdonley@bakerlaw.com

Counsel for Appellant

RONALD J. STAY
Georgia Department of Law
40 Capitol Square, SW
Atlanta, GA 30334-1300
rstay@law.ga.gov

STEPHEN PETRANY
ROSS BERGETHON
Georgia Department of Law
40 Capitol Square, SW
Atlanta, GA 30334-1318
spetrany@law.ga.gov
rbergethon@law.ga.gov

CAREY A. MILLER
VINCENT R. RUSSO
JOSHUA R. BELINFANTE
MACY M. MCFALL
MILES C. SKEDSVOLD
Robbins Alloy Belinfante Littlefield LLC
500 14 th Street, NW
Atlanta, GA 30318
cmiller@robbinsfirm.com
vrusso@robbinsfirm.com
jbelinfante@robbinsfirm.com
mmcfall@robbinsfirm.com
mskedsvold@robbinsfirm.com

Counsel for The State of Georgia

Counsel for Intervenor
Georgia Automobile Dealers
Association