

FILED  
Court of Appeals  
Division I  
State of Washington  
3/7/2025 3:01 PM

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
3/10/2025  
BY SARAH R. PENDLETON  
CLERK

**NO. 1037228**

**IN THE WASHINGTON STATE SUPREME COURT**

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COURT OF APPEALS

CAUSE NO. 86123-9-I

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LUCID GROUP USA, INC.,  
Petitioner

vs.

STATE OF WASHINGTON,  
DEPARTMENT OF LICENSING,  
Respondent

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**BRIEF OF AMICI CURIAE COLTURA, CONSUMERS  
FOR AUTO RELIABILITY AND SAFETY, AND THE  
SEATTLE ELECTRIC VEHICLE ASSOCIATION  
IN SUPPORT OF PETITION FOR REVIEW**

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Dated: March 7, 2025

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## I. INTRODUCTION

Washington law currently permits Tesla, alone among all automobile manufacturers, to sell directly to consumers in our state. For all other manufacturers, including manufacturers of electric vehicles (“EVs”), sales are permitted only through independent franchised dealerships. Amici Coltura, Consumers for Auto Reliability and Safety, and the Seattle Electric Vehicle Association (collectively, the “EV Coalition”) support Petitioner Lucid Group USA, Inc.’s (“Lucid”) petition for review in this matter for two primary reasons.

To start with, if the law challenged here, which gives a single, politically-favored actor unique access to a major market, does not violate the Privileges and Immunities Clause of the Washington Constitution, then it is hard to imagine any law that would. The Court of Appeals’ rejection of Lucid’s challenge effectively renders the Privileges and Immunities Clause a nullity and review is justified on that ground alone.

But, as we explain more fully below, review is also justified because requiring EVs to be sold through franchised dealerships is inimical to Washington's commitment to almost entirely eliminate the state's greenhouse gas ("GHG") emissions by mid-century. For a variety of reasons, the dealership system is likely to retard, rather than encourage, EV sales, and widespread adoption of EVs is a critical component of Washington's climate strategy because it is the most effective means of addressing Washington's largest source of GHG emissions. The Court of Appeals opinion therefore jeopardizes achievement of Washington's climate commitments, "an issue of substantial public interest" that should be addressed by this Court. RAP 13.4(b)(4).

## **II. IDENTITY AND INTEREST OF AMICI**

The identities and interests of the EV Coalition are detailed in the motion for leave to file this memorandum.



### **III. STATEMENT OF THE CASE**

The EV Coalition relies on Petitioner's statement of the case.

### **IV. ARGUMENT**

#### **A. The Legislature Has Committed Washington to Steep Reductions in GHG Emissions.**

The Legislature has committed to steadily reducing Washington's GHG emissions so that they are 95% below 1990 levels by 2050. RCW 70A.45.020. To achieve these reductions, the Legislature has adopted a suite of legislation that comprehensively addresses the state's GHG emissions. These statutes include: the Climate Commitment Act ("CCA"), RCW Chapter 70A.45, which establishes a "cap-and-invest" program that will reduce GHG emissions from major emitters in the state; the Clean Energy Transformation Act ("CETA"), RCW Chapter 19.405, which requires decarbonization of the state's electricity sector; the Clean Buildings Act, RCW 19.27A.200–270, which sets energy performance standards for the state's large buildings; and legislation to address specific GHGs like

hydrofluorocarbons (a refrigerant that is also a powerful GHG), RCW Chapter 70A.60, and methane, RCW Chapter 70A.540.

GHG emissions from the transportation sector account for about 40% of Washington’s GHG emissions, easily the largest share from any sector, and remain stubbornly high.<sup>1</sup> The Legislature has adopted several measures to address transportation-related GHG emissions. These include measures to encourage utilities to promote the electrification of transportation or the use of alternative fuels, RCW 80.28.360–.365, RCW 54.16.430, and the Clean Fuel Standard, which requires motor fuels sold in Washington to meet increasingly stringent limits on the GHG intensity of those fuels, culminated in a requirement that such fuels have a carbon intensity 20% below 2017 levels by 2038. RCW Chapter 70A.535.

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<sup>1</sup> See *Washington Greenhouse Gas Inventory*, WASHINGTON DEPARTMENT OF ECOLOGY (last visited Mar. 3, 2025), available at <https://ecology.wa.gov/air-climate/reducing-greenhouse-gas-emissions/tracking-greenhouse-gases/ghg-inventories>.

Finally, and most relevant to this memorandum, in 2022, Washington adopted California’s vehicle emissions standards via the Clean Vehicles Program rule (the “CVP Rule”), which requires that 100% of new cars, light-duty trucks, and medium-duty vehicles must be zero-emission vehicles (“ZEVs”), including EVs and hydrogen fuel cell vehicles, by 2035.<sup>2</sup> Further, via the Clean Cars 2030 Law, the legislature set a target date of 2030 for all passenger and light duty vehicles sold, purchased, or registered in Washington to be electric vehicles.<sup>3</sup> To accomplish these goals, the CVP Rule includes incentives to help consumers purchase ZEVs and supports the expansion of public charging networks.

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<sup>2</sup> See *Washington Clean Cars*, WASHINGTON STATE DEPARTMENT OF ECOLOGY (last visited Mar. 3, 2025), available at <https://ecology.wa.gov/Air-Climate/Air-quality/Vehicle-emissions/Clean-cars>; see also *Washington Transportation Electrification Strategy*, INTERAGENCY ELECTRIC VEHICLE COORDINATING COUNCIL, at 25 (Feb. 2024), available at <https://deptofcommerce.app.box.com/s/uphekt6rwpmtvbhojyi6eifjxdwttdvh>.

<sup>3</sup> Codified at RCW 43.392.020.

According to the state's Transportation Electrification Strategy, widespread adoption of EVs is critical to meeting Washington's GHG reduction goals.<sup>4</sup> As MIT experts recently stated, "[i]f electric vehicles are going to change the way we travel in time to meet our climate goals, people need to start choosing them over [traditional vehicles] today."<sup>5</sup> EVs also provide significant consumer benefits, including reduced fuel costs (especially in Washington, which enjoys among the lowest electricity rates in the nation), reduced maintenance, and lower lifetime costs of ownership.<sup>6</sup> EVs can also support operation of the electric grid, thus allowing greater use of renewable energy sources like wind and solar,<sup>7</sup> and can act as emergency backup

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<sup>4</sup> *Id.*

<sup>5</sup> David Keith & Aaron Krol, *Electric Vehicles*, MIT CLIMATE PORTAL (July 24, 2023), available at <https://climate.mit.edu/explainers/electric-vehicles>.

<sup>6</sup> See *Electric Vehicle Benefits for Washington*, UNION OF CONCERNED SCIENTISTS (Mar. 2024), available at <https://www.ucsusa.org/sites/default/files/2024-05/wa-state-ev-benefits.pdf>.

<sup>7</sup> Fitzgerald, Nelder, and Newcomb, *Electric Vehicles as Distributed Energy Resources*, ROCKY MOUNTAIN INSTITUTE

generators for home use during power outages.<sup>8</sup> Yet Washington EV sales are well below the rate necessary to meet the law's requirements over the long term.<sup>9</sup>

### **B. Franchised Automobile Dealerships Discourage EV Adoption.**

Under the status quo, ZEVs are unlikely to account for 100% of new passenger vehicle sales in Washington by 2035 in large part due to institutional bias from traditional franchised automobile dealerships. To start with, the CVP Rule's ZEV mandate is aimed at manufacturers, not dealers. So, while manufacturers must ensure that 35% of new light-duty vehicles sold in Washington are electric or plug-in hybrids by 2026 and 100% by 2035, dealers themselves are under no obligation to

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ELECTRICITY INNOVATION LAB (June 2016), available at [https://rmi.org/wp-content/uploads/2017/04/RMI\\_Electric\\_Vehicles\\_as\\_DERs\\_Final\\_V2.pdf](https://rmi.org/wp-content/uploads/2017/04/RMI_Electric_Vehicles_as_DERs_Final_V2.pdf).

<sup>8</sup> *A Better Alternative to Generators for Emergency Power*, City of Thousand Oaks (Jan. 22, 2025), available at <https://toaks.gov/news-and-updates&prid=94>.

<sup>9</sup> INTERAGENCY ELECTRIC VEHICLE COORDINATING COUNCIL, *supra* note 2, at 25.

purchase ZEVs from manufacturers.<sup>10</sup> It is little wonder, then, why Tesla—as the only direct sales auto manufacturer in the state—accounted for over half all ZEVs sold in Washington in 2023.<sup>11</sup>

Unfortunately, as Petitioner highlights, the independent franchise model of auto sales does not promote EV adoption. Franchised dealer markups for EVs are often greater than for gas-powered vehicles,<sup>12</sup> which may “eat” state or federal incentives intended to encourage EV sales. Further, EVs typically require

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<sup>10</sup> See *Manufacturer Information*, WASHINGTON STATE DEPARTMENT OF ECOLOGY (last visited Mar. 3, 2025), available at <https://ecology.wa.gov/air-climate/reducing-greenhouse-gas-emissions/vehicle-emissions-standards/manufacture-information>.

<sup>11</sup> *Id.*

<sup>12</sup> Jacob Boggs & Aaron Gregg, *GM and Ford Threaten to Withhold Popular Cars as Dealerships Raise Prices*, THE WASHINGTON POST (Feb. 12, 2022), available at <https://www.washingtonpost.com/business/2022/02/12/ford-gm-dealer-markups/>; Russ Heaps, *How to Avoid Dealer Markups in 2024: Buyer Beware*, KELLY BLUE BOOK (Mar. 29, 2024), available at <https://www.kbb.com/car-advice/buyer-beware-dealer-markups/> (noting that, in 2023, Toyota, Honda, Lexus, and Kia purchasers paid 6-8% over MSRP).

far less maintenance than traditional internal combustion engine vehicles because they have fewer moving parts.<sup>13</sup> EV maintenance can also be more efficient and cost-effective for consumers, because certain repairs and diagnostics can be conducted remotely without the need to visit an in-person service center.<sup>14</sup> But franchised dealer service departments account for 49% of a dealer's gross profits,<sup>15</sup> creating a serious disincentive for dealers to actively promote EV sales.

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<sup>13</sup> *Maintenance and Safety of Electric Vehicles*, U.S. DEPARTMENT OF ENERGY (last visited Mar. 5, 2025), available at <https://afdc.energy.gov/vehicles/electric-maintenance>.

<sup>14</sup> Thomas Rudy, *A New Era of Auto Repair: How Electric Cars Will Be Fixed in the Future and What It Means for Consumers*, YAHOO! FINANCE (Feb. 16, 2023), available at [https://finance.yahoo.com/news/era-auto-repair-electric-cars-150556176.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce\\_referrer\\_sig=AQAAAK6m8irD8j9-c2F1wgKGKK7j4d6ENAS6aLZe8t5W2kWac3FydKrieHDYm71T6m3zraBmV1sookBCqGFmuchHSVJndC02k4HN667rxk3oKvyO83bYIoMa6CZvIAqqmFibk1Qh3jdgG1o7S7u9zlUh5SdogMuxZIwZmPgpSqVyrYbfA](https://finance.yahoo.com/news/era-auto-repair-electric-cars-150556176.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAK6m8irD8j9-c2F1wgKGKK7j4d6ENAS6aLZe8t5W2kWac3FydKrieHDYm71T6m3zraBmV1sookBCqGFmuchHSVJndC02k4HN667rxk3oKvyO83bYIoMa6CZvIAqqmFibk1Qh3jdgG1o7S7u9zlUh5SdogMuxZIwZmPgpSqVyrYbfA).

<sup>15</sup> Kimberley Hurley, *Service Department Now Makes up 49% of Your Dealership's Gross Profit*, CBT NEWS (Sept. 10, 2018), available at <https://www.cbtnews.com/service-department-now-makes-up-49-of-your-dealerships-gross-profit/#:~:text=>

Additionally, independent franchised dealers have been found to actively discourage EV sales by, for example, providing inaccurate information to consumers and otherwise steering them toward gas-powered models.<sup>16</sup> A recent study found that, largely because selling traditional vehicles requires less consumer education and less effort than selling EVs, nearly half of car salesmen are “not at all excited” about selling EVs, while only 8% of salesmen are “very excited” or “extremely excited” to sell EVs.<sup>17</sup> Washington franchised dealers have hindered the transition to electric vehicles in other ways, such as by working with the Trump Administration to reverse the Biden Administration’s “de facto electric vehicle mandate.”<sup>18</sup> And in

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The%20National%20Automobile%20Dealers%20Association,of%20the%20new%20tax%20laws.

<sup>16</sup> *Electric Vehicles are Hitting a Road Block*, WASHINGTON POST (Nov. 9, 2023) available at: <https://www.washingtonpost.com/climate-solutions/2023/11/09/car-dealerships-ev-sales/>.

<sup>17</sup> Patrick George, *Your Car Dealer Is Probably “Not Excited At All” to Sell EVs*, INSIDE EVs (Aug. 8, 2024), available at: <https://insideevs.com/news/729255/ev-dealers-not-excited/>.

<sup>18</sup> *See Open Ltr. from Auto Dealers to President Trump*, EV VOICE OF THE CUSTOMER (last visited Mar. 5, 2025), available at



California, the California New Car Dealers Association is funding a lobbying campaign urging the California Air Resources Board to pause enforcement of the state's EV mandate.<sup>19</sup>

Finally, dealerships commonly engage in predatory and abusive tactics. For example, the Federal Trade Commission recently adopted rules aimed at two illegal tactics, bait-and-switch tactics and hidden junk fees, which were estimated to save consumers nationwide more than \$3.4 billion and an estimated 72 million hours each year shopping for vehicles.<sup>20</sup> Unfortunately, the rule was recently struck down by the Fifth Circuit on procedural grounds.<sup>21</sup> For a technology already struggling for widespread consumer acceptance, these kinds of unscrupulous tactics could, if employed in EV sales, artificially

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<https://evvoiceofthecustomer.com/> (signed by nearly 100 Washington franchised dealers).

<sup>19</sup> See Calibrate.org.

<sup>20</sup> 89 Fed. Reg. 590 (16 C.F.R. Part 463).

<sup>21</sup> *Nat'l Auto. Dealers Ass'n v. Fed. Trade Comm'n*, 127 F.4th 549 (5th Cir. 2025).

taint the public image of EVs, further hindering EV adoption. Making matters worse, approximately 3,000 franchised dealers have not even bothered to register their EV sales with the IRS, leading to numerous consumers having their promised EV tax credit denied.<sup>22</sup>

For these reasons, Washington’s Interagency Electric Vehicle Coordinating Council unsurprisingly has advised that enabling auto manufacturers to “sell direct to consumers” is critical to “accelerate” ZEV adoption rates.<sup>23</sup>

## V. CONCLUSION

This Court should accept review because this case raises issues of extreme public importance, namely, the achievement of the Legislature’s strong climate policies, which are aimed at addressing one of the most serious long-term threats to

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<sup>22</sup> *Why Some EV Buyers Are Getting Their Tax Returns Rejected This Year*, NPR (Feb. 20, 2025), available at <https://www.npr.org/2025/02/28/nx-s1-5301005/ev-tax-credit-returns-denied>.

<sup>23</sup> INTERAGENCY ELECTRIC VEHICLE COORDINATING COUNCIL, *supra* note 2, at 26.

Washington's future. This Court should grant review to correct the Court of Appeals' failure to consider these policies.

This document contains 1,751 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of March, 2025.

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### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was filed with the Clerk on the above date using the Court's electronic filing system with a copy served upon all counsel of record.

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**Appellate Court Case Title:** Lucid Group USA, Appellant v State Licensing, Respondent  
**Superior Court Case Number:** 23-2-00783-0

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