NO. 103722-8

SUPREME COURT OF THE STATE OF WASHINGTON

LUCID GROUP USA, INC.,

Petitioner,

v.

STATE OF WASHINGTON, DEPARTMENT OF LICENSING,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Lucid Group USA, Inc. (Lucid), asks this Court to grant it what our Legislature has not: the right to sell cars directly to Washington consumers. To do so, Lucid asks the Court to take an expansive view of the right implicated by Washington's vehicle dealer licensing laws. The Court of Appeals properly declined that request, following this Court's well-established privileges and immunities case law rejecting "'attempts to assert the right to carry on business when a narrower, nonfundamental right is truly at issue.'" *Lucid Group USA, Inc. v. Dep't of Licensing*, 33 Wn. App. 2d 75, 94, 559 P.3d 545 (2024) (quoting *Assoc'n of Wash. Spirits and Wine Distribs. v. Liquor Control Bd.*, 182 Wn.2d 342, 360, 340 P.3d 849 (2015)).

The Court of Appeals correctly concluded that this case did not implicate the privileges and immunities clause because Lucid is not prevented from engaging in business in Washington's motor vehicle market and is merely required to comply with Washington's Franchise Act. *Lucid Group USA,*

Inc., 33 Wn. App. 2d at 94-95. The court properly understood that a narrower, nonfundamental right was at issue—the right to sell cars. *Id.* And because no fundamental right of state citizenship was involved, the court correctly found that the legacy clause exception at RCW 46.96.185(1)(g)(vii) was constitutional, too. *Id.* at 97 n.10.

This Court need not revisit the Court of Appeals' analysis. The court's opinion is consistent with this Court's privileges and immunities decisions. RAP 13.4(b)(1). And, because this Court has already offered ample guidance to resolve the narrow question in this case, the petition does not involve a significant question of law under the Washington Constitution. RAP 13.4(b)(3). Nor does it raise a matter of substantial public interest that should be determined by this Court. RAP 13.4(b)(4). Rather, Lucid's petition raises a policy issue that only the legislature can decide. The Court should deny review.

II. COUNTERSTATEMENT OF THE ISSUES

Is the right to be licensed as a vehicle dealer a fundamental right of state citizenship that implicates the privileges and immunities clause of the Washington Constitution?

If the right to sell cars is a fundamental right of state citizenship, does the legislature have reasonable grounds to bar manufacturers and their affiliates from simultaneously operating as vehicle dealers to ensure "fair competition among dealers and others" and safeguarding "necessary reliable services to the consuming public" and "stable employment to the citizens of this state"? RCW 46.96.010.

III. STATEMENT OF THE CASE

A. Washington Law Generally Prohibits Vehicle Manufacturers and Their Affiliates from Operating as Vehicle Dealers

Washington has a comprehensive licensing and regulatory scheme for both motor vehicle manufacturers and motor vehicle dealers. *See* chapters 46.70 and 46.96 RCW. To operate in

Washington, both manufacturers and dealers must be licensed by the Department of Licensing. RCW 46.70.021.

Washington's Franchise Act, chapter 46.96 RCW, which governs the relationship between vehicle manufacturers and dealers, generally prohibits a vehicle manufacturer or any affiliated entity from simultaneously operating as a vehicle dealer. Specifically, RCW 46.96.185(1) states that a "manufacturer" or an "affiliated entity" shall not "compete with a new motor vehicle dealer of any make or line by acting in the capacity of a new motor vehicle dealer, or by owning, operating, or controlling, whether directly or indirectly, a motor vehicle dealership in this state." RCW 46.96.185(1)(g). And only licensed dealers may sell cars. RCW 46.70.021; RCW 46.96.185(1)(g). In 2014, the legislature made explicit that a violation of chapter 46.96 RCW is grounds for denying a dealer license. RCW 46.70.045.

The statute includes limited exceptions. RCW 46.96.185(1)(g)(i)-(vii). Under RCW 46.96.185(1)(g)(i), a

manufacturer may "own or operate a dealership for a temporary period . . . during the transition from one owner of the dealership to another. . . ." Another exception allows a "truck manufacturer to own, operate, or control a new motor vehicle dealership that sells only trucks of that manufacturer's line make with a gross vehicle weight rating of 12,500 pounds or more," provided that "the truck manufacturer has been continuously engaged in the retail sale of the trucks at least since January 1, 1993[.]" RCW 46.96.185(1)(g)(iv).

In 2014, the legislature added a new exception to the statute. RCW 46.96.185(1)(g)(vii). That exception is a standard legacy clause permitting a "manufacturer that held a vehicle dealer license in this state on January 1, 2014," to own or operate a dealership that "sells new vehicles that are only of that manufacturer's makes or lines and that are not sold new by a licensed independent franchise dealer . . . ." RCW 46.96.185(1)(g)(vii).

B. The Department Issued Lucid USA a Vehicle Manufacturer License and Denied its Affiliate, Lucid Group, a Vehicle Dealer License

Lucid USA manufactures electric motor vehicles. Administrative Record (AR) 578, 585, 780, FF 4.6. Lucid Group is an affiliate of Lucid USA; Lucid USA sells its vehicles exclusively through Lucid Group. AR 436, 502-503, 506, 578, 585, 780; FF 4.7.

In 2022, Lucid USA applied for a vehicle manufacturer license and, on the same day, Lucid Group applied for a dealer license.[1] The Department issued Lucid USA a vehicle manufacturer license and denied Lucid Group's application for a dealer license, because issuing it would cause the company to violate RCW 46.96.185(1)(g). AR 67-8, 579, 710-11, 780; FF 4.11.

[1] Lucid misstates that DOL "informed Lucid it could obtain" a dealer license. Pet. 4. DOL only informed Lucid it could *apply* for a dealer license and DOL would review its application to determine if it met the criteria. AR 578.

Lucid appealed the Department's denial of a dealer license. AR 73-174. In the administrative proceedings, Lucid primarily argued that RCW 46.96.185(1)(g)'s bar on vehicle manufacturers competing with franchised dealers did not apply to it because Lucid does not have its own franchise dealers. AR 239-44. It also argued that the law and the Department's denial of Lucid's dealer application violated both the Washington and United States constitutions. AR 244-48.

Both the Office of Administrative Hearings and the Director's designee found that the Department properly denied Lucid's application for a dealer license because granting the license would violate RCW 46.96.185(1)(g). AR 778-86; 1055-68. Both administrative decisionmakers declined to address Lucid's constitutional arguments, as they lacked the authority to rule on them. AR 783, CL 5.11; AR 1056 ¶ 2.1.

C. The Court of Appeals Affirmed the Denial of Lucid's Dealer License, Holding the Law Does Not Implicate a Privilege or Immunity

Lucid sought judicial review of the Department's final order on multiple grounds, arguing: (1) the statute did not prohibit Lucid from competing with new vehicle dealers; (2) the statutory prohibition on manufacturers competing with new vehicle dealers violated the privileges and immunities clause of the Washington constitution; and (3) the statute violated the equal protection and due process clauses of the United States constitution.[2] The Court of Appeals took direct review under RCW 34.05.518(1).

The Court of Appeals affirmed the Department's denial. The court found there was no fundamental right of state citizenship to operate as a vehicle dealer and, therefore, the privileges and immunities clause was not implicated. *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 91-95. Following this

[2] Lucid abandons all its arguments save the privileges and immunities claim under Washington's constitution.

Court's precedent, the Court of Appeals rejected Lucid's argument that the licensing requirement implicated the "fundamental right to do business," because it did not preclude Lucid from doing business or give preferential treatment to a class of competitors at Lucid's expense. *Id.* at 94-95. As such, Lucid's claim implicated only a narrower right: the ability to operate as a vehicle dealer, which the court found was not a fundamental right of state citizenship. *Id.* The court also explained that, even if a fundamental right were implicated, there were reasonable grounds for the licensing requirements. *Id.* at 95 n.8.

IV. REASONS WHY REVIEW SHOULD BE DENIED

The Court of Appeals applied settled law to properly reject Lucid's claim that RCW 46.96.185(1)(g)'s bar on vehicle manufacturers simultaneously operating as vehicle dealers infringes on its right to carry on business. Rather, as the Court of Appeals correctly noted, the law implicates a narrower interest—to sell vehicles in Washington using "its preferred method

('direct-sales-only')." *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 94. Because operating a vehicle dealership is not a fundamental right of state citizenship, the court correctly held that the law does not implicate or violate the privileges and immunities clause. *Id*.

The court straightforwardly applied this Court's precedent, including *Washington Food Industry Assocation & Maplebear, Inc. v. City of Seattle*, 1 Wn.3d 1, 524 P.3d 181 (2023), *Am. Legion Post No. 149 v. Washington State Department of Health*, 164 Wn.2d 570, 192 P.3d 306 (2008), and *Association of Washington Spirits and Wine Distributors v. Liquor Control Board*, 182 Wn.2d 342, 340 P.3d 849 (2015). Because the question and law at issue in this case is neither complex nor addresses unanswered questions, the petition does not involve a significant question of law warranting this Court's attention. RAP 13.4(b)(3).

Moreover, even if the petition involves an issue of public interest, Lucid's environmental policy arguments must be directed to the legislature—not this Court. RAP 13.4(b)(4). *See e.g.*, SB 6082, 66th Leg. Reg. Sess. (2020); HB 1388, 67th Leg. Reg. Sess. (2021); SB 6304, 68th Leg. Reg. Sess. (2024).

This Court's review is unwarranted.

A. The Court of Appeals Followed Long-Settled Law in Determining That RCW 46.96.185(1)(g) Does Not Implicate or Create a Privilege or Immunity

The Court of Appeals properly held that RCW 46.96.185(1)(g)'s prohibition on licensed vehicle manufacturers or their affiliates holding vehicle dealer licenses does not violate the Washington Constitution's privileges and immunities clause because the law does not implicate a fundamental right of state citizenship.

Washington courts apply a two-step analysis when evaluating a challenge under the privileges and immunities clause. *Ockletree v. Franciscan Health System*, 179 Wn.2d 769,

776, 317 P.3d 1009 (2014).[3] First, the Court determines whether a challenged law grants a privilege or immunity. *Wash. Food Indus. Assoc.*, 1 Wn.3d 1 at 27-28. If not, the Court's inquiry ends and there is no violation. *Id*. If it does, the court asks whether reasonable grounds exist for the grant of that privilege or immunity. *Id*. Legislative action based on reasonable grounds will be upheld. *Ockletree*, 179 Wn.2d at 783.

The Court of Appeals followed this Court's precedent and correctly found RCW 46.96.185(1)(g) does not implicate a fundamental right or violate the privileges and immunities clause.

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[3] Laws that do not implicate a fundamental right of state citizenship are subject to the same review as under the equal protection clause of the Fourteenth Amendment. *Ockletree*, 179 Wn.2d at 776. Lucid does not challenge the Court of Appeals holding that RCW 46.96.185(1)(g) satisfies rational basis. *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 95-97.

1. The Court of Appeals correctly identified the right implicated as the right to sell cars, which is not a fundamental right of state citizenship

The terms "privileges" and "immunities" refers only to "those fundamental rights which belong to the citizens of the state by reason of such citizenship." *Ockletree*, 179 Wn.2d at 778 (quoting *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902)). While the "right to carry on business" is a "long-recognized privilege under our constitution," *Assoc'n of Wash. Spirits and Wine Distribs.*, 182 Wn.2d at 360, this Court has warned against simply accepting the assertion of a fundamental "right to carry on business when a narrower, nonfundamental right is truly at issue." *Id.* Indeed, the Court recently cautioned that the "right to carry on business" is "implicated only in very narrow circumstances." *Wash. Food Indus. Assoc.*, 1 Wn.3d at 28.

The Court examines the specifics of the regulated activity to determine whether a statute truly implicates the right to carry on business or constitutes an ordinary business regulation that does not implicate constitutional concerns. This Court has

distilled several principles governing this analysis. A statute that "does not prevent any entity from engaging in business," and merely regulates how that business shall be conducted, does not implicate the fundamental right to do business under the privileges and immunities clause. *Am. Legion Post #149*, 164 Wn.2d at 608. This Court also has distinguished between businesses that one has the right to engage in and those that require a license from the state. *Randles v. Wash. State Liquor Control Bd.*, 33 Wn.2d 688, 694, 206 P.2d 1209 (1949).

For example, in *American Legion Post No. 149,* this Court rejected an attempt to characterize "[s]moking inside a place of employment" as implicating the fundamental right to "carry on business therein." 164 Wn.2d at 608. Because the smoking restriction did not block the appellant from doing business, there was no article I, section 12 violation. *Id.* at 607. As the Court of Appeals aptly noted, the decision "rested on 'the distinction between a lawful business which a citizen has the right to engage in and one in which he may engage in only as a matter of grace

of the state.'" *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 93 (quoting *Randles*, 33 Wn.2d at 694).

Similarly, in *Association of Washington Spirits and Wine Distributors*, the Court rejected as "overbroad" the plaintiff's attempt to characterize the "assignment of different licensing fees for different abilities to sell and distribute spirits" as burdening the "fundamental right to carry on business." 182 Wn.2d at 362. The Court held the statute did not implicate the "right to do business" because it does not "unfairly discriminate against a class of businesses to the benefit of another class of the same businesses." *Id.* As such, the right at issue was more properly characterized as the "right to sell liquor," which this Court has never recognized as a "fundamental right or privilege.'" *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 94 (quoting *Assoc'n of Wash. Spirits and Wine Distribs.*, 182 Wn.2d at 362).

This Court has long recognized there is no grant of a "privilege" when similarly situated businesses are treated

equally. *See, e.g., City of Seattle v. Gervasi*, 144 Wash. 429, 258 P. 328 (1927) (upheld city ordinance that prohibited the practice of some occupations on Sundays because all members of the same occupation were similarly treated, even if the occupations were treated differently); *Bauer v. State*, 7 Wn.2d 476, 110 P.2d 154 (1941) (statute that treats candy wholesalers differently from candy retailers allowed because the statute applies equally to each person within the class).

The Court of Appeals properly applied these precedents to conclude that "Lucid Group's assertion that it has a fundamental right to 'carry on business' is overgeneralized, as the right is narrower than Lucid asserts[.]" *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 94. The court noted that "the law 'does not unfairly discriminate against a class of businesses to the benefit of another class of the same businesses; it merely assigns a uniform' prohibition in the manner it may wish to carry out its business." *Id.* at 94 (quoting *Ass'n of Wash. Spirits*, 182 Wn.2d at 362). Because RCW 46.96.185(1)(g) "equally prohibits all

manufacturers or their affiliates from competing with dealers outside of a few exceptions," it does not implicate a broad "right to carry on business." *Id.* at 94. In fact, Lucid admitted the statute treats all manufacturers equally in its opening brief below, observing that the law "requir[es] all manufacturers to sell their vehicles through the dealers." Appellant's Br., *Lucid Group USA, Inc.*, 33 Wn. App. 2d, 559 P.3d 545 (2024), at 26, 27. Because RCW 46.96.185(1)(g) applies equally to vehicle manufacturers and their affiliates, with limited exceptions, the law creates no "privilege."

The Court of Appeals also correctly concluded that Lucid is not "effectively prohibited" from conducting business in Washington. *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 94. Rather, following *American Legion Post No. 149*, the court held that "Lucid Group is not prevented from engaging in business within the motor vehicle market, only that its preferred method ("direct-sales-only") is not allowed. *Id.* at 94 (internal quotations and citations omitted). "Instead, if Lucid wishes to enter the

motor vehicle market, it merely needs to do so in a manner consistent with the Franchise Act and RCW 46.98.185(1)(g) [sic]." *Id.* at 95.

Engaging in business as a vehicle dealer is an activity "one . . . may engage in only as a matter of grace of the state." *Randles*, 33 Wn.2d at 694; *see generally,* chapter 46.70 RCW, chapter 46.96 RCW. The Court of Appeals correctly held that selling cars is not a fundamental right of state citizenship. It is, instead, a right "left to the discretion of the legislature." *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc*., 196 Wn.2d 506, 519, 475 P.3d 164 (2020). The Court's prior precedent provides full answers to the issues Lucid raises in its petition. Further review is unwarranted. RAP 13.4(b)(3).

2. The Court of Appeals opinion does not conflict with this Court's precedent

In an attempt to manufacture a conflict with this Court's case law, Lucid misreads the Court of Appeals. It claims the court required Lucid to "identify an authority 'specifically creating a fundamental right to sell cars.'" Pet. 14. Not so. The

Court of Appeals merely followed this Court's warning that the fundamental right to carry on business is "'implicated only in very narrow circumstances.'" *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 92 (quoting *Wash. Food Indus. Assoc.*, 1 Wn.3d at 28).

Applying this Court's precedent, the court rightly concluded that the right to carry on business is implicated when a party "is entirely blocked from doing business, when the law unfairly discriminates between businesses, with an eye to the type of industry at issue." *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 94. Because Lucid is not blocked from doing business, the court properly identified the actual right implicated by the denial of Lucid's vehicle dealer application as the right to sell cars. *Id.* The court observed that "Lucid fails to cite any authority specifically creating a fundamental right to sell cars." *Id.* And this is true. Like this Court observed with spirits in *Association of Washington Spirits and Wine Distributors*, no court has ever

"held that the right to sell [cars] is a fundamental right or privilege." *Assoc. of Wash. Spirits*, 182 Wn.2d at 362.

Nor is there any conflict with any of the other cases Lucid cites. First, Lucid misreads *Martinez-Cuevas*. Lucid claims that because *Martinez-Cuevas* noted the Court had not enumerated a comprehensive list of fundamental rights of citizenship, the Court of Appeals wrongly required Lucid to "identify a pre-existing authority specifically holding that there is a fundamental right to sell cars[.]" Pet. 14-15. But this Court's unremarkable statement that its past opinions do not comprise an exhaustive list of fundamental rights or privileges poses no conflict with the Court of Appeals holding that the right to sell cars, especially in the manner desired, is not fundamental.

Notably, *Martinez-Cuevas* actually pointed to a source of the fundamental right in question there: article II, section 35 of the Washington Constitution. *Martinez-Cuevas*, 196 Wn.2d at 519. That provision requires the legislature to pass laws to protect workers engaged in dangerous employment. *Id.*

Accordingly, dairy workers, who engage in "extremely dangerous" work, had a fundamental right to be covered by the provisions of the Minimum Wage Act, which establishes a minimum wage and provides overtime protections. *Id.* at 521. No such constitutional guarantee or fundamental right to sell cars exists here.

The three other cases Lucid relies on, *Ex parte Camp*, 38 Wash. 393, 80 P. 547 (1905); *City of Seattle v. Dencker*, 58 Wash. 501, 108 P. 1086 (1910); and *State v. W.W. Robinson Co.*, 84 Wash. 246, 146 P. 628 (1915), involved laws that improperly distinguished between similar classes of businesses selling the same products with no justification. The laws in those cases were further invalid because they were motivated by "mere protectionism or favoritism." *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 95 n.8. That is not a problem here. *See* Sec. IV.A.3 *supra*; Br. of Resp't 54-63.

In *Dencker*, the Court found the only possible grounds for the distinction was economic protectionism, and it could identify

"no public concern" the distinction furthered. *Dencker*, 58 Wash. at 504. In fact, the Court was concerned that the ordinance was anti-competitive and pro-monopoly. *Id.* at 510-11.

Similarly, *Robinson* concluded that there was no basis for a statute that exempted cereal and flour mills from onerous regulations that applied to other similarly situated businesses. *Robinson*, 84 Wash. at 249-50. But, as the Court of Appeals held, and as Lucid concedes, RCW 46.96.185(1)(d) treats manufacturers and their affiliates alike, and there are reasonable grounds to distinguish between manufacturers and dealers.

Ex parte Camp is more of the same: the Court invalidated an ordinance that prohibited peddling produce within the city limits but exempted farmers. *Camp*, 38 Wash. at 396-97. Although the court found the city had the power to regulate produce peddling as a "nuisance," it could find no basis for

permitting one class "to indulge in the nuisance [while] others [were] unconditionally prohibited." *Id*. at 397.[4]

Nor does *Ralph v. City of Wenatchee* conflict. In that case, this Court invalidated an ordinance that required non-resident photographers to obtain a license to engage in photography business but exempted resident photographers. *Ralph,* 34 Wn.2d 638, 638-40, 209 P.2d 270 (1949). The Court held that the ordinance violated the privileges and immunities clause because "it 'discriminates unreasonably' against a class of business—nonresident photographers—by prohibiting their business in favor of the business of another class of the same business—resident photographers." *Wash. Food Indus. Assoc.*, 1 Wn.3d at 28 (quoting *Ralph*, 34 Wn.2d at 641). Here, in contrast, Lucid remains able to sell cars in Washington; it "merely needs to do

[4] Part of *Camp*'s reasoning—that legislation could only differentiate between classes of businesses for purposes of taxation, not of regulation—was abandoned only 10 years later in *Dencker*. *Compare Camp* 38 Wash. at 397, *with Deckner*, 58 Wash. at 504.

so in a manner consistent with the Franchise Act and RCW 46.98.185(1)(g) [sic]," as all manufacturers must. *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 95.

There is no conflict with this Court's precedent, which provides ample guidance for how to resolve the routine constitutional concerns Lucid raises. RAP 13.4(b)(1), (3). The Court should deny review.

3. Even if a fundamental right were at issue, the Court properly found that there are reasonable grounds for prohibiting manufacturers from operating as dealers

The Court of Appeals also correctly concluded that, although it did not need to reach the second step of the privileges and immunities analysis, if it did, there were reasonable grounds for the licensing restrictions. *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 95 n. 8.

The reasonable grounds test is satisfied if the "legislative distinction . . . in fact serves the legislature's stated goal." *Martinez-Cuevas*, 196 Wn.2d at 523. That is, the grant of the privilege or immunity must bear a "natural, reasonable, and just

relation to the subject matter of the act." *Ockletree*, 179 Wn.2d at 783.

The legislature limited the ability of manufacturers to sell vehicles directly to consumers because it was concerned with maintaining competition among dealers and ensuring strong and sound dealerships in the state. RCW 46.96.010. This is a legitimate public interest focused on benefiting the consuming public and ensuring a strong, local automobile industry, an important sector of Washington's economy. The Court of Appeals correctly observed that the Franchise Act also "articulates a goal of responding to observed power disparities between manufacturers and dealers as the sale of motor vehicles in this state vitally affect the general economy of the state and the public interest and public welfare." *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 95 n. 8 (internal quotations omitted).

Twenty-five years ago, the legislature passed RCW 46.96.185(1)(g) to prevent vehicle manufacturers from purchasing vehicle dealerships to directly sell vehicles to the

public. Substitute Senate Final Bill Report, 2000 Reg. Sess., ESSB 6220. That was a response to the concern that allowing direct sales by manufacturers would prejudice other dealers and could lead to decreased consumer choice. *Id.*

The legislature's restrictions on vertical integration in the automobile industry directly serves its reasonable interest in protecting both Washington consumers and a vital sector of Washington's economy. *See, e.g.*, *Ford Motor Co. v. Texas Dep't of Trans.*, 264 F.3d 493, 500 (5th Cir. 2001) (state had legitimate interest in in preventing "vertically integrated companies from taking advantage of their incongruous market position"); *Tesla, Inc. v. Louisiana Auto. Dealers Ass'n*, 113 F.4th 511, 530 (5th Cir. 2024) (holding that "preventing vertical integration or analogous consolidations of monopoly power" was a sufficient basis to uphold a direct-sales ban). The Court of Appeals correctly held that even if RCW 46.96.185(1)(g) implicated the privileges and immunities clause, it would survive the reasonable grounds analysis.

B. Lucid Did Not Challenge the Exception at RCW 46.96.185(1)(g)(vii), Which Is Not Relevant to This Appeal

Below, Lucid's primary argument was that RCW 46.96.185(1)(g)'s prohibition on manufacturers acting as dealers either did not apply to it or violated the privileges and immunities clause. It never directly challenged the legacy clause exception at RCW 46.96.185(1)(g)(vii).[5] *See, e.g.*, Appellant's Br., *supra*, at 24-36; AR 239-44. It relied on the (1)(g)(vii) exception solely as an example for why the legislature allegedly did not have reasonable grounds for the general prohibition. Appellant's Br., *supra*, at 28. Indeed, at oral argument in the Court of Appeals, when asked if it challenged this exception, Lucid responded, "no, we assert that the . . . broader restriction to Lucid violates its privileges or immunities rights." Oral Argument at 20:11–20:24, *Lucid Group USA, Inc. v. Dep't of*

[5] The Court of Appeals statement in footnote 10 that Lucid also challenged the constitutionality of RCW 46.96.185(1)(g)(vii) was incorrect.

Licensing, Sept. 13, 2024 (https://tvw.org/video/division-1-court-of-appeals-2024091212/?eventID=2024091212).

The Court should reject Lucid's new focus on this exception, particularly when Lucid expressly disavowed that it sought to invalidate the exception. *Id.* at 17:37–17:43. Rather, it effectively asks the Court grant Lucid its own exception by reversing the denial of its dealer application. But to do so, this Court would have to conclude that it is a fundamental right of state citizenship to sell cars in the manner of one's choosing, which would necessarily entitle *all* vehicle manufacturers to operate as dealers. In short, this Court would have to rewrite the Franchise Act. Simply invalidating the legacy clause would not entitle Lucid to a dealer license, because the general prohibition would still apply.

Finally, even if the exception at (vii) were properly before the Court, it satisfies the privileges and immunities clause. First, "a privilege is not necessarily created every time a statute allows a particular group to do or obtain something;" it must involve a

fundamental right. *Am. Legion Post. #149*, 164 Wn.2d at 606-07. And there is no fundamental right to sell cars. *Lucid Group USA, Inc.*, 33 Wn. App. 2d at 27 n.10.

Second, the exception satisfies the reasonable grounds test. When the legislature clarified in 2014 that the Department may deny a dealer license if it would lead to a violation of chapter 46.96 RCW, it created the legacy clause at RCW 46.96.185(1)(g)(vii) to permit manufacturers that had already held dealer licenses to retain those licenses. *See* Wash. Final Bill Report, 2014 Reg. Sess., ESSB 6272. The use of similar legacy clauses has been affirmed by this Court and others. *Foley v. Dep't of Fisheries*, 119 Wn.2d 783, 837 P.2d 14 (1992) (affirming a statute that limited sea urchin harvesting licenses to only those previously licensed); *City of New Orleans v. Dukes*, 247 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976) (upholding ordinance barring pushcart vendors from the French Quarter, unless they had been in continuous operation for at least eight years).

Subsection (vii) is a valid exercise of the legislature's authority to determine how best to structure the automobile industry in Washington, limiting vertical integration in the industry while respecting previously issued licenses, as other courts have found. *See Ford Motor Co.*, 264 F.3d at 498 (5th Cir. 2001); *International Truck and Engine Corp. v. Bray*, 372 F.3d 717, 722-24 (5th Cir. 2004); *Tesla, Inc.*, 113 F.4th at 530 (5th Cir. 2024).

C. This Case Does Not Involve a Matter of Substantial Public Interest That Should Be Determined by This Court

Finally, Lucid's petition does not involve "an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4); *See, e.g.*, *State v. Watson*, 155 Wn.2d 574, 122 P.3d 903 (2005). Instead, it raises policy arguments as to why electric vehicle manufacturers ought to be allowed to make direct sales in Washington. Pet. 8-12. But those are exactly the types of arguments that must only be made—and

have been made—to the legislature. This policy debate should not be "determined by the Supreme Court." RAP 13.4(b)(4).

"The Legislature is the fundamental source for the definition of this state's public policy" and courts "must avoid stepping into the role of the Legislature by actively creating the public policy of Washington." *Sedlacek v. Hillis*, 145 Wn.2d 379, 390, 36 P.3d 1014 (2001).

Notably, the legislature has considered exactly the policy arguments Lucid makes here, both in past legislative sessions and the current one. *See e.g.*, SB 6082, 66th Leg. Reg. Sess. (2020); HB 1388, 67th Leg. Reg. Sess. (2021); SB 6304, 68th Leg. Reg. Sess. (2024) SB 5592, 69th Leg. Reg. Sess. (2025); SB 5377, 69th Leg. Reg. Sess. (2025). None of these bills have passed. Lucid is effectively trying to achieve through the courts what it has been unable to accomplish through the legislature. The Court should reject Lucid's invitation to supplant the legislature's role as policymakers.

V. CONCLUSION

This Court should deny the Petition for Review.

This document contains 4,984 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 12th day of March, 2025.

NICHOLAS W. BROWN
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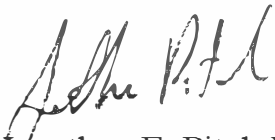

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PROOF OF SERVICE

I, Michael Sawyer, certify that I caused to be served a copy of **Answer to Petition for Review** on all parties or their counsel of record on the date below as follows:

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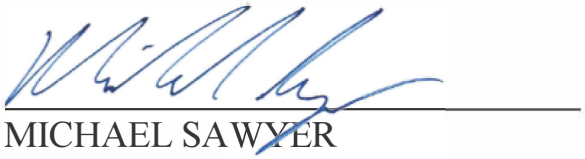
I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 12th day of March 2025, in Olympia, Washington.



MICHAEL SAWYER
Paralegal

AGO/LICENSING AND ADMINISTRATIVE LAW DIV

March 12, 2025 - 3:38 PM

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