No. 861239-9-I

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

LUCID GROUP USA, INC.,

Petitioner,

v.

STATE OF WASHINGTON, DEPARTMENT OF LICENSING,

Respondent.

PETITION FOR REVIEW

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I. INTRODUCTION

Petitioner Lucid Group USA, Inc. ("Lucid Group") wants to sell Lucid electric vehicles directly to consumers in Washington, just like Tesla does from its nine dealerships in the state. But the Court of Appeals held that Washington law prohibits Lucid from doing so and that the law was constitutional. This Court should grant review because that decision addresses a significant constitutional question of enormous practical importance: Namely, is Tesla truly going to be the only electric vehicle manufacturer allowed to sell vehicles directly to consumers in Washington?

Since the Legislature enacted a special provision for Tesla in 2014, Tesla's growth in the state has been astronomical—it has more than doubled its number of dealerships and nearly 100,000 Washington residents now drive a Tesla. Washington consumers deserve more electric vehicle choices. The Washington Departments of Commerce and Transportation have concluded that, to meet the state's environmental goals, the "state can no longer leave any policy option untapped to increase EV adoption," and that other manufacturers like Lucid must be "allowed to sell directly to consumers" because "this market inconsistency creates an unnecessary barrier to EV adoption."[1]

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[1] Washington Interagency Electric Vehicle Coordinating Council, *Washington Transportation and Electrification Strategy*, at 117 (Feb.

That "market inconsistency" is not just an environmental problem, it is a constitutional problem too. Washington's differential treatment of Lucid runs afoul of the Washington Constitution's Privileges and Immunities Clause, which protects against "favoritism and special treatment for a few to the disadvantage of others." *Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc.*, 196 Wash.2d 506, 518, 475 P.3d 164 (2020). According to the Court of Appeals, Washington's prohibition of Lucid's direct-sales-only business model does not implicate a "privilege" because there is no specific authority creating a fundamental right to sell cars—even though this Court repeatedly has recognized the fundamental right to carry on business. The Court of Appeals' requirement that plaintiffs identify pre-existing authority establishing a fundamental right to engage in a specific activity conflicts with *Martinez-Cuevas*, where this Court explained that while its precedent has "identified fundamental rights of state citizenship," it has "*never* characterized this list as comprehensive or limited to only those enumerated rights." *Id.* at 522 (emphasis added). The Court of Appeals' contrary holding takes a wrecking ball to the "broad range of rights" the clause was meant to cover, *id.*, further warranting this Court's review.

2024), *available at* https://deptofcommerce.app.box.com/s/uphekt6rwpmtvbhojyi6eifjxdwttdvh (last visited Dec. 16, 2024).

II. IDENTITY OF PETITIONERS/DECISION BELOW

Lucid Group petitions for this Court's review of *Lucid Group USA, Inc. v. Department of Licensing*, No. 86123-9-I (Wash. Ct. App. Nov. 25, 2024) (cited as "slip op." and attached as App. 1–24).

III. ISSUE PRESENTED FOR REVIEW

Whether Washington can prohibit Lucid Group from engaging in its business of selling cars directly to consumers without using any independent franchised dealers, while permitting other manufacturers and dealers to do the same, consistent with the command of the Privileges and Immunities Clause of the Washington Constitution that "[n]o law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." Wash. Const. art. I, § 12.

IV. STATEMENT OF THE CASE

1. Lucid USA, Inc. ("Lucid Manufacturing") is an automotive company that manufactures zero emission, all electric motor vehicles. Certified Agency Record ("AR") at 251. Lucid Group is an affiliate of Lucid Manufacturing and sells the vehicles manufactured by Lucid Manufacturing. *Id.* Lucid Manufacturing and Lucid Group share a common parent—

Atieva, Inc. AR at 252. This petition will refer to these affiliated entities collectively as "Lucid."

Lucid employs a direct-sales-only business model, selling its vehicles straight to consumers without any independent franchised dealers. AR at 251. This model enables Lucid to provide a premium sales experience, one that avoids the stress, annoyances, and frustrations that consumers typically associate with purchasing a new car. AR at 252.

The direct-sales-only model is customary for new electric vehicle manufacturers. Most notably, Tesla, Inc., directly sells its electric vehicles. Tesla is licensed in Washington both as a motor vehicle manufacturer and a dealer. AR at 351–82. The DOL first licensed Tesla as a dealer in 2009 and has renewed Tesla's license annually ever since. AR at 351–52; RCW 46.70.083. In 2014, the Washington Legislature enacted a special provision confirming Tesla's authorization to directly sell its vehicles in the state. *See* 2014 Wash. Legis. Serv. Ch. 214 (S.S.B. 6272); RCW 46.96.185(1)(g)(vii).

2. Lucid Group applied for a dealer license from the DOL after the agency informed Lucid it could obtain one. AR at 253. Nine months later, DOL reversed course and issued a notice of intent to deny the application. AR at 260. DOL's sole basis for denial was that "RCW 46.70.045 and RCW 46.96.185(g)

prohibit the Department from issuing Lucid Group USA a vehicle dealer license." *Id.*

RCW 46.70.045 provides that the DOL may deny a dealer license when "the issuance of a new license or subagency would cause a manufacturer … affiliated entity, or other person controlled by or under common control with a manufacturer … to be in violation of chapter 46.96 RCW," Washington's Franchise Act. As relevant here, RCW 46.96.185(1)(g) in turn provides that, "[n]otwithstanding the terms of a franchise agreement, a manufacturer … shall not … [c]ompete with a new motor vehicle dealer 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."

Lucid requested an administrative hearing. AR at 237. The parties filed cross-motions for summary judgment on whether RCW 46.96.185(1)(g) prohibited Lucid Group from selling Lucid vehicles, and, if it did, whether that prohibition is constitutional as applied to Lucid. AR at 231–48. The Office of Administrative Hearings affirmed. The ALJ's order explained that "[t]he only dispute is one of law, namely, whether the Franchise Act applies to [Lucid] when it has no independent franchisee dealers." AR at 782–83. The order "conclude[d] that RCW 46.96.185(1)(g) does apply to [Lucid], and that it prohibits [Lucid] from obtaining a motor vehicle license." *Id.* The ALJ did

not consider Lucid's constitutional arguments, stating that it "does not have the authority to address constitutional issues." *Id.* The Director issued a final order affirming the denial. AR at 1056–58.

3. Lucid timely petitioned Thurston County Superior Court for review. App. 5. The Superior Court transferred the case to the Court of Appeals, Division II under RCW 34.05.518(1)(b) because judicial review can occur based on the agency record without any further factual development. App. 48–49. The Court of Appeals, Division II *sua sponte* transferred the case to Division I pursuant to Court Administrative Rule 21(a).

4. On November 25, 2024, the Court of Appeals issued a published opinion affirming DOL's denial of Lucid Group's dealer application. Slip. op. 24. The Court held RCW 46.96.185(1)(g) prohibited Lucid Group from obtaining a dealer license and selling Lucid vehicles, reasoning that the Franchise Act regulates not only "traditional dealer-manufacturer relationships, but also the relationships of manufacturer's affiliates and dealers of any make or line." *Id.* at 16.

The Court rejected Lucid's claim that prohibiting Lucid Group from conducting its business of selling cars violates the Privileges and Immunities Clause of the Washington Constitution, art. I, § 12. Slip op. 17–21. The Court rejected Lucid's argument that Lucid Group has a fundamental right to

"carry on business," thereby implicating the Privileges and Immunities Clause. *Id.* at 20. The Court reasoned that "Lucid Group fails to cite any authority specifically creating a fundamental right to sell cars," and it noted that "RCW 46.96.185(1)(g) equally prohibits all manufacturers or their affiliates from 'compet[ing]' with dealers outside of a few exceptions." *Id.* The Court further reasoned that the law does not "entirely block[]" Lucid Group from doing business because "if Lucid Group 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)"—*i.e.*, through an independent franchised dealer. *Id.* at 20–21.

In a footnote, the Court stated that "[e]ven if a fundamental right was implicated, we would hold that RCW 46.96.185(1)(g) is based on reasonable grounds." *Id.* at 21 n.8. In full, the Court's explanation of those grounds is:

> Unlike [Lucid's cited] cases, more than mere protectionism or favoritism motivates RCW 46.96.185(1)(g). From the beginning of the Act, RCW 46.98.185(1)(g) 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." RCW 46.96.010. These goals constitute reasonable grounds for the Act.

V. ARGUMENT

The decision below warrants review because it raises "an issue of substantial public interest," RAP 13.4(b)(4), that involves a "significant question of law" under the Washington Constitution, RAP 13.4(b)(2), as to which "the decision of the Court of Appeals is in conflict with" this Court's precedent, RAP 13.4(b)(1). If the Court of Appeals' decision stands, all direct-sales-only electric vehicle manufacturers except Tesla will be prohibited from opening dealerships in the state. That decision will not only have a profound practical impact on Washington consumers and the environment, but also will render nugatory the Privileges and Immunities Clause's protection against special-interest legislation.

A. Whether Direct-Sales-Only Manufacturers Can Sell Vehicles in Washington is an Issue of Substantial Public Interest

This case warrants review under RAP 13.4(b)(4) because it raises an issue of substantial public interest: Is Tesla really the only electric vehicle manufacturer that Washington will allow to sell cars directly to Washington consumers?

The State of Washington desires to be a leader on climate action, having adopted an impressive goal of "limiting [greenhouse gas] emissions to 45% below 1990 levels by 2030 and achieving net-zero emissions by 2050." Washington

Interagency Electric Vehicle Coordinating Council, at 9, *supra*.[2] According to Washington's Interagency Electric Vehicle Coordinating Council—which is chaired by officials from Washington's Departments of Commerce and Transportation—electric vehicles "play a critical role in the state's decarbonization efforts," as vehicles represent *24 percent* of the state's greenhouse gas emissions. *Id.*

The Council concluded that permitting electric vehicle manufacturers to "sell direct to consumers" is important to "accelerate" electric-vehicle adoption rates. *Id.* at 116–17. It explained that "[c]urrently, Tesla is the only [electric vehicle manufacturer] allowed to sell directly to consumers in Washington," and that "this market inconsistency creates an unnecessary barrier to EV adoption." *Id.* at 117. The Council's "modeling shows the state can no longer leave any policy option untapped to increase EV adoption," and that permitting manufacturers like Lucid to directly sell vehicles in the state will "empower[] consumer choice and create[e] fair competition in the automaker market." *Id.* at 117–18.

Indeed, the direct-sales model is critical for the emerging electric vehicle industry for many reasons, including because: new electric vehicle manufacturers are still growing and lack the

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[2] *Available at* https://deptofcommerce.app.box.com/s/uphekt6rwpmtvbhojyi6eifjxdwttdvh.

sales and service volume necessary to support a franchised dealership network; electric vehicles generally require less maintenance than internal-combustion vehicles, which would greatly reduce franchised dealers' revenue; and electric vehicle manufacturers are in a better position to educate consumers about their new technologies. *See, e.g.*, Mackinac Center, *Direct Sales of Electric Vehicles*;[3] Electrification Coalition, *EVs and Consumer Choice*.[4]

The direct-sales model also saves consumers thousands of dollars per vehicle by avoiding unnecessary markups added by independent franchised dealers that depress electric vehicle adoption rates. An analysis by the U.S. Department of Justice concluded that forcing manufacturers to sell through independent franchised dealers costs consumers an average of $2,225 per vehicle (in 2000 dollars). *See* DOJ, Economic Analysis Group, Competition Advocacy Paper, *Economic Effects of State Bans on Direct Manufacturer Sales to Car Buyers* 4 (May 2009).[5] More recently, Volkswagen dealers are adding $10,000 to $20,000 markups to its electric vehicle, the ID Buzz. Rob Stumpf, INSIDEEVs.com, *Volkswagen ID. Buzz Dealer Markups Are*

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[3] *Available at* https://www.mackinac.org/archives/2021/The%20Case%20for%20Direct%20Sales%20--%20March%202021%20Update.pdf.
[4] *Available at* https://electrificationcoalition.org/work/state-ev-policy/evs-and-consumer-choice/.
[5] *Available at* https://www.justice.gov/atr/public/eag/246374.pdf.

Here, Even Though WV Said "Don't" (Nov. 23, 2024).[6] Independent franchised dealers have hindered the transition to electric vehicles in other ways, such as by pressuring the Biden Administration to "tap the breaks" on environmental initiatives that would hasten the transition in an open letter signed by nearly 100 Washington dealers.[7]

Tesla's growth in Washington is a testament to the growing consumer demand for direct sales of electric vehicles. Before the Washington Legislature enacted a special provision for Tesla in 2014, *see* p. 4, *supra*, Tesla already had opened four dealerships in the state.[8] Tesla has since opened at least *five more dealerships*.[9] Nearly 100,000 Washingtonians drive a Tesla, representing approximately *55 percent* of the battery electric vehicles registered in the state. *See* Washington State Open Data Portal, Most Common Registered Electric Vehicles.[10]

Now is a critical moment for broadening Washington consumers' access to electric vehicles. While first-generation electric vehicles tended to have high price tags, Lucid will soon

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[6] *Available at* https://insideevs.com/news/741991/vw-id-buzz-markups-are-here/.
[7] *See* Open Ltr. from Auto Dealers to President Biden, *available at* https://evvoiceofthecustomer.com/ (last visited Dec. 22, 2024).
[8] *See* Washington State Department of Revenue, Business Lookup, *available at* https://secure.dor.wa.gov/gteunauth/_/#6.
[9] *See id.*
[10] *Available at* https://data.wa.gov/Demographics/Most-Common-Registered-Electric-Vehicle-Models/cki8-rxms.

be introducing new models at lower price points to reach a wider market. *See* Jay Ramey, *Lucid's next EV will be much more affordable*, Autoweek (Sept. 11, 2024).[11] Other direct-sales-only electric vehicle manufacturers are implementing similar plans.[12] Left uncorrected, the Court of Appeals' decision means that these electric vehicles will not be available for purchase in the state, to the disadvantage of Washington consumers and the state's aim to lead the nation on climate change action.

B. The Court of Appeals' Narrow Interpretation of the Privileges & Immunities Clause Conflicts With This Court's Precedents and the Washington Constitution

The absurdity of Washington closing its market to every direct-sales-only manufacturer but for Tesla also raises a substantial constitutional question warranting review under RAP 13.4(b)(1) and (b)(3). The Privileges and Immunities Clause of the Washington Constitution "was intended to prevent favoritism and special treatment for a few to the disadvantage of others." *Martinez-Cuevas*, 196 Wash.2d at 518. Yet that is precisely what Washington law, as construed by the Court of Appeals, does—it

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[11] *Available at* https://www.autoweek.com/news/a62156785/2027-lucid-earth-preview/.

[12] *See, e.g.*, Peter Valdes-Dapena, *The Rivian R2 and R3 are Rivian's smaller, more affordable off-road EVs*, CNN (Mar. 7, 2024), *available at* https://www.cnn.com/2024/03/07/business/rivian-reveals-new-affordable-evs/index.html.

insulates the state's independent franchised dealers and Tesla from competition to the disadvantage of Washington consumers.

This Court applies a two-step analysis to Privileges and Immunities Clause claims: "First, we ask whether a challenged law grants a 'privilege' or 'immunity' for purposes of our state constitution. If the answer is yes, then we ask whether there is a 'reasonable ground' for granting that privilege or immunity." *Martinez-Cuevas*, 196 Wash.2d at 519 (citations omitted). The decision below contradicts this Court's precedent with respect to both steps and its reasoning renders the Clause a paper tiger.

1. This Court has repeatedly held that the right to "carry on business" implicates a fundamental right. *Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wash.2d 342, 360–61, 340 P.3d 849 (2015); *Am. Legion Post #149 v. Wash. State Dept. of Health*, 164 Wash.2d 570, 607, 192 P.3d 306 (2008); *Grant Cnty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wash.2d 791, 812, 83 P.3d 419 (2004); *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902). The Court of Appeals nevertheless held that prohibiting Lucid Group selling Lucid cars did not implicate a "privilege" or "immunity" for three reasons: (1) there is no authority "specifically creating a fundamental right to sell cars;" (2) "RCW 46.96.185(1)(g) equally prohibits all manufacturers or their affiliates from 'compet[ing]' with dealers outside of a few exceptions;" and (3)

Lucid Group is not "entirely blocked from doing business" because "if Lucid Group 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)"—in other words, change its business model to sell through independent franchised dealers. Slip op. 20–21.

The Court of Appeals' requirement that Lucid identify an authority "specifically creating a fundamental right to sell cars" conflicts with *Martinez-Cuevas*. In *Martinez-Cuevas*, this Court considered whether RCW 49.46.130(2)(g)'s exemption of agricultural workers from overtime laws implicated a fundamental right. 197 Wash.2d at 519–22. No prior authority had held that overtime laws implicate a fundamental right. *See id*. However, the Court explained that, while its prior decisions have "identified fundamental rights of state citizenship," it has "*never* characterized this list as comprehensive or limited to only those enumerated rights." *Id.* at 522 (emphasis added). The Court proceeded to reason that, with respect to agricultural workers, overtime laws implicate "the fundamental right to health and safety protections of the Minimum Wage Act," and, with respect to employers, the exemption "grants dairy farmers a privilege or immunity from paying otherwise mandatory overtime pay." *Id.* The Court of Appeals' requirement that Lucid identify a pre-existing authority specifically holding that there is a fundamental

right to sell cars is irreconcilable with this Court's approach in *Martinez-Cuevas*.

The Court of Appeals' decision further conflicts with this Court's decisions in *Ralph v. City of Wenatchee*, 34 Wash.2d 638, 209 P.2d 270 (1949); *State v. W.W. Robinson Co.*, 84 Wash. 246, 146 P. 628 (1915); *City of Seattle v. Dencker*, 58 Wash. 501, 108 P. 1086 (1910); and *In re Camp*, 38 Wash. 393, 80 P. 547 (1905).

In *Ralph*, this Court invalidated a town ordinance regulating commercial photographers. 34 Wash.2d at 641–44. The ordinance required non-resident photographers to pay a license fee and it prohibited all photographers from engaging in "any solicitation for photographic work … in public places" and from "going in or to private … establishments for the purpose of soliciting any kind of photographic work or to perform the work of a photographer without having first been requested to do so." *Id.* at 642. The Court reasoned that the licensing fee "discriminates unreasonably" against non-resident photographers, and that the location restrictions effectively "prohibit activity of non-resident photographers." *Id.* at 641–42.

According to the Court of Appeals' logic, *Ralph* was wrong three times over. The plaintiff never identified any authority "specifically creating a fundamental right" to engage in commercial photography. The ordinance "equally prohibited"

solicitation by resident commercial photographers. And non-resident photographers were not "entirely blocked" from doing business in the town, they simply needed to change their business model by opening a photography studio.

Similarly, in *Robinson*, the Court invalidated a statute that imposed onerous conditions on manufacturers and dealers selling mixed feeding stuffs but exempted cereal and flour mills selling the same stuff "made in the regular process of manufacturing cereal or flour." 84 Wash. at 248. The Court stated that "the act under consideration is clearly in violation of the constitution[] … because it authorizes cereal and flour mills to sell mixed and unmixed feeding stuffs, while other persons selling the same feeding stuffs are required to comply with the provisions of the act." *Id.* at 250. Simply put, the Legislature cannot "discriminat[e] between different merchants selling the same class of goods." *Id.*; *see also Sherman Clay & Co. v. Brown*, 131 Wash. 679, 231 P. 166 (1924) (invalidating ordinance prohibiting second-hand dealers from disposing of goods for ten days after purchase or receipt but exempting purchasers of stoves, furniture, or the total contents of houses). Yet, according to the decision below, the statute should have been upheld because there was no authority specifically creating a fundamental right to sell mixed feeding stuffs, the ordinance treated all non-cereal and flour mill merchants "equally", and

such merchants were not "entirely blocked" from doing business, they simply needed either to comply with the statute's conditions or to change their business model to producing mixed feeding stuffs through cereal and flour milling.

In *Dencker*, the Court invalidated an ordinance that imposed licensing fees on merchants selling goods through vending machines. 58 Wash. at 502. The Court explained that "this seems to be a tax on invention, for invention in most cases, as in this, lessens the expense of the business, and thereby necessarily cheapens the product.... It would seem that the reduction in part of an article of commerce would savor of the quality of a blessing rather than of a curse, when the welfare of the consumer is taken into consideration." *Id.* at 510. Yet the challenger in *Dencker* identified no authority specifically creating a fundamental right to sell goods through vending machines, all merchants were subject to the ordinance, and no merchant was entirely prevented from doing business because they could either pay the fee or change their business model to sell without vending machines.

Finally, in *Camp,* the Court invalidated an ordinance that prohibited peddling fruits and vegetables within the city but exempted farmers directly selling their own produce. 38 Wash. at 393. The Court determined that the law privileged farmers without a proper basis, explaining that "attempts to distinguish

between peddling by the farmer or nurseryman and peddling by the purchaser from such farmer or nurseryman … are arbitrary and no proper basis for classification." *Id.* at 397 (quotation marks omitted). Yet the challenger in *Camp* identified no authority specifically creating a fundamental right to peddle fruits and vegetables, the ordinance regulated all non-farmers alike, and the non-farmers were free to sell their fruits and vegetables in the town through some business model other than peddling.

This Court repeatedly has made clear that *Ralph*, *Robinson*, *Dencker*, and *Camp* are good law and illustrate the Privileges and Immunities Clause's protection of the fundamental right to carry on business. *See, e.g., Grant Cnty. Fire Prot. Dist.*, 150 Wash.2d at 810 & n.12 (citing *Robinson*, *Dencker*, and *Camp*); *Schroeder v. Weighall*, 179 Wash.2d 566, 572 n.4, 316 P.3d 482 (2014) (citing *Robinson*, *Dencker*, *Camp*, and *Sherman*); *Am. Legion Post*, 164 Wash.2d at 608 (citing *Ralph*); *Madison v. State*, 161 Wash.2d 85, 114, 163 P.3d 757 (2007) (Madsen, J., concurring) (citing *Ralph, Robinson*, *Dencker, Camp*, and *Sherman*). Yet the Court of Appeals did not even try to explain how its reasoning is consistent with the logic of these decisions.

To be sure, this Court has held that the fundamental right to carry on business is not implicated by laws that did "not

unfairly discriminate against a class of businesses to the benefit of another class of the same businesses." *Ass'n of Wash. Spirits*, 182 Wash.2d at 362. In *Ass'n of Washington Spirits*, for example, the right was not implicated by a statute that simply imposed "different licensing fees for different abilities to sell and distribute spirits." *Id.* In *American Legion Post*, the right was not implicated by a statute that "merely prohibit[ed] smoking within a place of employment." 164 Wash.2d at 608. And in *Washington Food Indus. Ass'n & Maplebear, Inc. v. City of Seattle*, 1 Wash.3d 1, 524 P.3d 181 (2023), the right was not implicated by a hazard-pay ordinance for food delivery drivers that did not apply to taxi drivers and other workers, with the Court explaining that "food delivery network companies provide a different service, and the drivers and shoppers who work for them do so under different circumstances than those other businesses." *Id.* at 29.

Unlike those statutes, RCW 46.96.185(1)(g), "prohibit[s] a class of businesses to the benefit of another class of the same business." *Id.* at 28. The law prohibits Lucid Group from opening dealerships in Washington, insulating the state's independent franchised dealers and Tesla from competition. If the Court of Appeals is correct that—contrary to this Court's precedents—this case does not implicate the Privileges and Immunities Clause, then no case will and the Clause will not protect against

"laws serving the interest of special classes of citizens to the detriment of the interests of all citizens." *Grant Cnty. Fire Prot. Dist.*, 150 Wash.2d at 806–07.

2. The Court of Appeals' analysis of step two is even further unmoored from this Court's precedents. This Court has explained that "[u]nder the reasonable ground test, a court will not hypothesize facts to justify a legislative distinction. Rather, the court will scrutinize the legislative distinction to determine whether it *in fact* serves the legislature's stated goal." *Schroeder*, 179 Wash.2d at 574 (citations omitted). This standard is "more protective" than the federal constitution. *Id.* at 572; *Bennett v. United States*, 2 Wash.3d 430, 442, 539 P.3d 361 (2023) (explaining that the Clause "differs from and is more protective than the federal equal protection clause and requires a very different analysis" (cleaned up)). A legislative distinction will be upheld only if it is "justified in fact and theory." *Martinez-Cuevas*, 196 Wash.2d at 523. "Speculation may suffice under rational basis review, but article I, section 12's reasonable ground analysis does not allow it." *Id.*

The Court of Appeals did not even pay lip service to the foregoing standards. Instead, its explanation of the Legislature's "reasonable ground" for denying Lucid Group the privilege of selling cars is three sentences:

> [M]ore than mere protectionism or favoritism motivates RCW 46.96.185(1)(g). From the beginning of the Act, RCW 46.98.185(1)(g) 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." RCW 46.96.010. These goals constitute reasonable grounds for the Act.

Id. at 21 n.8. But there are no "power disparities" that need to be addressed between Lucid and its independent franchised dealers because Lucid has no independent franchised dealers. Moreover, the Court of Appeals' opaque and cursory reasoning conflicts with this Court's decisions in *Schroeder*, *Martinez-Cuevas*, and *Bennett*, which make clear that "the reasonable ground test requires careful consideration of the legislative purposes underlying the challenged statute." *Bennett*, 2 Wash.3d at 447.

In *Martinez-Cuevas*, the Court held that there was no reasonable ground for RCW 49.46.130(2)(g)'s exemption of agricultural workers from overtime pay requirements. Respondent argued that "lawmakers found the seasonal nature of farming and changes in weather, crop growth, commodity market prices, and husbandry rendered agricultural work ill suited to the 40-hour workweek and overtime pay." 196 Wash.2d at 524. The Court explained that "[t]he record, however, does not support these assertions." *Id.* The "legislative history … does not

reference seasonality or the variations of agricultural work as considered during the passage of the Minimum Wage Act." *Id.* In short, the respondents did "not offer, and we have not found, any convincing legislative history that illustrates a reasonable ground for granting the challenged overtime pay exemption." *Id.* at 524–25.

Likewise, in *Schroeder*, the Court held there was no reasonable ground for RCW 4.16.190(2), which eliminated the tolling of the statute of limitations for medical malpractice claims concerning minors. The Court agreed that "addressing escalating insurance rates was a legitimate legislative goal," but explained that "[n]either the respondents nor the legislative record provides any factual support for the theory that RCW 4.16.190(2) will reduce insurance premiums." 179 Wash.2d at 574–75. The Court also rejected respondents' argument that RCW 4.16.190(2) served the goal of limiting stale medical malpractice claims. *Id.* at 576. It reasoned that "RCW 4.16.190(2) is not addressed to stale claims generally, it is (at best) addressed to stale claims arising from medical malpractice injuries to minors." *Id.* "If it is to be justified on the basis that it is a substantial wrong to permit even one stale medical malpractice claim to proceed, then there can be no rational explanation for the legislature's failure to eliminate tolling for other incompetent plaintiffs." *Id.* at 577.

Finally, in *Bennett*, this Court invalidated the eight-year statute of repose in RCW 4.16.350(3) after finding that it was "not addressed to stale claims generally, in light of the explicit exemptions and tolling provisions noted above." 2 Wash.3d. at 450. "[L]ike the statute in *Schroeder*, the principle for which the statute of repose really stands is not that compelling even one defendant to answer a stale claim is a substantial wrong." *Id.* (cleaned up). "Rather, the statute of repose stands for the principle that requiring a medical malpractice defendant to answer a stale claim is a substantial wrong *unless*" the plaintiff fell into a statutory exception. *Id.* at 450–51. "Thus, according to its plain language, the statute of repose does not in fact serve the legislature's stated rationale of preventing stale claims generally." *Id.* at 451.

The decision below could not identify a reasonable ground for prohibiting Lucid Group from selling Lucid vehicles because there is none. Historically, states enacted dealer-franchise laws "to protect retail car dealers from perceived abusive and oppressive acts by the manufacturers," which obviously has no application to manufacturers, like Lucid, that have no independent franchised dealers. *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 439 U.S. 96, 100–01 (1978); *see also Tacoma Auto Mall, Inc. v. Nissan N. Am., Inc.*, 169 Wash.App. 111, 120, 279 P.3d 487 (2012) (Franchise Act "regulate[s] the

relationship between manufacturers and 'their dealers' in order to protect those dealers"). And the Legislature has *never* offered any justification for prohibiting direct-sales-only manufacturers (except for Tesla) from selling their vehicles directly to consumers without using any independent franchised dealers. It defies reason that Washington law permits Tesla to open an unlimited number of new dealerships in Washington in perpetuity, whereas Lucid is prohibited from selling even a single vehicle in the state.

* * *

The Court of Appeals' holding that Washington's prohibition of Lucid's direct-sales-only business model is constitutional flies in the face of this Court's precedents giving meaning to the Privileges and Immunities Clause. Review is therefore warranted because the decision below conflicts with decisions of this Court and raises a significant question under the Washington Constitution, in addition to having a significant practical impact on countless Washington consumers and the environment for generations to come.

VI. CONCLUSION

The Court should grant the petition for review.

This document contains 4,999 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 23rd day of December 2024.

Respectfully submitted,

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APPENDIX A

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Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LUCID GROUP USA, INC., Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF LICENSING, Respondent.	No. 86123-9-I DIVISION ONE PUBLISHED OPINION

DÍAZ, J. — Lucid Group USA, Inc. (Lucid Group) wishes to continue to sell in Washington the motor vehicles of its corporate sibling, Lucid USA, Inc. (Lucid USA), which manufactures the vehicles. The Department of Licensing (DOL) denied Lucid Group's new motor vehicle dealer license application, finding that RCW 46.96.185(1)(g) prohibits Lucid Group from selling cars and thereby "competing" with dealers of "any make or line" because it is an "affiliate" of Lucid USA. An administrative law judge (ALJ) affirmed the DOL's denial. Lucid Group disputes that interpretation of RCW 46.96.185(1)(g) and asks us to reverse the denial of its application. Alternatively, Lucid Group argues RCW 46.98.185(1)(g) is unconstitutional under Washington's privileges and immunities clause, and it also brings federal due process and equal protection claims. We affirm the ALJ.

I. BACKGROUND

Lucid USA designs and manufactures electric vehicles. Lucid Group sells Lucid USA's vehicles. In August 2021, Lucid USA and Lucid Group simultaneously applied for licenses with the DOL. Lucid USA applied for a motor vehicle manufacturing license. Lucid Group applied for a new motor vehicle dealer license. In June 2022, the DOL notified Lucid Group of its intent to deny its motor vehicle dealer license application and cited RCW 46.96.185(1)(g) of the Franchise Act (the Act), chapter 46.96 RCW. In September 2022, the DOL issued Lucid USA a motor vehicle manufacturing license.

In June 2022, Lucid Group requested an administrative hearing to appeal the denial of its application. Lucid Group and the DOL subsequently filed cross-motions for summary judgment before the ALJ.

In December 2022, the ALJ granted the DOL's motion for summary judgment and denied Lucid Group's motion. The ALJ concluded the purpose of RCW 46.96.185(1)(g) and the Franchise Act "is multi-fold: to protect dealers from the disparity in bargaining power with manufacturers, to protect the public, and to maintain fair competition *among dealers*." (emphasis added). The ALJ further held that, if it granted Lucid Group's application, that order "would place [Lucid Group] at a distinct financial advantage over other dealers." The ALJ's order did not address Lucid Group's constitutional claims as the ALJ stated it did "not have authority to address constitutional issues." Lucid Group appealed the order to the DOL's director. In February 2023, the DOL's director affirmed the ALJ's order.

In March 2023, Lucid Group petitioned the superior court for review. In

August 2023, the superior court transferred the matter to this court.[1]

II. ANALYSIS

A. Statutory Interpretation of RCW 46.96.185(1)(g)

1. Standards of Review

The Administrative Procedure Act, chapter 34.05 RCW, governs review of a final decision by the DOL's director. RCW 34.05.510. Moreover, "appellate review of administrative decisions is generally limited to the administrative record." Residents Opposed to Kittitas Turbines v. Energy Facility Site Evaluation Council, 165 Wn.2d 275, 300-01, 197 P.3d 1153 (2008). The "burden of demonstrating the invalidity of agency action is on the party asserting invalidity," here, Lucid Group. RCW 34.05.570(1)(a).

That said, we review summary judgment orders de novo for whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); see Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). "The moving party has the burden of showing that there is no genuine issue as to any material fact." Indoor Billboard/Wash., Inc. v. Integra Telecom of

[1] Numerous automotive dealer associations filed amicus briefs in support of DOL. The Washington State Auto Dealers Association's brief addressed both Lucid Group's statutory and constitutional arguments. The National Automobile Dealers Association's brief focused on the constitutional arguments. The final brief, from various state-level associations, primarily compared the Franchise Act and RCW 46.96.185(1)(g) to other states' statutes. Br. of Amicus Curiae Ga. Auto. Dealers Ass'n et al. at 12 (Georgia), 13 (Illinois), 14 (Mississippi), 15 (New Jersey), 16 (North Carolina), 17 (Ohio), 19 (Pennsylvania).

Wash., Inc., 162 Wn.2d 59, 70, 170 P.3d 10 (2007). However, "[w]hen parties file cross motions for summary judgment, questions of law determine the outcome if there are no genuine issues of material fact." Michel v. City of Seattle, 19 Wn. App. 2d 783, 789, 498 P.3d 522 (2021). Regardless, on "summary judgment review, we may affirm the trial court's decision on any basis within the record." Davidson Serles & Assocs. v. City of Kirkland, 159 Wn. App. 616, 624, 246 P.3d 822 (2011).

Here, the ALJ concluded, and the parties do not dispute, that the "material facts are not in dispute" and the "only dispute is one of law, namely, whether the Franchise Act applies to [Lucid Group] when it has no independent dealers."

We review issues of statutory interpretation de novo. Pal v. Dep't of Soc. & Health Servs., 185 Wn. App. 775, 781, 342 P.3d 1190 (2015). Even so, "agency interpretations of statutes are accorded deference only if '(1) the particular agency is charged with the administration and enforcement of the statute, (2) *the statute is ambiguous*, and (3) the statute falls within the agency's special expertise.'" Fode v. Dep't of Ecology, 22 Wn. App. 2d 22, 33, 509 P.3d 325 (2022) (emphasis added) (quoting Bostain v. Food Express, Inc., 159 Wn.2d 700, 716, 153 P.3d 846 (2007)). Ultimately, however, this court is not bound by any agency interpretation as courts have the "'ultimate authority to interpret a statute.'" Port of Tacoma v. Sacks, 19 Wn. App. 2d 295, 304, 495 P.3d 866 (2021) (quoting Bostain, 159 Wn.2d at 716).

"When interpreting a statute, the court's fundamental objective is to ascertain and give effect to the legislature's intent." Lenander v. Dep't of Ret. Sys., 186 Wn.2d 393, 405, 377 P.3d 199 (2016). We begin with the plain language of

the statute and its context within the broader statutory scheme. Id. Statutes "must be harmonized with other provisions, if at all possible" and interpreted so "'all the language is given effect and no portion is rendered meaningless or superfluous.'" Jackson v. Fenix Underground, Inc., 142 Wn. App. 141, 145-46, 173 P.3d 977 (2007) (quoting Kilian v. Atkinson, 147 Wn.2d 16, 21, 50 P.3d 638 (2002)). Further, "a court must not add words where the legislature has chosen not to include them." Rest. Dev., Inc. v. Cananwill, Inc., 150 Wn.2d 674, 682, 80 P.3d 598 (2003).

"If the meaning of the statute is plain on its face, then we must give effect to that meaning as an expression of legislative intent." Lenander, 186 Wn.2d at 405. "If, after this inquiry, the statute remains ambiguous or unclear, it is appropriate to resort to aids of construction and legislative history." Id. "Statutory language is ambiguous when it is susceptible to more than one reasonable interpretation." In re Estate of Garwood, 109 Wn. App. 811, 814, 38 P.3d 362 (2002). "The statute is not necessarily ambiguous simply because of two different interpretations. The question, however, is whether those interpretations are sufficiently reasonable to warrant further inquiry." Fraternal Ord. of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Ord. of Eagles, 148 Wn.2d 224, 242, 59 P.3d 655 (2002).

2. Discussion

This appeal concerns the applicability of RCW 46.96.185(1)(g), which states:

> Notwithstanding the terms of a franchise agreement, *a* manufacturer, . . . *affiliated entity*, or other person . . . under common control with a manufacturer . . . 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.

(Emphasis added). RCW 46.96.185(1)(g) then lists seven exceptions to the above restriction. RCW 46.96.185(1)(g)(i)-(vii). The DOL can deny license applications that would violate chapter 46.96 RCW. RCW 46.70.045.

Lucid Group argues the "Franchise Act—including section RCW 46.96.185(1)(g) . . . functions to 'regulate the relationship between manufacturers and *their* dealers in order to protect those dealers and benefit the car-buying public.'" Tacoma Auto Mall, Inc. v. Nissan N. Am., Inc., 169 Wn. App. 111, 120, 279 P.3d 487 (2012) (emphasis added) (internal quotation marks omitted). Further, it claims, "[c]onsistent with the function of the Act, section 46.96.185(1)(g) is inapplicable where, as here, a manufacturer has no franchised dealers and therefore has no dealer relationship to regulate."

We disagree based on our reading of the plain language of the statute, when read in the context of its statutory scheme. Lenander, 186 Wn.2d at 405.

a. Plain Language of RCW 46.96.185

The Franchise Act expressly incorporates the definitions contained in RCW 46.70.011. RCW 46.96.020. There, a "'[m]anufacturer' means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused vehicles or remanufactures vehicles in whole or in part." RCW 46.70.011(8). RCW 46.96.185(1) applies its terms equally to affiliates of manufacturers by stating without qualification that "a manufacturer, distributor, factory branch, or . . . wholly or partially owned subsidiary, *affiliated* entity . . . shall not" undertake the actions enumerated therein. (Emphasis added.) It is

undisputed that Lucid USA is a manufacturer and that Lucid Group sells Lucid USA's vehicles as an affiliated or sibling entity as both companies are owned by Atieva, Inc. See BLACK'S LAW DICTIONARY 72 (12th ed. 2024) (defining "affiliate" as a "corporation that is related to another corporation by shareholding or other means of control; a subsidiary, parent, or *sibling* corporation.") (emphasis added). Therefore, the prohibitions of RCW 46.96.185(1) apply equally to Lucid Group and Lucid USA.

Deconstructing the statute, RCW 46.96.185(1)(g) proscribes that "*a* manufacturer" or "affiliated entity . . . shall not . . . [c]ompete[2] with *a* new motor vehicle dealer of *any make or line*"[3] in one relevant[4] way. (Emphasis added.)

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[2] A standard dictionary defines "compete" as "to seek or strive for something (as a position, possession, reward) for which others are also contending." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 463 (1993). "[C]ompetition" is defined as the "struggle for commercial advantage; the effort or action of two or more commercial interests to obtain the same business from third parties." BLACK'S LAW DICTIONARY 357 (12th ed. 2024); see also Samish Indian Nation v. Dep't of Licensing, 14 Wn. App. 2d 437, 442, 471 P.3d 261 (2020) ("'Where the legislature has not defined a term, we may look to dictionary definitions, as well as the statute's context, to determine the plain meaning of the term.'") (quoting In re Det. of J.N., 200 Wn. App. 279, 286, 402 P.3d 380 (2017)). There is no dispute that Lucid Group and other sellers of automobiles are seeking "to obtain the same business" from third party purchasers of vehicles.

[3] The Federal Motor Vehicle Safety Standards define "make" as "a name that a manufacturer applies to a group of vehicles or engines." 49 C.F.R. § 565.12 (emphasis omitted). "Line means a name that a manufacturer applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type." Id. (emphasis omitted). There is no dispute that other sellers of automobiles have makes and lines, so defined.

[4] Another way in which a manufacturer or an affiliate may not compete with a car dealer is "by owning, operating, or controlling, whether directly or indirectly, a motor vehicle dealership in this state." RCW 46.96.185(1)(g). The DOL asserts in passing that Lucid Group "opened two vehicle dealerships in Seattle." However, the DOL does not claim Lucid Group is violating the Franchise Act by owning a dealership in some capacity. As such, this alternative prohibition is inapplicable to

Namely, a manufacturer or an affiliate may not compete with a car dealer "by acting in the capacity of a new motor vehicle dealer." RCW 46.96.185(1)(g). Recently, our Supreme Court interpreted the term "acting in the capacity" as "indicat[ing] the legislature's intent to capture those who *do the type of work* . . . both formally and informally." Dobson v. Archibald, 1 Wn.3d 102, 109, 523 P.3d 1190 (2023) (discussing a contractor registration statute) (emphasis added) (quoting RCW 18.27.080). A "dealer" is "one that makes a business of buying and selling goods esp. without altering their condition." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 581 (1993) (listing automobiles as an example). Thus, RCW 46.98.185(1)(g) intends to prohibit certain entities that "do the type of work" a dealer, i.e., buying and selling new motor vehicles.

Importantly, the introductory clause of RCW 46.98.185(1)(g) makes clear that this prohibition applies "[n]otwithstanding the terms of a franchise agreement," i.e., irrespective of the nature or content of a dealer's corporate arrangement or agreement with a manufacturer. Thus, Lucid Group falls within RCW 46.98.185(1)(g)'s purview even if it lacks a franchise or any formal agreement with Lucid USA.[5]

In sum, we hold that the plain language of RCW 46.96.185(1)(g) "captures" Lucid Group, meaning Lucid Group as an affiliate of Lucid USA cannot compete with a dealer that sells vehicles of "any make or line." Dobson, 1 Wn.3d at 109. In

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the current appeal. The material undisputed fact is that Lucid USA sells its vehicles through Lucid Group.

[5] That said, the record contains portions of a "Dealer Sales and Service Agreement" between Lucid USA and Lucid Group. Nothing in this opinion turns on the content of that contract.

other words, RCW 46.98.185(1)(g)'s prohibitions are not limited to a manufacturer competing only with "their" own dealers or dealerships, as Lucid Group asserts. As such, we hold that, had the DOL issued Lucid Group a dealer license, it would have permitted a violation of RCW 46.98.185(1)(g). In turn, RCW 46.70.045 authorizes the DOL to deny of Lucid Group's license application.

The legislature's selective use of broad language in RCW 46.98.185(1)(g) bolsters this interpretation. Specifically, the legislature chose to use the indefinite article "a" before "a manufacturer" and "a new motor vehicle dealer" in that statute. RCW 46.98.185(1)(g). Similarly, the legislature used a very broad term to define who a manufacturer or an affiliate could not compete with, i.e., a dealer of "any make or line." Id. See, e.g., Dep't of Ecology v. City of Spokane Valley, 167 Wn. App. 952, 965, 275 P.3d 367 (2012) ("Use of a definite rather than indefinite article is a recognized indication of statutory meaning" and indicated "'the individual in question is undetermined, unidentified, or unspecified.'") (internal quotation marks omitted) (quoting State v. Ose, 156 Wn.2d 140, 146, 124 P.3d 635 (2005)); Shepler v. Terry's Truck Center, Inc., 25 Wn. App. 2d 67, 79-80, 522 P.3d 126 (2022) (same).

The use of these indefinite articles contrasts with narrower language in two exceptions to the statute's prohibitions. RCW 46.96.185(1)(g)(v)(D) exempts from unfair competition manufacturers inter alia whose market power is more equal to dealerships under "*their* franchise agreements with the manufacturer." Similarly,

RCW 46.98.185(1)(g)(vii) exempts from unfair competition certain manufacturers[6] inter alia which own a "dealership that sells new vehicles that are only of *that* manufacturer's makes or lines." (Emphasis added.)

As such, the legislature's shift from broad language within RCW 46.98.185(1)(g)—i.e., the use of indefinite articles and "any make or line"—to narrower phrasing in the exceptions "indicat[es]" the broad scope of the former, RCW 46.98.185(1)(g), is intentional. Spokane Valley, 167 Wn. App. at 965. "'[W]hen the legislature uses different words in the same statute, we presume the legislature intends those words to have different meanings.'" Peterson v. Dep't of Soc. & Health Servs., 28 Wn. App. 2d 16, 22, 534 P.3d 869 (2023) (alteration in original) (internal quotation marks omitted) (quoting Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd., 182 Wn.2d 342, 353, 340 P.3d 849 (2015)). Thus, subject to narrowly drawn exceptions, the legislature meant to regulate all competition between all manufacturers or affiliates who sell or trade vehicles as any dealer would, and not just competition between manufacturers and *their* dealers.

Further, Lucid offers no interpretation that "harmonize[s]" both the broad language of RCW 46.98.1851(g) and the narrow language of the exceptions, without rendering parts of the statute superfluous. Jackson, 142 Wn. App. at 145-46; Ralph v. State Dep't of Nat. Res., 182 Wn.2d 242, 248, 343 P.3d 342 (2014) ("we cannot 'simply ignore' express terms. We must interpret a statute as a whole

[6] That is, those manufactures that "held a vehicle dealer license in this state on January 1, 2014." RCW 46.98.185(1)(g)(vii).

so that, if possible, no clause, sentence, or word shall be superfluous, void, or insignificant.") (citation omitted); Am. Legion Post No. 149 v. Dep't of Health, 164 Wn.2d 570, 588, 192 P.3d 306 (2008) ("Statutes are to be read together, whenever possible, to achieve a harmonious total statutory scheme . . . which maintains the integrity of the respective statutes.").

In response, Lucid Group first argues that the word "capacity" (in the phrase "acting in the capacity") means "'a position, character, or role either duly assigned or assumed without sanction.'" Hanson v. Carmona, 1 Wn.3d 362, 374, 525 P.3d 940 (2023) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 330 (2002)). Armed with this definition, Lucid argues that the statute is prohibiting manufacturers only from "assum[ing] the role of their *independent* dealers" and, "because it does not have any" independent dealers, Lucid USA or Group "cannot usurp" such a role. (Emphasis added). However, as discussed above, the prohibitions of RCW 46.96.185(1)(g) apply in the first instance, not just to competition with independent dealers, but to any dealers of "any make or line." And Lucid Group wrongly tears the word "capacity" from its context in the phrase "by acting in the capacity" of a dealer, which—as also explained above—points to a functional definition for entities that "do the type of work" a dealer, i.e., selling and trading new motor vehicles.[7]

[7] As part of this argument, Lucid Group also argued that the term "'new motor vehicle dealer' [] does not mean *anyone* who sells vehicles, but instead only independent dealers selling vehicles pursuant to a franchise or contract with a manufacturer." See Wash. Ct. of Appeals oral argument, Lucid Group USA v. Dep't of Licensing, No. 86123-9-I (Sept. 13, 2024) at 6 min., 57 sec. through 7 min., 9 sec. video recorded by TVW, Washington State's Public Affairs Network, https://tvw.org/video/division-1-court-of-appeals-

Lucid Group next claims RCW 46.96.185(1)(g)'s introductory clause ("[n]otwithstanding the terms of any franchise agreement") clarifies the section "functions to regulate the relationship between traditional manufacturers and *their* franchised dealers." (Emphasis added). In so arguing, Lucid Group relies on Continental Cars, Inc. v. Mazda Motor of Am., Inc., No. C11-5266-BHS, 2011 WL 4026793 (W.D. Wash. 2011) (court order). Id. at 13.

Indeed, Continental Cars held that similar "notwithstanding" language in the Franchise Act showed a "legislative intent to balance power between *the* dealer and the manufacturer," further finding that the Franchise Act "sets out the baseline from which new automotive manufacturers and dealers cannot bargain below." 2011 WL 4026793, at *5 (emphasis added) (citing RCW 46.96.150(4)). However, Lucid Group over-interprets the holding in Continental Cars as (a) seeking to define the entire and exclusive purpose of the Franchise Act, as (b) regulating only the relationship between a manufacturer and *their* dealer, when it does and says neither. On the contrary, Continental Cars' undifferentiated use of the definite article "the" and the plural is equally consistent with the Act's purpose of regulating the relationship between manufacturers and *any* dealer. State v. Neher, 52 Wn.

2024091212/?eventID=2024091212. This argument is quickly dispensed with. First, that definition nowhere contains the word "independent"; Lucid Group simply injects that concept for its own ends. Second, a "'[n]ew motor vehicle dealer' means a motor vehicle dealer engaged in the business of . . . dealing in new motor vehicles . . . under a franchise . . . agreement, *or* contract with the manufacturer of the new motor vehicles." RCW 46.96.020(10) (emphasis added). Here, it is undisputed that Lucid Group sells Lucid USA's vehicles—not on some kind of honor system—but through some kind of written contract. Finally, Lucid Group's argument ignores the more relevant text of RCW 46.96.185 that its prohibition applies "[n]otwithstanding the terms of a franchise agreement."

App. 298, 300, 759 P.2d 475 (1988) ("'the' can sometimes be read as 'a'.") (citing BLACK'S LAW DICTIONARY 4 (4th rev. ed. 1968)). At most, the case stands for the proposition that regulating franchise agreements is merely one way, among others, of regulating the industry.

b. The Broader Statutory Context and Statutory Scheme

The broader statutory context, including the Franchise Act's sweeping legislative findings at RCW 46.96.010, also belie Lucid Group's cramped interpretation of RCW 46.96.185(1)(g). While the Franchise Act was motivated in part by "a substantial disparity in bargaining power between automobile manufacturers and *their* dealers," the legislature also found that "maintenance of fair competition among dealers [plural] *and others* is in the public interest, and that the maintenance of strong and sound dealerships is essential to provide continuing and necessary reliable services to the consuming public in this state and to provide stable employment to the citizens of this state." RCW 46.96.010 (emphasis added).

In other words, the Franchise Act seeks to protect dealers, dealerships, consumer, and indeed the public's interests by maintaining fair competition between all dealers and all manufacturers. Id. It would be a blinkered view of the Franchise Act (and inconsistent with the express language of RCW 46.96.185(1)(g)) to believe it could achieve those ends by simply focusing on the relationship between a manufacturer and its and only its dealers. Accordingly, the Franchise Act looks beyond that singular relationship to regulate "competition among dealers *and others*." RCW 46.96.010 (emphasis added).

In response, Lucid Group cites to Tacoma Auto Mall, which also discusses the above legislative findings but ultimately is inapposite. There, this court addressed how another section of the Franchise Act, former RCW 46.96.200 (1994), affected the standing of "prospective purchasers," not dealers. Tacoma Auto Mall, 169 Wn. App. at 122-23. In that context, this court held the Act's findings show the "express purpose of the Franchise Act is to regulate the relationship between manufacturers and 'their dealers' in order to protect those dealers and benefit the car-buying public." Id. at 120 (quoting RCW 46.96.010).

As with Continental Cars, we hold that Tacoma Auto Mall's general recitation of this singular legislative finding does not stand for the proposition that the Franchise Act has a single purpose, as Lucid Group asserts. Id. Nowhere in the opinion did we hold that the entire statutory scheme considered *solely* that relationship. Instead, Tacoma Auto Mall's holding as to RCW 46.96.200 is consistent with the Act's intent to govern competition between dealers and any other party acting as a dealer for "any make or line." RCW 46.96.185(1)(g). This interpretation permits us to harmonize both RCW 46.96.200 and RCW 46.96.185(1)(g). Jackson, 142 Wn. App. at 145-46.

Finally, Lucid Group cites to numerous additional provisions of the Franchise Act, which it claims show that "*all* of the provisions of the Franchise Act are focused on regulating the relationship between manufacturers and *their* dealers." (Emphasis added). Lucid cites to:

- RCW 46.96.030, which discusses restrictions on a manufacturer's "termination, cancellation, or nonrenewal of the franchise."
- RCW 46.96.185(1)(a), (b), and (p), each which prohibit various

specified "discriminat[ory]" or "adverse" actions "against a new motor vehicle dealer."

- RCW 46.96.200, which states a "manufacturer shall not withhold consent to the sale, transfer, or exchange of a franchise to a qualified buyer" and provides a framework for such transactions.
- RCW 46.96.230, which states a "manufacturer . . . shall pay . . . payment or other compensation due under a manufacturer incentive program."

In other words, Lucid Group asks us to read an implied narrowness of purpose within the Franchise Act based on the above provisions. However, none of these provisions or any cited authorities thereto affirmatively state the Franchise Act *solely* focuses on traditional dealer relationships or agreements with manufacturers. Further, courts "must not add words where the legislature has chosen not to include them." Cananwill, 150 Wn.2d at 682. Instead, the Franchise Act's legislative findings and RCW 46.98.185(1)(g)'s broad terms demonstrate a multifaceted focus for the Franchise Act.

Lucid also cites to RCW 46.96.185(1)(h), arguing that "[u]nlike section (1)(g), section (1)(h) contains no exceptions for manufacturers operating service facilities prior to 2014." It further argues if "DOL's broad reading of section (1)(g) were correct, then section (1)(h) would prohibit manufacturers expressly authorized to own dealerships, such as Tesla (which avails itself of the exception of (1)(g)(vii)), from providing service in Washington. Lucid also argues that this reading of (1)(h) would "prohibit Lucid from performing warranty work in the state, even though DOL has expressly agreed that it can" thus leading to absurd results. Id.; Jesperson v. Clark County, 199 Wn. App. 568, 578, 399 P.3d 1209 (2017) ("we construe a statute to avoid absurd results.").

Indeed, RCW 46.96.185(1)(h) prohibits manufacturers or affiliates from competition with dealers by "owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motor vehicles under the manufacturer's new car warranty and extended warranty."

Contrary to Lucid Group's argument, however, RCW 46.96.185(1)(g) and (1)(h) can be easily harmonized by interpreting it to allow manufacturers who fall within an exception from (1)(g) to act as a dealer and thus engage in the activities listed within (1)(h). Again, we must seek to harmonize all language of the Franchise Act. Jackson, 142 Wn. App. at 145-46; Am. Legion Post No. 149, 164 Wn.2d at 588 ("This court assumes the legislature does not intend to create inconsistent statutes.").

In short, we hold that the intent of the "statute is plain on its face"; it not only regulates traditional dealer-manufacturer relationships, but also the relationships of manufacturer's affiliates and dealers of any make or line. Lenander, 186 Wn.2d at 405. Even if the statute is susceptible to "different interpretations," we hold those interpretations are not "sufficiently reasonable to warrant further inquiry." Tenino Aerie, 148 Wn.2d at 242. As such, we need not reach its legislative history and "must give effect to" the above plain meaning as an "expression of legislative intent." Lenander, 186 Wn.2d at 405.

B. Constitutionality of RCW 46.96.185(1)(g)

"When presented with claims under both the state and federal constitutions, we review the state constitutional arguments first." Am. Legion, 164 Wn.2d at 605. Lucid Group asserts Washington's privileges and immunities clause as well as

federal equal protection and due process challenges. "[W]hether an agency order, or the statute supporting the order, violates constitutional provisions is a question of law that we review de novo." Pal, 185 Wn. App. at 781.

1. Washington Privileges and Immunities Clause

Washington's privileges and immunities clause states that "[n]o law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." CONST. art. I, § 12. This clause "was intended to prevent favoritism and special treatment for a few to the disadvantage of others." Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc., 196 Wn.2d 506, 518, 475 P.3d 164 (2020).

"[W]e have subjected legislation to a two-part test under this 'privileges' prong of article I, section 12 analysis." Schroeder v. Weighall, 179 Wn.2d 566, 572-73, 316 P.3d 482 (2014). "First, we ask whether a challenged law grants a 'privilege' or 'immunity' for purposes of our state constitution." Id. at 573. "Not every benefit constitutes a 'privilege' or 'immunity' for purposes of the independent article I, section 12 analysis. Rather, the benefits triggering that analysis are only those implicating 'fundamental rights . . . of . . . state . . . citizenship.'" Id. (quoting State v. Vance, 29 Wash. 435, 458, 70 P. 34 (1902)). Second, "[i]f the answer is yes, then we ask whether there is a 'reasonable ground' for granting that privilege or immunity." Id. (quoting Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 145 Wn.2d 702, 731, 42 P.3d 394 (2002) (Grant County I)). Under this test, "a court will not hypothesize facts to justify a legislative distinction." Id. at 574.

"Rather, the court will scrutinize the legislative distinction to determine whether it *in fact* serves the legislature's stated goal." Id. (alteration in original).

As to whether a privilege or immunity was granted, Lucid Group argues that our Supreme Court "has repeatedly held that the right to 'carry on business' within the State implicates a fundamental right." Vance, 29 Wash. at 458. Lucid relies on numerous authorities to support its above argument, including Vance, Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 83 P.3d 419 (2004) (Grant County II), American Legion, and Ass'n of Wash. Spirits. Id. Lucid Group's reliance on each is inapposite.

Long ago, our Supreme Court in Vance expressed and, more recently, it reiterated in Grant County II the general principle that "[p]rivileges and immunities therein . . . secure in each state to the citizens of all states the right to remove to and *carry on business therein*." Vance, 29 Wash. at 458 (emphasis added); Grant County II, 150 Wn.2d at 813 (quoting Vance, 29 Wash. at 458). However, even more recently, our Supreme Court, also reiterated that the "'right . . . to carry on business'" is "implicated only in very narrow circumstances." Wash. Food Indus. Ass'n v. City of Seattle, 1 Wn.3d 1, 28, 524 P.3d 181 (2023) (quoting Vance, 29 Wash. at 458).

In exploring the counters of these "narrow circumstances," our Supreme Court recently reviewed its decision regarding a licensing statute, which only required licenses for "'transient'" photographers and not "'resident'" photographers. Id. (quoting Ralph v. City of Wenatchee, 34 Wn.2d 638, 639, 209 P.2d 270 (1949)). The court noted that the right to carry on business was implicated, by way of

example, where the ordinance was "designed 'substantially to prohibit activity of nonresident photographers.'" Id. at 29 (quoting Ralph, 34 Wn.2d at 642).

In contrast, in American Legion, our Supreme Court also considered "whether the right to smoke in a private facility is a privilege or immunity." 164 Wn.2d at 606. There, the appellant asserted "it is similarly situated to a hotel, where smoking is allowed in some rooms, because they are both 'private facilities' and 'places of employment.'" Id. at 607. The court observed that "the privileges and immunities clause is violated if a statute treats two businesses that are selling the same product differently." Id. Nonetheless, our Supreme Court rejected the appellant's argument, finding that the challenged law "does not prevent any entity from engaging in business, which is a privilege for purposes of article I, section 12" and "[i]nstead, the Act merely prohibits smoking within a place of employment." Id. at 608. That is, our Supreme Court flatly held "there is no privilege involved," meaning "there is no violation of article I, section 12" because the appellant was not entirely blocked from doing business. Id. This 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 only as a matter of grace of the state," a distinction which "must be constantly in mind." Randles v. Wash. State Liquor Control Bd., 33 Wn.2d 688, 694, 206 P.2d 1209 (1949).

Moreover, in Ass'n of Wash. Spirits, the court reiterated that the "'right to . . . carry on business therein,' [is] a long-recognized privilege under our constitution." 182 Wn.2d at 360 (quoting Grant County II, 150 Wn.2d at 812-13). While true, the court also held that Washington courts "have also rejected attempts to assert the

right to carry on business when a narrower, nonfundamental right is truly at issue." Id. (citing Am. Legion, 164 Wn.2d at 607-08). There, our Supreme Court rejected an "argument that the assignment of different licensing fees for different abilities to sell and distribute spirits burdens its fundamental right to carry on business" as "overbroad." Id. at 362. Specifically, the challenged law did "not unfairly discriminate against a class of businesses to the benefit of another class of the same businesses; it merely assigns a uniform fee to the class of individuals in Washington who sell spirits." Id. The court further stated that "we have never held that the right to sell liquor is a fundamental right or privilege." Id.

In short, Lucid Group's assertion that it has a fundamental right to "carry on business" is overgeneralized, as the right is narrower than Lucid asserts, triggered when an appellant is entirely blocked from doing business, when the law unfairly discriminates between businesses, with an eye to the type of industry at issue.

Taking these principles in reverse order, similar to Ass'n of Wash. Spirits, Lucid Group fails to cite any authority specifically creating a fundamental right to sell cars. Id. Further, RCW 46.96.185(1)(g) equally prohibits all manufacturers or their affiliates from "compet[ing]" with dealers outside of a few exceptions. That is, 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.

Finally, as in American Legion, Lucid Group is "not prevent[ed] . . . from engaging in business" within the motor vehicle market, only that its preferred method ("direct-sales-only") is not allowed. 164 Wn.2d at 606; Wash. Food Indus.

Ass'n, 1 Wn.3d at 29 (appellant there "does not allege that it is effectively prohibited from engaging in business as a result of the ordinance, only that it receives disfavored treatment."). Instead, if Lucid Group 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).

Therefore, we hold that the Franchise Act implicates no fundamental right and, thus, does not violate the privileges and immunities clause. Schroeder, 179 Wn.2d at 573.[8]

2. Federal Due Process and Equal Protection

The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

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[8] Even if a fundamental right was implicated, we would hold that RCW 46.96.185(1)(g) is based on reasonable grounds. Lucid Group's reliance on three cases to argue otherwise is inapposite. In re Camp, 38 Wash. 393, 396-97, 80 P. 547 (1905) (disapproved of a law allowing "peddling" as the "distinctions are arbitrary and no proper basis for classification."); City of Seattle v. Dencker, 58 Wash. 501, 504, 108 P. 1086 (1910) (disapproved of a law requiring licenses for vending machines as there was "no claim that the business discriminated against here affects in any way the public morals or the business interests of the community . . . but purely in the way of competition."); State v. Robinson Co., 84 Wash. 246, 250, 146 P. 628 (1915) (disapproved of a law that "authorize[d] cereal and flour mills to sell mixed and unmixed feeding stuffs, while other persons selling the same feeding stuffs are required to comply with the provisions of the act."). Unlike those cases, more than mere protectionism or favoritism motivates RCW 46.96.185(1)(g). From the beginning of the Act, RCW 46.98.185(1)(g) 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." RCW 46.96.010. These goals constitute reasonable grounds for the Act.

In asserting federal due process and equal protection claims, Lucid appears to concede that a federal fundamental right is not implicated as it applies a rational basis test. Indeed, where no fundamental right or suspect classification is implicated, "a rational basis review" is required "under the Due Process and Equal Protection clauses of the Fourteenth Amendment." Craigmiles v. Giles, 312 F.3d 220, 222, 229 (6th Cir. 2002). Rational basis review requires "only that the regulation bear some rational relation to a legitimate state interest" which carries a "'strong presumption of validity.'" Id. at 223-24 (quoting Walker v. Bain, 257 F.3d 660, 668 (6th Cir. 2001)). "Still, 'notwithstanding the strong presumption of constitutionality, the rational basis test 'is not a toothless one.'" Romero v. Dep't of Soc. & Health Servs., 30 Wn. App. 2d 323, 346, 544 P.3d 1083 (2024) (quoting Nielsen v. Dep't of Licensing, 177 Wn. App. 45, 53, 309 P.3d 1221 (2013)) (internal quotation marks omitted).

Lucid primarily relies on Giles and St. Joseph Abbey v. Castille, 712 F.3d 215 (5th Cir. 2013). Both cases struck down laws under a rational basis test that required caskets be sold exclusively by licensed funeral directors or funeral homes. Giles, 312 F.3d at 222; St. Joseph Abbey, 712 F.3d at 217-18. Both cases explained that the challenged laws had little to no justification beyond "naked protectionism" or ignored the power dynamics between the parties involved. Giles, 312 F.3d at 229 (finding that the law was nothing but a "naked attempt to raise a fortress protecting the monopoly rents that funeral directors extract from consumers."); St. Joseph Abbey, 712 F.3d at 225-26 (rejecting the argument that "exclusivity will assure purchasers of caskets informed counsel" as "third-party

sellers do not have the same incentive as funeral home sellers to engage in deceptive sales tactics" meaning the law actually put consumers "at a greater risk.").

Here, as noted above, the Franchise Act's legislative findings stress the importance of ensuring "fair competition" in light of the "substantial disparity in bargaining power" between manufacturers and dealers. RCW 46.96.010. As such, the legislature's articulated goal of preventing manufacturer's abuse of power motivated the Franchise Act generally and RCW 46.96.185(1)(g) specifically. In other words, the Act and RCW 46.98.185(1)(g) were not unjustified "protectionism" or ignorant of "deceptive sales tactics" like the statutes challenged in Giles, 312 F.3d at 229, and St. Joseph Abbey, 712 F.3d at 225.

As a final note, Ford Motor Co. v. Texas Dep't of Transp., 264 F.3d 493 (5th Cir. 2001), is instructive. There, the Fifth Circuit considered whether a Texas law properly prohibited Ford's retail website. Id. at 498. Similar to RCW 46.96.185(1)(g), the Texas law prohibited manufacturers from directly or indirectly owning, operating, or acting as a dealer.[9] Id. Ford filed suit, alleging that the law violated inter alia Ford's due process and equal protection rights under the United States constitution. Id. The Fifth Circuit held the law properly sought "to prevent vertically integrated companies from taking advantage of their incongruous market position" and prevent unfair practices arising therefrom which "are legitimate state

[9] Specifically, the Texas law provided that, "'[e]xcept as provided by this section, a manufacturer or distributor may not directly or indirectly . . . own an interest in a dealer or dealership . . . operate or control a dealer or dealership; or . . . act in the capacity of a dealer.'" Ford Motor Co., 264 F.3d at 498 (quoting former Tex. Rev. Civ. Stat. art. 4413(36), § 5.02C(c)(1)-(3)).

interests" and satisfied rational basis review. Id. at 503 (quote), 510 (holding).

In short, we hold there is adequate constitutional basis for RCW 46.98.185(1)(g) as it "bear[s] some rational relation to a legitimate state interest." Giles, 312 F.3d at 223.[10] Thus, Lucid Group's federal constitutional challenge fails.

III. CONCLUSION

For the reasons above, we affirm the ALJ's decision upholding the DOL's denial of Lucid Group's new motor vehicle dealer application.

Díaz, J.

WE CONCUR:

Coburn, J.

Dwyer, J.

[10] Lucid Group also challenges the constitutionality of RCW 46.96.185(1)(g)(vii) which exempts from unfair practices any "manufacturer that held a vehicle dealer license in this state on January 1, 2014." Lucid Group avers that only Tesla is covered by the exception. At oral argument, Lucid Group clarified "the remedy here . . . is not to strike down that exception." Wash. Ct. of Appeals oral argument, supra at 17 min., 37 sec. through 17 min., 43 sec. Instead, the "exception means that the application of the restriction to Lucid violates its privileges and immunities rights, because it's discriminatory," thereby undermining the reasonableness of the provision. Id. at 20 min., 1 sec. through 20 min., 11 sec.

However, as discussed above, this appeal does not implicate a fundamental right, making Washington's privileges and immunities clause ab initio inapplicable. Schroeder v. Weighall, 179 Wn.2d 566, 572-73, 316 P.3d 482 (2014). Further, this court asked Lucid Group at oral argument if it challenged this exception under equal protection and it responded "no, we assert that the . . . broader restriction to Lucid violates its privileges or immunities rights." Wash. Ct. of Appeals oral argument, supra at 20 min., 11 sec. through 20 min., 24 sec. As such, we need not address whether RCW 46.96.185(1)(g)(vii) satisfies federal rational basis.

APPENDIX B

RCW 46.96.185 Unfair practices—Exemptions—Definitions. (1) Notwithstanding the terms of a franchise agreement, a manufacturer, distributor, factory branch, or factory representative, or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative, shall not:

(a) Discriminate between new motor vehicle dealers by selling or offering to sell a like vehicle to one dealer at a lower actual price than the actual price offered to another dealer for the same model similarly equipped;

(b) Discriminate between new motor vehicle dealers by selling or offering to sell parts or accessories to one dealer at a lower actual price than the actual price offered to another dealer;

(c) Discriminate between new motor vehicle dealers by using a promotion plan, marketing plan, or other similar device that results in a lower actual price on vehicles, parts, or accessories being charged to one dealer over another dealer;

(d) Discriminate between new motor vehicle dealers by adopting a method, or changing an existing method, for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its dealers that is not fair, reasonable, and equitable. Upon the request of a dealer, a manufacturer, distributor, factory branch, or factory representative shall disclose in writing to the dealer the method by which new motor vehicles, parts, and accessories are allocated, scheduled, or delivered to its dealers handling the same line or make of vehicles;

(e) Discriminate against a new motor vehicle dealer by preventing, offsetting, or otherwise impairing the dealer's right to request a documentary service fee on affinity or similar program purchases. This prohibition applies to, but is not limited to, any promotion plan, marketing plan, manufacturer or dealer employee or employee friends or family purchase programs, or similar plans or programs;

(f) Give preferential treatment to some new motor vehicle dealers over others by refusing or failing to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motor vehicles sold or distributed by the manufacturer, distributor, factory branch, or factory representative, a new vehicle, parts, or accessories, if the vehicle, parts, or accessories are being delivered to other dealers, or require a dealer to purchase unreasonable advertising displays or other materials, or unreasonably require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles;

(g) 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. It is not, however, a violation of this subsection for:

(i) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership for a temporary period, not to exceed two years, during the transition from one owner of the dealership to another where the dealership was previously owned by a franchised dealer and is currently for sale to any qualified independent person at a fair and reasonable price. The temporary

operation may be extended for one twelve-month period on petition of the temporary operator to the department. The matter will be handled as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is a franchisee of the petitioning manufacturer or distributor may intervene and participate in a proceeding under this subsection (1)(g)(i). The temporary operator has the burden of proof to show justification for the extension and a good faith effort to sell the dealership to an independent person at a fair and reasonable price;

(ii) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership in conjunction with an independent person in a bona fide business relationship for the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, and where the independent person: (A) Has made, or within a period of two years from the date of commencement of operation will have made, a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer, distributor, factory branch, or factory representative has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. Nothing in this subsection (1)(g)(ii) relieves a manufacturer, distributor, factory branch, or factory representative from complying with (a) through (f) of this subsection;

(iii) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership in conjunction with an independent person in a bona fide business relationship where the independent person: (A) Has made, or within a period of two years from the date of commencement of operation will have made, a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer, distributor, factory branch, or factory representative has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. The number of dealerships operated under this subsection (1)(g)(iii) may not exceed four percent rounded up to the nearest whole number of a manufacturer's total of new motor vehicle dealer franchises in this state. Nothing in this subsection (1)(g)(iii) relieves a manufacturer, distributor, factory branch, or factory representative from complying with (a) through (f) of this subsection;

(iv) 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, and the truck manufacturer has been continuously engaged in the retail sale of the trucks at least since January 1, 1993;

(v) A manufacturer to own, operate, or control a new motor vehicle dealership trading exclusively in a single line make of the manufacturer if (A) the manufacturer does not own, directly or indirectly, in the aggregate, in excess of forty-five percent of the total ownership interest in the dealership, (B) at the time the manufacturer first acquires ownership or assumes operation or control of any such dealership, the distance between any dealership thus owned, operated, or controlled and the nearest new motor vehicle dealership trading in the same line make of vehicle and in which the manufacturer has no ownership or control is not less than fifteen miles and complies with the applicable provisions in the relevant market area sections of this chapter, (C) all of the manufacturer's franchise agreements confer rights on the dealer of that line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and the manufacturer agree are appropriate, and (D) as of January 1, 2000, the manufacturer had no more than four new motor vehicle dealers of that manufacturer's line make in this state, and at least half of those dealers owned and operated two or more dealership facilities in the geographic territory or area covered by their franchise agreements with the manufacturer;

(vi) A final-stage manufacturer to own, operate, or control a new motor vehicle dealership; or

(vii) A manufacturer that held a vehicle dealer license in this state on January 1, 2014, to own, operate, or control a new motor vehicle 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, or to own, operate, or control or contract with companies that provide finance, leasing, or service for vehicles that are of that manufacturer's makes or lines;

(h) Compete with a new motor vehicle dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motor vehicles under the manufacturer's new car warranty and extended warranty. Nothing in this subsection (1)(h), however, prohibits a manufacturer, distributor, factory branch, or factory representative from owning or operating a service facility for the purpose of providing or performing maintenance, repair, or service work on motor vehicles that are owned by the manufacturer, distributor, factory branch, or factory representative;

(i) Use confidential or proprietary information obtained from a new motor vehicle dealer to unfairly compete with the dealer. For purposes of this subsection (1)(i), "confidential or proprietary information" means trade secrets as defined in RCW 19.108.010, business plans, marketing plans or strategies, customer lists, contracts, sales data, revenues, or other financial information;

(j)(i) Terminate, cancel, or fail to renew a franchise with a new motor vehicle dealer based upon any of the following events, which do not constitute good cause for termination, cancellation, or nonrenewal under RCW 46.96.060: (A) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a franchise agreement for the sale or service of another make or line of new motor vehicles; (B) the fact that the new motor vehicle dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the manufacturer or distributor; (C) that the new motor vehicle dealer has or intends to relocate the manufacturer or distributor's make or line of new motor vehicles or service to an existing dealership facility that is

within the relevant market area, as defined in RCW 46.96.140, of the make or line to be relocated, except that, in any nonemergency circumstance, the dealer must give the manufacturer or distributor at least sixty days' notice of his or her intent to relocate and the relocation must comply with RCW 46.96.140 and 46.96.150 for any same make or line facility; or (D) the failure of a franchisee to change the location of the dealership or to make substantial alterations to the use or number of franchises on the dealership premises or facilities.

(ii) Notwithstanding the limitations of this section, a manufacturer may, for separate consideration, enter into a written contract with a dealer to exclusively sell and service a single make or line of new motor vehicles at a specific facility for a defined period of time. The penalty for breach of the contract must not exceed the amount of consideration paid by the manufacturer plus a reasonable rate of interest;

(k) Coerce or attempt to coerce a motor vehicle dealer to refrain from, or prohibit or attempt to prohibit a new motor vehicle dealer from acquiring, owning, having an investment in, participating in the management of, or holding a franchise agreement for the sale or service of another make or line of new motor vehicles or related products, or establishing another make or line of new motor vehicles or service in the same dealership facilities, if the prohibition against acquiring, owning, investing, managing, or holding a franchise for such additional make or line of vehicles or products, or establishing another make or line of new motor vehicles or service in the same dealership facilities, is not supported by reasonable business considerations. The burden of proving that reasonable business considerations support or justify the prohibition against the additional make or line of new motor vehicles or products or nonexclusive facilities is on the manufacturer;

(l) Require, by contract or otherwise, a new motor vehicle dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is uniformly required of other similarly situated new motor vehicle dealers of the same make or line of vehicles and is reasonable in light of all existing circumstances, including economic conditions. In any proceeding in which a required facility alteration, expansion, or addition is an issue, the manufacturer or distributor has the burden of proof. Except for a program or any renewal or modification of a program that is in effect with one or more new motor vehicle dealers in this state on June 12, 2014, a manufacturer shall not require, coerce, or attempt to coerce any new motor vehicle dealer by program, policy, standard, or otherwise to change the location of the dealership or construct, replace, renovate, or make any substantial changes, alterations, or remodeling to a new motor vehicle dealer's sales or service facilities, except as necessary to comply with health or safety laws or to comply with technology requirements without which a dealer would be unable to service a vehicle the dealer has elected to sell, before the tenth anniversary of the date of issuance of the certificate of occupancy or the manufacturer's approval, whichever is later, from:

(i) The date construction of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative; or

(ii) The date a prior change, alteration, or remodel of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative;

(m) Prevent or attempt to prevent by contract or otherwise any new motor vehicle dealer from changing the executive management of a new motor vehicle dealer unless the manufacturer or distributor, having the burden of proof, can show that a proposed change of executive management will result in executive management by a person or persons who are not of good moral character or who do not meet reasonable, preexisting, and equitably applied standards of the manufacturer or distributor. If a manufacturer or distributor rejects a proposed change in the executive management, the manufacturer or distributor shall give written notice of its reasons to the dealer within sixty days after receiving written notice from the dealer of the proposed change and all related information reasonably requested by the manufacturer or distributor, or the change in executive management must be considered approved;

(n) Condition the sale, transfer, relocation, or renewal of a franchise agreement or condition manufacturer, distributor, factory branch, or factory representative sales, services, or parts incentives upon the manufacturer obtaining site control, including rights to purchase or lease the dealer's facility, or an agreement to make improvements or substantial renovations to a facility. For purposes of this section, a substantial renovation has a gross cost to the dealer in excess of five thousand dollars;

(o) Fail to provide to a new motor vehicle dealer purchasing or leasing building materials or other facility improvements the right to purchase or lease franchisor image elements of like kind and quality from an alternative vendor selected by the dealer if the goods or services are to be supplied by a vendor selected, identified, or designated by the manufacturer or distributor. If the vendor selected by the manufacturer or distributor is the only available vendor of like kind and quality materials, the new motor vehicle dealer must be given the opportunity to purchase the franchisor image elements at a price substantially similar to the capitalized lease costs of the elements. This subsection (1)(o) must not be construed to allow a new motor vehicle dealer or vendor to gain additional intellectual property rights they are not otherwise entitled to or to impair or eliminate the intellectual property rights of the manufacturer or distributor or to permit a new motor vehicle dealer to erect or maintain signs that do not conform to the reasonable intellectual property usage guidelines of the manufacturer or distributor;

(p) Take any adverse action against a new motor vehicle dealer including, but not limited to, charge backs or reducing vehicle allocations, for sales and service performance within a designated area of primary responsibility unless that area is reasonable in light of proximity to relevant census tracts to the dealership and competing dealerships, highways and road networks, any natural or man-made barriers, demographics, including economic factors, buyer behavior information, and contains only areas inside the state of Washington unless specifically approved by the new motor vehicle dealer;

(q) Require, coerce, or attempt to coerce any new motor vehicle dealer by program, policy, facility guide, standard, or otherwise to order or accept delivery of any service or repair appliances, equipment, parts, or accessories, or any other commodity not required

by law, which the dealer has not voluntarily ordered or which the dealer does not have the right to return unused for a full refund within ninety days or a longer period as mutually agreed upon by the dealer and manufacturer; or

(r) Modify the franchise agreement for any new motor vehicle dealer unless the manufacturer notifies the dealer in writing of its intention to modify the agreement at least ninety days before the effective date thereof, stating the specific grounds for the modification, and undertakes the modification in good faith, for good cause, and in a manner that would not adversely and substantially alter the rights, obligations, investment, or return on investment of the franchised new motor vehicle dealer under the existing agreement.

(2) Subsection (1)(a), (b), and (c) of this section do not apply to sales to a motor vehicle dealer: (a) For resale to a federal, state, or local government agency; (b) where the vehicles will be sold or donated for use in a program of driver's education; (c) where the sale is made under a manufacturer's bona fide promotional program offering sales incentives or rebates; (d) where the sale of parts or accessories is under a manufacturer's bona fide quantity discount program; or (e) where the sale is made under a manufacturer's bona fide fleet vehicle discount program. For purposes of this subsection, "fleet" means a group of fifteen or more new motor vehicles purchased or leased by a dealer at one time under a single purchase or lease agreement for use as part of a fleet, and where the dealer has been assigned a fleet identifier code by the department of licensing.

(3) The following definitions apply to this section:

(a) "Actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, distributor, factory branch, or factory representative, whether paid to the dealer or the ultimate purchaser of the vehicle.

(b) "Control" or "controlling" means (i) the possession of, title to, or control of ten percent or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary, or (ii) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise, except as expressly provided under the franchise agreement.

(c) "Motor vehicles" does not include trucks that are 14,001 pounds gross vehicle weight and above or recreational vehicles as defined in RCW 43.22.335.

(d) "Operate" means to manage a dealership, whether directly or indirectly.

(e) "Own" or "ownership" means to hold the beneficial ownership of one percent or more of any class of equity interest in a dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

(4) A violation of this section is deemed to affect the public interest and constitutes an unlawful and unfair practice under chapter 19.86 RCW. A person aggrieved by an alleged violation of this section may petition the department to have the matter handled as an adjudicative proceeding under chapter 34.05 RCW. [2018 c 296 s 2; 2014 c 214 s 7; 2010 c 178 s 6; 2003 c 21 s 3; 2000 c 203 s 1.]

Application—2014 c 214: See note following RCW 46.70.045.

Captions not law—2003 c 21: See note following RCW 46.96.020.

APPENDIX C

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 1. Declaration of Rights (Refs & Annos)

West's RCWA Const. Art. 1, § 12

§ 12. Special Privileges and Immunities Prohibited

Currentness

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Credits
Adopted 1889.

Notes of Decisions (1222)

West's RCWA Const. Art. 1, § 12, WA CONST Art. 1, § 12
Current through Nov. 5, 2024, General Election.

DECLARATION 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.

DATED this 23rd day of December 2024.

s/ Curt Roy Hineline
Curt Roy Hineline
WSBA No. 16317

Attorney for Lucid Group USA, Inc.

BAKER & HOSTETLER LLP

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Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	86123-9
Appellate Court Case Title:	Lucid Group USA, Appellant v State Licensing, Respondent
Superior Court Case Number:	23-2-00783-0

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