United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
September 4, 2026
Lyle W. Cayce
Clerk

No. 25-50319

LUCID GROUP USA, INCORPORATED,

Plaintiff—Appellant,

versus

MONIQUE JOHNSTON, *in her official capacity as Director of the Motor Vehicle Division of the Texas Department of Motor Vehicles*; DANIEL AVITIA, *in his official capacity as Executive Director of the Texas Department of Motor Vehicles*; CORRIE THOMPSON, *in her official capacity as the Director of the Enforcement Division of the Texas Department of Motor Vehicles*,

Defendants—Appellees,

TEXAS AUTOMOBILE DEALERS ASSOCIATION,

Intervenor—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:22-CV-1116

Before ELROD, *Chief Judge*, and HIGGINBOTHAM and GRAVES, *Circuit Judges*.

PATRICK E. HIGGINBOTHAM, *Circuit Judge*:

Lucid Group challenges a Texas law barring manufacturers from selling vehicles directly to consumers. The district court found the prohibition withstands scrutiny under the Fourteenth Amendment's Equal Protection and Due Process Clauses, and we AFFIRM.

I

Lucid USA, Inc., manufactures electric vehicles. Its affiliate, Lucid Group USA, Inc., sells the vehicles online and at retail centers called "studios."[1] In Texas, Lucid owns a studio in Plano and a warranty-and-service center in Houston. It has no independently franchised dealers.

Texas law bars motor-vehicle manufacturers and their affiliates from owning, operating, controlling, or acting on behalf of a franchised dealer for the same type of car the manufacturer produces ("the prohibition").[2] Only independent dealers, acting as manufacturers' franchisees, may sell vehicles directly to Texas consumers.[3]

In 2021, the Texas Department of Motor Vehicles (DMV) notified Lucid that it cannot sell its vehicles at the Plano studio because of the

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[1] Atieva, Inc., is the parent company of Lucid USA and Lucid Group USA. We refer to these entities collectively as "Lucid," as TEX. OCC. CODE § 2301.476(a)(1) defines manufacturer to include the manufacturer's affiliates.

[2] TEX. OCC. CODE § 2301.476(c) (previously codified at TEX. REV. CIV. STAT. ANN. art. 4413(36) § 5.02C(c) (West)). Seventeen states have adopted similar provisions. *See* Kristy Hartman & Laura Shields, *State Laws on Direct Sales*, NAT'L CONF. OF STATE LEGISLATURES (2021), https://www.wispolitics.com/wp-content/uploads/2021/08/State-Laws-on-Direct-Sales.pdf. Some states except electric-vehicle and/or non-franchising manufacturers from their direct-sales bans. *Id.*; *see, e.g.*, COLO. REV. STAT. § 44-20-126 (permitting manufacturer to own, operate, or control a dealership if the manufacturer makes only electric vehicles and has no franchised dealers for the same line-make); CAL. VEH. CODE § 11713.3 (prohibiting manufacturers from opening a retail store selling the same line-make within a particular market area).

[3] *See Int'l Truck & Engine Corp. v. Bray*, 372 F.3d 717, 719 (5th Cir. 2004), *opinion corrected on denial of reh'g*, 380 F.3d 231 (5th Cir. 2004).

prohibition.[4] In response, Lucid sued DMV officials Monique Johnston, Daniel Avitia, and Corrie Thompson in their official capacities under 42 U.S.C. § 1983. Texas Automobile Dealers Association (TADA) intervened as a defendant. Lucid brings as-applied challenges to the prohibition under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The district court held Lucid's claims fail as a matter of law upon review of cross-motions for summary judgment, and Lucid timely appealed.

II

The district court had subject-matter jurisdiction under 28 U.S.C. § 1331, and we have jurisdiction under 28 U.S.C. § 1291. "We review a district court's grant of summary judgment de novo."[5] "On cross-motions for summary judgment, we review each party's motion independently, viewing the evidence and inferences in the light most favorable to the nonmoving party."[6]

III

The district court held the prohibition does not violate the Equal Protection and Due Process Clauses because it is rationally related to a legitimate governmental interest. Faithful to this court's precedent evaluating the constitutionality of direct-sales bans on automobile manufacturers,[7] we leave the judgment of the district court undisturbed. We begin by revisiting the guiding precedent, then we apply it to Lucid's claims.

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[4] *See id.* at 718–19 (5th Cir. 2004) (DMV enforces the prohibition). Lucid opened the Plano studio in November 2022 with limited operations.

[5] *DeVoss v. Sw. Airlines Co.*, 903 F.3d 487, 490 (5th Cir. 2018) (internal quotation marks and citation omitted).

[6] *Ford Motor Co. v. Tex. Dep't of Transp.*, 264 F.3d 493, 498 (5th Cir. 2001).

[7] *See id.* at 503, 510–11; *Int'l Truck*, 372 F.3d at 723–24, 728–29; *Tesla, Inc. v. La. Auto. Dealers Ass'n*, 113 F.4th 511, 530–31 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2813

A

First came *Ford* in 2001. Ford challenged Texas's direct-sales ban, which barred Ford from selling its vehicles to consumers through an online showroom.[8] We held the prohibition does not deny manufacturers equal protection under the law, as it does not treat Ford differently from similarly situated manufacturers and "bears a reasonable relationship to the State's legitimate purpose in controlling the [automobile] retail market,"[9] thereby "prevent[ing] vertically integrated companies from taking advantage of their incongruous market position" and perpetuating fraud and unfair practices against citizens.[10]

International Truck followed in 2004. The manufacturer there argued Texas's direct-sales ban "did not bar manufacturers from controlling dealers of used vehicles."[11] We held the prohibition applied to new and used vehicles alike and survives rational basis review, albeit by the metric of the dormant Commerce Clause, for the reasons articulated in *Ford.*[12]

Subsequent decades witnessed a proliferation of electric vehicles. Then came *Tesla* in 2024. Tesla challenged a similar prohibition under

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(2025). *Ford* and *International Truck* reviewed challenges to the same provision Lucid challenges here. *Tesla* dealt with a challenge to Louisiana's direct-sales ban, which mirrors Texas's direct-sales ban in relevant part for the purposes of this appeal.

[8] *Ford*, 264 F.3d at 498.

[9] *Id.* at 510–11 (quoting *Exxon Corp. v. Maryland*, 437 U.S. 117, 125 (1978)).

[10] *Id.* at 503 (citing *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 43 (1980)). Although this reasoning unfolds in the analysis of Ford's dormant Commerce Clause claim, the opinion references and adopts it when addressing Ford's equal protection claim. *Id.* at 510.

[11] *Int'l Truck*, 372 F.3d at 720.

[12] *Id.* at 723–24, 728–29.

Louisiana law as violative of the Equal Protection Clause.[13] Given the likeness between Texas's direct-sales ban and the challenged law in *Tesla*, we found *Ford* controlling.[14] We further held *Ford* applies to the automobile industry at large, not simply manufacturers who utilize the franchise model, so Tesla's equal protection claim failed.[15]

Lucid contends *Ford*, *International Truck*, and *Tesla* are not controlling because they involved facial challenges and Lucid brings only as-applied claims. The relevant inquiry, however, is whether Lucid's as-applied claims are legally and factually distinct from the arguments we considered in those cases.[16] We turn now to that inquiry, addressing Lucid's equal protection and substantive due process claims.

B

A legislative classification that implicates neither a suspect class nor a fundamental right "must be upheld . . . if there is any reasonably conceivable state of facts that could provide a rational basis for the classification."[17] To prevail on its equal protection claim, Lucid "must first show that two or more classifications of similarly situated persons were treated differently under the

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[13] *Tesla*, 113 F.4th at 522.

[14] *Id.* at 530–31.

[15] *Id.*

[16] *See In re Cao*, 619 F.3d 410, 430 (5th Cir. 2010) (en banc) ("While rejection of a facial challenge to a statute does not preclude all as-applied attacks, surely it precludes one resting upon the same asserted principle of law." (quoting *Penry v. Lynaugh*, 492 U.S. 302, 354 (1989) (Scalia, J., dissenting))); *see also id.* ("[A] plaintiff cannot successfully bring an as-applied challenge to a statutory provision based on the same factual and legal arguments [a court] expressly considered when rejecting a facial challenge to that provision." (citation omitted)).

[17] *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993).

statute."[18] Then, as the party "attacking the presumption of validity extended to legislative classifications," Lucid bears "the burden to negative every conceivable basis which might support [the prohibition]."[19]

Lucid offers two interpretations of the relevant classification. Lucid argues Texas's prohibition should be read as a classification between direct-sales manufacturers and franchised manufacturers, as well as a classification between direct-sales manufacturers and independent dealers. In other words, Lucid contends it is similarly situated to franchised manufacturers and independent dealers for the purposes of the prohibition, yet it is treated differently from them under the law.

We reject both readings, as we did in *Tesla* and *Ford*. *Tesla*, citing *Ford*, refused "to view the challenged provisions as a classification of only non-franchising car manufacturers" as the relevant classification "created by the regulatory scheme" is "the class of all vehicle manufacturers."[20] Nor can Lucid show it is similarly situated to independent dealers, as the prohibition defines "manufacturer" to include "a person who . . . is affiliated with . . . or is under common control with, a manufacturer" and Lucid's manufacturing and dealership entities are affiliates under the same parent company.[21] As in

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[18] *Duarte v. City of Lewisville*, 858 F.3d 348, 353 (5th Cir. 2017) (internal quotation marks and citation omitted).

[19] *Glass v. Paxton*, 900 F.3d 233, 245 (5th Cir. 2018) (quoting *Beach Commc'ns*, 508 U.S. at 315) (internal quotation marks omitted); *see also St. Joseph Abbey v. Castille*, 712 F.3d 215, 223 (5th Cir. 2013) ("[R]ational basis review places no affirmative evidentiary burden on the government.").

[20] *See Tesla*, 113 F.4th at 530 (citation omitted); *see also Ford*, 264 F.3d at 510 (rejecting Ford's argument that interpreted manufacturers selling preowned vehicles as a distinct class among all manufacturers).

[21] Tex. Occ. Code § 2301.476(a)(1)(B). Moreover, the record belies Lucid's claim that it is similarly situated to an independent dealership, as Lucid's briefing includes

Tesla and *Ford*, Lucid's "request borders on asking us to apply a more rigorous standard of scrutiny even though in this context '[i]mperfect classifications that are underinclusive or over-inclusive pass constitutional muster.'"[22]

Even if Lucid could show the prohibition treats it differently from similarly situated persons, it cannot negate every conceivable basis of support for the law. *Ford* and *Tesla* visit plain consequences upon this case. *Ford* holds the legislature has a rational basis for classifying automobile manufacturers differently than dealers to curtail vertical integration and monopolistic tendencies.[23] And *Tesla* clarifies "[t]he crucial element of *Ford* was not abuse of one's own dealers but the prevention of vertically integrated companies from taking advantage of their incongruous market position and frauds, unfair practices, discrimination, impositions, and other abuses of our citizens."[24] So *Ford* applies to the "automobile industry more broadly," not just franchised manufacturers, because "the state has a legitimate interest in preventing firms from vertically integrating and abusing the resulting power

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a detailed explanation of the "vast disparities between Lucid's direct-to-consumer sales model and the franchised dealership model."

[22] *Tesla*, 113 F.4th at 530 (alteration in original) (citation omitted).

[23] *Ford*, 264 F.3d at 503, 510. The historical development of the automobile industry lends support for *Ford*'s findings. *See, e.g.*, *Coleman Motor Co. v. Chrysler Corp.*, 525 F.2d 1338, 1344–45 (3d Cir. 1975) (finding Chrysler used its position and vertical integration to engage in predatory intra-brand competition with its dealer); *Ford Motor Co. v. United States*, 405 U.S. 562, 570–71 (1972) (blocking Ford's attempt to vertically integrate with a spark-plug manufacturer because it would substantially lessen competition and further "aggravate[] an already oligopolistic market"). Concerns related to vertical integration have been deemed a rational basis for drawing lines between manufacturers and retailers in other industry contexts, as well. *See, e.g.*, *Exxon*, 437 U.S. at 124–25 (upholding state law that prohibited oil producers and refiners from operating gas stations).

[24] *Tesla*, 113 F.4th at 531 (cleaned up) (citation omitted).

not only on its own dealers, but other dealers, and yes even consumers down the run."[25]

The crux of Lucid's equal protection claim is that the prohibition is irrational as applied to a direct-sales manufacturer. We rejected this argument in *Tesla*, finding "[t]here is hardly a more quintessential example of vertical integration than a manufacturer's extending itself into distribution."[26] Moreover, the record does not meaningfully distinguish the facts here from *Tesla*'s facts. Tesla and Lucid manufacture and sell the same product through the same business model, and the stated purpose of Louisiana and Texas's direct-sales bans is to protect dealers and consumers from anti-competitive behavior.[27] Given the precedent we are duty-bound to follow and its striking similarity to the legal and factual arguments before us, Lucid's as-applied equal protection claim fails as a matter of law.

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[25] *Id.*

[26] *Id.*

[27] *Id.* at 518–19, 530–31; *Ford*, 264 F.3d at 503, 510.

C

To prevail on its substantive due process claim, Lucid must suffer a deprivation of a property or liberty interest protected by the Fourteenth Amendment and show the prohibition is not "rationally related to a legitimate governmental interest."[28] Although prior challenges to direct-sales bans in this circuit did not raise substantive due process claims, we have scrutinized and upheld such provisions under rational basis review by the metric of equal protection. And rational basis review under the Equal Protection and Due Process Clauses mirror each other.[29] So even if Lucid could show the prohibition deprives it of a protected interest, the substantive due process claim fails for the same reason as the equal protection claim: Lucid cannot meet its burden to negate every conceivable rational basis for the law, as *Ford*, *International Truck*, and *Tesla* unequivocally hold that such bases exist.

IV

We AFFIRM the judgment of the district court.

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[28] *Simi Inv. Co. v. Harris Cnty.*, 236 F.3d 240, 249–51 (5th Cir. 2000).

[29] *See, e.g.*, *St. Joseph Abbey*, 712 F.3d at 223–27 (resolving equal protection and due process claims together with the same rational basis analysis); *Hines v. Alldredge*, 783 F.3d 197, 202–03 (5th Cir. 2015), *abrogated on other grounds by Hines v. Quillivan*, 982 F.3d 266 (5th Cir. 2020) (same); *Newell-Davis v. Phillips*, No. 22-30166, 2023 WL 1880000, at *6 (5th Cir. Feb. 10, 2023) (unpublished) (same). Indeed, Lucid concedes these claims rise and fall together.

JENNIFER WALKER ELROD, *Chief Judge*, concurring *dubitante*:

I concur, as our precedent appears to tie us to this conclusion. However, I have doubts both as to whether the *Tesla* case forecloses Lucid's as-applied challenge to Texas's law prohibiting direct sales by car manufacturers and as to the substantive correctness of *Tesla*'s holding about the rationality of such laws as applied to relatively new entrants in the car market. *See Tesla, Inc. v. La. Auto. Dealers Assn.*, 113 F.4th 511, 529–31 (5th Cir. 2024), *cert. denied sub nom. Lala v. Tesla, Inc.*, 145 S. Ct. 2813 (2025).

First, *Tesla* addresses only a facial challenge to Louisiana's equivalent of the law that Lucid challenges. It does not seem to preclude an as-applied challenge, and Lucid points to differences that could lead to a different result. *See In re Cao*, 619 F.3d 410, 430 (5th Cir. 2010) (*en banc*). Lucid does not simply parrot the legal arguments from *Tesla*, but points to meaningful differences between Louisiana and Texas's statutes and between Tesla and Lucid's businesses. In other words, it offers a true as-applied challenge. However, these differences fail to clear the bar set by the broad language in *Tesla*, and its holding could apply with equal force here.

Second, I agree with JUDGE HIGGINBOTHAM's concurrence *dubitante* that this legal regime does not appear to be based on a legitimate concern for consumers' welfare. *Tesla*'s holding that the government has a rational interest in "preventing vertical integration or analogous consolidations of monopoly power" through prohibiting car manufacturers from selling those cars directly to consumers sits uneasily with other case law regarding the rationality of economic protectionism. *Compare Tesla*, 113 F.4th at 530, *with St. Joseph Abbey v. Castille*, 712 F.3d 215, 222–23 (5th Cir. 2013).

"[E]conomic protection of a favored industry is not, on its face, a legitimate state interest." *Hines v. Quillivan*, 982 F.3d 266, 278 (Elrod, J., concurring in part and dissenting in part) (5th Cir. 2020) (citing *St. Joseph Abbey*, 712 F.3d at 222–23). But our precedent also states that "the state has a legitimate interest in preventing firms from vertically integrating and abusing the resulting power not only on its own dealers, but other dealers, and yes even consumers down the run." *Tesla*, 113 F.4th at 531. I, therefore, must concur *dubitante.*

Patrick E. Higginbotham, *Circuit Judge*, concurring dubitante:

With respect, I write separately to register my discomfort with *Tesla*'s restraint of an electric-vehicle manufacturer that perpetuates none of the ills that motivated Tex. Occ. Code § 2301.476's enactment.[1] While axiomatic that the state has an interest in curtailing unfair trade practices harmful to the free market and consumers, the record must reveal a rational relationship between the state's means and ends. And this inquiry is conducted not in the broadest and most abstract of terms but rather unfolds in the intricate factual universe of a litigant's particular claim. As the High Court has held, "a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."[2]

The question before us is whether Texas's direct-sales ban on automobile manufacturers violates the Constitution as applied to Lucid. That Lucid's product and business model differ markedly from the traditional American car manufacturer is significant, as the latter influenced the enactment of the decades-old regulation challenged here. We ought not forget Lord Coke's maxim that "The Office of Judges is always to make such construction as to suppress the Mischief and advance the Remedy; and to suppress subtle Inventions and Evasions for Continuance of the Mischief."[3]

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[1] *Tesla, Inc. v. La. Auto. Dealers Ass'n*, 113 F.4th 511, 531 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2813 (2025).

[2] *Nebbia v. New York*, 291 U.S. 502, 511 (1934).

[3] *United States v. Second Nat'l Bank of N. Miami*, 502 F.2d 535, 541 (5th Cir. 1974) (quoting Heydon's Case, 3 Co. 7a, 7b, Magdalen College Case, 11 Co. 66b, 73b).

Beginning in the 1930s, direct-sales prohibitions in the automobile industry arose in response to franchising manufacturers' exploitation of their franchisees.[4] The "Big Three" franchising manufacturers—General Motors, Ford, and Chrysler—imposed draconian terms on dealers, such as forced inventory purchases independent of the dealer's ability to sell and the termination of franchise contracts at will.[5] Left alone, manufacturers could (and did) induce franchised dealers to invest in promoting the manufacturers' brands, only to open their own retail stores and undercut their franchisees by maintaining artificially high wholesale prices. The mischief afoot was manufacturers' leveraging their unequal bargaining power at the expense of their vulnerable dealers. By enacting laws to prohibit manufacturers' direct sales to consumers, many states sought to protect dealers from intra-brand competition with their own upstream franchising manufacturers, not from inter-brand competition with non-franchising manufacturers lacking contractual privity to dealers.[6] This elementary

[4] *See* Daniel A. Crane, *Tesla, Dealer Franchise Laws, and the Politics of Crony Capitalism*, 101 IOWA L. REV. 573, 577–79 (2016).

[5] *See id.*; *see also* Friedrich Kessler, *Automobile Dealer Franchises: Vertical Integration by Contract*, 66 YALE L.J. 1135, 1149–55 (1957); S. REP. NO. 2073 at 3 (1956) (describing draconian terms of franchise agreements that weighed heavily in the manufacturer's favor).

[6] *See* Crane, *supra* note 4, at 578–79; *see, e.g.*, *Ford Motor Co. v. Tex. Dep't of Transp.*, 264 F.3d 493, 500 (5th Cir. 2001) ("Specifically, with respect to the addition of [the prohibition], the legislative history indicates the legislature's intent to prevent manufacturers from utilizing their superior market position to compete against dealers in the retail car market. The legislature's concern was fueled by the recent opening of several dealerships owned by manufacturers and the perceived detriment to the public from vertical integration of the automobile market."); *Mass. State Auto. Dealers Assoc., Inc. v. Tesla Motors MA, Inc.*, 15 N.E.3d 1152, 1155–57 (Mass. 2014) (same); *Greater N.Y. Auto. Dealers Assoc. v. Dep't of Motor Vehicles*, 969 N.Y.S.2d 721, 726 (Sup. Ct. N.Y. 2013) (same).

distinction between the regulation of intra-brand and inter-brand competition has long been recognized by the High Court.[7]

For these reasons, the *Ford* court had little trouble accepting Texas's justification for its direct-sales ban vis-à-vis Ford Motors, one of the infamous "Big Three."[8] Ford's attempt to sell its preowned vehicles directly to consumers through an online showroom plainly could visit harm upon franchised Ford dealers.[9] To these eyes, this case—and *Tesla*—present quite different circumstances. The dealer-protection rationale imbuing section 2301.476[10] and *Ford* has no application to a non-franchised manufacturer with no downstream intra-brand entities to harm. And there is simply no historical evidence that Texas's direct-sales prohibition was motivated by harms related to inter-brand competition. Absent another valid purpose, preventing inter-brand competition is naked protectionism, which we have long held "is not by itself a legitimate state interest."[11]

On what grounds, then, may Texas restrict the sales of non-franchised automobile manufacturers? The state offers consumer safety as an alternative rationale, and indeed, many imperfect economic regulations have been upheld on such grounds. The harm to consumers must, nevertheless, extend beyond the hypothetical. Sheltering a discrete industry from competition must bear a genuine tie to consumer injury, not pursued for its own sake.[12]

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[7] *See, e.g.*, *Leegin Creative Leather Prods., Inc. v. PSKS*, 551 U.S. 877, 890 (2007).

[8] *Ford*, 264 F.3d at 500, 510.

[9] *Id.* at 503–04, 510–11.

[10] The same goes for Louisiana's direct-sales ban at issue in *Tesla*, as it mirrors Texas's direct-sales ban in relevant part for the purposes of this appeal.

[11] *Hines v. Quillivan*, 982 F.3d 266, 274 (5th Cir. 2020).

[12] *See St. Joseph Abbey v. Castille*, 712 F.3d 215, 225–26 (5th Cir. 2013).

Texas Automobile Dealers Association, an intervenor-defendant here, argues that the dealer-distribution model fosters intra-brand dealer competition that reduces consumer prices, while a manufacturer's vertical integration would increase consumer prices by eliminating that intra-brand dealer competition. This position cannot withstand scrutiny under basic economic principles. Vertical integration may raise a specter of monopoly but, as here, "a manufacturer cannot obtain monopoly profits by integrating forward into distribution and then charging customers an above-market retail margin."[13] As the Supreme Court has recognized, manufacturers would earn lower, not higher, profits if the retail mark-up increased.[14] "[A] manufacturer that has market power in its brand is already charging a monopoly mark-up at the wholesale level," and "further retail mark-up would decrease its profits because it would cause the manufacturer to exceed the profit-maximizing price for its product."[15]

Rather, Lucid's vertical integration could lower consumer prices by eliminating double marginalization. Double marginalization captures the increase in consumer prices from varied firms in the production and distribution chain exercising their market power to set supercompetitive prices. Free from the price ramifications of double marginalization, a vertically integrated manufacturer may leverage its market power in the distribution chain to decrease consumer prices.

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[13] Daniel A. Crane, *Why Intra-Brand Dealer Competition Is Irrelevant to the Price Effects of Tesla's Vertical Integration*, 165 U. PA. L. REV. ONLINE 179, 183 (2017).

[14] *See Cont'l T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 56 n.24 (1977); *see also Leegin Creative Leather Prods. Inc.*, 551 U.S. at 896 ("[T]he interests of manufacturers and consumers are aligned with respect to retailer profit margins.").

[15] *See* Crane, *supra* note 13, at 183.

Moreover, the advent of the electric car is significant in its technological prowess and environmental implications. The electric powertrain is a distinct product from a combustible engine, so none should be surprised that electric-vehicle manufacturers have adopted a business model distinct from the franchised manufacturers that have dominated the last century. Imposing market restraints on this emerging industry stifles innovation and technological advancement. Although the *laissez-faire* market that nurtured the Industrial Revolution imparted great harm to the consumer, the pendulum swings too far if we permit states to regulate economic activity that—given Lucid's lack of franchised dealers—will affect only *inter*-brand competition. And the injury suffered by these competitors is not of the antitrust flavor; here, automobile dealers simply wish to avoid the unpleasant reality of losing customers to a cheaper, more innovative substitute product. There is no rational basis for the state to mandate its preferred distribution strategy for non-franchised electric-vehicle manufacturers. All that remains is a consumer with fewer choices.[16]

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Free market activity is the rule in our nation, not the exception. From its very inception, the Fourteenth Amendment has borne an economic rights

[16] Indeed, numerous consumer-protection groups have taken the position that direct-sales bans on car manufacturers are bad for the consumer, including the Consumer Federation of America, Consumer Action, Consumers for Auto Reliability and Safety, and the U.S. Federal Trade Commission. *See, e.g.*, FED. TRADE COMM'N, *Letter to Michigan State Senator Darwin L. Booher* (May 7, 2015), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-regarding-michigan-senate-bill-268-which-would-create-limited-exception-current/150511michiganautocycle.pdf; Michael Van Beek, *Public Letter on Direct Automobile Sales*, MACKINAC CENTER FOR PUBLIC POLICY (Feb. 18, 2015), https://www.mackinac.org/21003; R. Warren Anderson *et al.*, *Open Letter by Academics in Favor of Direct EV Sales and Service* (Apr. 14, 2021), https://laweconcenter.org/wp-content/uploads/2021/04/Direct-Sales-Nationwide-Academics-Letter-4.14.pdf.

component. *Tesla* countenances a generalized interest in preventing vertical integration in the automobile industry. But as applied to Lucid, summarily relying on *Tesla* to deny relief mystifies and troubles me. A per se presumption of cognizable harm when an automobile manufacturer engages in vertical integration, detached from facts of the manufacturer's business model, defies the fact-specific nature of the rational basis inquiry in an applied challenge. I concur in the majority, as I am bound to follow our precedent, but I do so with great reservation.