ALAN WILSON
ATTORNEY GENERAL

February 7, 2025

The Honorable Shane Massey, Member
South Carolina Senate
P.O. Box 142
Columbia, SC 29202

Dear Senator Massey:

You seek our opinion regarding "the authority of a Manufacturer, Wholesaler, Distributor, or its subsidiaries to sell vehicles outside of the franchise dealership network."

By way of background, you provide the following information:

> [b]ased on the recent actions and statements of Scout Motors detailed below, concern has arisen that Scout Motors may be preparing to bypass the dealer franchise network and sell its vehicles directly to consumers. I am writing seeking your opinion as to whether such sales would violate state law.
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> In October of 2024, Volkswagen's Scout Motors announced its intent to sell directly to consumers. It would seem that this would bypass the dealer franchise network and violate South Carolina Franchise & Retail Sales laws. (See: Regulation of Manufacturers, Distributors and Dealers Act (S.C. Code Ann. § 56-15-10 et seq.) and the Dealer or Wholesaler Licenses Act (S.C. Code Ann.§ 56-15-310 et seq.) of the South Carolina Code.) Furthermore, a 2013 opinion issued by your office appears to support the notion that direct sales are prohibited by state law.
>
> 1) Can a manufacturer, wholesaler, distributor, or its subsidiaries directly sell vehicles to retail customers in the State of South Carolina, thereby bypassing the dealer franchise network?
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> 2) Does state law prevent direct sales by a manufacturer, wholesaler, distributor, or its subsidiaries even if they are a "start-up" or a new brand in the United States?
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> 3) If a manufacturer were to sell or service vehicles directly to citizens of South Carolina and bypass the franchise dealer network, they would be in violation of both Franchise and SCDMV Retail Sales Laws (Title 56,.Chapter 15 of the South Carolina Code of Laws.) Would the SCDMV and SLED be charged with the enforcement of such violations, or would the Attorney General enforce the law?

> 4) Is there a contract or law provision that would be violated, and/or the terms of any incentives package breached, if a manufacturer that received the incentives to come to South Carolina acts in violation of South Carolina law?

It is our opinion that South Carolina's Franchise Law prohibits the kind of activity set forth in your letter. A manufacturer may not bypass South Carolina's dealer franchise network. Further, it is our opinion that the Franchise Law is constitutional and enforceable by a party with the requisite standing to sue.

Law/Analysis

State automobile franchise laws are commonplace in the United States. As one authority has noted,

> [o]stensibly, the public policy behind these state laws regulating the relationship between manufacturers and dealers is to prevent manufacturers from abusing, and competing with, their own dealers. Otherwise, manufacturers would take advantage of the information asymmetry between the two parties and create more productive sales locations for themselves. . . . Most states' franchise laws explicitly prohibit manufacturers from directly selling vehicles to consumers at a physical store in the state, which at least in theory would be in direct competition with the manufacturer's franchise dealers.

Parnell, "A Model + (ESLA) for the Future," Los Angeles Lawyer, 43 June LA LAW, 12, 14 (June, 2020).

Another author has discussed the impact of franchise laws with the advent of the Internet, arguing that the franchise laws inhibit competition. Nevertheless, that commentator recognized that a state's franchise laws prohibit Internet sales in that state by stating:

> [u]nlike sales of books and compact discs, new vehicle sales are highly regulated. Accordingly, the first wave of online vehicle entrepreneurs soon discovered that state franchise laws prohibits many, if not most, innovative approaches. For example, franchise laws forbidding direct-to-consumer sales by vehicle manufacturers are on the books in every state. Many states severely restrict, or outright prohibit brokering, referrals, and certain forms of new vehicle advertising.

Delacourt, "New Cars and Old Laws: An Examination of Anticompetitive Regulatory Barriers to Internet Auto Sales," 3 J.L. Econ. & Pol'y, 155 (2007).

Moreover, as is generally recognized, automobile franchise laws serve an important purpose in preserving the auto industry. This purpose is summarized by the following analysis:

> [f]ranchise laws play a key role in ensuring that consumers and local communities benefit from strong sales and service networks for one of the most important

> purchases made by most U.S. households. These laws promote price competition and consumer advocacy by dealers in warranty and recall repairs. They also stabilize the retail market, which helps to protect the economic employment, and charitable impact of franchised dealers in communities big and small across the country.
>
> The success of this American approach is a key reason why the automotive industry in the United States thrives as a bedrock of local economies and an engine of innovation.

Scali, Rasmussen and Baumann, "An American Solution: Automotive Franchise Laws Serve Local Communities and Consumers," 40 SPG Franchise L.J. 665 (2021).

South Carolina's Franchise Law, designed to fulfill these same objectives, is codified at S.C. Code Ann. § 56-15-10 et seq. (regulation of Manufacturers, Distributors and Dealers Act) and § 56-15-310 et seq. (Dealers or Wholesalers Licenses Act). Section 56-15-20 of the Code provides:

> Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale or has business dealings with respect to a motor vehicle within this State shall be subject to the provisions of this chapter and shall be subject to the jurisdiction of the courts of this State upon service of process in accordance with the provisions of Chapter 9 of Title 15."

S.C. Code Ann. § 56-15-20 (1976 Code, as amended). Thus, the General Assembly has mandated that any person who attempts to sell cars in South Carolina is subject to the jurisdiction of the courts of this state.

The key portion of the Franchise Law is § 56-15-45. Such section states:

> (A) It is unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to own, operate, or control or to participate in the ownership, operation, or control of a new motor vehicle dealer in this State, to establish in this State an additional dealer or dealership in which that person or entity has an interest, or to own, operate, or control, directly or indirectly, an interest in a dealer or dealership in this State, excluding a passive interest in a publicly traded corporation held for investment purposes. This subsection does not prohibit the ownership, operation, or control of a new motor vehicle dealer by a manufacturer or franchisor:
>
> (1) for a temporary period, not to exceed one year, during the transition from one owner or operator to another, except that on a showing by a manufacturer or franchisor of good cause, a court of competent jurisdiction may extend this time limit for periods up to an additional twelve months;

(2) during a period in which the new motor vehicle dealer is being sold pursuant to a bona fide contract, shareholder agreement, or purchase option to the operator of the dealership; or

(3) at the same location at which the manufacturer or franchisor has been engaged in the retail sale of new motor vehicles as the owner, operator, or controller of the dealership for a continuous two-year period of time immediately before January 1, 2000, where there is no prospective new motor vehicle dealer available to own or operate the dealership in a manner consistent with the public interest.

(B)(1) It is unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to compete unfairly with a new motor vehicle dealer of the same line make operating pursuant to a franchise in the State of South Carolina. Except as otherwise provided in this subsection, the mere ownership, operation, or control of a new motor vehicle dealer by a manufacturer or franchisor pursuant to the conditions set forth in subsection (A) of this section is not a violation of this subsection.

(2) For purposes of this subsection, a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor is conclusively presumed to be competing unfairly if it gives preferential treatment to a dealer or dealership in which an interest is directly or indirectly owned, operated, or controlled by the manufacturer or franchisor or any partner, affiliate, wholly or partially owned subsidiary, officer, or representative of the manufacturer or franchisor, expressly including, but not limited to, preferential treatment regarding the direct or indirect cost of vehicles or parts, the availability or allocation of vehicles or parts, the availability or allocation of special or program vehicles, the provision of service and service support, the availability of or participation in special programs, the administration of warranty policy, the availability or allocation of factory rebates, or the availability and use of after warranty adjustments, advertising, floor planning, or financing or financing programs.

(C) It is unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to own a facility that engages primarily in the repair of motor vehicles, except motor homes, if the repairs are performed pursuant to the terms of a franchise or other agreement or the repairs are performed as part of a manufacturer's or franchisor's warranty. Nothing in this subsection prohibits a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor from owning a facility to perform warranty or other repairs on motor vehicles owned and operated by the manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor.

> (D) Except as may be provided otherwise in subsections (A) and (B) of this section, a manufacturer or franchisor may not sell, directly or indirectly, a motor vehicle to a consumer in this State, except through a new motor vehicle dealer holding a franchise for the line make that includes the motor vehicle. This subsection does not apply to manufacturer or franchisor sales of new motor vehicles to the federal government, nor to manufacturer or franchisor leases of new motor vehicles to employees of the manufacturer or franchisor. Nothing in this subsection prohibits a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor operating as a motor vehicle lessor from selling a motor vehicle to the lessee at the conclusion of a lease agreement between the two parties. Nothing in this subsection prevents a manufacturer or franchisor from establishing an e-commerce website for the purpose of referring prospective customers to motor vehicle dealers holding a franchise for the same line make of the manufacturer or franchisor.

Pursuant to Section 56-15-45, it is thus illegal for an automobile manufacturer, except under certain limited circumstances, to sell new cars to South Carolina consumers or to repair cars. As § 56-15-45(D) provides, except in certain circumstances, ". . . a manufacturer or franchisor may not sell, directly or indirectly, a motor vehicle to a consumer in this State, except through a new motor vehicle dealer holding a franchise for the line make that includes the motor vehicle." Subsection (C) states that "[i]t is unlawful for a manufacturer or franchisor . . . to own a facility that engages primarily in the repair of motor vehicles, except motor homes, if the repairs are performed pursuant to the terms of a franchise or other agreement or the repairs are performed as part of a manufacturer's or franchisor's warranty." Under this State's Franchise Law, it is the licensed automobile dealer who is responsible for selling and repairing new cars.

South Carolina law provides that dealers must be licensed by the Department of Motor Vehicles. According to the statute, "[b]efore engaging in business as a dealer or wholesaler in this State, a person first must make application to the Department of Motor Vehicles for a license..." S.C. Code Ann. § 56-15-310 (1976 Code, as amended). Additionally, South Carolina law requires a dealer to have a place of business or premises for the sale of motor vehicles before obtaining a license. Section 56-15-330 provides:

> No dealer may be issued or allowed to maintain a motor vehicle dealer's license unless:
>
> (1) The dealer maintains a bona fide established place of business for conducting the business of selling or exchanging motor vehicles which must be the principal business conducted from the fixed location. The sale of motorcycle or motor driven cycles need not be the principal business conducted from the fixed location. A bona fide established place of business for any motor vehicle dealer includes a permanent, enclosed building or structure, not excluding a permanently installed mobile home containing at least ninety-six square feet of floor space, actually occupied by the applicant and easily accessible by the public, at which a permanent business of

> bartering, trading, or selling of motor vehicles or displaying vehicles for bartering, trading, or selling is carried on, wherein the public may contact the owner or operator at all reasonable times and in which must be kept and maintained the books, records, and files required by this chapter. A bona fide established place of business does not mean a residence, tent, temporary stand, or other temporary quarters.
>
> (2) The dealer's place of business must display a permanent sign with letters at least six inches in height, clearly readable from the nearest major avenue of traffic. The sign must clearly identify the licensed business.
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> (3) The dealer's place of business must have a reasonable area or lot to properly display motor vehicles.

S.C. Code Ann. § 56-15-330 (1976 Code, as amended). Thus, the South Carolina Department of Motor Vehicles is delegated by the Legislature as the authority to license dealers based upon the criteria set forth above.

In Op. S.C. Att'y Gen., 1989 WL 406119, No. 89-29 (March 10, 1989), we emphasized the paramount importance of the licensing procedure established by § 56-5-330 and concluded that such licensing provision was constitutional:

> [t]he General Assembly, in 1983, enacted Article 3 of the Motor Vehicle Code, which was codified as §§ 56-15-310 through 56-15-360. These sections require a license before a person may engage in the business of acting as a dealer or wholesaler of motor vehicles. Various procedures, including procedures for application, are established. Section 56-15-330, requiring dealers and wholesalers to maintain an established "place of business", provides in pertinent part:
>
> > No dealer may be issued or allowed to maintain a motor vehicle dealer's license unless:
> >
> > (1) The dealer maintains a bona fid established place of business for conducting the business of selling or exchanging motor vehicles which must be the principle business conducted from the fixed location. . . .
>
> Pursuant to the police power, and in harmony with federal and state constitutional provisions, a state may require a license to engage in a particular occupation. Frost v. Railroad Commission of the State of California, 271 U.S. 583, 595 (1926); New Motor Vehicle Board v. Fox, 439 U.S. 96 (1978).
>
> Cases have concluded that statutes such as 56-15-330, which require a dealer or wholesaler of motor vehicles, as a condition for the issuance of a license, to maintain an established place of business at a fixed location . . . are within the state's police power and are constitutional.

In addition, we have addressed the sweeping prohibitions of South Carolina's Franchise Law in an opinion to Senator Greg Hembree, Op. S.C. Att'y Gen., 2013 WL 5763371 (October 11, 2013). There, we concluded that South Carolina's Franchise Law is binding upon automobile manufacturers, such as Scout Motors, and may not be bypassed by a manufacturer:

> [a] manufacturer attempting to sell cars to South Carolina consumers via the internet will never be able to obtain the license which is required under South Carolina law to sell cars because they would not meet the requirement of having a physical premises in South Carolina.
>
> The South Carolina legislature appears to have limited sales of cars in South Carolina over the internet to dealers. "This chapter does not prohibit a dealership located in this State from contracting with an on-line electronic service to provide motor vehicles to consumers in this State." S.C. Code Ann. § 56-15-85 (1976 Code, as amended). "Nothing in this subsection prevents a manufacturer or franchisor from establishing an e-commerce website for the purpose of referring prospective customers to motor vehicle dealers holding a franchise for the same line make of the manufacturer or franchisor." S.C. Code Ann. § 56-15-45(D) (1976 Code, as amended).
>
> In conclusion, South Carolina law prohibits a manufacturer from selling cars over the internet to South Carolina consumers.

We herein today reiterate and reaffirm our 2013 opinion. That opinion recognized the importance of South Carolina's automobile Franchise Law and that, except in narrow circumstances, cars may be sold in South Carolina only through the licensed dealer.

As noted above, South Carolina's Franchise Law is broad, and comprehensive in its prohibitions of automobile manufacturers competing with car dealerships in South Carolina. The Franchise Law was enacted in 2000 pursuant to Act No. 287. That statute's title expresses the broad scope of the Franchise Law as follows:

> AN ACT TO AMEND CHAPTER 15, TITLE 56, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REGULATION OF MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND DEALERS, BY ADDING SECTION 56-15-45 SO AS TO PROHIBIT OWNERSHIP, OPERATION, OR CONTROL OF COMPETING DEALERSHIPS BY A MANUFACTURER OR FRANCHISOR EXCEPT UNDER CERTAIN CIRCUMSTANCES, PROHIBIT UNFAIR COMPETITION BY A MANUFACTURER OR FRANCHISOR AGAINST A FRANCHISEE, DEFINE PREFERENTIAL TREATMENT GIVING RISE TO A PRESUMPTION OF UNFAIR COMPETITION, EXEMPT SALES BY MANUFACTURERS OR FRANCHISORS TO THEIR EMPLOYEES AND TO THE FEDERAL GOVERNMENT, AND TO ALLOW SALES BY LESSORS TO LESSEES AND ELECTRONIC REFERRALS BY WAY OF A MANUFACTURER'S OR FRANCHISOR'S WEBSITE; BY ADDING SECTION 56-15-46 SO AS TO REQUIRE WRITTEN NOTICE TO A CURRENT

> DEALERSHIP OF THE INTENTION OF A FRANCHISOR TO RELOCATE AN EXISTING DEALERSHIP OR TO ESTABLISH A NEW DEALERSHIP WITHIN A ten-MILE RADIUS OF THE CURRENT DEALERSHIP, PROVIDE GROUNDS FOR INJUNCTION OF THAT ESTABLISHMENT OR RELOCATION, AND PROVIDE FOR EXCEPTIONS; TO AMEND SECTION 56-15-60, RELATING TO DEALERS' CLAIMS FOR COMPENSATION, SO AS TO LIMIT THE AUDIT PERIOD FOR INCENTIVE COMPENSATION PROGRAMS AND ALLOW FOR REIMBURSEMENT OF A CLAIM PAYMENT IF THE CLAIM IS MATERIALLY DEFECTIVE; BY ADDING SECTION 56-15-85 SO AS TO PROVIDE FOR THE ELECTRONIC SALE OF MOTOR VEHICLES TO CONSUMERS IN THIS STATE BY A DEALERSHIP LOCATED IN THIS STATE; BY ADDING SECTION 56-15-140 SO AS TO PROVIDE FOR VENUE FOR ACTIONS FILED PURSUANT TO THIS ACT IN THIS STATE, NOTWITHSTANDING AN AGREEMENT TO THE CONTRARY; AND BY ADDING SECTION 56-19-490 SO AS TO REQUIRE THAT THE TITLE OF A MOTOR VEHICLE REFLECT THAT IT WAS RETURNED TO A MANUFACTURER PURSUANT TO A "LEMON LAW" OR SIMILAR PROCEEDING.

In other words, the Act, except in certain limited circumstances, bars automobile manufacturers or franchisors from owning, operating or controlling competing dealerships and prohibits unfair competition by a manufacturer or franchisor against a dealer. See also, Lucid Group USA, Inc. v. Johnston et al., 2024 WL 3404624 (W.D. Tex. 2024) (prohibition from selling cars directly to customers by a manufacturer or from "owning, operating or otherwise controlling motor vehicle dealerships"). As was stated in the Post and Courier as the legislation neared passage, the Bill would "outlaw auto manufacturers from owning car dealerships or directly selling new cars over the Internet. . . ." Charleston News and Courier, April 26, 2000. While there were critics of the legislation, the Bill's sponsor, Senator Land, noted that "the people of South Carolina, the consumers" would greatly benefit. Pursuant to Subsection (D), except in very limited circumstances, a manufacturer or franchisor may not "sell, directly or indirectly, a motor vehicle to a consumer in this State. . . ."

Further, in Section 1 of the 2000 Franchise Law, the General Assembly reaffirmed the statute's broad sweep in its legislative findings, as follows:

> [t]he General Assembly finds that the distribution of motor vehicles in the State of South Carolina vitally affects the general economy of the state and its public interest and public welfare. In the exercise of its police power, it is necessary for the state to regulate motor vehicle manufacturers, distributors, dealers, and their representatives doing business in South Carolina to prevent frauds and other abuses upon its citizens.

We conclude that this comprehensive legislative purpose – to protect South Carolina's dealer franchise network against competition from manufacturers – is the law in South Carolina. In our view, a court would uphold the General Assembly's purpose. The short answer to your questions thus is that under current South Carolina law, a manufacturer may not engage in sales

to retail customers, or own, operate, or otherwise control a car dealership in South Carolina, thereby bypassing the dealer franchise network.

We note that, prior to passage of South Carolina's Franchise Law in 2000, this Office issued an opinion concluding that (H. 4450), a Bill to "Prohibit Ownership, Operation, or Control of Competing Dealerships By a Manufacturer or Franchisor Except Under Certain Circumstances," would likely be held by a court to be unconstitutional as "protectionism." Such Bill was undoubtedly a version of what ultimately became Act No. 287 of 2000. In that opinion, we concluded that the legislation "violates not only the Commerce Clause and the Takings Clause, but also the Due Process and Equal Protection Clauses." With respect to the Commerce Clause in particular, we referenced, among other authorities, Maine v. Taylor, 477 U.S. 131, 138 (1986). We stated that "facial discrimination against interstate commerce violates the Commerce Clause unless the state demonstrates 'legitimate local purpose' which cannot be served as well by nondiscriminatory means." See Op. S.C. Att'y Gen., 2000 WL 655464 (April 5, 2000).

Nevertheless, despite our opinion, the Bill was enacted, and became Act No. 287. Now, of course, the Franchise Act, as enacted by the General Assembly, would be entitled to the strong presumption of constitutionality. See, e.g. Nichols v. S.C. Research Authority, 290 S.C. 415, 424, 351 S.E.2d 155, 160 (1986) ["Every legislative act must be presumed constitution and should be declared unconstitutional only when its invalidity is manifest beyond a reasonable doubt."].

Furthermore, since our 2000 opinion was issued, courts have generally upheld Franchise Acts as constitutionally valid and binding upon automobile manufacturers, citing their overriding local purpose. Indeed, almost immediately after our 2000 opinion questioning the constitutionality of pending legislation relating to car dealerships was issued, the Fifth Circuit Court of Appeals upheld Texas' Franchise Law as constitutional. In Ford Motor Co. v. Texas Dept. of Transp., 264 F.3d 493 (5th Cir. 2001), the Fifth Circuit concluded that Texas' Franchise statute did not violate the dormant Commerce Clause, did not infringe upon the manufacturers' First Amendment right to free speech, was not unconstitutionally vague, and did not deny the manufacturer equal protection of the laws or due process. There, the Franchise Law was enforced administratively by the Texas Department of Transportation. Under Texas law, Ford Motors was ineligible to be licensed as a dealer. The State, through the Texas Motor Vehicle Division, filed a complaint against Ford, alleging it was selling vehicles without a dealer's license. The Texas law provided that a manufacturer could not own an interest in a dealer or dealership or operate or control a dealer or dealership or act in the capacity of a dealer. Following the State's administrative enforcement complaint, Ford filed suit in federal court alleging that the Texas Franchise Law was unconstitutional.

In validating the Texas Franchise Law as constitutional, the Fifth Circuit reviewed the purpose served by the statute:

> [s]pecifically, with respect to the addition of § 5.02(C)(c) [providing that a manufacturer may not own an interest in, operate or control of a dealer or dealership or act in the capacity of a dealer], 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.

264 F.ed at 500. Ford, however, argued that the Franchise Law "amounts to nothing more than economic protectionism." Id.

The Fifth Circuit disagreed, relying upon Exxon Corp. v. Md., 437 U.S. 117 (1978). According to the Court,

> [w]e find no significant factual or legal distinction between Exxon and the instant case. In Exxon, oil companies challenged the validity of a Maryland statute prohibiting producers and refiners of [ ] petroleum products from operating retail service stations within Maryland. In the present case, Ford, an automobile manufacturer, challenges the validity of a Texas statute prohibiting manufacturers of automobiles from retailing automobiles within Texas. The oil producers in Exxon presented Commerce Clause challenges identical to those raised by Ford. The producers argued that "the Maryland statute violate[d] the Commerce Clause in three ways:(1) by discriminating against interstate commerce; (2) by unduly burdening interstate commerce; and (3) by imposing controls on a commercial activity of such an essentially interstate character that it is not amendable to state regulation." Exxon, 437 U.S. at 125, 98 S.Ct. 2207. The Court rejected each of these claims. In so doing, the Court made clear that merely because "the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce." Exxon, 437 U.S. at 126, 98 S.Ct. 2207. Absent a facially discriminatory purpose, a State statute or regulation is discriminatory when it provides for differential treatment of similarly situated entities based upon their contacts with the State or has the effect of providing a competitive advantage to in-state interests vis-à-vis similarly situated out-of-state interests.

Thus, in the Fifth Circuit's view,

> Ford has failed to show that, either facially or in practical effect, § 5.02C(c) discriminates according to the extent of a business entity's contacts with the State. Section 5.02C(c) does not discriminate based on Ford's contacts with the State, but rather on the basis of Ford's status as an automobile manufacturer. It is irrelevant under§ 5.02C(c) whether Ford, as a manufacturer, is domiciled in Texas or Michigan. In either circumstance, it is similarly prohibited from engaging in retail automobile sales in Texas. See CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 87, 107 S.Ct. 1637, 95 L.Ed.2d 67 (1987) (upholding a statute because "[i]t has the same effects ... whether or not the [entity] is a domiciliary or resident of [the State]."). Ford points to the fact that Texas has no motor vehicle manufacturers as evidence of the

> law's discriminatory purpose and effect. In actuality, under the Code's broad definition of motor vehicle, Texas manufacturers of motorboats and motorcycles are considered motor vehicle manufacturers. See § 1.03(25). Irrespective of this fact, the Court rejected a similar assertion in Exxon, finding of no consequence that there were no Maryland oil producers or refiners. Exxon, 437 U.S. at 125, 98 S.Ct. 2207.
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> Moreover, § 5.02C(c) does not discriminate against independent automobile dealers seeking to operate in Texas. The section only prevents manufacturers, regardless of their domicile, from entering the retail market. Consequently, § 5.02C(c) does not protect dealers from out-of-state competition, it protects dealers from competition from manufacturers. Out-of-state corporations, which are non-manufacturers, have the same opportunity as in-state corporations to obtain a license and operate a dealership in Texas. Thus, § 5.02C(c) does not discriminate among in-state and out-of-state manufacturers, nor does it discriminate among in-state and out-of-state dealers by raising the costs of doing business in the local market, stripping away the economic advantages for an out-of-state participant, or giving advantages to local participants. The absence of such discrimination, either facially or in practical effect, removes § 5.02C(c) from the Supreme Court's definition of a discriminatory law.
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> The controlling question thus becomes whether, under Pike v. Bruce Church, "the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits." 397 U.S. at 142, 90 S.Ct. 844. As evidence of the burden on commerce caused by § 5.02C(c), Ford extols the benefits of the Showroom to consumers, Texas automobile dealers, and Ford itself. The district court correctly ignored these alleged benefits, the elimination of which is not a constitutional burden on commerce. These arguments relate to the economic efficacy of the statute and are misdirected to this Court. Exxon, 437 U.S. at 128, 98 S.Ct. 2207 ("It may be true that the consuming public will be injured ... but ... that argument relates to the wisdom of the statute, not its burden on commerce."). Ford has also failed to demonstrate that § 5.02C(c) will burden commerce by inhibiting the flow of interstate goods. The number of out-of-state vehicles retailed in Texas will not decrease because of § 5.02C(c). Section 5.02C(c) merely requires that automobiles be retailed through independent dealerships, rather than manufacturer-operated dealerships. See Exxon, 437 U.S. at 127, 98 S.Ct. 2207 (holding that the Commerce Clause does not protect "the particular structure or methods of operation in a retail market."). However, even assuming that § 5.02C(c) does create a burden on interstate commerce, Ford has failed to establish that the burden is clearly excessive in relation to the putative local benefits.

264 F.3d at 502-503. Likewise, the Fifth Circuit rejected the other constitutional arguments Ford mounted. According to the Fifth Circuit, "[f]or the reasons discussed in the dormant Commerce Clause analysis, we 'have no hesitancy in concluding that [the Franchise statute] . . . bears a reasonable relationship to the State's legitimate purpose in controlling the [automobile] retail market.'" (citing Exxon, 437 U.S. at 125). Id. at 510.

Moreover, in Tesla, Inc. v. La. Automobile Dealers Assn., 113 F.4th 511 (5th Cir. 2024), the Fifth Circuit upheld Louisiana's Franchise Laws "prohibiting automobile manufacturers from selling directly to consumers or performing warranty services for cars they did not own. . . ." The lower court granted the Dealers' Motion to Dismiss and Tesla appealed. The Fifth Circuit relied upon and reaffirmed the Ford case, discussed above:

> Preventing vertical integration is a legitimate state interest and is one of the interests that the district court relied upon. In Ford, we upheld a statutory provision prohibiting Ford from selling cars directly to consumers online. 264 F.3d at 498. The court recognized a legitimate interest in "prevent[ing] vertically integrated companies from taking advantage of their incongruous market position." Id. at 503. And that is not even the broadest language that the court used "[W]e have no hesitancy in concluding that [the regulation] bears a reasonable relationship to the State's legitimate purpose in controlling the automobile retail market." Id. at 510 (cleaned up). The court rejected Ford's argument that "manufacturers do not have disproportionate power in the preowned vehicle market." Id.
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> Tesla avers that Ford upheld a regime that prevented manufacturers from competing with their own dealerships. See, e.g., Ford, 264 F.3d at 504 (expressing concern that "Ford seems to remain in a superior market position to its dealers" (emphasis added)). Scholarly amici point out that Ford "was decided long before a single mass-market electric vehicle was sold in the United States and at a time when every car manufacturer sold through franchised dealers." Neither of those factors is present here.[ ]
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> The crucial element of Ford was not abuse of one's own dealers but the "prevent[ion of] vertically integrated companies from taking advantage of their incongruous market position and . . . frauds, unfair practices, discrimination, impositions, and other abuses of our citizens." Id. at 503. That language is broad. And taken in the context of even broader language, see id. at 510, Ford readily controls this case.
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> Tesla insists that defendants must explain why vertical integration is bad for consumers. That is a bridge too far. It is contrary to Ford, which sets out an open-ended array of possible harms of vertical integration that are not limited to specific consumer harms. See id. at 503. Instead, we can assume 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. It is Tesla's burden, not defendants', to dispel the notion that fear of vertical integration is not a conceivable rational basis.
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> In short, even if we accept Tesla's and scholarly amici's reading of Ford that it was principally concerned with abuse of power by a manufacturer against its dealers Ford also has clear language indicating broader concerns with vertical integration, monopoly power, and state control of the automobile industry more broadly. All of these constitute legitimate state interests.

> Both the warranty-services ban and the direct-sales ban find a rational basis in this broader language. There is hardly a more quintessential example of vertical integration than a manufacturer's extending itself into distribution. And extension into the provision of auxiliary services (here, in the warranty-services context) evokes sufficiently similar concerns.

113 F.4th at 530-31.

Accordingly, we believe, based upon these authorities, that South Carolina's Franchise Law is constitutionally valid. As the Court concluded in Ford Motor Co., we "have no hesitancy in concluding that [the Franchise Law] bears a reasonable relationship to the State's legitimate purpose in controlling the [automobile] retail market. . . ." 264 F.3d at 510 (citing Exxon, 437 U.S. at 125). And, as concluded in Tesla, "vertical integration is a legitimate state interest. . . ."

You have also asked who can bring suit to enforce the Franchise Law. You inquire specifically as to whether SCDMV, SLED or the Attorney General may bring an action. Typically, we cannot address such questions in an opinion of this Office as only a court may determine standing to sue, based upon the facts and circumstances. Of course, a party must have the necessary standing to bring an action. As was recently stated by our Court of Appeals,

> "Generally, a party must be a real party in interest to the litigation to have standing." Sloan v. Friends or Hunley, Inc., 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006). "Standing to sue is a fundamental requirement in instituting an action." Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." Michael P. v. Greenville Cnty. Dep't. of Soc. Servs., 385 S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009). "Standing may be acquired (1) by statute, (2) under the principle of 'constitutional standing,' or (3) via the 'public importance' exception to general standing requirements." Pres. Soc'y of Charleston v. S.C. Dep't. of Health & Env't. Control, 430 S.C. 200, 209-10, 845 S.E.2d 481, 486 (2020). . . .
>
> Our Supreme Court has explained the requirements of constitutional standing as follows:
>
> > To possess constitutional standing, first, a party must have suffered an injury-in-fact which is a concrete particularized, and actual or imminent invasion of a legally protected interest.
> >
> > Second, a causal connection must exist between the injury and the challenged conduct.
> >
> > Finally, it must be likely that a favorable decision will address the injury.
>
> Youngblood v. S.C. Dep't. of Soc. Servs., 402 S.C. 311, 317-18, 741 S.E.2d 515, 518 (2013). . . .

Hawkins v. Hammond, 437 S.C. 36, 43, 875 S.E.2d 60, 63-64. See also S.C. Pub. Int. Founds. v. S.C. Dept. of Transp., 421 S.C. 110, 804 S.E.2d 854 (2017). As noted, only a court may determine if a party possesses the requisite standing to sue. Further, only a court may ascertain whether or not a statute, such as South Carolina's Franchise Law, implies a private right of action, even though the statute does not expressly confer such a right. See Citizens of Lee County, Inc. v. Lee County, 308 S.C. 23, 28, 416 S.E.2d 641, 645 (1992) [whether legislation is enacted for the special benefit of a private party is the test of whether a private right of action is created by implication]. We note that, while the Franchise Law does not expressly confer a private right to action, the Act does make it explicit in § 56-15-20 that South Carolina courts are open to address issues concerning the Act.

Nevertheless, while we are unable definitively to address standing, or a private right of action, we would note that the Department of Motor Vehicles is the licensing authority for dealers. We observe that courts have consistently held that the government "has standing to enforce its own laws. . . ." 452 Fed. App'x. 186, 18 (3rd Cir. 2011). The question will be what government agency may do so with respect to South Carolina's Franchise Laws. It should be observed that the Department of Motor Vehicles is the agency empowered to license automobile dealers in South Carolina. A court could well conclude that DMV would have standing to enforce the requirement in South Carolina that a manufacturer may not engage in the sale of automobiles in this State.

With respect to whether the Attorney General may bring suit, the issue is more problematical. As our Supreme Court has recognized, "[t]he Attorney General is concerned only with the vindication of public rights, not the infringement of private rights by individuals.... The Attorney General has no standing to intervene in grievances not affecting the public interest." Langford v. McLeod, 269 S.C. 466, 238 S.E.2d 161, 164 (1977). Moreover, "[i]n the absence of statutory authority, the attorney general ordinarily may not maintain an action solely for the vindication of private rights or for the redress of private grievances in which the public has no interest . . . except to the extent that the cause involves public as well as private interests." 7A C.J.S. Attorney General § 43. While South Carolina's Franchise Law vindicates both private rights and supports a public purpose, we have found no decision in which the Attorney General has brought suit to enforce an automobile Franchise Law.

Further, no provision in the Franchise Act authorizes the Attorney General to bring suit to enforce the Law. We think that given the interests that the statutes were primarily designed to protect – that of the automobile dealers – the Attorney General's standing to sue is uncertain in this particular instance.

Conclusion

Numerous courts have recognized that automobile Franchise Laws, such as those in South Carolina, serve an important purpose in preserving the automobile industry. As one court

has observed, "[f]ranchise laws play a key role in ensuring that consumers and local communities benefit from strong sales and service networks for one of the most important purchases made by most U.S. households." The purpose of South Carolina's Franchise Law, enacted in 2000, is best expressed in its title, which is to "Prohibit ownership, operation or control of competing dealerships by a manufacturer or franchisor except under certain circumstances" and to "prohibit unfair competition by a manufacturer or franchisor against a franchisee. . . ."

In 2013, we issued an opinion concluding that South Carolina's Franchise Law may not be bypassed by a manufacturer. There, we concluded that "South Carolina law prohibits a manufacturer from selling cars over the internet to South Carolina consumers." This opinion is reiterated and reaffirmed herein.

We also note that numerous federal and state courts have rejected various constitutional challenges to state Franchise Laws. See Deere & Co. v. State, 130 A.3d 1197, 1209 (N.H. 2015) (and the numerous cases cited therein). Among these decisions, the Fifth Circuit Court of Appeals has upheld both the Texas and Louisiana statutes against various constitutional attacks. These decisions are discussed in detail herein.

Thus, we believe, based upon these authorities, that South Carolina's Franchise Law is constitutional. As the Court concluded in the Ford Motor case, we "have no hesitancy in concluding that [the Franchise Law] bears a reasonable relationship to the State's legitimate purpose in controlling the [automobile] retail market. . . ." 264 F.3d at 510 [citing Exxon, 437 U.S. at 125]. The Tesla case reaffirmed Ford.

It is well settled that "statutes can have no extraterritorial effect." In other words, "legislative enactments can only operate . . . upon persons or things within the territorial jurisdiction of the lawmaking power, and that no law has any effect, or its own force, beyond the territorial limit of the sovereignty, from which its authority is derived." Op. S.C. Att'y Gen., 2022 WL 219394 (January 18, 2022). Thus, South Carolina's Franchise Law does not affect automobile sales in another state.

Of course, the General Assembly is free to modify, add to, or make exceptions to the Franchise Law. We note that a Bill is currently pending, H. 3777, to amend § 56-15-45 to provide "that an automotive manufacturer that owns or operates a manufacturing factory or assembly plant that has never had dealer franchise agreements must be allowed to sell directly to consumers to promote consumer choice and market freedom." This is a policy decision for the General Assembly pursuant to is lawmaking power.

Our opinion here deals with the law as it currently exists and has been on the books since 2000. We thus reiterate and reaffirm our 2013 opinion, discussed herein, and conclude that the Franchise Law is binding upon automobile manufacturers, such as Scout Motors. In our view, contrary to our earlier 2000 opinion, we believe these statutes are constitutional.

Sincerely,

Robert D. Cook
Solicitor General