Case No. S25A1139

IN THE SUPREME COURT OF GEORGIA

Lucid Group USA, Inc.,
Appellant,

v.

State of Georgia,
Appellee,

v.

Georgia Automobile Dealers' Association,
Intervenor-Appellee.

On Appeal from the Superior Court of Fulton County
Case No: 24CV008318

AMICUS CURIAE BRIEF OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLANTS AND REVERSAL

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IDENTITY AND INTEREST OF AMICUS CURIAE

Pacific Legal Foundation (PLF) is a nonprofit law firm that defends individual liberty, including the right to earn a living free of unreasonable government interference. For over 50 years, PLF has litigated in support of the right of individuals to pursue economic opportunity, one of the central promises of the Fourteenth Amendment. PLF has participated in cases before the United States Supreme Court, the Eleventh Circuit Court of Appeals, and Georgia courts in support of economic freedom. *See, e.g.*, *Chubb v. Comm'r for the Ga. Dep't of Cmty. Health*, No. 23-12364 (11th Cir. 2024) (fighting for midwives' right to open and operate birth centers in Georgia).

PLF attorneys are familiar with the legal issues raised by this case and the briefs filed with this Court. In fact, PLF has filed an amicus brief in a similar case brought by Lucid Group in Texas. *See* Br. of Pacific Legal Foundation as Amicus Curiae in Support of Pl.'s Mot. for Summ. J., *Lucid Group USA v. Johnston*, No. 1:22-cv-01116-RP (W.D. Tex. 2022), Dkt. No. 13. PLF's policy perspective and litigation experience in support of economic liberty will provide a valuable additional viewpoint on the issues presented in this case.

INTRODUCTION

Lucid Group USA, Inc. (Lucid) has called upon the Georgia courts and the state constitution to guard its rights to due process and equal protection.

But the superior court held that Lucid exists in a constitution-free zone outside the reach of these fundamental rights.

This remarkable holding stems from a strained reading of a constitutional provision granting the General Assembly an express police power to regulate the auto industry. And this holding defies a fundamental tenet of the rule of law "that government and each of its parts remain open on impartial terms to all who seek its assistance." *Romer v. Evans*, 517 U.S. 620, 633 (1996). The superior court's interpretation also places the Georgia Constitution in jeopardy of violating the United States Constitution's Equal Protection Clause, which cannot abide a law that would exempt a disfavored group of citizens from legal protection.

According to the complaint, the state's ban on car manufacturers selling directly to consumers (unless that manufacturer has the good fortune of being Tesla) does not further the government's purported interest in preventing anti-competitive business practices. Instead, the law appears to be premised on sheltering the dealership industry from competition. That is not a legitimate government interest that satisfies the state's due process protections for the right to earn a living.

Given that Lucid has due process rights under the Georgia Constitution, it has stated a claim that should survive a motion to dismiss. Georgia's Due Process Clause protects the right to engage in one's chosen profession, "subject

only to such restrictions as are necessary for the public good." *Raffensperger v. Jackson*, 316 Ga. 383, 389 (2023) (quoting *Bramley v. State*, 187 Ga. 826, 834 (1939)). This Court should therefore reverse the superior court and embrace a common-sense reading of the state constitution that does not disinherit certain citizens from the grand American tradition of individual liberty.

ARGUMENT

I. The Georgia Constitution protects the fundamental rights of automobile businesses

In defiance of canons of statutory construction and the Anglo-American legal tradition, the superior court held that the auto industry simply does not enjoy due process and equal protection of the law under the Georgia Constitution. But the Georgia Constitution did not create a constitutional desert for auto businesses. To the contrary. The Georgia Constitution guarantees due process and equal protection to all citizens and businesses in Georgia, including businesses engaged in the distribution of vehicles.

The superior court held that an amendment to the Georgia Constitution stripped away certain rights from vehicle manufacturers, distributors, and dealers.

That pertinent amendments says:

> Notwithstanding [the Due Process Clause, Equal Protection Clause, and Freedom of Conscience Clause] of this Constitution, the General Assembly in the exercise of its police power shall be authorized to regulate . . . new motor vehicle manufacturers,

> distributors, dealers, and their representatives doing business in Georgia, including agreements among such parties, in order to prevent frauds, unfair business practices, unfair methods of competition, impositions, and other abuses upon its citizens.

Ga. Const. art. III, § VI, para. II(c).

This Court interprets the state constitution based on "the plain and ordinary meaning of the text, viewing it in the context in which it appears and reading the text in its most natural and reasonable manner." *Olevik v. State*, 302 Ga. 228, 236 (2017). Here, the meaning is plain: the General Assembly may exercise its police power to regulate the car industry, and constitutional protections cannot hobble the police power when used to prevent enumerated abusive business practices like fraud. Regulatory action that lacks a reasonable connection to such harms remains subject to the normal constitutional rights the Georgia Constitution guarantees.

Lucid still enjoys due process and equal protection rights to engage in conduct that does not fall within the harms listed by the amendment. Traditional canons of construction support this commonsense interpretation.

A. The Court should give meaning to all language in the Amendment

This Court interprets legal text "to avoid a construction that makes some language mere surplusage." *Gonzalez v. Miller*, 320 Ga. 170, 176 (2024). Every written word in a text should have meaning. This is particularly true of a governing text like a constitution. *See Camden County v. Sweatt*, 315 Ga. 498,

509 (2023) ("This canon of statutory construction applies with at least equal force in the constitutional context.") (internal quotation marks omitted).

By waving away the enumerated harms in Paragraph II(c) as a mere "statement of purpose," the superior court renders a detailed portion of the amendment's operative sentence as meaningless fluff. That is not how this Court reads statutes, and it certainly is not how it should read a constitution. "It cannot be presumed that any clause in the constitution is intended to be without effect." *Marbury v. Madison*, 5 U.S. 137, 174 (1803). Constitutions do not contain claptrap.

Of course, the canon against surplusage, like any canon of construction, is "not an absolute rule," *Stanley v. City of Sanford*, 145 S. Ct. 2058, 2066 (2025), but courts should favor an interpretation that "leaves no part of the statute ignored or left without work to do." *Feliciano v. Dep't of Transp.*, 145 S. Ct. 1284, 1294 (2025); *see also Gonzalez*, 320 Ga. at 176–77. Here, the only plausible way to read the "in order to" clause of Paragraph II(c)—unless the Court leaves it "without work to do"—is to read it as defining the scope of the state's police power subject to the amendment, a typical role for a constitution. As Justice Ellington said recently regarding a different provision of the Georgia Constitution, "the people of Georgia saw fit to include this clause in our Constitution, so we cannot brush it aside." *Ammons v. State*, 315 Ga. 149, 168 (2022) (Ellington, J., concurring).

The statutory environment surrounding the provision at issue confirms this reading. The motor vehicle provision arises in a section of the state constitution entitled, "Specific Powers." This section, among other things, enables the General Assembly to "restrict land use," exercise the power of eminent domain, and regulate advertising along public thoroughfares. Ga. Const. art. IX, § II, para. IIII.

Most of these grants of specific powers do not include an "in order to" clause. Only two do: the specific power to regulate land use and the specific power to regulate the car industry. The specific power to regulate land use is granted "in order to" prevent certain harms to the environment, *id.* at (a)(1), and the power to regulate the motor vehicle industry is granted "in order to" prevent certain abusive business practices. *Id.* at (c). Given that the "in order to" language is used in conjunction with several specific grants of power—but not others—these clauses must have substantive meaning. Reading these clauses out of their respective provisions puts them on par with the other specific powers in which these clauses are not used, a result contrary to basic standards of interpretation.

Moreover, if this Court omits the "in order to" clause from one power, it would have to omit that clause from the other. Ignoring the "in order to" clause that limits the specific land use powers granted to the state would seriously impede the home rule granted by the Constitution to counties and

municipalities over land use. *See* Ga. Const. art. IX, § 4, para. IV. The "in order to" clause of the land use power likely has meaning that preserves that home rule, and therefore the "in order to" clause in the motor vehicle provision should likewise mean something. *See* Frank S. Alexander, *Inherent Tensions Between Home Rule and Regional Planning*, 35 Wake Forest L. Rev. 539, 558 (2000).

The timeline of constitutional revisions bolsters this conclusion. The other subsections within "Specific Powers" were adopted in the 1980s, including the land use subsection with its "in order to" clause. The motor vehicle subsection was adopted a decade later. Thus, at the time that the motor vehicle subsection was ratified, the drafters were familiar with both the specific powers that included an "in order to" clause, and those that did not. Their choice to include the "in order to" clause should therefore be presumed to have significance.

The broader constitutional context also supports a more limited reading of the grant of police power over the auto industry. The Georgia Constitution's bill of rights, which houses the due process and equal protection guarantees that Lucid calls upon here, imposes "the affirmative constitutional duty," *State v. Miller*, 260 Ga. 669, 672 (1990), on the General Assembly to protect these rights: "[I]t shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship." Ga. Const. art. I, § 1, para. VII. Interpreting the

Georgia Constitution to waive this duty for a particular class conflicts with the emphatic demand that the General Assembly stand as a sentinel of Georgia citizens' civil rights.

B. The superior court misread the "in order to" clause as meaningless prefatory language

The superior court sought to escape this conclusion by casting the "in order to" clause as merely a prefatory statement of purpose without substance. This is a misapplication of the canons of construction that does not comport with the plain meaning of the constitution.

As Lucid noted in its opening brief, AOB at 29, prefatory language is *prefatory*. In other words, it is a "passage that precedes the text's operative terms, such as a legislative preamble." Antonin Scalia & Bryan A. Garner, *Reading Law* 217 (2012). Here, the "in order to" clause should play a role in the interpretive quest because it is incorporated into the operative text of the statute (and thus must be given weight lest it be rendered mere surplusage).

But even assuming that a clause embedded in the operative text is prefatory, such prefatory language may still have interpretive power. A statement of purpose "is a key to open the minds of the makers, as to the mischiefs, which are to be remedied, and the objects, which are to be accomplished by the provisions of the statute." 1 Joseph Story, *Commentaries on the Constitution of the United States* § 459, at 326 (2d ed. 1858). Even with

a prefatory statement of purpose, "[l]ogic demands that there be a link between the stated purpose and the command." *District of Columbia v. Heller*, 554 U.S. 570, 577 (2008). It is thus appropriate to consider the statement of purpose as an interpretive tool unless used to "give words and phrases of the dispositive text itself a meaning that they cannot bear." Scalia & Garner, *supra* at 218.

The "in order to" clause helps to illuminate meaning without conflicting with the dispositive text. The operative text grants a "police power" to regulate the motor vehicle industry. But the police power is already "reserved to the States." *City of Boerne v. Flores*, 521 U.S. 507, 518 (1997). So, the constitutional provision granting police power over the motor vehicle is either a codification and clarification of the state's existing police power, or it's an expansion of that preexisting power.

It is quite common for constitutional provisions to codify and clarify preexisting customary law. *See* Adam MacLeod, *A Workable Common Law Baseline for Regulatory Takings*, 20 J. Law, Econ., & Pol'y 461, 467 (Spring 2025) (describing the common and traditional role of lawmakers in adopting "declaratory enactment[s]," which "merely restate[] or give[] specific content to pre-existing legal doctrine" and "define[] the contours of rights"). *See also* Randy Barnett, *Restoring the Lost Constitution* 54–55 (2014) ("In other words, for Madison even some of the rights enumerated in the Bill of Rights, such as the freedom of speech, were natural 'retained' rights."). Indeed, most of the

rights codified in the Bill of Rights had existed under English customary law prior to that time. *See, e.g.*, *Securities and Exchange Commission v. Jarkesy*, 603 U.S. 109, 121 (2024) (discussing the longstanding common law right to a jury that preceded its incorporation into the Bill of Rights); *Heller*, 554 U.S. at 593 ("By the time of the founding, the right to have arms had become fundamental for English subjects."). Likewise with the right to earn a living under the Georgia Constitution that the superior court held to no longer apply to the auto industry. *See Bramley*, 187 Ga. at 834 (It is "the common inherent right of every citizen to engage in any honest employment he may choose.").

The constitutional provision at issue in this case fills this common constitutional role—the clarification of preexisting customary law regarding the scope of the police power that "defines the contours of rights." MacLeod, *supra* at 467. The provision clarifies that the businesses operating in the vehicle industry cannot rely on due process or equal protection rights to block police power regulations of abusive business practices like fraud. This assertion of the scope of the General Assembly's police power was a narrow response to decisions from this Court that had limited the state's power to regulate vehicle franchises. *See* Alexandra K. Howell, *Enforcing a Wall of Separation Between Big Business and State: Protection from Monopolies in State Constitutions*, 96 Notre Dame L. Rev. 859, 888–90 (2020). The amendment thus was a minor course correction that fine-tuned the contours of

the preexisting police power, not a titanic shift in the traditional limits on that power.

This reasonable interpretation is far less outlandish and troubling than an interpretation that reads the state constitution as withdrawing fundamental rights from a distinct class. If the people of Georgia had intended to strip one of the most storied rights in the Anglo-American legal tradition from the auto industry, they would have spoken more clearly. *See* Scalia & Garner, *supra* at 318 (changes to longstanding customary law "must be clear").

C. *The Court should avoid the profound federal constitutional problems that arise if the state constitution exempts a particular group from constitutional protection*

Perhaps most alarming, the superior court's holding plunges the constitutionality of the state constitutional amendment into doubt. The superior court's interpretation of the Georgia Constitution imposes a unique burden on a particular group of businesses and individuals involved in the auto industry by stripping them of fundamental rights, yet these protections remain for all other Georgia citizens. Under the Fourteenth Amendment of the United States Constitution, the Georgia Constitution cannot impose "a special disability upon those persons alone." *Romer*, 517 U.S. at 631. This Court should adopt the (more) reasonable reading that avoids the teeth of this serious constitutional dilemma. *See FCC v. Consumers' Research*, No. 24-354, Slip Op.

at 30 (U.S. Sup. Ct., June 27, 2025) ("Statutes . . . should be read, if possible, to comport with the Constitution, not to contradict it.").

The U.S. Supreme Court is clear that state constitutions cannot simply exempt a class of citizens from legal protection. A state constitution defies equal protection under federal law if it "has the peculiar property of imposing a broad and undifferentiated disability on a single named group." *Romer*, 517 U.S. at 632.

In *Romer*, the Supreme Court invalidated an amendment to the Colorado Constitution that stated:

> Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination.

Id. at 624. The Supreme Court held that—under the Fourteenth Amendment's Equal Protection Clause—Colorado could not "nullif[y] specific legal protections for this targeted class." *Id.* at 629. This was so even though the group of citizens targeted was a non-suspect class. *Id.* at 631.

The superior court's reading of the Georgia Constitution's auto industry amendment places it right alongside the discredited Colorado amendment in *Romer*. A reading of the Georgia Constitution that ignores the "in order to"

clause ostracizes the auto industry from the shelter of due process and equal protection even when burdensome regulations are entirely unrelated to the industry. If, for example, the General Assembly held that only car dealers owned and operated by white males can sell vehicles in Georgia, the superior court's interpretation of the Georgia Constitution would leave the dealers without an equal protection claim.

This "special disability" not only conflicts with the federal equal protection clause but with the broader Anglo-American legal tradition. Few constitutional protections enjoy as deep a legal pedigree as due process. "It is now the settled doctrine of this Court that the Due Process Clause embodies a system of rights based on moral principles so deeply embedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society . . . ." *Solesbee v. Balkcom*, 339 U.S. 9, 16 (1950) (Frankfurter, J., dissenting).

At least since Magna Carta in 1215, the promise that due process must accompany the deprivation of rights has served as the bedrock of English and American systems of constitutional government. *See* John H. Dillon, *Laws and Jurisprudence of England and America* 208 (1894) (explaining that the Due Process Clause had been drawn from Magna Carta and incorporated "language [that] had stood for more than five centuries as the classic expression and as the recognized bulwark of the ancient and inherited rights of Englishmen to be secure in their personal liberty and in their possessions"). Due process is a vital

precondition for the meaningful enforcement of every other right, since without it the government can simply deny procedural guarantees required for the vindication of substantive rights.

In other words, the superior court's interpretation of the state constitution banishes the auto industry to a constitution-free zone: without due process rights, other rights become flimsy "parchment barriers." The Federalist No. 48 (James Madison). In essence, the superior court has revived the ancient doctrine of civil death—the extinguishing of civil rights as a form of criminal punishment—for a specific group. For good reason, the English common law doctrine of civil death was rejected by early American courts and by the Georgia Constitution, and Georgia is not among the minority of states with civil death statutes on the books. *See* Ga. Const. art. I, § 1, para. XX (rejecting civil death as to property rights as a punishment for conviction); Harry David Saunders, *Civil Death – A New Look at an Ancient Doctrine*, 11 Wm. & Mary L. Rev. 988, 990 (1970).

In any case, the blanket declaration that an entire group of people suffer a form of civil death as a matter of law would have been unusual even by the standards of the cruel times that gave birth to that discredited relic. The Equal Protection Clause of the Fourteenth Amendment cannot abide a disability of such drastic consequence imposed on a specific group.

If a reasonable interpretation exists that avoids such a serious constitutional problem, this Court should adopt it. The Court should give effect to the "in order to" clause. Then, the Amendment simply provides that due process and equal protection guarantees do not handcuff the General Assembly from preventing "frauds, unfair business practices, unfair methods of competition, impositions, and other abuses upon its citizens." Ga. Const. art. III, § VI, para. II(c). This avoids the distressing interpretation that would call into question the constitutionality of the Amendment.

II. Lucid's Due Process Claim Should Survive the Motions to Dismiss

It is unsurprising that, but for the 1992 amendment, neither defendant even tried to argue that Lucid did not state a due process claim. The Lucid complaint adequately pleads that the direct-sales ban burdens Lucid's right to engage in its chosen profession. The ban is animated by a protectionist motive to favor the local dealership industry against the manufacturing industry (with the exception of a politically and economically powerful business like Tesla). As a matter of law, Georgia cannot burden the right to earn a living in order to cater to special interests.

The Georgia Constitution's Due Process Clause protects "'the common inherent right of every citizen to engage in any honest employment he may choose, subject only to such restrictions as are necessary for the public good.'"

Raffensperger, 316 Ga. at 389 (quoting *Bramley*, 187 Ga. at 834). The Georgia Constitution offers greater protection than the rational basis standard applied to burdens on the right to earn a living under the federal Due Process Clause.

Under federal rational basis, courts employ "a relatively relaxed standard" that will uphold a challenged law "so long as there is any reasonably conceivable state of facts that could provide a rational basis" for the law. *United States v. Skrmetti*, 145 S. Ct. 1816, 1835 (2025) (simplified). The Georgia Constitution expects more, requiring that a burden on the right to earn a living be reasonably necessary to achieving "a specific interest in health, safety, or public morals." *Raffensperger*, 316 Ga. at 392.

This Court has created a multi-step framework for due process claims regarding the right to earn a living. First, the plaintiff must "show that the occupation sought is, at a minimum, lawful but for the challenged restriction." *Id.* at 391. Second, the plaintiff must show that the regulation "unreasonably burdens the ability to pursue" that occupation. *Id.* The burden of persuasion then shifts to the government to demonstrate that its regulation "is reasonably necessary to advance an interest in health, safety, or public morals." *Id.* This Court has specified that "protectionism" is "decidedly *not* sufficient to justify a burden on the ability to practice a lawful profession." *Id.* at 392.

The Complaint's pleadings, taken as true, satisfy this framework. Selling new cars is a lawful occupation. And the Complaint offers nonconclusory

allegations that Georgia's direct-sales ban "unreasonably interferes" with Lucid's exercise of that occupation. Indeed, the Complaint sets forth allegations that the ban is motivated by an interest that this Court has already deemed per se unreasonable: protectionism.

The Complaint marshals statements and research from scholars, industry professionals, and the Federal Trade Commission that all point to the same conclusion: the direct-sales ban is a protectionist measure that shields dealers from competition. *See* Complaint ¶¶ 43–45. Under this Court's holding that protectionism is never a sufficient interest to justify burdening the right to earn a living, the Complaint has pled a valid claim upon which relief can be granted.

As the Complaint explains, a direct-sales ban may have once served a legitimate role in a different economic era and applied against different manufacturers. Direct-sales bans arose to deal with a specific and outdated problem—powerful manufacturers undercutting their franchised dealers by opening competing dealerships. *See* Daniel A. Crane, *Tesla, Dealer Franchise Laws, and the Politics of Crony Capitalism*, 101 Iowa L. Rev. 573, 578–79 (2016).

The auto manufacturing industry is far more competitive now than it was when the "Big Three" dominated the field. *See id.* at 574. Meanwhile, the dealerships themselves have grown to be a big business interest, a far cry from

the small operations bullied by giant auto makers. *Id*. at 600. A law aimed at a problem that no longer exists is not "reasonably necessary to advance an interest in health, safety, or public morals." *Raffensperger*, 316 Ga. at 391. To be reasonably necessary, "a statute's current burdens must be justified by current needs." *Shelby Cnty. v. Holder*, 570 U.S. 529, 550 (2013) (simplified).

But even if times had not changed, the law's application to Lucid would serve no legitimate government purpose because Lucid is a small manufacturer that does not contract with franchised dealers and therefore cannot cause the harm that the law aims to address. Since the law's purpose is "so far removed from the reasons offered for it," we are left with the "inevitable inference" that the law exists to protect incumbent industries. *Romer*, 517 U.S. at 621. *See also Ford Motor Co. v. Texas Dep't of Transp*., 264 F.3d 493, 512 (5th Cir. 2001) (Jones, J., concurring) (Direct-sales bans are "a genre of state laws favoring local automobile dealers over out-of-state manufacturers.").

Nothing underscores this inference quite like the careful carveout for Tesla. While the exemption does not call Tesla by name, the law's failure to connect the exemption to a government purpose, and the fact that the exemption only affects one powerful business in the state, indicate that the state's interest is not quite what it claims. As this Court put it, "if a similarly situated person is able to pursue the occupation competently, then the burden

imposed on the person who is prohibited from pursuing the occupation is likely not reasonably necessary to the State's interest in health and safety." *Raffensperger*, 316 Ga. at 390.

CONCLUSION

The Georgia Constitution does not banish Lucid to a constitutional desert. Lucid, like any other business or individual in Georgia, enjoys the fundamental right to due process of law. This Court should reverse and direct the superior court to deny the motions to dismiss.

Rule 20 Word Count Certification

This submission does not exceed the word-count limit imposed by Rule 20.

DATED: July 10, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have this day served a true and correct copy of the foregoing **AMICUS CURIAE BRIEF OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLANTS AND REVERSAL** on all counsel of record by both U.S. mail and electronic mail.

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