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Tesla's Reliance on the Commerce Clause Under Article I of the U.S. Constitution:

Are State Laws Prohibiting Factory Direct Sales Unconstitutional?

By Leonard A. Bellavia, *Bellavia Blatt, P.C.*

In less than two weeks' time from February into March of this year, Tesla released, and subsequently retracted, significant changes to its sales model. First, Tesla announced in late February 2019 that it would be closing all "brick and mortar" stores and exclusively sell cars online. Under Tesla's proposed February business model, consumers would no longer be able to walk into a retail location to inspect or test drive a Tesla vehicle before completing an online purchase with the assistance of a Tesla representative. Tesla stated that by eliminating its physical locations, it would lower its prices on all vehicles–besides the Model 3–by six percent. However, late February 2019 seems long ago, as Tesla has already announced in early March a reversal of the "new" business plan.

Under the March "reversal," instead of a complete shutdown of all physical locations, Tesla would be closing approximately ten percent of its stores, singling out those with the least amount of foot traffic. Other locations that had been closed immediately after Tesla's February announcement would be re-opened with smaller staff. There were also stores that would be "under review" and may eventually be shut down by Tesla anyway.

Is Tesla's rapid reversal of its plan to sell vehicles exclusively online a sign of defeat under the franchise laws throughout the country? Or, is it more likely that Tesla's change of heart is based upon real property lease obligations at their U.S. locations which reportedly exceed $1.6 billion over the next few years?[1]

Whatever the reason may be for Tesla's reversal, it is likely that Tesla, at least in some way, is still planning to disrupt the automobile franchised dealership model. It is possible that Tesla may have attempted to overhaul its current business model too early and may still plan to later move sales strictly online once the leases they are currently locked into as part of their retail location/showroom network come closer to expiration.

[1] Rob Stumpf, *Tesla Still Owes $1.6 Billion in Leases for Closing Stores: Report*, The Drive, Mar. 9, 2019, at http://www.thedrive.com/news/26857/tesla-still-owes-1-6-billion-in-leases-for-closing-stores-report.

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In the early 2010s, Tesla began its aggressive campaign to bypass the traditional means of selling vehicles through franchised dealerships, or, as Tesla called them, "middle men." By lobbying to amend, or abolish, states' franchise laws banning the direct sale of vehicles to consumers, Tesla endeavored to change the rules under which factories have sold vehicles to dealers for decades. To the dismay of automakers and franchised dealers alike, Tesla began to gain ground in a number of states.

Beginning in 2013 New Hampshire passed legislation allowing auto manufacturers to sell directly to consumers as long as the manufacturer had no existing dealer franchisees/network.

This law allows Tesla to sell vehicles directly to consumers because it never sold vehicles through franchised dealerships. The following year Washington passed legislation banning direct sales by manufacturers, but grandfathered Tesla's right to sell directly to consumers. Later in 2014, after a multi-year litigation in Massachusetts's highest court, Tesla was granted the right to sell to consumers directly.

Since then Tesla has experienced other smaller victories, sometimes through negotiated settlements, such as the right to open a limited number of stores in a variety of states, including New York, New Jersey, and Ohio. Tesla, however, has also encountered various legal obstacles on its path to circumventing the traditional franchised dealership network method of selling vehicles.

Tesla v. State of Michigan

In 2016 Tesla sued the state of Michigan in Federal Court. In *Tesla Motors, Inc. v. Ruth Johnson,* 16-cv-1158 (U.S.D.C. W.D. Michigan 2016), Tesla challenged the constitutionality of Section 445.1574 of the Michigan Compiled Laws. Section 445.1574 prohibits motor vehicle manufacturers from directly selling their vehicles to consumers within the state. This Michigan state law requires all manufacturers to contract with independent, franchised dealers to sell their cars.

Tesla alleges that Michigan Compiled Laws Section 445.1574: (a) blocks Tesla from pursuing legitimate business activities and subjects it to arbitrary and unreasonable regulation in violation of the Due Process Clause of the Fourteenth Amendment; and (b) discriminates against interstate commerce and restricts the free flow of goods between states in violation of the dormant Commerce Clause. Tesla claims the sole purpose for applying Section 445.1574 to a non-franchising manufacturer like Tesla was to insulate Michigan's entrenched automobile dealers and manufacturers from competition which is not a legitimate government interest under the U.S. Constitution.

Specifically, Section 445.1574 provides that manufacturers "shall not," among other things, "sell any new motor vehicle directly to a retail customer other than through franchised dealers." MICH. COMP. LAWS ANN. § 445.1574(1)(i). In other words, Section 445.1574 prevents manufacturers from selling cars directly to consumers in Michigan and even from servicing cars at facilities within the state. Section

445.1574 also prohibits manufacturers from owning, operating, or controlling a new or used motor vehicle dealer. Mich. Comp. Laws Ann. § 445.1574(1)(h). Tesla also argues that it does not propose to own, operate, or control a dealership; it simply wants to sell cars directly to consumers. In this respect, Tesla claims that Section 445.1574 creates a monopoly in favor of Michigan-based franchised dealers and benefits Michigan's local manufacturers (who sell their cars through dealers) by blocking Tesla from operating within the state.

Tesla further contends:

- Even if the Michigan law could be regarded as a reasonable limitation on the ability of manufacturers employing a traditional dealer network to compete unfairly against their own dealers, it serves no rational purpose as applied to Tesla, which only sells directly to consumers. Furthermore, the application of Section 445.1574's manufacturer-direct sales and service prohibitions to Tesla has no legitimate rational basis as Tesla has never sold cars through an independent dealership and, therefore, cannot engage in unfair business practices vis-a-vis a franchised dealer. As applied to Tesla, Tesla contends that the prohibition serves only to deny Michigan consumers access to Tesla's sales; and
- Section 445.1574 unquestionably harms consumers as it prevents a non- franchising manufacturer like Tesla from selling cars within the state of Michigan and removes a competitor from the marketplace. Tesla further alleges that increasing competition enhances consumer choice and reduces prices whereas reducing competition takes choice away from consumers and increases prices.

In sum, the main focus of the Michigan lawsuit is Tesla's contention that the above-referenced Michigan law violates the Commerce Clause. The United States Constitution empowers Congress "[t]o regulate Commerce. . . among the several States." U.S. Const. art. I, § 8, cl. 3. The Commerce Clause also has a negative aspect, referred to as the dormant Commerce Clause, which restricts state and local governments from impeding the free flow of goods from one state to another. The dormant Commerce Clause prevents states from promulgating protectionist policies, i.e., regulatory measures aimed to protect in-state economic interests by burdening out-of-state competitors. Tesla contends that Section 445.1574 violates the dormant Commerce Clause by prohibiting Tesla from selling and servicing cars in Michigan except through independent franchised dealers, which impermissibly discriminates against interstate commerce by impeding the flow of out-of-state-manufactured vehicles into Michigan and by favoring in-state interests (Michigan franchised dealers and Michigan-based vehicle manufacturers) over out-of-state interests (Tesla). Again, Tesla argues that the Michigan law does not advance any legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives and imposes a burden on interstate commerce that is clearly excessive in relation to any conceivable local benefit.

While the lawsuit is still in the discovery phase, the State of Michigan's Answer to Tesla's Second Amended Complaint asserts the following affirmative defenses:

- Tesla never has sought permission for direct sales but only for dealer licenses;
- The State of Michigan has a constitutional, legitimate non-discriminatory reason for its purported non-discriminatory statute which is to prevent vertical integration in the manufacturing and selling of automobiles; and
- The statute was not promulgated to discriminate against Tesla, because it was enacted before the existence of Tesla.

Can States Ban Online Direct Sales by a Motor Vehicle Manufacturer?

While Tesla's move to a strictly online sales model appears to be halted for now, the automaker still poses a threat to the traditional dealer network model. If Tesla's lobbying efforts are successful and they obtain approval for their online model, it may open the door for new online manufacturers to appear and begin selling cars directly to consumers. Therefore, like Tesla, other new auto manufacturers from India, China, and elsewhere may be emboldened and attempt to navigate around the franchised dealer network system.

The case between Tesla and the State of Michigan is still pending, but Tesla has doubled down on its argument that any state attempting to ban Tesla's "online sales only" business model would be an unconstitutional restraint on interstate commerce that violates the Commerce Clause. When asked whether pro-franchise law state regulators would challenge Tesla's online sales model, Musk stated, "I'm sure the franchise dealers will try to oppose [Tesla] in some way, but to do so would be a fundamental restraint on interstate commerce and violate the Constitution. So, good luck with that." Jeremy Alicandri, *Tesla's Online Model Confuses Industry Experts*, Forbes, Mar. 5, 2019. However, Musk's argument served as an overly simplistic reading of the Commerce Clause.

The Framework of a Dormant Commerce Clause Analysis

Indeed, just some of the questions that a Court must reach to determine whether a state law, such as the one in Michigan that prohibits a manufacturer from selling any new motor vehicle directly to a retail customer other than through franchised dealers, would be stricken as an unconstitutional violation of the Commerce Clause, are: (a) whether the law discriminates against out of state competition or has the effect of favoring in-state economic entities; (b) whether the law effectuates a legitimate local purpose and if its burden on commerce is excessive in relation to its benefits; and (c) whether the State has any other reasonable means of advancing a legitimate local (non-economic) state interest.

As just one example, in the case of *Granholm v. Heald*, 544 U.S. 460 (2005), many of these same issues were raised. Specifically, the Supreme Court examined two state laws that permitted in-state wineries to

directly ship alcohol to consumers but restricted the ability of out-of-state wineries to do so. The Supreme Court consolidated the two state cases and granted certiorari on the following question: "Does a State's regulatory scheme that permits in-state wineries to ship alcohol directly to consumers but restricts the ability of out-of-state wineries to do so violate the dormant Commerce Clause in light of § 2 of the Twenty-first Amendment?" *Granholm v. Heald*, 541 U.S. 1062, 158 L. Ed. 2d 962, 124 S. Ct. 2389 (2004).

One of the two consolidated cases originated in New York. In that case the District Court initially granted summary judgment to the plaintiffs (out of state wineries) as it held that, under established Commerce Clause principles, the New York direct-shipment scheme discriminated against out-of-state wineries. The Court of Appeals for the Second Circuit reversed, because it determined that the law effectuated a legitimate local purpose and its burden on commerce was not excessive in relation to its benefits. *Swedenburg v. Kelly*, 358 F.3d 223, 227 (2004). Specifically, the Second Circuit "recognize[d] that the physical presence requirement could create substantial dormant Commerce Clause problems if this licensing scheme regulated a commodity other than alcohol." *Id.* at 238. The court nevertheless sustained the New York statutory scheme, because, in the court's view, "New York's desire to ensure accountability through presence is aimed at the regulatory interests directly tied to the importation and transportation of alcohol for use in New York." *Id.* As such, the New York direct shipment laws were "within the ambit of the powers granted to states by the Twenty-First Amendment." *Id.* at 44.

The U.S. Supreme Court, however, relying on the Commerce Clause, invalidated both state laws. Simply stated, the Supreme Court held that the differential treatment between in-state and out-of-state wineries constituted explicit discrimination against interstate commerce and this discrimination substantially limited the direct sale of wine to consumers, an otherwise emerging and significant business. 541 U.S. 1062, 158 L. Ed. 2d 962, 124 S. Ct. 2389 (2004).

Turning this same analysis to Tesla, the question becomes, "Can states proffer a strong enough legitimate local purpose for prohibiting manufacturers from selling new motor vehicles directly to retail customers other than through franchised dealers so that such laws would survive a Commerce Clause challenge?" As stated above, in reaching its decision, a court must analyze the following: (a) whether the law discriminates against out-of-state competition or has the effect of favoring in-state economic entities; (b) whether the law effectuates a legitimate local purpose and if its burden on commerce is excessive in relation to its benefits; and (c) whether the State has any other reasonable means of advancing a legitimate local (non-economic) state interest. Further, a Court must consider the evidence presented on a "sensitive, case-by-case" basis to ascertain the purposes and effect of the law being analyzed in order to determine whether the law is unconstitutional. *See West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994). Indeed, the Supreme Court has held that a state law's burden on interstate companies does not, by itself, establish a claim of discrimination against interstate commerce. *See Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 126 (1978). Further, the Supreme Court has stated that "incidental burdens on interstate may be unavoidable when a State legislates to safeguard the health and safety of its people." *Philadelphia v. New Jersey*, 437 U.S. 617, 625 (1978).

Safety Concerns and Protection Against Fraud Are Among Legitimate State Interests for Banning Online Direct Sales

A strong argument could be advanced that Tesla should not be permitted to sell its vehicles online directly to consumers due to the inherent shortcomings regarding the servicing of Tesla vehicles. Specifically, states have a "legitimate" public interest in ensuring that its citizens have reasonably convenient access to a dealer who can service their vehicles or perform warranty services. In this vein, certain state franchise laws also require dealers to meet specifically mandated service facility requirements in order to obtain licensing to operate an auto dealership. If Tesla is intending to increase sales under a direct sales model, that would necessarily require a more robust "brick and mortar" service presence nationwide. While Tesla has stated that it would have service centers located throughout each state, it is unlikely that these service centers would be located such that no consumer would be forced to drive an unreasonable distance or have to wait an unreasonable amount of time to have service or warranty work performed.

A second legitimate local purpose for prohibiting manufacturers from selling new motor vehicles directly to retail customers other than through franchised dealers is that states possess a legitimate interest in requiring financing contracts to be signed by consumers while physically present at a dealership. These "wet ink" requirements are also imposed by numerous finance companies. These laws and finance company requirements are meant to pose an additional layer of protection to consumers in an area that has been found to be rife with fraud and predatory lending practices. In a 2017 Forbes article, David Valdez, a California attorney, discussed the difficulties inherent in executing electronic contracts and how consumers, especially those who speak English as a second language, are more susceptible to fraud and predatory lending. Diane Hembree, *E Contract Abuse Alert: How Car Dealers Can Fake You Auto Loan*, Forbes. Apr. 15, 2017. Valdez's observations are especially on point given the actions of Credit Acceptance Corporation, an auto finance company that utilizes electronic contracts, which settled, for over $12 million dollars, a class action suit regarding fraudulent overcharging of consumers. *Fielder v. Credit Acceptance Corp.*, 19 F. Supp.2d 966, 1998 U.S. Dist. LEXIS 14222 (August 4, 1998).

A Similar Direct Sale Issue Previously Decided Against Ford

In *Ford Motor Co. v. Texas Department of Transportation*, 264 F.3d 493 (5th Cir. 2001), a case that seemingly mirrors the pending Tesla Michigan case, Ford attempted to market pre-owned cars in Texas via its internet site. The Texas Motor Vehicle Division argued that Ford's actions violated a Texas State law—formerly, Section 5.02C(c) of the Motor Vehicle Code, currently Section 2301.476(c)—that prohibited

a manufacturer or distributor from: (a) owning an interest in a dealer or dealership; (b) operating or controlling a dealer or dealership; or (c) acting in the capacity of a dealer. In rejecting Ford's Commerce Clause challenge to the Texas State law, the Fifth Circuit held: (i) the statute was not discriminatory because it dealt with the status of being a manufacturer, no matter where domiciled; and (ii) the elimination of the ability to sell used cars from Ford's website was not a constitutional burden on commerce. Most importantly, the Court held that the law did not violate the Commerce Clause, because it was a legitimate reason for the State of Texas to require retail car sales through independent dealerships to prevent vertically integrated companies from taking advantage of consumers and to prevent unfair practices and other abuses. The decision in *Ford Motor Co.*, is instructive as the Michigan state law currently challenged by Tesla does not discriminate against out-of-state manufacturers. Specifically, Tesla is held to the same standard as manufacturers such as General Motors or Toyota, which are required sell their vehicles through a franchised dealer network. As such, even though the law may have an incidental effect on interstate commerce, the law regulates the conduct of manufacturers, no matter where domiciled.

As seen in *Ford Motor Co.*, a third legitimate local interest is the prevention of "vertical integration" of dealers and manufacturers. In fact, this was raised as an affirmative defense in Tesla's lawsuit against the State of Michigan. In this respect, state laws, such as Section 445.1574 of the Michigan Compiled Laws, that prevent the direct sale of vehicles to consumers by manufacturers, cause franchised dealers within the same geographic area to compete for the sale of their vehicles. Such competition amongst franchised dealers leads to lower vehicle prices for consumers. With an online direct sales model, the same incentive to reduce prices is not present for manufacturers. Indeed, a 2015 study by the Phoenix Center for Advanced Legal & Economic Public Policy Studies showed that intra-brand competition amongst franchised dealers in Texas caused new vehicle prices to drop by $500 per sale. T. Randolph Beard, George S. Ford, & Lawrence Spiwak, *The Price Effects of Intra-Brand Competition in the Automobile Industry: An Econometric Analysis*. *Phoenix Center Policy Paper Number 48*, Phoenix Center Policy Paper Series. 2015

In sum, while Tesla continues to push the argument that franchise laws prohibiting direct sales by manufacturers are an unconstitutional violation of the Commerce Clause, numerous compelling, legitimate state interests exist to justify prohibiting manufacturers from selling new motor vehicles directly to retail customers other than through franchised dealers. As such, rumors of the imminent demise of the automobile franchised dealership model are extremely overblown. ■

Leonard Bellavia is the founding partner of Bellavia Blatt, P.C., an automotive law firm that has represented thousands of dealerships nationwide for the past 30 years in all aspects of commercial litigation and buy-sell transactions. Mr. Bellavia has initiated several class action lawsuits, including those against DMS companies CDK and Reynolds and Reynolds. He also serves as Chair of the Automotive Franchise Law Section of the New York State Bar Association and has previously served as Chair of the Litigation Section of NADC.

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President's Message

Andy Weill
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This will be my final message as President of NADC; my term of office is ending during the Spring Conference at Dana Point.

I will also be a presenter at the conference; I will be on a panel dealing with how to identify and work on problem clauses that frequently arise in reinsurance program agreements. I will be joined by two excellent presenters from our associate members: Erika Ahern Curran of CNA National and Mark Barnes of Portfolio. This has led to some final reflections I would like to share with the members.

First, I am grateful for the many opportunities I have had to collaborate directly with so many through my NADC membership. This has probably been the major source of professional development for me personally. There is a special edge that comes from the teamwork and interplay with other professionals who bring fresh ideas, perspective, and experience into a subject. I have had the opportunity to work with fellow attorneys, vendors, allies such as our friends at NADA, and a variety of others. It is not an exaggeration to say that I feel I have learned much more from them than they have from me. It has been a privilege to work with such top-flight professionals, and I am pleased that many have become personal friends.

Equally important is the quality of the NADC audience. We have a high percentage of membership attendance, who are informed, engaged, and hungry for the best quality of information and presentation. If you have done many presentations, you know the difference when you have an attentive, informed audience. It sharpens the experience and brings out the best. Moreover, we are fortunate to have a group that provides quality feedback, to which we listen and make various adjustments. We remind you to fill out those feedback forms because they really matter, and they inform us in many ways about the content you want, suggestions to improve schedule, ways to improve the clarity of presentations, and much more.

While the presentations are one obvious form of the promotion of collaboration in NADC, it is only one of many facets. The list-serve is one example where helpful information and suggestions abound on a daily basis. I am particularly struck by the many times different members will see an angle on a problem that gives a completely new insight or reveals a level of unsuspected complexity to what initially seemed a straightforward problem. At times, I have even seen some opposing points of view that, upon further communication and consideration, turn out to be more harmonious than seemed to be the case. This type of cooperative criticism and counterpoint is, to my mind, the essence of true professionalism.

My exhortation to all members is to take advantage of the opportunities afforded for collaboration. There are many ways to do this besides presentations. One example: clients occasionally come to me with a federal tax question affecting dealership operations. The notion occurs to me that there could be state regulatory implications, so I pick up my handy NADC Directory and make a call or send an email. Sometimes the answer is routine. Other times, I end up in a call that alerts me to aspects that need to be considered, and I make sure the client gets to the right person to handle that facet.

To put it at its simplest: look for excuses to reach out to your fellow members. Over and over, you will find them helpful, supportive, and incredibly knowledgeable. And when requests come your way, be generous with your time and wisdom; it is a very wise investment.

My final message would not be complete without a heartfelt thanks to another source of collaboration at NADC: the management support we get from Erin and the team at AMS. There is a lot of behind-the-scenes work that is crucial for the success of NADC, and my job has been materially eased by the consistency of the staff.

My personal thanks to all of you for all the help over these past two years. I could not have done it without generous assistance from founding members, former Presidents, and helpful tips from everyone. ■

Updated Member Contact Information

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Colorado LEV Decision Forebodes a Cascade Effect

By Matthew Groves, *Colorado Automobile Dealers Association*

In September 2018 then-Governor Jim Hickenlooper signed an Executive Order directing the Colorado Air Quality Control Commission (AQCC) to create a rule adopting California's Low Emission Vehicle (LEV) standards. While California's clean air standards had long been a topic of discussion in the federal arena, no state had exempted itself from the federal Clean Air Act in favor of California standards since Arizona and New Mexico in 2008. Within a few years in 2012, Arizona and New Mexico both reversed their decisions, reverting back to the federal standard. Colorado would represent the fourteenth state (plus the District of Columbia) and the only non-coastal state to join the "green-car resistance." Following Colorado's adoption of the California LEV standards, the new Governor of Colorado, Jared Polis, issued an Executive Order directing the AQCC to adopt California's Zero Emissions Standards (ZEV).

Administrative rulemaking generally takes an agency between six and twelve months, depending on the complexity of the rule and the level of stakeholder participation required under a state's Administrative Procedures Act. A sweeping change like clean car standards, tolling massive impacts on a state's environment and economy, notwithstanding the federal pre-emption issues, ranges at the longer end of this spectrum. Unfazed by the gravity of this change, the AQCC was able to push forward a rule on a unanimous vote only three months after the Executive Order was signed.

Seen by environmental advocates as a cantilever to widespread adoption, Colorado's regulation for low emission standards will likely clear a path for other landlocked states. Throughout the rulemaking process, advocates and commissioners alike stated that this was defensive posturing, in the event the EPA attempted to freeze the Corporate Average Fuel Economy standard at 2022 levels. As the recent emigration of Californians turns neighboring southwestern and mountain west states increasingly democratic, and by extension, adverse to the Administration's position on climate change, the environmental movement is growing in areas where it previously did not exist. We will likely see the next wave of exemptions among these states, fueled by Colorado's adoption. At a recent national conference, I was informed by two other "federal standard" states that there had been rumblings of LEV and ZEV expansion on the horizon.

Still, in light of the fervor of the advocacy groups and the acquiescence of the state government, many overlook the policy of low emission vehicles in favor of the politics. Lost in the landscape of the 2020 Presidential election–and the numerous entrants from the exempting states--are chasms of variance in topographical, economic, and consumer considerations between California and the rest of the country.

Perhaps the most significant policy issue dealers will face if their state self-exempt is the loss of the ability to dealer trade across state lines with non-LEV states. When a consumer cannot find the right car nearby, a dealer could easily look to an adjacent state in order to locate the vehicle that meet the consumer's needs. With the adoption of California's LEV rule, this will no longer be possible. Instead, the dealer will be constrained to other LEV states. The resulting distance between those states will inevitably drive up the price on the car. And, rising car prices tip the scales in a consumer's mind toward staying in their older vehicle for longer. Since those older vehicles emit vastly dirtier air and more greenhouse gases compared to any new vehicle, this will defeat the environmental goal of the regulation in those cases.

With every unwanted regulation come work arounds. It is well known that in a ZEV state, a vehicle that is not "California compliant" cannot be registered by a local Division of Motor Vehicles. Now, this only applies to new vehicles, which the regulations define as under 7,500 miles. Therefore, we have seen a proliferation of individuals desiring diesel pickup trucks to willingly buy a new truck in an adjacent state, then allow others to put the first 7,500 miles on it before bringing it home to a LEV state to register as a "used" truck. This and other anecdotes show that free will and consumer choice cannot be suppressed by governmental mandates.

Alas, the environmental advocates are unfazed. As they pursue a tiered roll-out strategy that would enable ZEV to proliferate into an increasingly adopted standard, they simultaneously gain leverage on the Administration to move long-stalled negotiations over Corporate Average Fuel Economy and discredit the often-lobbed threat that the Administration may strike Section 177 of the federal Clean Air Act, thereby eliminating California's exemption from every state that has adopted it.

As no such action or compromise has become a reality, the Colorado Auto Dealers Association brought an action in state court against the regulatory authorities to overturn the LEV adoption. The arguments make clear that the AQCC cut corners and sprinted through their deliberative process to comply with the former governor's ambitions. In addition, it challenges the authority of the AQCC to make regulations pertaining to mobile source emissions pertaining to new and existing vehicles, as this is outside the authority delegated to them by the

legislature. The newly minted state Attorney General will stand to defend the state agencies. Our hope is that the rule of law will prevail over the vocal minority of environmental advocates and that will return the state to regular order, momentarily triaging the bleeding of states over to the California standard. In the meantime, it may benefit our neighboring states to watch the court battle and undertake the hypothetical exercise of how they could defend such a push as well. ■

Matthew Groves is the Vice President of Legal and Regulatory Affairs for the Colorado Automobile Dealers Association in Denver, Colorado. He represents the interests of Colorado new car dealers before the Motor Vehicle Dealer Board, Auto Industry Division, Consumer Credit Unit, and Air Quality Control Commission.

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