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IN THE SUPREME COURT OF THE STATE OF DELAWARE

TESLA, INC. Appellant, v. THE DELAWARE DIVISION OF MOTOR VEHICLES, Appellee.	No. 375,2022 CASE BELOW: SUPERIOR COURT OF THE STATE OF DELAWARE C. A. No. N21A-09-001-CLS

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TABLE OF CONTENTS

TABLE OF CITATIONS

Page(s)

CASES

STATUTES

The Delaware Division of Motor Vehicles ("Division") makes little effort to respond to Tesla, Inc.'s ("Tesla") arguments. As Tesla explained in its opening brief, the Delaware Franchise Act expressly prohibits only *franchising* manufacturers—that is, manufacturers that sell their vehicles through franchised dealers in Delaware—from operating a dealership. The Act does so through its definitions of "[m]anufacturer," "[n]ew motor vehicle," and "[n]ew motor vehicle dealer," which collectively define "manufacturer" to include only manufacturers that sell their vehicles through dealers "hold[ing] … a valid sales and service agreement, franchise or contract" with the manufacturer. *See* 6 *Del. C.* § 4902(7), (8)(b), (9). Because Tesla sells its vehicles directly to the public, and not through any such dealer, the Franchise Act's prohibitions do not apply to Tesla. Moreover, as Tesla also explained, the Licensing Act forecloses the Division from denying a dealer's license for non-compliance with the Franchise Act because the Franchise Act is not among the Delaware statutes that the Licensing Act expressly identifies as a ground for denying a dealer's license.

The Division fails to respond convincingly to either statutory argument. Indeed, its brief does not even *cite* the Franchise Act's definitions of "manufacturer," "new motor vehicle," and "new motor vehicle dealer." Nor does the Division address—or even cite—this Court's primary case applying the Franchise Act, *Future Ford Sales, Inc. v. Public Service Commission of Delaware*,

654 A.2d 837 (Del. 1995), which explained that the Franchise Act is specifically intended to regulate the relationship between franchising manufacturers and franchisees, *id.* at 842, 844—a purpose that is not served by applying the Act to manufacturers with no franchisees, such as Tesla. Instead, the Division assumes, without analyzing, the key issue before the Court. The Division argues that the Court cannot rewrite the Franchise and Licensing Acts to grant Tesla a dealer's license and must instead defer to the General Assembly, which possesses sole authority to amend them. But both statutes already allow non-franchising manufacturers like Tesla to obtain a dealer's license. And both statutes already preclude the Division from denying a license based on non-compliance with the Franchise Act. No further legislative intervention is needed. By ignoring the distinction between franchising and non-franchising manufacturers and by seizing authority to enforce the Franchise Act, it is the Division, not Tesla, that seeks to rewrite the Licensing and Franchise Acts.

The Court should vacate the Division's decision and remand with instructions to grant Tesla's application.

ARGUMENT

I. THE FRANCHISE ACT PROHIBITS ONLY FRANCHISING MANUFACTURERS FROM OPERATING DEALERSHIPS

This case hinges on a straightforward question of statutory construction. The core issue is whether the Franchise Act forbids Tesla from selling vehicles directly to the public, as the Division contends. As this Court has emphasized, interpretation of any statute must begin with its text, and if that text is clear, the interpretive inquiry comes to an end. *E.g.*, *Noranda Aluminum Holding Corp. v. XL Ins. Am., Inc.*, 269 A.3d 974, 977-978 (Del. 2021) ("When interpreting a statute, our goal is 'to ascertain and give effect to the intent of the legislators, as expressed in the statute.' If the plain statutory text admits only one reading, we apply it."). Here, the text of the Franchise Act's text conclusively answers the question before the Court.

As Tesla has explained, Br. 22-23, although the Franchise Act makes it unlawful for a "manufacturer" to "act in the capacity of a dealer except as provided by this section," 6 *Del. C.* § 4913(b)(14), the Act expressly defines "manufacturer" to encompass only those manufacturers that, unlike Tesla, sell their vehicles through franchisees. Specifically, under the Franchise Act's definitions, a company qualifies as a "manufacturer" only if it "manufactures or assembles" vehicles that are "sold to a new motor vehicle dealer" that "holds … a valid sales

and service agreement, franchise or contract granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles." 6 *Del. C.* § 4902(7), (8)(b), (9). Tesla, which has applied for a license to sell its vehicles directly to the public in Delaware, is not a "manufacturer" under the Act.

Because Tesla asks only that the Court apply the plain meaning of that statutory text, it seeks the precise opposite of a statutory "carve out." Opp. 3, 5, 13, 15. It is instead *the Division* whose position would "change the language" of the Franchise Act. *Id.* at 5. In effect, the Division would rewrite the definition of "new motor vehicle," 6 *Del. C.* § 4902(8)(b), to add the following underlined text:

> "New motor vehicle" means a "vehicle which has been sold to a new motor vehicle dealer or has been sold directly to the public."

And it would rewrite the definition of "new motor vehicle dealer," *id.* § 4902(8)(9), to strike the following language:

> "New motor vehicle dealer" means a "person or entity engaged in the business of selling, offering to sell, soliciting or advertising the sale of new motor vehicles ~~and who holds … a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles~~."

It is only by revising the Franchise Act's definitions in this way that the Division could insist that the statute's prohibitions encompass companies like Tesla that do not sell their vehicles through a franchised dealer. The Division never confronts

this statutory text; indeed, it fails to even cite 6 *Del. C.* § 4902 in its brief, and instead simply assumes that the Franchise Act prohibits all manufacturers from selling vehicles directly.

Rather than proffer its own interpretation of the statutory text, the Division attacks Tesla's. First, the Division contends that the Court should defer to its interpretation and review it only for abuse of discretion. Second, the Division claims that Tesla's construction would undermine the General Assembly's purported intent to regulate all manufacturers through the Franchise Act. Third, it asserts that the "change" Tesla seeks to the Franchise Act must come from the General Assembly. Fourth, the Division appears to contend that, as a factual matter, Tesla is a franchising manufacturer and thus subject to the Franchise Act's prohibition. Finally (and inconsistently), the Division attempts to defend the Superior Court's view that Tesla should be denied a license even if Tesla is *correct* that its vehicles are not subject to regulation under the Franchise Act. As explained below, each of these arguments is meritless.

A. This Court Should Review The Division's Interpretation Of The Franchise Act *De Novo*

The Division repeatedly mischaracterizes the appropriate standard of review. As this Court recently explained in *Delmarsh, LLC v. Environmental Appeals Board*, 277 A.3d 281 (Del. 2022), while "statutory interpretation is ultimately the

responsibility of the courts, a reviewing court may accord due weight, *but not defer*, to an agency interpretation of a statute administered by it." *Id.* at 289 (emphasis added); *accord Delaware Dep't of Nat. Res. & Env't Control v. Sussex Cnty.*, 34 A.3d 1087, 1090 (Del. 2011) ("[s]tatutory interpretation is a question of law" that courts review *de novo* without deference to the agency determination). The Court's review is thus *de novo*, and the Division's interpretation of the *Licensing Act* (which the Division administers) is entitled to weight only to the extent that it is persuasive—which it is not. *See infra* pp. 20-25. The Division's interpretation of the *Franchise Act* is entitled to no weight, because the Public Service Commission, not the Division, administers that statute. *See* Br. 14-15.

Moreover, this case does not turn on "[t]he Division's understanding of what transpired" during witness testimony or the admission of evidence at the hearing, Opp. 20, but the pure statutory question of whether the Franchise Act's prohibitions apply to non-franchising manufacturers like Tesla. Such statutory questions are subject to *de novo* review. *Delaware Dep't of Nat. Res. & Env't Control*, 34 A.3d at 1090. The Superior Court thus erred in reviewing the Division's decision under a deferential abuse-of-discretion standard. *See* Opp. 20.

B. The Purpose Of The Franchise Act Is To Regulate Franchises

The Division begins its interpretation of the Franchise Act not with the text of the statute's definitional provision, but with what it contends is the "legislative

intent" that motivated the Act's enactment. Opp. 21. The Division points to the General Assembly's stated goal of "regulat[ing] vehicle manufacturers" as evidence that it sought to regulate *all* manufacturers, including those that do not sell their vehicles through franchised dealers. *Id*. (quoting 6 *Del. C.* § 4901). But that simply begs the question. The quoted language appears in the Franchise Act's "declaration of purpose," which is an enacted provision of the Act. As explained, *supra* pp. 3-4, the Act defines "manufacturer" to include only manufacturers who sell through franchisees. And that definition applies to Section 4901, as it does to all other provisions of the statute. *See* 6 *Del. C.* § 4902 (providing that all definitions apply to all of Chapter 49). Thus, when the General Assembly said it intended to regulate "manufacturers," it meant *franchising* manufacturers.

The remaining language in the Franchise Act's declaration of purpose confirms that the General Assembly intended to regulate franchises specifically. 6 *Del. C.* §4901 ("The General Assembly finds and declares that … it is necessary … to *regulate franchises*" (emphasis added)). In *Future Ford Sales*, the Court likewise explained that the Act is "remedial legislation intended to regulate the relationship *between motor vehicle dealers and manufacturers*" by reducing "the gross disparity in bargaining power [that] permitted motor vehicle manufacturers to exert economic pressure over franchises." 654 A.2d at 842 (emphasis added).

The Division's application of the Franchise Act against Tesla—which has no franchisees of its own—does nothing to advance that purpose.

C. Because The Franchise Act Already Excludes Regulation Of Tesla, There Is No Need For Statutory Amendment

The Division next argues (at 24) that statutory change must come through the General Assembly and not the Courts. That is true, of course, but it is the Division, and not Tesla, that seeks to revise the text enacted by the General Assembly. It is the Division's interpretation—under which the Act applies to non-franchising manufacturers like Tesla—that would expand the definition of "manufacturer" to encompass companies that sell their vehicles directly, rather than only those that sell through franchising dealers. *See supra* pp. 4-5.

The Division's specific contentions about the need for legislative amendment all flow from the same misapprehension about the Franchise Act's text. The Division asserts that, in other states, electric-vehicle manufacturers that sell directly to the public have had to rely on the state legislature to amend state law to permit them to do so, and that Tesla must follow the same approach here. Opp. 24-25. But in one of the states cited (North Carolina), state law actually permitted non-franchising manufacturers, like Tesla, to sell directly even before the law was changed. And in the other three states (Pennsylvania, Maryland, and

New Jersey), the statutes at issue expressly prohibited *all* manufacturers from selling directly—precisely what is missing in Delaware's Franchise Act.

The Division notes (at 24) that Pennsylvania's dealer-licensing statute had to be amended in 2014 to permit Tesla to sell vehicles there. *See* 63 Pa. Stat. Ann. § 818.310(c)(6)(i). But that is because before amendment, Pennsylvania's statute had provided that "a manufacturer or distributor shall not … operate or control a dealer … which is engaging in the business of buying, selling or exchanging vehicles," *id*. § 818.310(c)(1)(ii), and defined "manufacturer" to encompass "*[a]ny* person, resident or nonresident, who manufactures or assembles *vehicles*," *id.* § 818.102 (emphases added), which were defined broadly to include "[e]very device which is or may be moved or drawn upon a highway," *id.* Because, unlike Delaware, Pennsylvania prohibited all manufacturers—franchising or not—from operating a dealership, an exception needed to be crafted for non-franchising electric-vehicle manufacturers.

Similarly, Maryland had to amend its laws to permit direct sales by non-franchising manufacturers of electric vehicles, *see* Md. Code Ann., Transp. § 15-305(e)(2)(i)(1), because Maryland's licensing statute had otherwise prohibited every "manufacturer or distributor" from "sell[ing] a new vehicle to a retail buyer," *id.* § 15-305(f). New Jersey likewise prohibited all manufacturers from selling directly to the public. *See* N.J. Stat. Ann. § 56:10-27 (1985) ("It shall be a

violation of this act for any motor vehicle franchisor … to offer to sell or sell motor vehicles, to a consumer, other than an employee of the franchisor, except through a motor vehicle franchisee."); *see also* N.J. Stat. Ann. § 56:10-26 (defining "[m]otor vehicle franchisor" to mean any "person engaged in the business of manufacturing, assembling or distributing new motor vehicles, … who will under normal business conditions during the year, manufacture, assemble, distribute or import at least 10 new motor vehicles"). In 2015, New Jersey thus amended its franchising law to permit electric-vehicle manufacturers to sell directly. *See* N.J. Stat. Ann. § 56:10-27.1.

By contrast, in North Carolina, the state Division of Motor Vehicles entered into a consent decree with Tesla agreeing that a prohibition on manufacturers operating dealerships in the pre-2019 statute, N.C. Gen. Stat. Ann. § 20-305.2(a) (2013), did not apply to Tesla because it "has no franchised or independent dealers in North Carolina (or anywhere in the world)." Consent Decree, *Tesla Motors, Inc. v. North Carolina Div. of Motor Vehicles*, No. 16 CVS 7763 Attachment A (Settlement Agreement) § 2 (N.C. Super. Ct. Jan. 18, 2019). In other words, the Division's North Carolina counterpart recognized, as the Division has failed to do here, that Tesla was not barred from obtaining a dealer's license. The state legislature subsequently amended the statute to override the consent decree, *see*

N.C. Gen. Stat. Ann. § 20-305.2(a), but created an exception for electric-vehicle manufacturers like Tesla, *id.* § 20-305.2(a)(4a).

In states like Delaware whose statutes expressly prohibit only *franchising* manufacturers from obtaining a dealer's license, courts have repeatedly upheld the issuance of dealer's licenses to Tesla. *See* Law & Econ. Scholars Amicus Br. in Support of Appellant 11-14. For instance, a New York court emphasized that the relevant New York statute prohibits the issuance of a dealer registration only to "franchisor[s]," N.Y. Veh. & Traf. Law § 415(7)(f)(i), in dismissing a challenge to New York Department of Motor Vehicles' approval of Tesla's application to operate retail stores on standing grounds. *See Greater N.Y. Auto. Dealers Ass'n v. Department of Motor Vehicles*, 969 N.Y.S.2d 721, 723-724 (Sup. Ct. 2013).

Similarly, an Arizona court held that Ariz. Rev. Stat. Ann. § 28-4460(A), which prohibits a manufacturer from "directly or indirectly compet[ing] with or unfairly discriminat[ing] among its dealers," "means … that a manufacturer cannot compete with or discriminate among the manufacturer's *own dealers*. The [statutory] prohibitions … therefore have no application to manufacturers that do not have any of their own dealers with which to compete or discriminate against." *Arizona Auto. Dealers Ass'n v. Arizona Dep't of Transp.*, 2017 WL 9753918, at *4 (Ariz. Super. Ct. Mar. 3, 2017) (emphasis added).

And as the Massachusetts Supreme Judicial Court explained, a Massachusetts statute that, like the Franchise Act, made it unlawful for "a manufacturer … to own or operate, either directly or indirectly through any subsidiary, parent company or firm, a motor vehicle dealership," Mass. Gen. Laws Ann. ch. 93B, § 4(c)(10), "was intended and understood only to prohibit manufacturer-owned dealerships when, unlike Tesla, the manufacturer already had an affiliated dealer or dealers in Massachusetts," *Massachusetts State Automobile Dealers Association v. Tesla Motors MA, Inc.*, 15 N.E.3d 1152, 1162 (Mass. 2014).

In short, the record from other States supports Tesla, not the Division. A change in the law has been required only where state law already barred all manufacturers from selling directly. But no change has been necessary when, as in Delaware, state law prohibited only franchising manufacturers from selling directly.[1]

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[1] The Division also makes much of *International Truck & Engine Corp. v. Bray*, 372 F.3d 717 (5th Cir. 2004), a Fifth Circuit decision that rejected a dormant Commerce Clause challenge to a Texas dealer law under the *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), balancing test on the ground that legislators might reasonably want to prevent "'vertically integrated companies from taking advantage of their market position,'" *id.* at 728; *see* Opp. 32. But application of that "most deferential" test, *Harper v. Public Serv. Comm'n of W. Va.*, 396 F.3d 348, 351 (4th Cir. 2005), says nothing about what Delaware legislators intended in adopting their own differently worded state statute.

The Division further maintains (at 22) that an unenacted bill introduced in the House of Representatives last year indicates that the General Assembly believes that the Franchise Act must be amended before non-franchising manufacturers like Tesla can operate a dealership. According to the Division, because three representatives (out of 41) and five senators (out of 21) proposed H.B. 239 in June 2021, "[t]he Legislature has spoken" on the meaning of the Franchise Act, which was enacted four decades ago. Opp. 22. But it is black-letter law that proposed legislation does not carry the force of law, and so proposed bills cannot override enacted statutory language. *Pizzadili Partners, LLC v. Kent Cnty. Bd. of Adjustment*, 2016 WL 4502005, at *10 (Del. Super. Ct. Aug. 26, 2016) ("Proposed legislation has no place in statutory construction."), *aff'd*, 157 A.3d 757 (Del. 2017); *see also City of Milwaukee v. Illinois & Michigan*, 451 U.S. 304, 332 n.24 (1981) ("[U]nsuccessful attempts at legislation are not the best of guides to legislative intent.").

Even if an unenacted bill could be relevant to interpreting the Franchise Act, the Division's interpretation of that bill is unwarranted. The legislators sponsoring H.B. 239 may simply wish to expressly disapprove the Division's interpretation of existing law because they believe that the existing statutory text required approval of Tesla's application. *Cf. Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1906-1907 (2019) (plurality op.) ("State legislatures are composed of individuals

who often pursue legislation for multiple and unexpressed purposes, so what legal rules should determine when and how to ascribe a particular intention to a particular legislator?").

The Division argues that only the General Assembly and not the Courts have authority to amend Delaware law. Tesla agrees. But that principle supports Tesla, not the Division. Tesla does not ask the Court to alter the statute, but to enforce the statute as written. The Franchise Act's plain text prohibits only franchising "manufacturers" from acting in the capacity of dealers and Tesla is not a manufacturer, as the Act defines that term.

D. Tesla Applied For A License To Sell Its Vehicles Directly To The Public, Not Through Any Dealer

Alternatively, counsel for the Division contends that Tesla falls within the Franchise Act's ambit because, as a factual matter, Tesla *is* a franchising manufacturer. Opp. 25. That directly conflicts with the Division's own factfinding and previous legal position.

Neither the Division's hearing officer, nor the Director, ever claimed, as the Division asserts now, that Tesla actually "does have franchises," and they never justified their decisions on that basis. Opp. 25. On the contrary, the Division's hearing officer explained in her decision that the hearing testimony indicated that "Tesla's business model is direct sales between Tesla and the consumer," that it is

"impossible for a parent company to enter into a franchise agreement with a wholly owned subsidiary company," and that "*Tesla does not enter into franchise agreements* with third party entities but does, in some circumstances have contracts with wholly owned subsidiaries." A402 (emphasis added). Based on that evidence, the hearing officer concluded that "'new motor vehicle dealer' as defined [within the statute] does not apply to Tesla and its proposed business model." *Id.*

This Court's "review [must] be based on articulated reasoning by the [Division] itself," not Division litigation counsel's post hoc rationalization for the Division's decision in its appellate briefing. *JNK, LLC v. Kent Cnty. Reg'l Plan. Comm'n*, 2007 WL 1653508, at *7 & n.45 (Del. Super. Ct. May 9, 2007) (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168-169 (1962)); *see also Delaware Alcoholic Beverage Control Comm'n v. Mitchell*, 196 A.2d 410, 413 (Del. 1963). The Court should therefore disregard the Division's new litigation position that Tesla has "franchises in other states [with] wholly owned subsidiaries," Opp. 25, which contradicts the findings of fact and conclusions of law reached by the agency itself.

Moreover, Tesla's use of wholly owned subsidiaries "in other jurisdictions," Opp. 13, is irrelevant. The Licensing Act governs issuance of licenses, and the Franchise Act regulates franchises, *in Delaware*. *See Focus Fin. Partners, LLC v. Holsopple*, 250 A.3d 939, 970 (Del. Ch. 2020) ("Delaware law presumes that 'a

law is not intended to apply outside the territorial jurisdiction of the State in which it is enacted.'"). Tesla applied for a dealer's license in Delaware in its own name and not through any subsidiary or franchisee, *see* A8, and if issued a dealer's license, Tesla will not operate any store in Delaware through a subsidiary or franchisee, *see* A317. Thus, the hearing officer correctly determined that Tesla is not a "new motor vehicle dealer" as the term is defined in the Franchise Act because it does not "hold[] … a … franchise or contract granted by [a] manufacturer." A402.

E. Tesla Need Not Show Its Vehicles Are "New Motor Vehicles" Under The Franchise Act In Order To Obtain A License Under The Licensing Act

Like the Superior Court, A566, the Division also insists (at 24-27) that even if Tesla is not subject to regulation as a "manufacturer" under the Franchise Act, Tesla cannot obtain a dealer's license because its vehicles are not "new motor vehicles" under the Franchise Act. That position is inconsistent with the Division's repeated assertion that Tesla is subject to the Franchise Act's prohibition on manufacturers selling directly. As explained, *supra* pp. 3-4, to qualify as a "[m]anufacturer" under the Franchise Act, Tesla's vehicles must be "[n]ew motor vehicles," 6 *Del. C.* § 4902(7), (8)(b). If, as the Superior Court concluded and the Division now contends, Tesla's vehicles are not "new motor

vehicles," the Division is wrong that Tesla is prohibited from selling directly by the Franchise Act. *See* Br. 25-28.

The Division attempts to leverage this erroneous determination by the Superior Court to pursue a heads-I-win-tails-you-lose strategy. The Division now contends that even if the Court *disagrees* with the Division's stated rationale and holds that the Franchise Act does not apply to Tesla, the Division will simply deny Tesla a license on remand on the new ground that Tesla does not plan to sell "new motor vehicles." Opp. 26-27. To preempt this threatened nullification of the Court's decision on remand, the Court should make clear both that the Franchise Act does not apply to Tesla, and that Tesla's license application should thus be evaluated without regard to whether Tesla can satisfy the Franchise Act's prohibitions and requirements—including its definition of "new motor vehicles."

Instead, the Division's review must be constrained to enforcing the requirements of the Licensing Act. As Tesla has explained, Br. 26-28, it is the *Licensing Act*, not the Franchise Act, that governs eligibility to obtain a dealer's license, and there can be no dispute that Tesla's vehicles qualify for issuance of such a license under the Licensing Act. Neither the Licensing Act nor the Division's dealer's license application form, *see* A8-12, use the phrase "new motor vehicle dealer." Instead, the Licensing Act requires only that an applicant obtain a license "to carry on and conduct the business of a *dealer*," 21 Del. C. § 6312

(emphasis added)—that is, the "business of buying, selling or dealing in new or used *vehicles*," *id.* § 6302(a) (emphasis added). The Licensing Act defines "[v]ehicle" to include, as relevant here, all "motor vehicles" *id.* § 6301(9), and defines "[d]ealer" to "include[] … *[a]ny* person, corporation, partnership, proprietorship or any other legal entity who offers to sell, sells, displays or permits the display for sale, of 5 or more vehicles within a 12-month period," or "is in the business of buying, selling or exchanging during any 12-month period 5 or more vehicles," *id.* § 6301(2)(a)-(b) (emphasis added). Tesla's vehicles plainly satisfy the Licensing Act's definition of "vehicle," and Tesla itself plainly satisfies the Act's definition of "dealer." And because the Licensing Act already defines "dealer," the court (and Division's litigation counsel) were wrong to look to a different statute to define that term. *See In re Digex Inc. S'holders Litig.*, 789 A.2d 1176, 1199 (Del. Ch. 2000) ("Where a statute specifically defines an operative term in a definitional section, a court will be bound by that definition and shall not resort to another statute to interpret that term.").

Moreover, even if it were necessary to define the phrase "new motor vehicle dealer" to determine whether Tesla is entitled to a license under the Licensing Act, the way to do so would be to determine the ordinary meaning of those words in context, not to look to an entirely different title of the Delaware Code. *See Salzberg v. Sciabacucchi*, 227 A.3d 102, 113 (Del. 2020) ("The court must give the

statutory words their commonly understood meanings.'" (quotation marks omitted)). The vehicles that Tesla seeks to sell are plainly both "new" and "motor vehicles" under the commonly accepted definitions of those terms. Accordingly, there can be no dispute that Tesla's vehicles qualify for issuance of a dealer's license under the Licensing Act.

II. THE DIVISION EXCEEDED ITS AUTHORITY BECAUSE NO STATUTE AUTHORIZES DENIAL OF A DEALER'S LICENSE FOR NONCOMPLIANCE WITH THE FRANCHISE ACT

The Division offers no persuasive basis for seizing authority to deny a dealer's license based not on any restriction in the Licensing Act, but instead on one found in an entirely separate statute, the Franchise Act. As with its arguments regarding the scope of the Franchise Act, the Division barely analyzes the statutory text or the principles of statutory construction that Tesla identified (Br. 37-43), and instead begins with the assumption that its preferred construction is correct.[2]

Most fundamentally, the Division is wrong that the text of the Licensing Act can be read to endow the Division with a roving, unlimited authority to deny a dealer's license based on the Division's own evaluation of prospective dealers' past, present, and future compliance with all provisions of Delaware law (and, apparently, the laws of all 49 other states). As Tesla explained, Section 6313 of the Licensing Act sets forth a series of specific "[g]rounds for denying" a license application, 21 *Del. C.* § 6313, that expressly include an applicant's non-compliance with certain provisions of only three specific Titles of the Delaware Code but do not include the Franchise Act or any other provision of Delaware law.

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[2] Here again, the Division applies the wrong standard of review. The Division's interpretation of the Licensing Act is entitled to weight only to the extent that it is persuasive—which it is not. *See supra* pp. 5-6.

Id. § 6313(4)-(6). Section 6313's specific list of statutory provisions cabins the Division's review under the more general instruction in Section 6312 that it must be "satisfied that the applicant is of good character and, so far as can be ascertained, the applicant has complied with and will comply with, the laws of this and other states." *Id*. § 6312. That reading follows this Court's instruction to "infer[] that all [statutory] omissions"—here, the omission of any reference to Title 6 or the Franchise Act in Section 6313—"were intended by the legislature." *See Leatherbury v. Greenspun*, 939 A.2d 1984, 1291 (Del. 2007) (emphases omitted). It also follows this Court's further instruction that "specific provisions"—such as those found in Section 6313—"should prevail over general provisions"—like Section 6312. *See A.W. Fin. Servs., S.A. v. Empire Res., Inc.*, 981 A.2d 1114, 1131 (Del. 2009).

The Division does not dispute these fundamental principles of statutory interpretation. Nor does it even attempt to explain why the General Assembly would have delineated specific laws as "[g]rounds for denying" a license application in Section 6313, only to then expand the list to include all Delaware laws in Section 6312. Instead, it contends that Tesla's interpretation would "ignore the language in [Section] 6312" and thereby render that provision "meaningless." Opp. 35. But that is not correct. As Tesla explained (Br. 39-40), although Section 6312's reference to the "laws of … this state" does not create any additional

substantive grounds for denying a license, it does impose a procedural mandate on the Division, outlining the steps that the Division must follow in determining whether to grant a license. In particular, the provision instructs the Division to "ascertain[]" "so far as [it] can" whether "the applicant has complied with and will comply with" the statutory provisions set forth in Section 6313. 21 *Del. C.* § 6312.

On the contrary, it is *the Division's* reading that renders multiple provisions of the statute meaningless. As Tesla explained (Br. 39), and the Division ignores, the Division's reading would nullify the express limits in Section 6315(5), which permit a license to be denied based on a criminal violation only if the criminal law was connected to the "business of selling vehicles" and only if the applicant had been "convict[ed]" of violating such a law. It is thus only Tesla's interpretation of the statute that reconciles both Section 6312 and Section 6313 and gives effects to all of the statute's language. That is dispositive because "administrative agencies ... derive their powers and authority *solely* from the statute creating such agencies" and so can exercise such power "'only in accordance with the terms of its delegation.'" *Bridgeville Rifle & Pistol Club, Ltd. v. Small*, 176 A.3d 632, 661 (Del. 2017).[3]

[3] The Division is wrong (at 36) that this principle applies only to cases involving constitutional rights. The Court in *Bridgeville* held that the "[a]gencies [in that case] ha[d] exceeded their statutory authority" by exercising power that was not granted under their enabling statute. *Id*. at 662. The same is true of the

The Division fares no better in attempting to sidestep Tesla's argument that permitting the Division to deny an application based on non-compliance with the Franchise Act would impermissibly usurp the authority of the agency that the General Assembly assigned to enforce that statute (the Public Service Commission) and create a new enforcement mechanism beyond the private right of action that the Franchise Act contemplates. As Tesla explained, courts have rejected other agencies' unauthorized attempts to seize power "where it ha[s] been specifically and expressly delegated by [the legislature] to a different agency." *Bayou Lawn & Landscape Servs. v. Secretary of Lab.*, 713 F.3d 1080, 1085 (11th Cir. 2013); *see also* Br. 41 & n.9 (collecting cases); *U.S. Chamber of Commerce v. U.S. Department of Labor*, 885 F.3d 360, 384-385 (5th Cir. 2018) (agency may not create new remedies to enforce a statutory scheme that Congress nowhere authorized). The Division contends that these cases should be disregarded because they involve agencies promulgating regulations under a statute administered by another agency, whereas the Division here seized authority to enforce another agency's statute in the course of adjudicating Tesla's license application. *See* Opp. 38-39. That distinction is beside the point. These cases recognize a broader principle. A legislature's decision to assign responsibility to one agency and to

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Division here.

create a particular enforcement mechanism demonstrates a legislative intent *not* to assign responsibility to another agency and *not* to create some other enforcement mechanisms. As this Court has recognized (and the Division ignores), the General Assembly designated the Public Service Commission as the agency "with administrative responsibility for enforcement of the [Franchise] Act." *Future Ford Sales*, 654 A.2d at 839. And the General Assembly designed particular remedies for violation of that Act. 6 Del. C. §§ 4902(1), 4903(b)(4), 4915(a), 4916(a). Those legislative choices confirm that the General Assembly did not intend for the Division to enforce the Franchise Act by denying a dealer's license under the Licensing Act.

Finally, the Division has no answer to the absurd results that would result from its interpretation. The Division does not deny that its interpretation would permit the Division to deny licenses for reasons wholly unrelated to an applicant's fitness to operate a dealership—including a conviction for disorderly conduct at a political protest or a citation in another state for failing to leash a dog. *See* Br. 42. Instead, the Division appears to argue that these absurd results must be accepted because they "give effect to" the statute's text. Opp. 38. But the Division ignores that its reading does not give effect to the statute's text because, as already explained, it reads out entirely the multiple specific laws that are listed as grounds for denial in Section 6313. The Division's interpretation is certainly not so

unambiguously correct that these unreasonable consequences can simply be ignored. For this reason as well, the Superior Court's decision should be reversed.

CONCLUSION

The Court should order the Division's decision vacated, with instructions to grant Tesla's dealer's license application.

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Respectfully submitted,

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