

## **State Automobile Dealership Statutes: Do We Really Need Them?**

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### **Introduction**

In today's day and age one can buy almost anything online, or go to a big-box store and purchase a variety of tangible and intangible products all at the same place. The development of new technologies, such as the internet, has given us the ability to experience such shopping. The growing trend is the ability to access information about products quickly and make purchases hassle and stress-free. As consumer expectations of the shopping process and experience have shifted, many sectors have been willing to accommodate consumers.

However, there is one shopping experience that has not changed much: car buying. Many would probably consider the whole experience stressful, having to haggle or go from one dealership to the next to look at different makes. So, why can't buying a car be more like shopping on Amazon? Why can't we buy cars online? Why can't we go to a big box store to buy a car and pick and choose from different makes all at the same place? The answer to all of these questions is automobile dealership franchise laws. This article will explore the history of dealership franchise laws, the current nature of these laws, offer a look at a Tesla Motors case under such laws, and offer the proponent and opponent views on automobile dealership franchise laws.

## The Foundations Of The Automobile Franchise Dealer System

The standard images that come into one's mind at the thought of the terms "auto industry" and "auto dealers" are ones of vast car dealership lots and formidable automobile manufacturers, such as General Motors, Ford, and Chrysler. However, the auto industry at the turn of the twentieth century was a far cry from the massive industrial and economic complex of today. It would be hard for most of us to imagine life without cars or life where cars are so expensive that only individuals in the upper class of society can afford such luxuries. Yet, during the late eighteen hundreds and early nineteen hundreds such was the case in America.

In the year 1893, bicycle mechanics Charles E. and J. Frank Duryea designed and built the first functional gasoline powered automobile in America.<sup>1</sup> By the end of the nineteenth century thirty automobile manufacturers in America produced a total of 2,500 automobiles in the year 1899.<sup>2</sup> To contrast, Ford Motor Company sold 239,242 automobiles in December of

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<sup>1</sup> J. Frank Duryea, *Who designed and built those early Duryea cars?* HathiTrust (1944), <http://hdl.handle.net/2027/mdp.39015023079109> (last visited Mar 10, 2016).

<sup>2</sup> *Automobiles - Facts & Summary*, HISTORY.com (2010), <http://www.history.com/topics/automobiles>. (Last visited Mar 10, 2016.)

2015.<sup>3</sup> The automakers in those early years of the industry would be better described as inventors who produced low volume, or in many cases one-of-a-kind vehicles that were sold to a handful of their wealthy friends.<sup>4</sup> Due to the low production volumes, automakers in most instances sold their vehicles directly to their customers or through the use of bicycle dealers.<sup>5</sup> At that time, there was no need for vast networks of dealerships to satisfy the public demand for cars because at that time there was not considerable demand for automobiles due to their high cost.

During the first two decades of the twentieth century the auto industry started to experience changes following technological developments. One of the key people who greatly influenced this changing environment was Henry Ford. Ford was able to set his company apart from the rest with the introduction of the Model A in 1903 and most importantly with the

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<sup>3</sup> Brent Snavely & Alisa Priddle, *Detroit Three auto sales soar in record year*, Detroit Free Press (2016), <http://www.freep.com/story/money/cars/chrysler/2016/01/05/fca-sales-rose-13-2015-record-year-autos/78268882/> (last visited Mar 10, 2016).

<sup>4</sup> Leslie J. Allen, *The first dealers: From humiliation to retail success*, Automotive News (2006), <http://www.autonews.com/article/20060925/SUB/60919024/the-first-dealers:-from-humiliation-to-retail-success> (last visited Jan 23, 2016).

<sup>5</sup> *Id.*

Model T in 1908.<sup>6</sup> Ford's ingenious use of the assembly line to produce his automobiles lowered the cost of the Model T to a level that middle-class Americans could afford. Ford was able to cut the cost of a Model T from \$850 in 1908 down to \$300 by 1925.<sup>7</sup> Ownership of a car was no longer reserved for just the wealthy. Ford, as well as other car manufacturers, started to see a speedy growth in the demand for their now affordable vehicles.

During the early years of the growing demand for automobiles, manufacturers implemented many different forms of distribution, such as selling directly to customers through factory-owned stores, mail order, and primarily through wholesale distributors.<sup>8</sup> The relationships between the automakers and their distributors at that time were very simple. Contracts were established for only a short period; usually such contracts were signed for one year and could be dissolved by either party with a thirty-day notice.<sup>9</sup> In exchange, the wholesale dealers were given exclusive rights to distribute the vehicles to retailers over a vast territory.<sup>10</sup>

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<sup>6</sup> Leslie J. Allen, *Rise and fall of Ford's sales network architect: Prison, success, bankruptcy*, *Automotive News* (2006), <http://www.autonews.com/article/20060925/SUB/60919023/1377> (last visited Jan 24, 2016).

<sup>7</sup> *Model T - Facts & Summary*, HISTORY.com (2010),

<http://www.history.com/topics/model-t> (last visited Mar 10, 2016).

<sup>8</sup> Thomas G. Marx, *The Development of the Franchise Distribution System in the U.S. Automobile Industry*, 59 *Business History Review* 465-474 (1985).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

As the market for cars kept growing, automakers were faced with a dilemma. Manufacturers needed to expand their distribution of cars through more auto store locations throughout the country.<sup>11</sup> However, the business of producing automobiles was very capital intensive, and opening company-owned centers would have caused auto manufacturers to divert vast amounts of their capital toward such centers instead to manufacturing efforts.<sup>12</sup> The sale of their vehicles through independent franchise dealers would allow the automakers to focus their capital on the manufacturing efforts of their business and pass the financial burden of opening and operating a franchise to the franchisee.<sup>13</sup> Also, automakers believed that an independent dealer, a small business owner, would put more effort into the business than an employee working at a company-owned dealership on a salary.<sup>14</sup> As an incentive for the dealers to invest their money in dealership facilities and inventory, manufacturers granted dealers

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<sup>11</sup> Gerald Bodisch, *Economic Effects Of State Bans On Direct Manufacturer Sales To Car Buyers*, ATR, Department of Justice Justice.gov (2016), <http://www.justice.gov/atr/economic-effects-state-bans-direct-manufacturer-sales-car-buyers> (last visited Jan 24, 2016).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Leslie J. Allen, *Rise and fall of Ford's sales network architect: Prison, success, bankruptcy*, *Automotive News* (2006), <http://www.autonews.com/article/20060925/SUB/60919023/1377> (last visited Jan 24, 2016).

exclusive rights to a territory.<sup>15</sup>

In those early days of franchising, the power of the franchise contract weighted heavily in favor of the car manufacturer. Manufacturers could impose vehicles on dealers that were not ordered, not deliver vehicles as scheduled, and cancel orders without any reason or liability.<sup>16</sup> Such behavior by the manufacturers manifested itself during the Great Depression. To cope with the failing market, and to keep their creditors from taking over their companies, manufacturers in the likes of Ford began to push cars onto their franchise dealers.<sup>17</sup> On this topic, the transportation curator for the Henry Ford Museum, Robert Casey, said, “He would just box 'em up, send 'em and say, if you don't pay for them, we're going to take your franchise away,”<sup>18</sup> During these years, many dealers experienced hardship and began to express their discontent with the manufacturers' practices, many started to look for legislative help. Even though, a single franchise dealer might not have much legislative leverage, or power over a manufacturer, collectively independent auto dealers became a powerful force.

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<sup>15</sup> Richard L. Smith, *Franchise Regulation: An Economic Analysis of State Restrictions on Automobile Distribution*, 25, *The Journal of Law and Economics* 125-157 (1982).

<sup>16</sup> *Id.*

<sup>17</sup> Leslie J. Allen, *Rise and fall of Ford's sales network architect: Prison, success, bankruptcy*, *Automotive News* (2006), <http://www.autonews.com/article/20060925/SUB/60919023/rise-and-fall-of-fords-sales-network-architect:-prison-success> (last visited Jan 24, 2016).

<sup>18</sup> *Id.*

Between the end of the Great Depression and the end of the 1950s, many changes to the franchise system were emerging. Much of the change was due to the lobbying of dealers against actions by the automakers that were perceived as abusive.<sup>19</sup> Slowly but surely automobile dealers started to gain legislative ground. In the year 1956, they finally secured a federal legislative victory in the form of the Automobile Dealers' Day in Court Act of 1956.<sup>20</sup> The act allowed automobile dealers to bring a federal lawsuit against manufacturers who failed to act in good faith in the compliance of the franchise agreement or in terminating, canceling, or refusing to renew the franchise agreement of the dealer.<sup>21</sup> However, the automobile dealers' biggest influence on the franchise system came from lobbying state legislatures. Through their collective leverage, automobile dealers began to secure the passage of state statutes that gave them a growing power over the terms of a franchise and the issuance of franchise licenses, such as prohibiting forced acceptance of unwanted cars, termination of franchise agreements without due cause, and restrictions on the

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<sup>19</sup> Daniel A. Crane, *Tesla and the Car Dealers Lobby*, Regulation 37, no. 2 (2014): 10-4 <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=2319&context=articles>.

<sup>20</sup> Id.

<sup>21</sup> 15 U.S.C.A. § 1222.

establishment of new franchises.<sup>22</sup>

### **Automobile Dealer Franchise Laws Today**

Today all 50 states have laws in regards to automobile franchising. All states require dealers to be licensed by the state.<sup>23</sup> States also regulate the entry of new dealers, as well as the exit and transfer of dealerships.<sup>24</sup> The laws vary from state to state, but they all have many similar articles.

Many states have laws in place that prohibit direct sales to consumers. Louisiana's statute pronounces a manufacturer in violation if it sells directly to customers without the use of franchise dealers, the statute reads as follows:

“A. It shall be a violation of this Chapter:...(k)(i) To sell or offer to sell a new or unused motor vehicle or recreational product directly to a consumer except as provided in this Chapter, or to compete with a licensee in the same-line makes, models, or classifications operating under an agreement or franchise from the

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<sup>22</sup> Daniel A. Crane, *Tesla and the Car Dealers Lobby*. Regulation 37, no. 2 (2014): 10-4, <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=2319&context=articles>. (Last visited Jan. 30, 2016.)

<sup>23</sup> Mark Cooper, *Bringing New Auto Sales and Service Into the 21st Century*, Consumer Federation of America (2002), <http://www.consumerfed.org/pdfs/InternetAutos102902.pdf>. (Last visited Jan 30, 2016).

<sup>24</sup> *Id.*

aforementioned manufacturer....”<sup>25</sup>

The statute prohibits manufacturers from making direct sales, but provides an exception for manufacturers who operate a dealership temporarily during a change of ownership, usually no longer than two years.<sup>26</sup> Such statutes prevent manufacturers not only from selling directly to customers, but can prohibit manufacturers from operating their own dealerships in a state altogether. Virginia’s statute governing the establishment of dealerships states that, “It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control any motor vehicle dealership in the Commonwealth.”<sup>27</sup> Such laws ban manufacturers from selling their vehicles in any way other than a franchised dealership.

A manufacturer can also find itself in a gridlock when trying to adjust its network of dealers. In most states dealers cannot have their franchise agreements terminated by a manufacturer unless a “good cause” is presented.<sup>28</sup> Such “good cause” does not include termination based on the dealer’s

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<sup>25</sup> La. Stat. Ann. § 32:1261.

<sup>26</sup> Id.

<sup>27</sup> Va. Code Ann. § 46.2-1572 (West).

<sup>28</sup> Francine Lafontaine & Fiona Scott Morton, *Markets: State Franchise Laws, Dealer Terminations, and the Auto Crisis*, 24 *Journal of Economic Perspectives* 233-250 (2010).

efficiency or the manufacturer's desire for increased profits.<sup>29</sup> Unless it pays a penalty, a manufacturer cannot simply terminate inefficient dealers in a declining market in order to adjust its network.<sup>30</sup>

### **Tesla Motor's Contest To An Established System**

Tesla Motors Inc. is an American electric automotive company founded in 2003 by engineers Martin Eberhard and Marc Tarpinning.<sup>31</sup> In 2008 the company launched its first vehicle, the Tesla Roadster with the promise that "...Tesla's products would be cars without compromise. Each new generation would be increasingly affordable, helping the company work towards its mission: to accelerate the world's transition to sustainable transport."<sup>32</sup> Since the launch of that very first model the company has introduced a second vehicle, the Model S, and currently has sold over 50,000 vehicles worldwide.<sup>33</sup>

Tesla not only wanted to accelerate the transition to sustainable transport but also wished to shift the distribution and

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<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Drake Baer, *The Making Of Tesla: Invention, Betrayal, And The Birth Of The Roadster Business Insider* (2014), <http://www.businessinsider.com/tesla-the-origin-story-2014-10> (last visited Mar 10, 2016).

<sup>32</sup> *About Tesla*, Tesla Motors.com (2016), <https://www.teslamotors.com/about>. (Last visited Jan 30, 2016.)

<sup>33</sup> Id.

sale approach of automobiles to suit better the modern consumer. First off, Tesla does not have franchised dealers for its vehicles; the company has retail locations owned solely by the company.<sup>34</sup> Second, the approach taken by Tesla in selling its vehicles contrasts significantly with that of traditional automobile dealers with vast car lots and facilities. Tesla uses small retail stores that are located predominantly in high traffic malls, usually with a single display model.<sup>35</sup> Customers who decide to purchase a vehicle order, pay, and schedule a delivery online.<sup>36</sup> Because, Tesla owns all of its retail locations, and sells the vehicles directly to the end user, everyone pays the same price.<sup>37</sup> Customers do not have to wonder if they received the best possible deal.

The automaker might have captured the attention of numerous consumers through its unconventional approach to selling and distributing cars, but it has also acquired the scrutiny of many auto dealer associations. Auto dealer associations in many states have brought law suits against Tesla on the grounds of violating automobile dealership franchise laws prohibiting

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<sup>34</sup> Nick Chambers, *Tesla is Turning the Car Sales Model on Its Head*, Autotrader Autotrader (2011), <http://www.autotrader.com/car-news/tesla-is-turning-the-car-sales-model-on-its-head-132587> (last visited Jan 30, 2016).

<sup>35</sup> *Id.*

<sup>36</sup> Jason M. Lemkin, *Why Doesn't Tesla Use Dealerships To Sell Their Vehicles?* Forbes.com (2013), <http://www.forbes.com/sites/quora/2013/06/04/why-doesnt-tesla-use-dealerships-to-sell-their-vehicles/#3573bf3261d7> (last visited Jan 30, 2016).

<sup>37</sup> *Id.*

direct sales and manufacturer-owned dealerships.<sup>38</sup> Moreover, automobile dealers in states where the law is vague and provides loopholes on the matter of direct sales have pushed for explicit legislative provisions to make such sales illegal.<sup>39</sup>

The legal challenges, brought up by dealers, have caused impediments for Tesla in Massachusetts, Texas, Virginia, New Jersey, and other states. Because these lawsuits are based on the same general argument, a closer examination will be given to Tesla's legal challenge in the state of New Jersey to generalize the company's legal challenges under current statutes.

Tesla was originally granted a license to sell its cars through their two company-owned stores in 2012 by the New Jersey Motor Vehicle Commission (MVC).<sup>40</sup> The awarding of the license was soon contested by the New Jersey Coalition of

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<sup>38</sup> Amy Wilson, *Tesla takes franchise fight to the states*, *Automotive News* (2013), <http://europe.autonews.com/article/20130318/RETAIL07/303189964/tesla-plays-hardball> (last visited Mar 18, 2016).

<sup>39</sup> Daniel A. Crane, *Tesla and the Car Dealers Lobby*. *Regulation* 37, no. 2 (2014): 10-4, <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=2319&context=articles>.

<sup>40</sup> Brief of Petitioner-Appellant, In the Matter of Adoption of Amendments to N.J.A.C. 13:21-15, Tesla Motors, Inc. v. New Jersey Motor Vehicle Commission, No. A-3213 (Superior Court of N.J. Appellate Division Sept. 15, 2014), <https://www.autonews.com/assets/PDF/CA96370917.PDF>. (Last visited March 18, 2016.)

Automotive Retailers (NJCAR).<sup>41</sup> The coalition insisted that Tesla was in violation of automobile franchise laws by not selling its cars through franchised dealerships and, therefore, should have its license revoked.<sup>42</sup> As a response, the MVC issued a letter expressing that Tesla's stores were in full compliance with state laws and that the MVC had no authority in forcing the automaker to contract with franchised dealers.<sup>43</sup> However, after vigorous lobbying by the NJCAR, which spent \$155,000 on such efforts, the MVC issued new rules in March 2014 that would force Tesla out of the state.<sup>44</sup> Under the new laws, an applicant who requests a dealer license, or renewal, must "...submit a copy of the applicant's franchise agreement(s) with the motor vehicle manufacturer(s) whose makes and models the applicant is franchised to sell."<sup>45</sup> The new clauses also updated requirements for the establishment of a place of business, stating:

- "1. As of April 1, 2014, all licensees selling new motor vehicles shall maintain a permanent, properly identified location of not less than a total of 1,000 square feet, on one or more than one floor, within a permanent, enclosed building and where there are included or immediately

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<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> Danielle Wiener-Bronner, *Why Does Tesla Need Dealers to Sell You a Car In New Jersey?* The Wire (2014), <http://www.thewire.com/business/2014/03/why-does-tesla-need-dealers-sell-you-car-new-jersey/359084/> (last visited Mar 18, 2016).

<sup>45</sup> N.J. Admin. Code § 13:21-15.2.

contiguous, clearly identified, fixed facilities to display at least two automobiles and equipment to service motor vehicles as required by N.J.S.A. 39:10-19.”<sup>46</sup>

These changes prevent Tesla from opening new stores, but also forced the automaker to close its existing locations. Tesla will not be able to renew its license due to the requirement of a franchise agreement. The requirement of square footage, minimum display of two vehicles, and attached service facilities would put its retail stores in violation of the law. These laws would thwart Tesla’s model for distribution and sales in the state of New Jersey. After rigorous appeals of the new laws as being unconstitutional, and lobbying for its own cause, Tesla was able to eventually secure a victory. Governor Chris Christie signed a bill in March 2015 that allows manufacturers of zero-emission vehicles to sell directly to consumers in New Jersey.<sup>47</sup> However, the new law limits such manufacturers to only four places of business within the state.<sup>48</sup> The success in New Jersey has been replicated in other states, but there are still those who ban Tesla, such as Texas, Arizona, and Massachusetts.<sup>49</sup>

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<sup>46</sup> N.J. Admin. Code § 13:21-15.4.

<sup>47</sup> Michael Symons, *Christie signs law allowing Tesla sales in N.J.*, USA Today (2015), <http://www.usatoday.com/story/money/cars/2015/03/18/christie-signs-law-allowing-tesla-sales-nj/24984763/>. (Last visited Jan 30, 2016.)

<sup>48</sup> N.J. Stat. Ann. § 56:10-27.1.

<sup>49</sup> John Voelcker, *Where Can Tesla Legally Sell Cars Directly To You? State-By-State Map: Latest Update Green Car Reports* (2015), [http://www.greencarreports.com/news/1095337\\_where-can-tesla-legally-sell-cars-directly-to-you-state-by-state-map](http://www.greencarreports.com/news/1095337_where-can-tesla-legally-sell-cars-directly-to-you-state-by-state-map). (Last visited Jan 30, 2016.)

Many people might wonder why there has been such a hostile backlash from dealers against Tesla. The attention Tesla has gotten has caused many to question why we even have dealerships and not just buy cars directly from a manufacturer or over the internet. The decades-old automobile franchise laws seem to be antiquated and not in touch with today's consumer needs. The problem here is not Tesla itself. It is unlikely that independent dealers see Tesla's small market share as a direct threat to their sales. Instead, the biggest issue here is what would happen if the major auto manufacturers, once seeing Tesla secure a right to sell directly, say to themselves that they want to follow suit and aggressively challenge the old system. So, should we continue to have automobile franchise dealerships or not?

### **Opponent And Proponent Views On Automobile Dealer Franchising**

While the dealer franchise system seemed mutually beneficial to manufacturers and dealers at its inception, today people are beginning to challenge the traditional concept. The benefit for manufacturers was avoiding investments in showrooms, service centers, advertisement, and consumer information.<sup>50</sup> The benefit for franchised dealers was exclusive

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<sup>50</sup> Gerald R. Bodisch, *Economic Effects Of State Bans On Direct Manufacturer Sales To Car Buyers*, ATR, Department of Justice Justice.gov (2009), <http://www.justice.gov/atr/economic-effects-state-bans-direct-manufacturer-sales-car-buyers>. (Last visited Jan 30, 2016.)

rights in return for their investment.<sup>51</sup> However, today consumers do not need a dealership to gather information about a vehicle. With the advent of the internet, consumers can research vehicles from the convenience of their home. The growth in the use of the internet for product research and final purchase has substantially grown over the past two decades.<sup>52</sup> Such developments have diminished the benefits of the franchise system.<sup>53</sup> Also, many companies have utilized the development of new technologies to form build-to-order, direct sales platforms, such as Dell Computers and Tesla Motors.<sup>54 55</sup> Such platforms are utilized to create low overhead cost models by carrying low amounts of finished goods inventories.<sup>56</sup> The resulting overhead savings of such platforms are then passed to consumers.<sup>57</sup> A 2000 report by a Goldman Sachs analyst found that under a build-to-deliver cycle the average savings per vehicle with an average price of \$26,000 would be \$2,225.<sup>58</sup> It is because of these financial

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<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> Johana Bhuiyan, *7 Reasons Why Tesla Doesn't Want To Sell Through Dealerships*, BuzzFeed (2016), <http://www.buzzfeed.com/johanabhuiyan/tesla-slams-general-motors-for-opposing-direct-sales#.gln1W2dP21>. (Last visited Mar 18, 2016.)

<sup>55</sup> Gerald R. Bodisch, *Economic Effects Of State Bans On Direct Manufacturer Sales To Car Buyers*, ATR, Department of Justice Justice.gov (2009), <http://www.justice.gov/atr/economic-effects-state-bans-direct-manufacturer-sales-car-buyers>. (Last visited Jan 30, 2016.)

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Id.

benefits that some oppose the traditional dealership system.

Many opponents of the current franchising structure believe that it creates undue restraints on trade. Opponents believe that if the requirements for exclusive territories, direct ownership of dealerships, and the ban on direct sales are lifted, consumers will benefit from increased competition.<sup>59</sup> Opponents of restrictive franchise laws, those laws that ban online sales and restrict entry to a state, have challenged the legality of such statutes under the “dormant” commerce clause. The “dormant” Commerce Clause is a legal doctrine inferred from Article 1, Section 8 of the U.S. Constitution which empowers Congress: “To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”<sup>60</sup> The “dormant” Commerce Clause prohibits states from enacting laws that would excessively burden interstate commerce.<sup>61</sup> The clause is meant to prevent any obstructions to commerce among states, and to make state laws that hinder a unified national market, for a purely local

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<sup>59</sup> Mark Cooper, *Bringing New Auto Sales and Service Into the 21st Century*, Consumer Federation of America (2002), <http://www.consumerfed.org/pdfs/InternetAutos102902.pdf> . (Last visited Jan 30, 2016.)

<sup>60</sup> U.S. Const., Art. 1, sec. 8, cl. 3.

<sup>61</sup> LII / Legal Information Institute, Commerce Clause, [https://www.law.cornell.edu/wex/commerce\\_clause](https://www.law.cornell.edu/wex/commerce_clause) (last visited Jan 31, 2016).

benefit, unconstitutional.<sup>62</sup> Opponents argue that under the clause, a state automobile dealership franchise law that prohibits the entry of a national seller, or prevents national competition, is only a local benefit, and, therefore should be considered unconstitutional.<sup>63</sup>

On the other side of the argument, dealers firmly believe in the continuation of current franchise protection laws. Proponents of franchise laws believe that they are necessary to level the playing field between large automakers and franchisees.<sup>64</sup> Dealers are independent businesses that take most of the financial risk of opening and operating dealerships.<sup>65</sup> Due to this, dealers consider laws that prevent the direct ownership of dealerships, and direct sale of cars, necessary to protect their investment in the franchise.<sup>66</sup> Dealers contribute to local communities through employment, paying out billions of dollars

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<sup>62</sup> Solveig Singleton, *Will the Net Turn Car Dealers into Dinosaurs?* State Limits on Auto Sales Online Cato Institute (2000), <http://www.cato.org/publications/briefing-paper/will-net-turn-car-dealers-dinosaurs-state-limits-auto-sales-online>. (Last visited Jan 31, 2016.)

<sup>63</sup> Id.

<sup>64</sup> Thomas B. Leary, *State Auto Dealer Regulation: One Man's Preliminary View*, Federal Trade Commission, (2001), [https://www.ftc.gov/public-statements/2001/05/state-auto-dealer-regulation-one-mans-preliminary-view#N\\_10](https://www.ftc.gov/public-statements/2001/05/state-auto-dealer-regulation-one-mans-preliminary-view#N_10). (Last visited Jan 31, 2016.)

<sup>65</sup> Brett Berk, *Do We Really Need Car Dealerships Anymore?* Popular Mechanics (2013), <http://www.popularmechanics.com/cars/a9265/do-we-really-need-car-dealerships-anymore-15748322/>. (Last visited Jan 31, 2016.)

<sup>66</sup> Id.

in paychecks nationwide, paying hundreds of millions of dollars in sales taxes, and contributing to charities.<sup>67</sup> Because of such economic contributions, dealers are an integral part of many communities. Also, due to dealers being local businesses, proponents argue that they have a better understanding of local customer needs and, therefore, can provide a better service than an outsider.<sup>68</sup>

## Conclusion

Automobile dealership franchise laws span back decades and, for the most part, have gone by unchallenged. Such restrictive laws were enacted to protect small franchise businesses. As time passed, franchises grew in numbers, and also in power. As they became large financial contributors to state economies, they saw their leverage over legislation grow.

Once Tesla began facing legal obstacles in selling its cars, a new interest was facilitated towards the old concepts and laws surrounding the automobile dealership franchise system. Tesla provided a more relaxed and streamlined model to

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<sup>67</sup> John O'Dell, *Why Tesla should stop fighting auto dealers*, CNN.com (2014), <http://www.cnn.com/2014/03/18/opinion/odell-tesla-new-jersey/>. (Last visited Jan 31, 2016.)

<sup>68</sup> Thomas B. Leary, *State Auto Dealer Regulation: One Man's Preliminary View*, Federal Trade Commission (2001), [https://www.ftc.gov/public-statements/2001/05/state-auto-dealer-regulation-one-mans-preliminary-view#N\\_10](https://www.ftc.gov/public-statements/2001/05/state-auto-dealer-regulation-one-mans-preliminary-view#N_10). (Last visited Jan 31, 2016.)

customers that did not require many of the discomforts of traditional car buying. The legal cases surrounding Tesla being banned in certain states only brought further attention and questions about the need for automobile dealership franchise laws. As discussed, there are strong opponents of franchise laws who would like to see many of the current laws removed. Arguments bolster the favorable economic effects that would be experienced in the form of lower prices. Others have put into question the legality of auto franchise laws.

On the other hand, proponents of automobile dealership franchise laws have made strong arguments for the need for such legislation to protect dealers from abuses by manufacturers. As discussed, franchise dealers invest significant amounts of capital in opening and operating dealerships and, therefore, feel it necessary to have the current restrictive laws in place to protect their investment. Proponents have also argued that franchised dealerships provide economic benefits for their communities and that they are better equipped to serve the needs of local markets.

In today's growing trend of online shopping and the desire of consumers to get the best bargain possible with the least amount of stress, it seems inevitable that we are going to see an expansion of the Tesla model of selling cars. Even though Tesla has been able to challenge state automobile dealership franchise laws and gain some victories, this automaker is only an exception to traditional automobile franchise law. It is unlikely that there would be an all-out repeal of current state automobile

dealership franchise laws. Due to the enormous legislative influence and economic effect that dealerships possess, changes to existing laws will likely be slow to come.