No. 23-683

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

West Virginia Automobile and Truck Dealers' Association, Thornhill Auto Group, Inc., Moses Ford, Inc., and Astorg Ford of Parkersburg, Inc.,

Plaintiffs,

v.

Ford Motor Company,

Defendant.

On Certified Question from the United States District Court for the Southern District of West Virginia Charleston Division Civil Action No. 2:22-cv-00291

PETITIONERS' BRIEF

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I. INTRODUCTION

This is a brief upon certified question review from the United States District Court for the Southern District of West Virginia, which posed the following Certified Question to this Court:

> Does a new motor vehicle dealer's completion of renovations, improvements, or image upgrades in accordance with the requirements of an optional franchisor program or incentive provision constitute installation of image elements "required and approved by the manufacturer" such that the ten-year grandfather clause found in W.Va. Code § 17A-6A-10(l)(i) (2015) applies and the dealership must be deemed in compliance with any subsequent incentive programs that would require replacement or alteration of those renovations, signs, or image elements?

The Petitioners herein urge this Honorable Court to answer the Certified Question in the affirmative.

II. STATEMENT OF THE CASE

1. The Trustmark Program

In 2010, Ford launched the Trustmark program, which incentivized its dealers to build dealership facilities utilizing designs, methods, and materials required and approved by Ford. (JAR004-007) Along with the Trustmark program, in 2013, Ford offered its Ford Facility Assistance Program, wherein Ford offered a dollar-for-dollar match, up to $750,000, toward the dealer's construction cost of a Trustmark dealership facility so long as the dealer implemented the Ford required facility design standards, and Ford approved the completed construction or renovation. For example, the dealer's construction or renovation had to meet Ford Trustmark requirements, such as incorporating a Ford Trustmark entry tower and exterior brand wall, Ford specified reception and greater area, Ford specified showroom area, Ford specified sales consultation and F&I area, Ford specified customer lounge and restrooms, Ford specified service department and write-up area, and Ford specified furniture for all customer areas. (JAR008-009)

The three dealers who are Petitioners before this Honorable Court are each new motor vehicle dealers who participated in the Ford Dealership Trustmark Facility Assistance Program and operate pursuant to franchise agreements with Ford for both the Ford and Lincoln brands. Each dealer constructed Trustmark 3 facilities under the program. Each Trustmark 3 facility houses both Ford and Lincoln brands. Each of the Trustmark 3 facilities featured franchisor image elements required and approved by Ford, including the entry tower, exterior walls, reception area, showroom areas, service areas, sales areas, restrooms, and furniture. (JAR008-009; JAR011-012)

2. The Lincoln Commitment Program

The Lincoln Commitment Program ("LCP") was first launched by Lincoln in 2011. The LCP changed over the years, but consistently remained a program through which Lincoln tracked the operations of its dealers and incentivized operations it believed to be desirable to the luxury automobile consumer. In July 2020, Lincoln materially altered the LCP to include a new facility/image-based metric upon which the dealers would be measured and ultimately eligible for incentive payments: brand exclusivity. (JAR016-021)

Under the 2020 LCP, Phase II, Ford offered its dealerships a facility/image-based incentive of a per-vehicle sold margin of 2.75% for Lincoln exclusive dealership facilities and 1.0% for certified dual dealerships, such as Petitioners' Trustmark 3 facilities. (JAR016-021) Ford reduced the incentive for Trustmark 3 dealers to 0% starting January 1, 2023. (JAR016-021)

Dealers that wished to receive facility-based incentives from Lincoln were required to drastically change their Lincoln facility to a brand exclusive model designed by Ford and adhering to the construction deadlines set forth by Ford, culminating in the completion of the new Lincoln exclusive facility by January 1, 2023. (JAR016-021)

3. The West Virginia Motor Vehicle Franchise Act

On March 14, 2015, the West Virginia Legislature passed Senate Bill No. 453, known as the West Virginia Motor Vehicle Franchise Act (hereinafter sometimes "Franchise Act" or "the Act"), into law as W. Va. Code § 17A-6A-1, *et seq.*, finding that "it is necessary to regulate motor vehicle dealers, manufacturers and distributors doing business in [West Virginia] in order to avoid undue control of the independent new motor vehicle dealer by the vehicle manufacturer or distributor… and to protect and preserve the investments and properties of the citizens and motor vehicle dealers of [West Virginia]." W. Va. Code § 17A-6A-1 (2015).[1]

The Franchise Act, at W. Va. Code § 17A-6A-10(1)(i), clearly articulates that dealers who have completed a facility upgrade qualify for any facility related benefits for the ten-year period following the completion of the upgrade, regardless of whether a manufacturer changes the requirements to receive the facility-related benefits. Specifically, the Act states:

> "[i]f a manufacturer… offers incentives or other payments to a consumer or dealer paid on individual vehicle sales under a program offered after the effective date of this subdivision… that are premised, wholly or in part, on dealer facility improvements or installation of franchiser image elements required by and approved by the manufacturer… and completed within ten years preceding the program shall be determined to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or other franchisor image elements that would replace or substantially alter those previously constructed or installed within that ten year period."

W. Va. Code § 17A-6A-10(1)(i).

The plain language of the Act explicitly states that any facility improvements or changes to facility image elements completed by the dealer and approved by the manufacturer within the

[1] A bill updating the subject statutory language was passed into law in 2022. The 2022 amendments are not applicable to the timeframe of the allegations presented in Plaintiffs' Complaint. Therefore, all references to the subject statutory language are references to the 2015 version of the law.

preceding ten years shall be determined to be in compliance with program requirements that offer incentives based on dealership facilities. Thus, according to the Act, Petitioners are entitled to the same facility and image based incentive payments Ford offers to dealers that construct Lincoln exclusive facilities for the ten years immediately following the completion of their prior Ford-approved facility renovations.

III. SUMMARY OF ARGUMENT

The West Virginia Franchise Act was passed into law by the West Virginia Legislature "to avoid undue control of the independent new motor vehicle dealer by the vehicle manufacturer or distributor… and to protect and preserve the investments and properties of the citizens and motor vehicle dealers of [West Virginia]." W. Va. Code § 17A-6A-1 (2015). Ford's strained interpretation of the language found at W. Va. Code § 17A-6A-10(1)(i) would render the protections contained therein wholly ineffective, undermining the clear legislative intent behind the statute.

The Act, at W. Va. Code § 17A-6A-10(1)(i), specifically states that a manufacturer is prohibited from using an incentive provision to require or coerce a dealership to substantially alter its facilities or franchisor image elements completed within the ten years preceding the incentive provision. W. Va. Code § 17A-6A-10(1)(i). Importantly, the next sentence of the section directly addresses a dealer's eligibility for subsequent facility related incentives. Thus, the Act prohibits a manufacturer from "require[ing] any dealer, whether by agreement, program, incentive provision, or otherwise" to make improvements to its facility if the dealer had completed said improvements in the prior ten years. And, then the Act also provides that a dealer that has completed facility improvements shall be eligible for facility related incentives for the ten-year period following completion of the facility improvements. In short, the Act contains a blanket prohibition on

"required" facility changes (i.e. "whether by agreement, program, incentive provision, or otherwise") for a ten-year period, and then follows that up to insure that a manufacturer cannot punish a dealer financially by making it ineligible for incentives if the dealer does not change its facilities. With respect to facility incentives, the Act states that "if a manufacturer… offers incentives or other payments to a consumer or dealer paid on individual vehicle sales… that are premised, wholly or in part, on dealer facility improvements or installation of franchiser image elements required by and approved by the manufacturer," then such improvements "completed within ten years preceding the program shall be determined to be in compliance with the program requirements pertaining to construction of facilities or installation of sings or other franchisor image elements that would replace or substantially alter those previously constructed or installed within that ten year period." W. Va. Code § 17A-6A-10(1)(i).

The certified question before this Honorable Court centers around the language in the statute referencing the installation of image elements "required and approved by the manufacturer." (JAR489) That language references whether the image elements themselves were "required and approved" by Ford for purposes of the program, not whether the image elements were "required" as a condition of operating as a Ford dealer. That is plainly seen when the statutory provision is reviewed in its entirety, since Ford is prohibited from "requiring" a dealer to alter its facilities to begin with. Ford attempts to muddy the meaning of the statutory language by creating a false dichotomy between manufacturer incentive programs that are voluntary or optional and those that would be "required." Ford's interpretation posits that the words "required" and "approved" operate to mean that the grandfather clause found at W. W. Va. Code § 17A-6A-10(1)(i) is only triggered if a vehicle manufacturer forces its dealership to make improvements or participate in facilities programs under the threat of franchise termination. This is not the case.

The language is clear, and the legislative intent is clearer. The words "required" and "approved" do not describe the undertaking of the construction project itself. The statute makes no distinction between voluntary, optional, or mandatory programs. Instead, the language states that it applies if a manufacturer offers **any** incentive program based at least in part on facilities and uses the words "required" and "approved" only to describe the types of franchiser image elements that are utilized in the modification of the facilities. (JAR011-012 and JAR438-441)

Both the Trustmark 3 facility designs, and the new Lincoln Vitrine exclusive facility designs are replete with franchisor image and design elements that are required by, and would need to be approved by, Ford. For these reasons the grandfather clause at W. Va. Code § 17A-6A-10(1)(i) is triggered "to avoid undue control of the independent new motor vehicle dealer by the vehicle manufacturer or distributor… and to protect and preserve the investments and properties of the citizens and motor vehicle dealers of [West Virginia]." W. Va. Code § 17A-6A-1 (2015).

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The December 4, 2023 Scheduling Order entered by this Honorable Court does not contemplate oral argument on the certified question and Petitioners do not specifically request that any such oral argument be heard by the Court. However, Petitioners are happy to argue the merits of their position in the event the Court believes a hearing would help its understanding of the matters.

V. ARGUMENT

1. W. Va. Code § 17A-6A-10(1)(i) explicitly governs the installation of franchiser required signs or image elements, regardless of whether the facility improvements were voluntary or optional.

An examination of the language in full reveals that the statute is unconcerned as to whether the construction project itself is "required and approved" by the manufacturer. What the statute

explicitly regulates is a program that offers payments based, at least in part, on the installation or modification of franchise image elements that are "required and approved" by the manufacturer for program eligibility.

The language of the statute reads:

> "If a manufacturer… offers incentives or other payments to a consumer or dealer paid on individual vehicle sales under a ***program*** offered after the effective date of this subdivision… that are premised, wholly or in part, on dealer facility improvements ***or installation of franchiser image elements required by and approved by the manufacturer***… and completed within ten years preceding the ***program*** shall be determined to be in compliance with the ***program requirements*** pertaining to construction of facilities or installation of signs or other franchiser image elements that would replace or substantially alter those previously constructed or installed within that ten year period."

W. Va. Code § 17A-6A-10(1)(i) (***emphasis added***).

Thus, the plain language of the Act, when we consider the entire clause, contemplates that its ten year grandfather clause applies to any incentive or other payment offered by a manufacturer program premised, wholly or in part, on installation of franchiser required image elements where a dealer has previously installed franchiser required image elements approved by the manufacturer within the preceding 10 years. The word "program" is highlighted in the above citation to demonstrate that the words "required and approved" do not modify the incentive program itself. Under the statute, a triggering incentive program can be voluntary while the Ford or Lincoln franchisor image elements that are installed pursuant to that voluntary program are "required and approved" by Ford.

Ford's position before the District Court is that the grandfather clause found in the West Virginia Motor Vehicle Franchise Act "***expressly applies only*** to prior dealership improvements

undertaken in the last 10 years that were both "***required and approved***" by the automobile manufacturer." (JAR244) (***emphasis in original***). Ford concludes that the grandfather clause is inapplicable to the LCP because the improvements made to the facilities of the Petitioner's dealerships "were ***performed voluntarily*** by the [Petitioner] Dealers and ***were not required by Ford.***" (JAR244) (***emphasis in original***).

Ford's argument boils down to whether the facility improvements are "required" as a condition of operation under the franchise agreement rather than a condition for payment under the LCP. A plain reading of the language at issue shows that the statute does not have such a limited scope.

The statute does not hold, as Ford argues, that the grandfather clause applies only to facility projects that were mandated by the franchiser. Indeed, the statute is clear that such actions are prohibited "whether by agreement, program, incentive provision, or otherwise." Thus, Ford cannot rely on the alleged voluntary nature of the LCP, since the statute outlaws such actions even if agreed to. Petitioners do not attempt to argue that building a Trustmark or building a Lincoln exclusive facility is required by Ford to continue to sell vehicles under the franchise contract. The language of the statute requires no such proof. Instead, the statute seeks to protect investments made by franchisees that include "franchiser image elements required and approved by the manufacturer," by protecting those investments from change for at least ten years.

This Court holds that, "[i]n determining how a specific statute should be applied, we look first to the statute's language. If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed." *Ancient Energy, Ltd. v. Ferguson*, 806 S.E.2d 154, 157 (W.Va. 2017), quoting *Appalachian Power Co. v. State Tax Dep't of West Virginia*, 466 S.E.2d 424, 438 (W.Va. 1995) (internal quotations omitted). "In other words where

the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation." *Id.*, quoting Syl. Pt. 2, *Crockett v. Andrews*, 172 S.E.2d 384 (W.Va. 1970); citing Syl. Pt. 2, *State v. Epperly*, 65 S.E.2d 488 (W.Va. 1951) (internal quotations omitted).

The plain language of the subject statute does not support Ford's arguments concerning the statute's use of the word "required." The LCP is a program. Trustmark was a program. Both programs require the installation or change of franchiser image elements to participate in the program. The statute applies to all programs offered by a manufacturer, and prohibits this conduct whether accomplished "by agreement, **program**, incentive provision, or otherwise." The statute does not state that dealers must be required to participate in the program in order for the grandfather clause to apply. Instead, the statute states that a change in franchiser image elements required and approved by the manufacturer as part of the offered program triggers protection under the grandfather clause. Stated another way, the Legislature determined that if a dealer constructs, or renovates, its facility in a manner that complies with Ford's franchiser image elements, that dealer's investment is protected for a period of 10 years regardless of whether Ford changes its mind and implements a different set of franchiser image elements. This provision, as advocated by the Petitioners, is also squarely aligned with the codified Legislative Intent, which is "to regulate motor vehicle dealers, manufacturers and distributors doing business in [West Virginia] **in order to avoid undue control of the independent new motor vehicle dealer by the vehicle manufacturer or distributor**… **and to protect and preserve the investments and properties of the citizens and motor vehicle dealers of [West Virginia].**" W. Va. Code § 17A-6A-1 (2015) (**emphasis added**). Whereas, Ford's interpretation results in a scenario where a dealer's facility investment is outdated at Ford's whim.

The statute here is unambiguous. The ten-year grandfather clause applies to the Petitioner dealers and the LCP because the dealers all installed manufacturer required image elements that were approved by Ford in the ten years preceding the 2020 LCP, a program which includes "incentives or other payments to a... dealer paid on individual vehicle sales… that are premised, wholly or in part, on dealer facility improvements or installation of franchiser image elements required by and approved by the manufacturer." W. Va. Code § 17A-6A-10(1)(i).

The plain language of the statute protects the significant financial investment undertaken by the dealers when they installed Trustmark 3 franchiser image elements required and approved by Ford under the Trustmark program. The statutory language protects those investments by providing the dealers a ten-year period wherein the previous installation of franchiser image elements required by Ford deems them in compliance with the requirements of any program that makes payments based upon modifying those franchiser image elements. Ford's strained construction of "required and approved" ignores the plain meaning of the statutory language and should therefore be rejected. The plain language of the statute supports the Petitioner's interpretation of the grandfather clause, not Ford's.

2. The facilities in question, both the Trustmark facilities and the proposed Lincoln Exclusive Vitrine facilities, are products of the Ford design team, featuring numerous Ford and Lincoln image elements that are required, and need to be approved by, Ford.

There is no question that the dealership facilities at issue in the matter, both the dual dealerships and the new Lincoln Vitrine, are the products of the design teams at Ford. Ford branding appears on the drawings available to dealerships when they are considering the facility construction. More than this, the terms of art "required image element," "required design

element", and other permutations of the phrase are used repeatedly by Ford when referring to the method and manner in which dealership facilities are built.

The language used in the statute mimics the language used by Ford when it refers to dealership facility construction projects. "Required and approved franchiser image elements" is a term of art utilized first by Ford in its facilities programs, and then referenced by the West Virginia Legislature in the drafting of the language before this Honorable Court. Specifically, the 2013 Ford Dealership Trustmark Facility Assistance Program, which was voluntary for dealers, still included provisions for *required* franchisor image elements, including a Ford Trustmark entry tower and exterior brand wall, Ford specified reception and greater area, Ford specified showroom area, Ford specified sales consultation and F&I area, Ford specified customer lounge and restrooms, Ford specified service department and write-up area, and Ford specified furniture for all customer areas. (JAR113-177) There is no question that each of the dealers constructed a certified Trustmark facility.[2]

Similarly, the Lincoln exclusive Vitrine designs feature many franchiser required image elements on which the incentive payments Ford will make are premised. Ford's corporate representative testified that Ford has final say and ultimate control over such required franchiser image elements in the Lincoln exclusive Vitrines.

> Q. Okay. Now, I know that this is a design drawing for a prototype stand alone Lincoln facility. Aside from that, what sorts of things does this picture show us?
>
> A. It shows as far as some of the design elements within the store. So you can see the two runways. They can hold three cars each. On the left-hand bottom corner there, you can see in between those two runways, you can see pavilions.

[2] Ford admits as much in support of its own Motion for Summary Judgment. *See*, JAR075.

As you move over to the right, you can see the entrance walkway into the vitrine. You can see the waterwall. And right behind that waterwall is the customer lounge. As you move further over to the left over there, you'll see as far as the service manager office and the craftsman desk where the service advisors greet the service-drive customers. On the right-hand side there you have a service drive…

Q. Does a franchise dealer have the ability to tailor a stand alone Lincoln vitrine in any way that they wish?

A. There are certain design elements that you have to have in the vitrine, but it's tailored…

Q. But all of those Lincoln vitrines will have certain design elements that are in all of the designs; is that fair?

A. Yeah, that would be certain – like you walk in, the reception desk, they all pretty much look the same. You'll have some sales pavilions, so there will be a certain key look and feel, but how it's actually executed could be greatly scaled, depending on the market…

Q. Who has final say in that decision, is it the dealership or Ford?

A. It comes back as far as them putting in an exception. Any deviations to what is standard, the dealer has to put in a request. You know if its something minor, the architect won't even review it with me. If it's something major, then we'll have a discussion.

Q. And so it sounds like the answer to my question is that Ford is, because the dealership has to make a request to Ford that will then either be granted or denied; is that fair?

A. Correct…

Q. And in order to qualify for any number of programs, those design standards and requirements must be followed by franchise dealers when either constructing or renovating their facility; fair?

[…]

A. As far as programs, I don't know. To be certified as a, you know, completed facility, they do have to meet those standards.

(JAR438-441)

Thus, it is uncontroverted that the Trustmark 3 facilities constructed by each of the dealers, and approved by Ford, include many "franchiser image elements required by and approved by the manufacturer." Further, according to Ford's own corporate testimony, any newly constructed Lincoln Vitrine facility also includes many elements which clearly meet the statutory language of franchiser image elements required by and approved by the manufacturer.

The franchiser image elements required by Ford for the Trustmark 3 facility must necessarily be modified for a dealer to operate a stand-alone, Lincoln-exclusive vitrine. The entire facilities provision found in the 2020 LCP is premised on the modification of franchise image elements in dual-branded facilities. The statutory language in question is precisely intended to protect the Petitioners by requiring Ford to deem them in compliance with the facility provision of the 2020 LCP for the remainder of the applicable ten-year time frame set forth in the grandfather clause.

3. The legislative intent in the passage of the act weighs heavily in Petitioner's favor regarding the interpretation of the statutory language.

At the outset, the West Virginia Franchise Act sets forth its intent to protect the motor vehicle dealerships of West Virginia from "undue control… by the vehicle manufacturer or distributor… and to protect and preserve the investments and properties of the citizens and motor vehicle dealers of [West Virginia]." W. Va. Code § 17A-6A-1 (2015). The concerns raised by West Virginia motor vehicle dealers that were addressed by the Legislature via passage of the subject statutory language are the same concerns that the motor vehicle dealer Petitioners bring in their underlying lawsuit.

Here, the Petitioners made significant investments in their facilities by participating in voluntary programs and installing image and design elements required and approved by Ford. The subject statutory language is intended to protect those investments. Specifically, the grandfather clause, in which the language under scrutiny is found, was intended to protect West Virginia motor vehicle dealers from the exact actions that Ford has undertaken herein.

In fact, the specificity of the language in the statute proves the intent. The act utilizes "required franchiser image elements," a term of art that is generally accepted within the motor vehicle dealership industry, to set forth the parameters of its grandfather clause. Ford utilizes the same term of art in its materials to describe the elements of a construction project that are required by Ford as "franchiser image elements."

The drafters of the statutory language foresaw scenarios wherein a West Virginia dealer's investment in its facilities would be rendered outdated by incentive programs offered by its franchiser. In order to protect those dealers, the Legislature included the grandfather clause found in W. Va. Code § 17A-6A-10(1)(i) so that West Virginia dealers could preserve their investment in facilities for at least ten years before the manufacturer could deem them out of compliance for any facility-based incentive program.

Few, if any, manufacturer incentive or facility programs are mandatory for a dealer to continue a relationship with the manufacturer. Practically all such programs are voluntary. Dealers can choose to participate in them or not. The drafters of the legislation were aware of this. Thus, no references to "required programs" or "required construction" are found in the statutory language. Instead, the subject statutory language references any program that provides a facility-based incentive premised on changing already existing image and design elements required and approved by the manufacturer.

Whether or not the Petitioners voluntarily engaged in construction projects is not dispositive of their claims. The intent of the legislature in the passing of the Act was to include voluntary construction projects within the purview of the grandfather clause so long as those construction projects were made pursuant to program requirements. This is made apparent by the legislature's decision not to include an exception for voluntary projects within the language of the grandfather clause, even though it included such exceptions elsewhere in the same section of the Act.

This Court "has long recognized that a cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute. Courts should favor the plain and obvious meaning of a statute as opposed to a narrow or strained construction." *Young v. Apogee Coal, Co., LLC*, 753 S.E.2d 52, 59 (W. Va. 2013), quoting Syl. Pt. 3, *Meadows v. Wal-Mart Stores, Inc.*, 530 S.E.2d 676 (W. Va. 1999); *T. Weston, Inc. v. Mineral Cnty.*, 638 S.E.2d 167, 171 (W. Va. 2006), citing *Davis Mem'l Hosp. v. W.Va. State Tax Comm'r*, 671 S.E.2d 682 (W. Va. 2008); *Thompson v. Chesapeake & O. Ry. Co.*, 76 F.Supp. 304 (S.D.W. Va. 1948) (internal citations and quotations omitted).

When significance and effect are given to all parts of this section of the West Virginia Code, voluntary construction projects clearly fall within the grandfather clause because they are not explicitly excepted by the statutory language. Elsewhere, in the very same section of the Act, the legislature created exceptions for voluntary acts. Specifically, W. Va. Code § 17A-6A-10 (1)(j)[3] holds that a manufacturer cannot

> condition the award, sale, transfer, relocation, or renewal of a franchise or dealer agreement or... sales, service, parts, or finance incentives upon site control or an agreement to renovate or make

[3] Please note that citations are made to the 2015 version of the statute because it is the applicable version in this matter. Subsection lettering and numbering in the Act were revised and citations to the current version will differ.

> substantial improvements to a facility: ***Provided, That voluntary and noncoerced acceptance*** of such conditions by the dealer in writing, including, but not limited to, a written agreement for which the dealer has accepted separate and valuable consideration, ***does not constitute a violation***.

W. Va. Code § 17A-6A-10(1)(j) (***emphasis added***).

Thereafter, at W. Va. Code § 17A-6A-10(2)(x)(v), another exception for voluntary action is found. This section governs the control over the voluntary products offered for sale by a dealer and states:

> Nothing in this paragraph prohibits a manufacturer or distributor from providing incentive programs to a ***new vehicle dealer who makes the voluntary decision*** to offer to sell, sell, or sell exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor.

W. Va. Code § 17A-6A-10(2)(x)(v) (***emphasis added***).

Thus, it is obvious from the inclusion of these exceptions for voluntary acts[4] that the Legislature was aware of the difference between voluntary and involuntary actions of dealerships and wished to make exceptions to prohibitions in some cases. The Legislature chose to not include such an exception in the grandfather clause found at W. Va. Code § 17A-6A-10(1)(i). This directly refutes Ford's argument that the grandfather clause does not apply to projects voluntarily taken on by a dealership.

Ford's interpretation of the language effectively strips the grandfather clause of any merit, meaning, or practical application. Such an interpretation shatters the protections the Legislature intended to bestow upon West Virginia dealers from the undue control of the vehicle manufacturer.

[4] *See also*, W. Va. Code § 17A-6A-5(e) and W. Va. Code § 17A-6A-10(2)(x)(v).

Put plainly, if the subject grandfather clause does not apply in this situation, then under what set of facts would it apply?

The specific factual scenario before the District Court is addressed by a specific grandfather clause passed by the West Virginia Legislature for the benefit and protection of West Virginia's motor vehicle dealers. This Honorable Court is urged to rule in support of the intention of the Legislature to protect this State's auto vehicle dealers from the violative practices of Ford.

VI. CONCLUSION

The certified question before this Honorable Court centers around the language in the statute referencing the installation of image elements "required and approved by the manufacturer." Declining to uphold the plain meaning and intent of the statute, set forth via Petitioner's interpretation of the language, would eradicate the protection of dealer facilities investments intended by West Virginia's Legislature.

Petitioners respectfully urge this Court to answer the District Court's certified question in the affirmative. In doing so, this Honorable Court will uphold the plain and unambiguous language of the facilities-based incentive grandfather clause and fulfill the statute's legislative intent to protect the investments of this State's auto vehicle dealers from undue control by vehicle manufacturers.

WEST VIRGINIA AUTOMOBILE AND TRUCK DEALERS ASSOCIATION, THORNHILL AUTO GROUP, INC., MOSES FORD, and ASTORG FORD OF PARKERSBURG, INC.,

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On Certified Question from the United States District Court for the Southern District of West Virginia Charleston Division Civil Action No. 2:22-cv-00291

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Petitioners, does hereby certify on this 26th day of January, 2024, that a true copy of the foregoing "Petitioner's Brief" was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

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