

Michigan Law

UNIVERSITY OF MICHIGAN LAW SCHOOL

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The Hon. Rick Snyder
Office of the Governor
Lansing, MI 48909

Re: H.B. 5606

Dear Governor Snyder,

I am writing concerning H.B. 5606, as amended by an S-1 substitute, which I understand is currently on your desk for signature or veto. I strongly urge you to veto this bill so that the question of direct distribution of automobiles by manufacturers can be fairly and fully debated.

As you may know, for the last two years, a fight has been brewing on a state-by-state basis between Tesla Motors, which wants to distribute its electric vehicles directly to consumers, and some car dealers, who want to block direct distribution because they see it as a threat to their business model. These legislative, regulatory commission, and judicial battles in states like New Jersey, Ohio, Georgia, North Carolina, Massachusetts, and Texas have been front-page news in the national media. Though sometimes successful in influencing political outcomes, the car dealers have found themselves virtually alone in their fight. No consumer groups have flocked to their side, the staff of the Federal Trade Commission have come out against them, and the academic community overwhelmingly—indeed possibly unanimously—supports the right of direct distribution.

I have been heavily involved in these issues as an academic, writing research papers, blogging, debating the car dealers on national television, and speaking at various fora. I was anticipating that this fight would come to Michigan sometime in the coming months and looked forward to presenting the case in favor of direct distribution. It was thus a rude surprise for me to learn yesterday that the fight had apparently come and gone in Michigan without making a ripple. Which brings me to H.B. 5606.

The original bill, introduced in May 2014, concerned one discrete issue relating to whether an automobile manufacturer could prohibit its affiliated franchised dealers from charging customers certain types of fees. That issue is irrelevant to Tesla, which has no franchised dealers and instead sells directly to consumers. But, on October 1, at the very end of the legislative session, the bill was quietly amended to add new provisions that seek to prohibit companies like Tesla from opening their own showrooms or even opening a gallery in which no sales activities takes place. In a single day and without publicity, the bill went from making one discrete change concerning existing manufacturer-dealer relations to subversively regulating a completely different topic that has been the subject of extended debate and media coverage elsewhere—without giving supporters of direct distribution any opportunity to weigh in or allowing the media to inform the citizens of this State about the stakes.

It's no surprise that the dealers want to avoid an open and full debate over this issue. As I and others have detailed at length in various blogs, publications, and talks, there really are no credible arguments for why an innovative car company wanting to distribute a new kind of vehicle shouldn't be able to open its own showrooms and service centers and deal directly with consumers. A Justice Department study from 2009 found that direct distribution could save consumers over \$2,200 per vehicle and expand the variety of vehicles available to consumers. When buying a car, consumers should have the right to choose between buying from an independent franchised dealer and directly from a manufacturer, just as they currently can for almost any other kind of product.

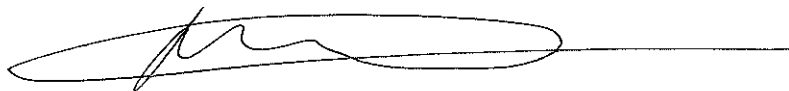
Last March, I organized an open letter to New Jersey Governor Chris Christie that analyzed the car dealers' arguments. The letter was signed by 72 of the most prominent economists and law professors in America, from across the political and ideological spectrum. Our letter concluded that there is no merit whatsoever to any of the car dealers' arguments and that laws against direct distribution are nothing but protectionism for the car dealers, pure and simple. Having been at this now for over a year, I'm unaware of a single academic who has taken the dealers' side.

I have been heartened in recent months that your Republican colleagues Rick Perry, Marco Rubio, and Chris Christie have all made statements to national news media in favor of direct distribution, as have many prominent Democrats. This should not be a question of partisan politics, but of objective economic principles and consumer choice.

In closing, let me stress that I have no personal stake in this fight. I am not being paid by Tesla or anyone else for my work on these issues. Nor do I have anything against car dealers. They do important work. But they should have to compete in a free market just like everyone else. Most fundamentally, they should not be able to get away with sneaking amendments into bills at the last minute in a way that precludes fair and open discussion of what they know is a highly controversial issue. The people of this great State deserve better than that kind of crony capitalism. Whatever you think of the merits, I ask you to veto this bill so that the issue can be fully aired in Michigan.

Thank you for your attention to this matter. I would be delighted to speak with you or any member of your staff should you have any questions.

Very truly yours,



Daniel A. Crane