

15-1218  
No. 15-\_\_\_\_\_

Supreme Court, U.S.  
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IN THE  
**Supreme Court of the United States**

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Husqvarna Professional Products, Inc.

*Petitioner,*

v.

The State of New Hampshire

*Respondent.*

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On Petition for a Writ of Certiorari  
to the New Hampshire Supreme Court

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**PETITION FOR A WRIT OF CERTIORARI**

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Earl Bennett  
General Counsel  
HUSQVARNA GROUP N.A.  
& L.A.  
9335 Harris Corners Parkway  
Suite 500  
Charlotte, NC 28269  
earl.bennett@husqvarnagroup.  
com  
(704) 921-7008

Thomas J. Collin  
*Counsel of Record*  
Jennifer S. Roach  
Mark R. Butscha, Jr.  
THOMPSON HINE LLP  
3900 Key Center  
127 Public Square  
Cleveland, Ohio 44114  
tom.collin@thompsonhine.com  
(216) 566-5500

*Counsel for Petitioner*

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## QUESTIONS PRESENTED

New Hampshire amended its automobile dealer statute in 2013 to subject manufacturers of lawn mowers and other yard and garden equipment to the same regulation as automobile manufacturers, including mandatory adjudication of disputes by a Motor Vehicle Industry Board. It did so by defining “motor vehicle” to include “yard and garden equipment.” The amended statute nullified essential terms in petitioner’s dealer contracts, including the right to arbitrate disputes, but the New Hampshire Supreme Court upheld it.

The questions presented are:

1. Whether a court deciding a Contract Clause case may use “rational speculation” review to uphold retroactive application of a law substantially impairing private contracts based on legislative findings that are contradicted by undisputed evidence.
2. Whether a court deciding an Equal Protection case may rely upon legislative findings to hold that a classification has a rational basis when the findings are contradicted by undisputed evidence.
3. Whether a statute requiring disputes between a manufacturer and its dealers to be submitted to a state administrative agency for adjudication violates the Supremacy Clause as to disputes subject to arbitration under the manufacturer’s dealer contracts.

## **PARTIES TO THE PROCEEDING**

Petitioner is Husqvarna Professional Products, Inc.

Respondent is the State of New Hampshire.

Other parties in the consolidated proceeding below before the New Hampshire Supreme Court were plaintiff-appellants Deere & Company, CNH America LLC, AGCO Corporation and plaintiff-appellant Kubota Tractor Corporation.

## **RULE 29.6 STATEMENT**

Husqvarna Professional Products, Inc. is a wholly owned subsidiary of Husqvarna AB, a publicly held Swedish corporation.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, Husqvarna Professional Products, Inc. (“Husqvarna”), respectfully petitions for a writ of certiorari to review the judgment of the New Hampshire Supreme Court in this case.

## **OPINIONS BELOW**

The opinion of the New Hampshire Supreme Court is unreported but is available at 2015 N.H. LEXIS 134 and is reprinted in the Appendix to this Petition (“App.”) at App. 1a. The order of the Superior Court denying summary judgment for petitioner and granting summary judgment for respondent is not reported and is reprinted in the Appendix at App. 41a.

## **JURISDICTION**

The judgment of the New Hampshire Supreme Court was entered on December 29, 2015. This Court’s jurisdiction is invoked under 28 U.S.C. § 1257(a).

## **CONSTITUTIONAL PROVISIONS AND STATUTORY PROVISIONS INVOLVED**

The Contract Clause in Article I, Section 10 of the Constitution provides: “No state shall ... pass any ... law impairing the obligation of contracts.” U.S. Const. art. I, § 10.

The Equal Protection Clause of the Fourteenth Amendment provides: “[N]or shall any State ... deny

to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1.

The Supremacy Clause of the Constitution provides: "This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." U.S. Const. art. VI, cl. 2.

The Federal Arbitration Act provides in pertinent part: "A written provision in any ... contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

Relevant portions of the Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers, N.H. Rev. Stat. Ann. ch. 357-C, as amended in 2013 by SB 126, are reproduced in the Appendix. App. 80a.

Relevant portions of the Regulation of Equipment Dealers, N.H. Rev. Stat. Ann. ch. 347-A, are reproduced in the Appendix. App. 102a.

## INTRODUCTION

This case raises issues of great importance about judicial review of state legislation. In affirming the constitutionality of legislation enlarging the scope of New Hampshire's motor vehicle dealership statute – known as the Automobile Dealer Bill of Rights – to reach yard and garden equipment dealers, the New Hampshire Supreme Court invented a new test for evaluating a statute under the Contract Clause, refused to consider evidence of arbitrary and irrational classification under the Equal Protection Clause, and ignored the legislation's conflict with the Federal Arbitration Act under the Supremacy Clause. If allowed to stand, the court's decision will provide a roadmap for other state courts on how to sidestep the constitutional analysis mandated by this Court when addressing challenges to protective economic regulation.

**Related Case.** Deere & Company, CNH America LLC and AGCO Corporation, parties to the consolidated appeals below, filed a motion with this Court on March 3, 2016 to stay enforcement of the same judgment which is the subject of this Petition, docketed as *Deere & Co. et al. v. State of New Hampshire*, No. 15A-910, and they will be filing contemporaneously with Husqvarna a petition for certiorari seeking review of the New Hampshire Supreme Court's disposition of their claims.

## STATEMENT OF THE CASE

### A. Statutory Background.

Husqvarna manufactures yard and garden equipment. It sells lawn mowers, snow throwers, trimmers, chainsaws and other yard and garden equipment through independent dealers and national retail chains, including Lowe's, Home Depot and Sears. Dealers handle multiple brands of products, including competitive brands, and they do not make any financial investments to carry Husqvarna products beyond purchase of products for resale.

Prior to 2013, Husqvarna's relationship with its more than 40 New Hampshire dealers was subject to the terms of dealer contracts and an equipment dealer statute, N.H. Rev. Stat. Ann. ch. 347-A ("Equipment Dealer Act"), which governed relationships between manufacturers and dealers of "yard and garden equipment" (N.H. Rev. Stat. Ann. § 347-A-1(II)).

The Equipment Dealer Act required good cause for termination, inventory repurchase after termination, and processing of warranty claims within 30 days. It was repealed by Senate Bill 126 ("SB 126"), signed into law on June 25, 2013. SB 126 also amended the State's motor vehicle dealer statute, N.H. Rev. Stat. Ann. ch. 357-C ("Dealership Act"), known as the Automobile Dealer Bill of Rights. Husqvarna and other manufacturers that had previously been within the coverage of the Equipment Dealer Act were now, by operation of the

amendment, subject to the Dealership Act. Under the Dealership Act, the definition of “motor vehicle” was enlarged to include “yard and garden equipment.” (N.H. Rev. Stat. Ann. § 357-C:1(I).)

Repeatedly amended since its initial passage in 1981, the Dealership Act regulates every aspect of a motor vehicle manufacturer’s relationship with its dealers. By moving Husqvarna into the Dealership Act, SB 126 nullified key provisions of its dealer contracts, all of which had been compliant with requirements of the now-repealed Equipment Dealer Act. Immediate termination of a dealer for fraud is no longer possible, and any termination, for fraud or otherwise, now requires a prior factual finding of good cause by an administrative agency, the Motor Vehicle Industry Board. Husqvarna’s contractual right to add dealers to a market area has been voided, and any change affecting intrabrand competition is now subject to a prior factual finding of good cause by the Motor Vehicle Industry Board. SB 126 voided Husqvarna’s right to set reimbursement rates for warranty service performed by dealers. It has effectively destroyed Husqvarna’s arbitration rights by requiring that all dealer disputes be adjudicated by the Motor Vehicle Industry Board.<sup>1</sup>

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<sup>1</sup> A complete listing of contractual provisions that are nullified by SB 126 appears in the August 6, 2014 summary judgment opinion of the Superior Court. App. 48a-51a.

## **B. New Hampshire Proceedings.**

Husqvarna filed a complaint on March 20, 2014 in the Merrimack County, New Hampshire Superior Court against the State of New Hampshire, seeking a declaration that (1) application of the Dealership Act to existing dealer contracts would substantially impair contract rights in violation of the Contract Clauses of the New Hampshire and U.S. Constitutions, (2) application of the Dealership Act to Husqvarna would violate its rights under the Equal Protection Clause of the U.S. Constitution and (3) the Dealership Act violates the Supremacy and Dormant Commerce Clauses of the U.S. Constitution. App. 43a-44a. Husqvarna filed a motion for summary judgment, and the State thereafter filed a cross-motion for summary judgment.

The Superior Court granted the State's motion and denied Husqvarna's motion in an August 6, 2014 Order.<sup>2</sup> It held that SB 126 did not substantially impair Husqvarna's contract rights in violation of either the New Hampshire or U.S. Constitutions (App. 43a-52a, 56a-57a); did not deprive Husqvarna of equal protection under the Fourteenth Amendment to the U.S. Constitution (App. 52a-54a, 57a); and did not violate the Supremacy Clause of

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<sup>2</sup> The Superior Court agreed that the Dealership Act's prohibition of arbitration was a violation of the Supremacy Clause, App. 52a, but it declined to enter judgment for Husqvarna on any of the counts in its complaint, including Count II, which alleged that this feature of the Dealership Act was unconstitutional, App. 56a-57a.

the U.S. Constitution, since provisions in SB 126 prohibiting arbitration could be severed from the statute (App. 52a).

Husqvarna filed an appeal in the New Hampshire Supreme Court on all issues decided by the Superior Court, which was consolidated with two other appeals challenging the constitutionality of SB 126 under the Contract Clauses of the New Hampshire and U.S. Constitutions and the Supremacy Clause of the U.S. Constitution, *Deere & Co. et al. v. State of New Hampshire*, No. 2014-0315, and *Kubota Tractor Corp. v. State of New Hampshire*, No. 2014-0441. App. 1a, 3a. In a December 29, 2015 opinion, the New Hampshire Supreme Court affirmed the Superior's Court's August 6, 2014 in all respects relevant to this Petition. App. 7a-32a, 39a-40a.<sup>3</sup>

**Contract Clause Claim.** Husqvarna argued in the New Hampshire courts that retroactive application of SB 126 would violate the Contract Clauses of both the New Hampshire and U.S. Constitutions. The New Hampshire Supreme Court assumed that SB 126 substantially impaired Husqvarna's contracts, App. 15a, but it held that retroactive application was permitted because SB 126 had a significant and legitimate public

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<sup>3</sup> The New Hampshire Supreme Court vacated the Superior Court's summary judgment for the State on Husqvarna's Dormant Commerce Clause claim and remanded for fact-finding on whether SB 126 unconstitutionally burdened interstate commerce. App. 32a-39a. Husqvarna has since dismissed the Commerce Clause claim, App. 58a-59a, and it is not before this Court or the New Hampshire courts.

purpose, App. 16a, and because including equipment manufacturers within the Dealership Act was a reasonable and necessary way to address that purpose – *i.e.*, to prevent equipment manufacturers from engaging in abusive and oppressive trade practices, App. 25a. The court held that there was no violation of the Contract Clause under the New Hampshire Constitution. App. 26a. Since the Contract Clause of the U.S. Constitution affords no greater protection than does that of the New Hampshire Constitution, the court held that “we reach the same conclusion under the Federal Constitution as we do under the State Constitution.” *Id.*

*Significant and legitimate public purpose.*

Relying on a student law review note and a law school hornbook, the court held that rational basis was the standard for reviewing whether the Legislature had a significant and legitimate public purpose. App. 22a. It declined to examine any of Husqvarna’s proof, since “it is not our role to second-guess this legislative determination.” *Id.* Quoting from one of this Court’s decisions evaluating an Equal Protection challenge to federal legislation,<sup>4</sup> the court stated that it will uphold a legislative choice based on “rational speculation.” App. 22a-23a.

The court relied solely on a May 22, 2013 entry in the House Journal to divine the purpose of SB 126. App. 15a-16a. The entry is taken verbatim from the

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<sup>4</sup> *FCC v. Beach Communications, Inc.*, 508 U.S. 307 (1993).

May 16, 2013 Majority Report of the House Commerce and Consumer Affairs Committee, titled "Statement of Intent,"<sup>5</sup> and it will be referred to herein as the Statement of Intent. The court summarized the legislative findings as follows, quoting from the Statement of Intent:

The legislature deemed such protection necessary because it considered the "relationship between equipment dealers and manufacturers" to be "identical to that [between] car/truck dealers" and car/truck manufacturers. ... The legislature determined that "[e]quipment dealers ... have business operations that are nearly identical in all respects to car/truck/motorcycle etc. dealers." ... The legislature further found that equipment dealership agreements, like automobile dealership agreements, had been "one-sided" and reflected that the dealers and manufacturers had "an autocratic relationship." ... It concluded that equipment manufacturers, like automobile manufacturers previously, "were abusing their power in the relationship" and that New Hampshire "businesses and consumers were being harmed as a result."

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<sup>5</sup> The Majority Committee Report is reproduced at App. 105a-108a. The May 22, 2013 House Journal entry, N.H.H.R. Jour. 765, is reproduced at App. 109a-11a.

App. 15a-16a.(citations omitted).

The Statement of Intent showed, according to the court, that the purpose of SB 126 was “to protect equipment dealers and consumers from perceived abusive and oppressive acts by manufacturers.” App. 16a. This was “unquestionably” a significant and legitimate public purpose. *Id.*

The court acknowledged that Husqvarna contended that there was no such purpose, because a crucial legislative finding – *i.e.*, that the relationship between yard and garden equipment dealers and manufacturers is identical to that between car/truck dealers and manufacturers – “is unsupportable and made in an ‘evidentiary vacuum.’” App. 22a. The finding was based on testimony and evidence from automobile dealers for Ford, Honda, Chevrolet and others, the New Hampshire Automobile Dealers Association (“NHADA”) and farm equipment dealers for Case, New Holland, Case IH and Massey Ferguson, not any dealers of yard and garden equipment. App. 113a-15a.

The legislative findings were false and groundless as to Husqvarna. Husqvarna showed that the Legislature had not considered any facts about yard and garden equipment dealers, App. 113a-15a, 122a-24a, and that it therefore could not possibly have found that the relationship of a yard and garden equipment manufacturer with its dealers was identical, or even similar, to that between car/truck

dealers and manufacturers.<sup>6</sup> The Legislature heard testimony from farm equipment dealers and may have concluded that manufacturers of large farm equipment, such as balers and combines, should be subject to the Dealership Act because of similarities between automobile dealerships and farm equipment dealerships, App. 113a-15a, 122a-24a, but it had no information about dealers selling lawn mowers and snow throwers.

Husqvarna's undisputed evidence showed that yard and garden equipment dealers have none of the characteristics identified by the Legislature as making automobile dealers vulnerable to manufacturer actions, App. 115a-19a, 122a-24a:

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<sup>6</sup> Excerpts from Husqvarna's main brief in the New Hampshire Supreme Court discussing the Legislative record and the absence of any consideration of the yard and garden equipment industry are reproduced in Appendix I.

| <b>Key Attributes of Automobile Dealers as Identified by Legislature</b> | <b>Corresponding Attributes of Husqvarna Dealers</b>                                       |
|--------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Significant investment required in manufacturer's brand                  | No significant investment in petitioner's brand, dealer discretion what investment to make |
| A single line supplier and no competitive lines                          | Multiple suppliers and competitive lines                                                   |
| Cannot switch to another supplier                                        | No limitation on switching to another supplier                                             |
| Mandatory investment in expensive facility upgrades                      | No mandatory investment in facility upgrades                                               |

*Reasonableness and Necessity.* The court held that SB 126 “plainly survives scrutiny” under the “standards for evaluating impairments of purely private contracts.” App. 24a (quoting *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 506 (1987)). According to the court, the provisions of the Dealership Act covering equipment manufacturers “reasonably accomplish the legislature’s goal of preventing equipment manufacturers from engaging in abusive and oppressive trade practices.” App. 25a.

Because the contracts at issue are private, the court refused to “second-guess” the Legislature’s determination that “including equipment manufacturers within the aegis of RSA chapter 357-C was a reasonable and necessary way to address its concern.” *Id.* (quoting *Keystone Bituminous Coal Ass’n*, 480 U.S. at 506). The court stated that the Legislature had determined that equipment manufacturers must be subjected “to the same level of regulation that it imposes upon automobile manufacturers.” App. 24a.

**Equal Protection Clause Claim.** The court purported to apply rational basis review to Husqvarna’s argument that classification of Husqvarna as a motor vehicle dealer was arbitrary and irrational. App. 30a-32a. Quoting from *Armour v. City of Indianapolis*, 132 S. Ct. 2073 (2012), the court followed the same analysis that it used to dispose of the Contract Clause claim. App. 31a-32a. According to the court, “a law [is] constitutionally valid if there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render [the classification] arbitrary or irrational.” App. 31a (quoting *Armour*, 132 S. Ct. at 2080-81).

The evidence showed that SB 126 as applied to Husqvarna suffered from exactly the failing listed in the court’s quote: The legislative “facts” upon which the classification is based could not rationally have been considered to be true by the Legislature. The

evidence tendered by Husqvarna showed that the Statement of Intent was false and unsupported by even a single word of testimony as to yard and garden equipment, but the court refused to look behind the text. Ignoring the evidence, it engaged in *no review*, much less rational basis review.

**Supremacy Clause Claim.** Chapter 357-C authorizes the Motor Vehicle Industry Board to decide disputes between a dealer and a manufacturer. The statute gives a dealer the right to appeal to the Board in the event of any dispute as to the results of a warranty claim audit (§ 357-C:5(II)(d)(5)), any attempt by a manufacturer to terminate or not renew the dealer agreement (§ 357-C:7), or any attempt by a manufacturer to add a dealer to the dealer's market area (§ 357-C:9).

Husqvarna sought a declaration under Count II of its complaint that the foregoing and other provisions are preempted by the Supremacy Clause because they conflict with the Federal Arbitration Act. Husqvarna requested that the trial court and the New Hampshire Supreme Court rule "that a dealer with an agreement containing an arbitration clause ... may not resort to the Board for resolution of any dispute arising under or in connection with the dealer relationship." App. 29a-30a, 124a-25a. The trial court did not address the request in its August 6, 2014 summary judgment ruling. App. 52a. The New Hampshire Supreme Court declined the request "without prejudice to Husqvarna raising this argument in any future litigated case between it and a dealer." App. 30a.

## REASONS FOR GRANTING THE PETITION

### **I. The New Hampshire Supreme Court's Ruling Directly Conflicts With Decisions of This Court and a Contract Clause Decision of the Highest Court of Another State.**

The New Hampshire Supreme Court's ruling directly conflicts with decisions of this Court applying the Contract Clause and Equal Protection Clause and interpreting the Supremacy Clause as applied to the Federal Arbitration Act. It directly conflicts with a decision by the Wisconsin Supreme Court applying the Contract Clause.

### **A. The New Hampshire Supreme Court's Ruling Conflicts With This Court's Contract Clause Decisions and with a Contract Clause Decision of the Wisconsin Supreme Court.**

This Court has clearly staked out the steps needed for evaluation of a Contract Clause claim. If a state law substantially impairs vested contract rights, as SB 126 does, the state "must have a significant and legitimate public purpose behind the regulation, ... such as the remedying of a broad and general social or economic problem." *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411-12 (1983). Identification of such a purpose "guarantees that the State is exercising its police power, rather than providing a benefit to special interests." *Id.* at 412 (footnote omitted).

Once such a public purpose has been identified, the next inquiry is whether impairment is “both reasonable and necessary” to serve the purpose claimed by the State. *United States Trust Co. v. New Jersey*, 431 U.S. 1, 29 (1977). Where, as here, a statute “nullifies express terms of ... [a] company’s contractual obligations and imposes a completely unexpected liability,” there must be a showing in the record that the “severe disruption of contractual expectations was necessary to meet an important general social problem.” *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 247 (1978).

Instead of following this analytical framework, the New Hampshire Supreme Court invented its own. Since, in the court’s judgment, review of a Contract Clause claim involving private contracts is “similar” to “rational basis review in the equal protection or due process context,” it determined that it could “uphold a legislative choice ‘based on rational speculation.’” App. 22a (quoting *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993)). Relying upon unsupported findings in the Legislature’s Statement of Intent, the court concluded that SB 126 had a significant and legitimate public purpose and rejected any review of the findings. It accepted them as true, because “it is not our role to second-guess” the Legislature’s determination. App. 22a.

The court was careful to distinguish review of legislation impairing private contracts from review of legislation impairing a State’s own contracts or those in which a State’s self-interest is at stake.

App. 23a-24a. Its newly-invented rational basis test applies only to private contracts.

The court's analysis directly conflicts with decisions of this Court and a decision of the Wisconsin Supreme Court and, if allowed to stand, would effectively immunize from Contract Clause review state legislation impairing private contract rights.

First, rational basis review has no place in Contract Clause analysis. There is no hint in the Court's Contract Clause decisions that rational basis review has any role to play, and it emphatically does not. The Court made this clear in *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717 (1984), when it rejected an invitation to apply Contract Clause principles in a due process challenge to retroactive application of federal pension legislation:

We have never held ... that the principles embodied in the *Fifth Amendment's Due Process Clause* are coextensive with prohibitions existing against state impairments of pre-existing contracts. ... Indeed, to the extent that recent decisions of the Court have addressed the issue, we have contrasted the limitations imposed on States by the *Contract Clause* with the less searching standards imposed on economic legislation by the Due Process Clauses.

*Id.* at 733 (italics in original). Consistently with this distinction, the Court of Appeals for the Third Circuit has noted that Contract Clause review of legislative action impairing vested contract rights “is more exacting than the rational basis standard applied in due process analysis.” *American Express Travel Related Services, Inc. v. Sidamon-Eristoff*, 669 F.3d 359, 369 (3d Cir. 2012). *See also, e.g., Lipscomb v. Columbus Municipal Separate School District*, 269 F.3d 494, 504 (5th Cir. 2001) (“And while impairment of contract analysis has an air of due process about it, our analysis [under the Contract Clause] is distinct.”).

The Wisconsin Supreme Court considered in *Society Insurance v. Labor & Industry Review Commission*, 326 Wis. 2d 444 (2010), the difference between rational basis review of a retroactive statute and Contract Clause review, and its examination is instructive here. The Wisconsin due process clause is substantially equivalent to the Due Process Clause in the Fourteenth Amendment, *id.* at 465 n.11, and Wisconsin interprets state and federal Contract Clauses “coextensively,” *id.* at 479. At issue was a law repealing a statute of limitations for payment of worker compensation benefits. Society, an insurer, challenged retroactive application on both due process and Contract Clause grounds after it was required to pay for claims falling outside the original limitations period.

The court concluded that the retroactive statute violated Society’s due process rights because it did not have a “rational basis.” *Id.* at 466, 477 (citations omitted). In order to show a rational basis, the law

must have a "rational legislative purpose" that outweighs "the private interests ... overturn[ed]" by the legislation. *Id.* at 467 (citations omitted). The court rejected an argument that proof of a "significant and legitimate public purpose" was needed, because this would "improperly subject ... the retroactive legislation to a heightened level of scrutiny." *Id.* at 468 n.12 (citation omitted).

In contrast, the court applied a heightened level of scrutiny when considering whether retroactive application violated Society's rights under the Contract Clause. It observed that "the level of scrutiny to which the legislation is subjected" depends on how severely the contractual relationship has been impaired. *Id.* at 479 (citations omitted). Because the law created a substantial impairment, it was "subject to heightened scrutiny," and, as a result, "there must exist a significant and legitimate public purpose behind the legislation." *Id.* at 483. Since the court had already concluded that the law could not be "justified by a rational legislative purpose" under due process analysis, it could not, *a fortiori*, be "justified by a significant and legitimate public purpose." *Id.* at 483. Retroactive application, thus, violated the Contract Clause.

The Wisconsin Supreme Court's analysis conforms to this Court's recognition of the need for heightened scrutiny in the face of substantial impairment: "The severity of impairment measures the height of the hurdle the state legislation must clear. ... Severe impairment ... will push the inquiry to a careful examination of the nature and purpose of the state legislation." *Allied Structural Steel Co.*,

438 U.S. at 245. *See also, e.g., Lipscomb*, 269 F.3d at 505 (“The level of scrutiny to which a court subjects state law is proportional to the degree of impairment.” (footnote omitted; citing *Allied Structural Steel Co.*)).

Unlike this Court and the Wisconsin Supreme Court, the New Hampshire Supreme Court was oblivious to the crucial distinction between rational basis review and Contract Clause review. When, as here, a law nullifies vested contract rights, Contract Clause analysis requires more than uncritical acceptance of self-serving legislative findings, and the lower court abdicated its constitutional duty under the Contract Clause to determine whether there was in fact a significant and legitimate public purpose for SB 126.

Second, the New Hampshire court’s holding conflicts with this Court’s insistence upon review of the legislative record in Contract Clause cases. In *Allied Structural Steel Co.*, the Court looked at a statute impairing rights under private employment contracts. The statute retroactively subjected the petitioner to a substantial pension funding charge when it determined to close its Minnesota office. 438 U.S. at 246-47. This Court stressed that such a “[s]evere impairment” of a contractual relationship necessitates “a *careful examination of the nature and purpose of the state legislation.*” *Id.* at 245 (emphasis added).

Explaining that the statute “nullifies express terms of the company’s contractual obligations and imposes a completely unexpected liability,” *id.* at

247, the Court looked to the legislative purpose for justification. It considered evidence “of legislative intent *in the record before us*,” *id.* (emphasis added), and concluded that there was a complete failure of proof of any necessity for the statute: “[T]here is no showing *in the record before us* that this severe disruption of contractual expectations was necessary to meet an important general social problem.” *Id.* at 247 (emphasis added).

This Court has repeatedly looked to the legislative record to understand the purpose and necessity for a state law under the Contract Clause. *See, e.g., Keystone Bituminous Coal Ass’n*, 480 U.S. at 486 n.14, 506 (considering legislative findings about the need for passage of a statute impairing contract rights); *Energy Reserves Group*, 459 U.S. at 417 n.25 (considering legislative history but finding that it was not dispositive on the question of whether a statute was special interest legislation); *United States Trust Co.*, 431 U.S. at 13-14 (considering circumstances of passage of New Jersey and New York statutes repealing contractual obligation to bondholders). *See also, e.g., Equipment Manufacturers Institute v. Janklow*, 300 F.3d 842, 861 (8th Cir. 2002) (holding that “the sparse legislative history” reinforced the conclusion that the purpose of an equipment dealer statute was to “change the obligations of the manufacturers and dealers”); *McDonald’s Corp. v. Nelson*, 822 F. Supp. 597, 608 (S.D. Iowa 1993) (reviewing committee testimony and other legislative history to determine purpose of statute), *aff’d sub nom. Holiday Inns*

*Franchising, Inc. v. Branstad*, 29 F.3d 383 (8th Cir. 1994).

The New Hampshire Supreme Court refused to engage in any analysis of the legislative record, relying solely on the Statement of Intent.<sup>7</sup> If it had, it would have seen that findings in the Statement of Intent were pure invention – that is, there was no record at all – as applied to the relationship between yard and garden equipment dealers and manufacturers.

Third, the court's ruling conflicts with this Court's decisions recognizing the imperative for review of legislative findings when constitutional rights are at issue. The New Hampshire court's default to a "rational speculation" standard barred Husqvarna from demonstrating the fallacy of the very legislative findings relied upon by the court. Such a standard nullifies any inquiry, let alone review. There is nothing in this Court's case law to suggest that Contract Clause analysis can be satisfied by reliance upon demonstrably false legislative rationalizations.

Legislative findings are not holy writ, and a court "retains an independent constitutional duty to

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<sup>7</sup> The New Hampshire court held that it could review legislative history in determining whether SB 126 had a significant and legitimate public purpose, observing that it is not "precluded from examining a statute's legislative history when analyzing whether it offends the State or Federal Contract Clause." App. 21a-22a. It then failed to do so, except to lift quotes from the Statement of Intent.

review [legislative] factual findings where constitutional rights are at stake.” *Gonzales v. Carhart*, 550 U.S. 124, 165 (2007) (citing *Crowell v. Benson*, 285 U.S. 22, 60 (1932) (“In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function.”)). This Court noted in *Gonzales* that findings recited in the Partial-Birth Abortion Ban Act of 2003 were incorrect and that it would not, therefore, uphold the Act on the basis of congressional findings alone. 550 U.S. at 165. Even though a court reviews “congressional factfinding under a deferential standard,” *id.*, there are limits. When “some recitations in the Act are factually incorrect, ... [u]ncritical deference to Congress’ factual findings ... is inappropriate.” *Id.* at 165-66. See also *United States v. Morrison*, 529 U.S. 598, 615 (2000) (rejecting congressional findings “that gender-motivated violence affects interstate commerce” because “they rely so heavily on a method of reasoning that we have already rejected as unworkable”).

The same treatment of legislative findings should have been followed by the New Hampshire Supreme Court. Instead, it refused to consider evidence that would have demonstrated that the Legislature’s findings were false. While this Court has cautioned that courts should ordinarily defer to legislative judgment as to the necessity and reasonableness of a particular measure, *Energy Reserves Group*, 459 U.S. at 412, there is nothing in this Court’s decisions

that would approve the New Hampshire court's approach -- *forgoing any review of legislative findings*.

Fourth, the court's decision conflicts with this Court's decisions holding that retroactive legislation can be justified only if needed to meet an important general social problem. Failure by the New Hampshire court to consider the record tendered by Husqvarna blinded it to the fact that SB 126 is precisely the type of narrow special interest legislation condemned by this Court under the Contract Clause. It is not "necessary to meet an important general social problem," *Allied Structural Steel Co.*, 438 U.S. at 247, or remedy "a broad and general social or economic problem," *Energy Reserves Group*, 459 U.S. at 412. The Legislature stated explicitly that SB 126 was enacted for protection of a narrow sector of the economy: it "seeks to continue to level the playing field for NH businesses." App. 106a, 109a (emphasis added). The New Hampshire Supreme Court's opinion carefully omitted any mention of this purpose.

Statutes purporting to "level the playing field" between manufacturers and dealers or equalize bargaining power between private contracting parties are paradigmatic special interest laws. They have repeatedly been held insufficient to justify retroactive impairment of contract rights. *E.g.*, *Equipment Manufacturers Institute*, 300 F.3d at 861 ("leveling the playing field between contracting parties is expressly prohibited as a significant and legitimate public interest" (footnote omitted)); *Pepsico, Inc. v. Marion Pepsi-Cola Bottling Co.*, 2003

U.S. Dist. LEXIS 20060, at \*20 (S.D. Ill. 2003) (“In spite of the general proclamations in the Act that it is for the public good, careful analysis of the Act’s provisions leads to only one conclusion: it serves the private interest to one party in a contractual relationship by attempting to level the playing field, and it does nothing to promote the greater good of society.”); *Kendall-Jackson Winery, Ltd. v. Branson*, 82 F.Supp.2d 844, 876 (N.D. Ill. 2000) (“to the extent that the retroactive imposition of the good-faith requirement was intended to adjust contractual obligations retroactively to give one party what it was unable to obtain through negotiations at the time of contracting, the Act would seem not only unconstitutionally to impair the parties’ contractual relationships but to have done so intentionally”); *McDonald’s Corp.*, 822 F.Supp. at 608-09 (“the articulated overall purpose of the Act is specifically to adjust the balance of power between contracting parties,” but the importance of franchising to the Iowa economy “does not supply a broad societal interest justifying the substantial impairment of *existing* contracts” (emphasis in original)).

Stressing that the contracts affected by SB 126 were “purely private,” the New Hampshire court looked no further than the Statement of Intent to conclude that SB 126 “plainly survives scrutiny” as a reasonable and necessary way to address the legislative goal of preventing equipment manufacturers from engaging in abusive and oppressive trade practices. App. 24a. Husqvarna’s evidence showed that, on the contrary, impairing its dealer contracts would address no important general

social problem or advance any "broad societal interest." *Exxon Corp. v. Eagerton*, 462 U.S. 176, 191 (1983). It showed that the Legislature was not exercising its police power but was instead "providing a benefit to special interests." *Energy Reserves Group*, 459 U.S. at 412.

### **B. The New Hampshire Supreme Court Ruling Conflicts with This Court's Equal Protection Clause Decisions.**

Husqvarna showed that its classification as a motor vehicle manufacturer was arbitrary and irrational and a violation of its rights under the Equal Protection Clause. Borrowing from its Contract Clause analysis, the New Hampshire Supreme Court held, however, that Husqvarna had failed to prove that the classification "is not rationally related to the legislature's legitimate purpose of protecting the dealers of such equipment from perceived abusive and oppressive acts by manufacturers." App. 32a. It was able to arrive at this conclusion only by denying Husqvarna any review of the record at all, much less review satisfying the rational basis test.

Even under comparatively forgiving rational basis review, a classification is unconstitutional if, "in light of the facts known or generally assumed[,] it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators." *Armour*, 132 S. Ct. at 2080. It is unconstitutional, likewise, if "the relationship of the classification to its goal is ... so attenuated as to render the

distinction arbitrary or irrational.” *Id.* The court’s acceptance of the self-serving Statement of Intent and refusal even to consider evidence demonstrating its falsity directly conflict with this Court’s decisions on rational basis review under the Equal Protection Clause.

This is not a case in which a court is free to speculate about a rational basis for state legislation. While the Court has noted that there is no requirement that a legislature “actually articulate at any time the purpose or rationale supporting its classification,” *Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992), the New Hampshire Legislature did exactly that in the Statement of Intent. Based on testimony from or about farm equipment dealers,<sup>8</sup> it subjected equipment manufacturers to the Dealership Act because their relationship with dealers “is identical to that of car/truck dealers” and the business operations of equipment dealers “are nearly identical in all respects to car/truck/motorcycle etc. dealers.” App. 106a. SB 126 “seeks to continue to level the playing field for NH businesses and ensure consumer interests are safeguarded as well.” *Id.* There is, thus, no room for speculation about the purpose for SB 126.

Husqvarna’s undisputed record evidence showed that these legislative findings, based exclusively on testimony regarding farm equipment manufacturers,

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<sup>8</sup> The Superior Court pointed to some of this testimony in its April 15, 2014 order in *Deere & Co. v. State of New Hampshire* granting the State’s motion for summary judgment. App. 73a-74a.

were false and groundless as applied to yard and garden equipment manufacturers and that Husqvarna's inclusion in the Dealership Act was therefore arbitrary and irrational. The evidence "precluded any plausible inference that the reason" for inclusion of Husqvarna in the Dealership Act was to achieve the purpose articulated by the Legislature, *Nordlinger*, 505 U.S. at 16, and there is no latitude for speculation about other possible purposes for SB 126. Since the Legislature "specifically declared ... [its] purpose, ... [there is] no room to conceive of any other purpose." *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 530 (1959) (discussing *Wheeling Steel Corp. v. Glander*, 337 U.S. 562 (1949)).

Even under the rational basis test, this Court's decisions contemplate *some review*. The "rational-basis standard is 'not a toothless one,'" *Schweiker v. Wilson*, 450 U.S. 221, 234 (1981), but the New Hampshire court treated it that way. Faced with record evidence that the Statement of Intent was false and groundless, the court had a duty to consider the evidence.<sup>9</sup> See, e.g., *Gonzales*, 550 U.S. at 165 (a court "retains an independent constitutional duty to review [legislative] factual findings where constitutional rights are at stake"); *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 51-52 (1936) ("Legislative declaration or finding is necessarily subject to independent judicial review

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<sup>9</sup> The court acknowledged that Husqvarna contended that a key finding in the Statement of Intent was "unsupportable and was made in an 'evidentiary vacuum,'" but it refused to "second-guess this legislative determination." App. 22a.

upon the facts and the law by courts of competent jurisdiction to the end that the Constitution as the supreme law of the land may be maintained.”).

The relevant inquiry for Equal Protection analysis is whether action taken by the Legislature – defining “motor vehicle” in a way that swept yard and garden equipment manufacturers into the Dealership Act – was “rationally related to the ... avowed purpose” of the legislation. *Armour*, 132 S. Ct. at 2084. It was not. A plaintiff may “negate a seemingly plausible basis for the law by adducing evidence of irrationality,” *St. Joseph Abbey v. Castille*, 712 F.3d 215, 223 (5th Cir. 2013) (footnote omitted), and Husqvarna did just that. The New Hampshire Supreme Court’s refusal to consider legislative history other than the veneer of afterthought “purpose” recitations in the Statement of Intent conflicts with this Court’s Equal Protection Clause decisions and constitutes exactly the kind of “judicial blindness to the history of a challenged rule or the context of its adoption” that defeats any meaningful rational basis review. *Id.* at 226.

**C. The New Hampshire Supreme Court’s Ruling Conflicts with This Court’s Decision in *Preston v. Ferrer*, Holding that a State Law Lodging Primary Jurisdiction in an Administrative Agency Is Superseded by the Federal Arbitration Act.**

The Dealership Act, as amended by SB 126, makes it an unfair method of competition for a manufacturer to require that a dealer submit

disputes to arbitration (N.H. Rev. Stat. Ann § 357-C:3(III)(p)(3)) and prohibits inclusion of an arbitration clause in a new dealership agreement (N.H. Rev. Stat. Ann. § 357-C:6(III)). The New Hampshire Supreme Court, affirming the trial court's determination that the provisions conflicted with the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.* ("FAA"), held that they could be severed from the Dealership Act. App. 28a. The court failed to address, however, Husqvarna's contention that remaining provisions in the Dealership Act, giving the Motor Vehicle Industry Board jurisdiction to decide disputes between a dealer and manufacturer, were unconstitutional under the Supremacy Clause insofar as they would require disputes to be decided by the Board even for dealers with agreements containing arbitration clauses. The Court observed that Husqvarna could raise the contention "in any future litigated case between it and a dealer." App. 30a.

The issue was ripe for decision, and the State of New Hampshire at no time argued that the issue was not justiciable under the New Hampshire declaratory judgment statute. N.H. Rev. Stat. Ann. § 491:22.

The Dealership Act authorizes the Motor Vehicle Industry Board to decide disputes between a dealer and a manufacturer. It gives a dealer the right to appeal to the Board in the event of a dispute as to the amount of a chargeback resulting from a manufacturer's audit of warranty claims (§ 357-C:5(II)(d)(5)); in the event of any attempt by a manufacturer to terminate or not renew the dealer

agreement (§ 357-C:7); or in the event of any attempt by a manufacturer to add a dealer to the dealer's market area (§ 357-C:9). Regulations issued by the Board also provide for hearings concerning rights of survivorship and association, discounts offered to dealers, and other matters not explicitly addressed in the Dealership Act. (N.H. Code Admin. Rules, Mvi 209.04, 209.06, 209.08-.09.)<sup>10</sup> Section 357-C:12(IX) gives a dealer the right to bring a civil action in superior court for any violation of the statute. Except for such civil actions, the Board has "exclusive powers" to hear any protest "complaining of conduct governed by and violative of this chapter." (§ 357-C:12(II).)

The vast majority of Husqvarna's New Hampshire dealers have arbitration clauses in their agreements with Husqvarna. App. 127a-29a. The foregoing statutory provisions give them the right to submit disputes to the Motor Vehicle Industry Board, however, and Section 357-C:12(II) makes it clear that the Board has exclusive jurisdiction to hear and decide any disputes.

It was error for the New Hampshire court not to hold that the Supremacy Clause preempts any statutory right of resort to the Motor Vehicle Industry Board by a dealer whose contract with Husqvarna contains language requiring arbitration of "[a]ny dispute arising out of or relating to this Agreement." App. 128a. Its failure to do so directly

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<sup>10</sup> In the interest of not further burdening the record, the text of the regulations has not been reproduced in the Appendix.

conflicts with this Court's decision in *Preston v. Ferrer*, 552 U.S. 346 (2008). The Court there considered a requirement under the California Talent Agencies Act that any dispute between a licensed talent agent and a client be submitted to the California Labor Commissioner for determination. The contract between an agent, Arnold Preston, and his client, Alex Ferrer, provided for arbitration. In response to Preston's demand for arbitration of a fee dispute, Ferrer filed a petition with the Labor Commissioner and thereafter filed an action seeking a declaration that the contract was not subject to arbitration. The California Court of Appeal ruled that the Labor Commissioner had exclusive original jurisdiction over the dispute, and the California Supreme Court denied Preston's petition for review.

This Court considered in *Preston* whether the FAA overrides "state statutes that refer certain disputes initially to an administrative agency," *id.* at 349, and it held that it does. The "FAA supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative," for parties who have agreed to arbitrate all questions arising under a contract. *Id.* at 359.

The Dealership Act imposes on Husqvarna the same administrative agency review that this Court invalidated in *Preston*, and the New Hampshire court's refusal to bar Motor Vehicle Industry Board review of disputes otherwise subject to arbitration directly conflicts with this decision. The Court should grant the Petition and declare that Board adjudication of disputes subject to arbitration is preempted by the Supremacy Clause.

## II. This Case Raises Matters of Great Importance and Urgency.

### A. Judicial Review of State Laws Impairing Contract Rights Is a Matter of Continuing Importance, and the New Hampshire Ruling, if Allowed to Stand, Would Gravely Compromise Protection of Private Contract Rights from Overreaching State Economic Legislation.

The constitutional rights secured by the Contract Clause are more important now than ever before. In the face of federal and state economic regulation growing more pervasive and intrusive, the prohibition of retroactive laws impairing the obligation of contracts has increasing significance. This Court has not recently interpreted the Contract Clause, but it is continuously under review in the federal courts of appeals<sup>11</sup> and state supreme courts.<sup>12</sup>

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<sup>11</sup> For recent decisions, see, e.g., *Powers v. United States*, 783 F.3d 570, 577-80 (5th Cir. 2015) (whether municipal ordinance impaired private contract); *Taylor v. City of Gadsden*, 767 F.3d 1124, 1133-36 (11th Cir. 2014) (whether change in pension contribution rate by city impaired contracts of city employees); *Cherry v. Mayor and City Council of Baltimore City*, 762 F.3d 366, 371-73 (4th Cir. 2014) (whether city's modification of pension plan gave rise to a claim under the Contract Clause); *Me. Ass'n of Retirees v. Bd. of Trustees of Me. Public Employees Ret. Sys.*, 758 F.3d 23, 29-32 (1st Cir. 2014) (whether Maine statute impaired claimed contractual right to cost of living adjustments for retirees); *Welch v. Brown*, 551 F. App'x 804, 810-12 (6th Cir. 2014) (whether city manager's orders

The Court should accept this case for review because the lower court has fashioned a rule for Contract Clause analysis that is dangerous and far-reaching, and the issue is clearly presented for review. The lower court's decision would effectively remove private contracts from Contract Clause protection.

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modifying contracts and collective bargaining agreements with respect to healthcare benefits of municipal retirees impaired their contract rights); *Am. Express Travel Related Servs. v. Sidamon-Eristoff*, 669 F.3d 359, 368-70 (3d Cir. 2012) (whether New Jersey statute reducing period after which travelers checks are deemed abandoned impaired American Express contract rights).

<sup>12</sup> For recent decisions, see, e.g., *Justus v. State of Colo.*, 336 P.3d 202, 207-11 (Colo. 2014) (whether Colorado statute changing formula for calculating annual cost of living adjustments for retirees in public employees' pension program violated the Colorado or U.S. Constitution Contract Clauses); *CDA Dairy Queen, Inc. v. State Ins. Fund*, 2013 Ida. LEXIS 111, at \*5-31 (Idaho 2013) (holding that court will apply federal Contract Clause principles when determining whether a statute violates state constitution prohibition against retroactive legislation); *In re Pension Reform Litig.*, 32 N.E.3d 1, 20-25 (Ill. 2015) (statute reducing retirement benefits of state funded retirement systems for public employees held unconstitutional under state and U.S. Constitutions); *Christiansen v. County of Douglas*, 288 Neb. 564, 576-85 (2014) (evaluating county resolution changing health insurance premium rates for retirees under state and U.S. Contract Clauses); *N. C. Ass'n of Educators v. North Carolina*, 776 S.E.2d 1, 8, 14-16 (N.C. Ct. App. 2015) (holding that repeal of statute establishing tenure for public teachers violated Contract Clause of U.S. Constitution), *pet. for review allowed*, 775 S.E.2d 831 (N.C. Aug. 20, 2015).

Retroactive legislation such as SB 126 “presents problems of unfairness ... [and] can deprive citizens of legitimate expectations and upset settled transactions.” *General Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992). It is the office of the Contract Clause to impose limits upon the power of a State to abridge existing contractual relationships, “even in the exercise of its otherwise legitimate police power.” *Allied Structural Steel Co.*, 438 U.S. at 242. The decision of the New Hampshire Supreme Court fatally vitiates the Contract Clause as applied to private contracts.

By substituting rational basis review for the scrutiny required by this Court’s Contract Clause decisions, and recognized by the Wisconsin Supreme Court in *Society Insurance*, the New Hampshire court has ensured that any legislative action destroying private contract rights will be validated if a court can merely point to legislative findings, or the text of the statute itself, reciting a significant and legitimate public purpose. Whether the findings or text are after-the-fact fabrications intended to justify legislative overreaching will not matter and will never be discovered. Any attempt to demonstrate, as here, that a statute addresses no important general social problem will be blocked.

If allowed to stand, the New Hampshire Supreme Court’s interpretation of this constitutional right may be followed by other courts, shielding from judicial review state legislative action impairing

private contracts.<sup>13</sup> It is precisely in the area of private contracts, however, that state legislatures may succumb to the lobbying power of well-organized private groups, like the NHADA, and enact laws giving their members contract rights they have been unable to negotiate on their own.

Husqvarna and other manufacturers of yard and garden equipment are already subject to statutes in more than 30 states regulating their relationships with dealers. The New Hampshire Legislature's decision to subject these relationships to a regulatory scheme for an industry – the manufacture and distribution of automobiles and trucks – bearing no resemblance to the outdoor power equipment industry is the first of its kind. App. 119a-22a. If the lower court's interpretation prevails, Husqvarna may find itself similarly hand-cuffed, and the Contract Clause stripped of any force or effect, in challenging retroactive application of comparably overreaching new laws in other states.

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<sup>13</sup> For representative cases in which impairment of private contract rights has been at issue, see, e.g., *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978); *Am. Express Travel Related Servs. v. Sidamon-Eristoff*, 669 F.3d 359 (3d Cir. 2012); *N. C. Ass'n of Educators v. North Carolina*, 776 S.E.2d 1 (N.C. Ct. App. 2015), *pet. for review allowed*, 775 S.E.2d 831 (N.C. Aug. 20, 2015); *Kirven v. Cent. States Health & Life Co.*, 409 S.C. 30 (2014); *Soc'y Ins. v. Labor & Indus. Review Comm'n*, 326 Wis.2d 444 (2010).

**B. Judicial Review of State Economic Legislation Is a Matter of Continuing Importance, and the New Hampshire Ruling, if Allowed to Stand, Would Remove This Legislation from Rational Basis Review.**

While purporting to apply rational basis review, the New Hampshire Supreme Court denied Husqvarna *any review*, refusing to look beyond glib assertions in the Statement of Intent. Even though it acknowledged that Husqvarna had assembled evidence showing that the legislative findings were false and groundless,<sup>14</sup> it would not consider the evidence. It is precisely this evidence that would have shown, however, that the classification of Husqvarna as a “motor vehicle” manufacturer “was not rationally related to the ... avowed purpose” for SB 126, *Armour*, 132 S. Ct. at 2084, and that the relationship of the classification to the purpose was “so attenuated as to render the distinction arbitrary ... [and] irrational,” *Nordlinger*, 505 U.S. at 11. The evidence would have shown that “the legislative facts on which the classification is ... based” could not rationally “have been considered to be true by the governmental decisionmaker,” *i.e.*, the Legislature. *Id.*

If allowed to stand, the New Hampshire court’s Equal Protection analysis could be followed by other courts to cut off any meaningful constitutional scrutiny of state economic legislation. There is no

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<sup>14</sup> See note 9 *supra*.

question, of course, that great deference is owed to state legislation not impinging on the rights of protected classes, but deference does not mean abject abdication.

Where, as here, the industry subjected to statutory regulation was not even considered by the legislature in the first place, its inclusion in the statute is the very definition of arbitrary and irrational. A legislative choice may not be "subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data," *Beach Communications, Inc.*, 508 U.S. at 315, but a court cannot refuse to weigh evidence showing that there is no "reasonably conceivable state of facts that could provide a rational basis for the classification," *id.* at 313.

This Court should reverse the New Hampshire Supreme Court's decision, because it would remove from Equal Protection review any state statute that was accompanied by legislative findings, no matter how pretextual or groundless, purporting to provide an explanation for a classification created by the statute.

**C. The Dealership Act's Motor Vehicle Industry Board Review Provisions Are Symptomatic of Continuing State Hostility to the National Policy Favoring Arbitration and Should Be Declared Unconstitutional.**

The FAA "reflects an emphatic federal policy in favor of arbitral dispute resolution," *Mitsubishi*

*Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985), and embodies a “national policy favoring arbitration,” *Nitro-Lift Technologies, L.L.C. v. Howard*, 133 S. Ct. 500, 501 (2012). Because state courts rather than federal courts are most frequently called upon to apply the FAA, it is “a matter of great importance ... that state supreme courts adhere to a correct interpretation of the legislation.” *Id.* The New Hampshire Supreme Court did not.

Prior to passage of SB 126, the Dealership Act’s provisions requiring submission of dealer disputes to the Motor Vehicle Industry Board posed no conflict with the FAA. The Act applied only to “motor vehicles,” as that term is commonly understood, and the Automobile Dealer’s Day in Court Act (“ADDCA”) had been amended in 2002 to specifically exempt “motor vehicle franchise contracts” from the reach of the FAA. (15 U.S.C. § 1226(a)(2).) Arbitration of a dispute under such a contract is permitted only if the parties consent to it. *Id.* The exemption applies only to dealers in motor vehicles, as “motor vehicle” is defined at 49 U.S.C. § 30102. (15 U.S.C. § 1226(a)(1)(A).) Section 30102(a)(6) defines a motor vehicle as “a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways ...”. The definition does not reach yard and garden equipment such as that manufactured by Husqvarna, and there is no possible argument that the ADDCA exemption from the FAA has any application to Husqvarna.

Sweeping yard and garden equipment manufacturers into the Dealership Act thus

subjected them to all of its Motor Vehicle Industry Board provisions for adjudication of dealer disputes.

Amendment of the Dealership Act to subordinate Husqvarna's arbitration rights to the exclusive jurisdiction of the Motor Vehicle Industry Board reflects state hostility to the FAA that this Court has repeatedly addressed and had to rectify, whether embodied in judicial rulings or legislation. *See, e.g., Nitro-Lift Technologies*, 133 S. Ct. at 504 (vacating order of Oklahoma Supreme Court interfering with authority of arbitrator to determine enforceability of noncompetition covenants); *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 688 (1996) (holding that FAA preempted Montana statute purporting to restrict enforceability of arbitration agreement). The Court should grant the Petition to respond to New Hampshire's refusal to accommodate the national policy favoring arbitration.

## CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Earl Bennett  
General Counsel  
HUSQVARNA GROUP  
N.A. & L.A.  
9335 Harris Corners  
Parkway  
Suite 500  
Charlotte, NC 28269  
earl.bennett@husqvarnag  
roup.com  
(704) 921-7008

Thomas J. Collin  
*Counsel of Record*  
Jennifer S. Roach  
Mark R. Butscha, Jr.  
THOMPSON HINE LLP  
3900 Key Center  
127 Public Square  
Cleveland, Ohio 44114  
tom.collin@thompsonhine.  
com  
(216) 566-5500

*Counsel for Petitioner  
Husquarna Professional  
Products, Inc.*

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