No. 24-925

In the Supreme Court of the United States

GREGORY LALA, ET AL.
Petitioners,

v.

TESLA, INCORPORATED, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF

Tesla's brief in opposition confirms that this Court should grant, vacate, and remand for a do-over. Tesla's chief—and repeated—argument is that a due process violation arises from Tesla's belief that some Louisiana Motor Vehicle Commission commissioners are "automobile dealers who view [Tesla's] direct-to-consumer sales [model] as a mortal threat to their business model." BIO.2. But Tesla has not challenged Louisiana's statutory direct-sales ban on due process grounds. Moreover, the underlying Commission proceedings in this case have nothing to do with direct-to-consumer sales. As Judge Smith explained (quoting Tesla's own words), the "'questions'" presented in the Commission proceedings address "'Tesla's performance of warranty repairs'" on vehicles that are outside of Tesla's leased fleet. *Id.* at 11a–12a & n.6; *accord id.* at 111a.

Tesla's misdirection evades—and indeed, effectively concedes—the fundamental defect in Judge Smith's opinion: That opinion never identifies what "substantial pecuniary interest in [the] legal proceedings" regarding repair services allegedly prevents industry-participant commissioners from conducting those proceedings. *Gibson v. Berryhill*, 411 U.S. 564, 578 (1973). In fact, Tesla refuses to defend as sufficient Judge Smith's statement that "Tesla *does* compete with the members of the Commission in the leasing and warranty-servicing market." App.23a (emphasis added). Tesla's refusal is understandable—because mere competitor status does not create a due process problem. *See Friedman v. Rogers*, 440 U.S. 1, 18 & n.19 (1979). That is the defect that warrants a GVR.

Finally, Tesla complains that a GVR would be procedurally improper. It accuses Petitioners of "invent[ing] a new" GVR test—"that a GVR may be appropriate whenever a lower court has 'apparent[ly]' failed 'to fully consider an issue.'" BIO.13. But that is quite literally what this Court has said, *see* Pet.14–15 (quoting *Lawrence v. Chater*, 516 U.S. 163, 167–68 (1996) (per curiam)), and done, *see id.* at 15 (citing *Andrus v. Texas*, 590 U.S. 806 (2020) (per curiam); *Youngblood v. West Virginia*, 547 U.S. 867 (2006) (per curiam)). Indeed, Tesla immediately backtracks by inventing its own standard—that such uses of the GVR tool should be limited to "egregious oversights in criminal cases where the petitioner's life or liberty is at stake." BIO.13. Setting aside that neither *Andrus* nor *Youngblood* identified any error (let alone an "egregious" one), this Court has never drawn Tesla's new line. For good reason: There is no principled justification for a criminal-defendants-only rule, while excluding, for example, a sovereign State whose agency has been deemed unconstitutional in a single-judge opinion that misapplies this Court's cases.

The Court should grant, "identify[] [the] controlling legal error" committed below, and remand for a do-over. *Myers v. United States*, 587 U.S. 981, 982 (2019) (Roberts, C.J., dissenting).

I. THE DECISION BELOW MISAPPLIES THIS COURT'S PRECEDENTS.

The fundamental error in Judge Smith's opinion is that it finds an alleged due process violation without identifying a commissioner's "substantial pecuniary interest" in the underlying Commission proceedings

that gives rise to the violation. Judge Smith agreed that Tesla was required to "plead enough specific facts plausibly to allege a 'substantial pecuniary interest in [the] legal proceedings' such that members of the commission 'should not adjudicate [this] dispute[].'" App.26a n.20 (quoting *Gibson*, 411 U.S. at 579). But his opinion never identifies that alleged interest. That is the narrow, clear, and "controlling legal error" that requires a GVR. *See Myers*, 587 U.S. at 982 (Roberts, C.J., dissenting). Tesla's brief in opposition confirms as much, in three respects.

1. To start, Tesla does not defend the thrust of Judge Smith's opinion—that Tesla's mere competitor status vis-à-vis the industry-participant commissioners is sufficient to establish a "substantial pecuniary interest" in the underlying Commission proceedings. *See, e.g.*, App.6a (recycling Tesla's complaint about an alleged "change [that] was made 'at the behest of Tesla's competitors'"), 7a (recycling Tesla's complaint that "competitors in the state have coopted the Commission"), 8a ("According to Tesla, competing dealerships 'comprise[] a controlling majority of the government' Commission."), 8a & n.3 ("Nine of those 15 [commissioners] are associated with competitor dealerships and defendants in this case," while "[t]he other 6 ... are not direct competitors with Tesla."), 12a ("Tesla's direct competitors participated in those votes."), 16a ("regulating direct competitors"), 20a (citing "allegations that members of the Commission compete directly with Tesla"), 22a ("Tesla's competitors"), 23a ("[T]he complaint alleges that Tesla does compete with the members of the Commission in the leasing and warranty-servicing market ...."). Although Tesla

protests that characterization of Judge Smith's opinion, BIO.21–22, Tesla effectively concedes that this reading—if correct—is a misapplication of this Court's precedents. That is precisely the error Judge Douglas identified below. *See* App.39a (Douglas, J., dissenting) ("The Supreme Court has clarified that regulatory boards are not unconstitutional merely because they are composed of competitors of the entities they regulate." (citing *Friedman*, 440 U.S. at 18–19)).

2. Recognizing as much, Tesla tries to prop up Judge Smith's opinion by identifying other supposed "substantial pecuniary interests." To no avail.

First, Tesla builds its brief around the belief that some commissioners are "automobile dealers who view [Tesla's] direct-to-consumer sales [model] as a mortal threat to their business model." BIO.2. That framing is puzzling for two reasons. One, Tesla has not challenged Louisiana's statutory direct-sales ban on due process grounds. App.110a–11a ("Notably, Tesla does not contend that the Commission has excluded Tesla from the motor vehicle sales market in Louisiana ...."); *id.* at 41a (Douglas, J., dissenting) ("Tesla does not allege that Louisiana's laws or direct sales ban violate due process."); *cf. id.* at 29a (Fifth Circuit unanimously "reject[ing]" Tesla's equal protection challenge to "the direct sales ban"). Two, and more fundamentally, the underlying Commission proceedings in this case have nothing to do with direct-to-consumer sales. As Judge Smith explained (quoting Tesla's own words), the "'questions'" presented in the Commission proceedings address "'Tesla's performance of warranty repairs'" on vehicles that are outside of Tesla's leased fleet. *Id.* at 11a–12a & n.6; *accord id.* at 111a ("Tesla's complaints

about the Commission are focused on the Commission's enforcement of Louisiana's laws related to leasing and warranty repairs."). Tesla cannot mix and match a supposed pecuniary interest regarding sales with an unrelated legal proceeding regarding non-sales activities. *See id.* at 26a n.20 (Judge Smith's opinion correctly understanding *Gibson* to require "a substantial pecuniary interest in *the* legal proceedings such that members of the commission should not adjudicate *this* dispute" (cleaned up and emphases added)).

Second, Tesla points (BIO.18) to Judge Smith's brief statement that the commissioners "have a general interest in the franchised-dealer model" and "strong financial incentives to keep Tesla out of Louisiana," App.20a. But that just reprises Tesla's problem regarding mere competitor status—for that sweeping statement describes every competitor. Yet, as *Friedman* emphasizes, mere competitor status and differing business models (there, "commercial" versus "professional") do not alone give rise to a due process violation. *See* 440 U.S. at 18 ("Rogers has no constitutional right to be regulated by a Board that is sympathetic to the commercial practice of optometry[.]"). Something more is required to articulate a substantial pecuniary interest. *Gibson* illustrates that plus factor—there, if independent optometrists succeeded in barring commercial optometrists from operating in Alabama, they "would fall heir" to "half" of Alabama's optometry industry. 411 U.S. at 571, 578. Here, however, neither Tesla nor Judge Smith have identified any such interest in the underlying Commission proceedings regarding whether Tesla is repairing vehicles outside of its

leased fleet. And merely pointing to the commissioners' supposed "general interest" (App.20a) in winning any "competition" against Tesla does not come close to meeting the *Gibson*/*Friedman* standard.

Third, Tesla claims that the commissioners' "substantial pecuniary interest was further confirmed by evidence of actual bias, including discussion that Tesla's entry into Louisiana is 'not good for the future of our [that is, the dealers'] business.'" BIO.22 (internal quotation marks omitted); *accord id.* at 18 ("When dealers raised that and similar concerns with the Commission, the responses—'I am on it,' '[w]e are on top of this,' and '[o]n top of it'—demonstrated that the Commissioners understood and shared the dealers' alarm."). Three quick responses dispose of this perplexing argument.

One, for the reasons just explained, Tesla's built-in assumption—that it has already identified an unlawful "substantial pecuniary interest" in the underlying proceedings regarding Tesla's repair activities—is wrong. There is no such interest to "confirm[]," BIO.22, because no such interest has been identified.

Two, as even Judge Smith recognized, this "bias" argument is a makeweight. The irreducible minimum in the *Gibson* line of cases is a showing that the defendant has a "substantial pecuniary interest in legal proceedings" and thus "should not adjudicate these disputes." 411 U.S. at 579. The role of the defendant's alleged bias (if any) is secondary in the analysis. That is why Judge Smith himself believed that "the *possibility* of bias is a sufficient showing—*at least where*

there is a pecuniary interest." App.24a (second emphasis added). In other words, bias alone does not trigger the *Gibson* line of cases if there is no prohibited substantial pecuniary interest to begin with. And the absence of any such interest is the problem here.

Three, and perhaps most troubling, Tesla's "bias" argument is factually inaccurate. For one thing, the quotations Tesla recycles above and attributes to "the Commissioners" (Petitioners here) were, in fact, never uttered by the commissioners. As Judge Smith explained, they are the words of the Commission's executive director and a non-commissioner dealer, both of whom Tesla elected not to sue. *Id.* at 9a & n.4. For another thing, Tesla omits that each of these alleged comments was made in regard to Tesla's plans to open a New Orleans warranty service center in 2018. *Id.* at 9a, 61a–62a. *Tesla is operating that service center today—and the Commission expressly "sided with Tesla" in "quite clear[ly]" ensuring that Tesla (a) may directly lease vehicles to consumers and (b) may directly perform warranty services on such vehicles. Id.* at 9a–10a. All this despite third-parties' lobbying against Tesla's ability to conduct these activities. *Id.* at 9a. It is both upside down and deeply unfair to mischaracterize Petitioners as harboring any bias toward Tesla. *See id.* at 47a (Douglas, J., dissenting) ("The only plausible inference from Tesla's allegations is that despite being asked to agree with [outsiders'] position, the Commission repeatedly refused to yield to [their] requests."). Thus, even if the bias argument were relevant here, it would fail on its own terms.

3. The foregoing demonstrates what Petitioners have explained all along: Judge Smith's opinion fails

to identify the requisite substantial pecuniary interest that would trigger the *Gibson* line of cases. And that explains Tesla's final, last-ditch effort. Tesla layers into its brief allegations from a "Proposed Suppl. to FAC," BIO.20, 24—entirely new allegations in a proposed amended complaint that the district court has not permitted to be filed and that the Fifth Circuit never considered. By Tesla's lights, those new allegations illuminate the commissioners' supposed "substantial pecuniary interest in excluding Tesla and its direct-to-consumer model from Louisiana." *Id.* at 24. And on that basis, Tesla insists that this Court should not prevent Tesla from proceeding to discovery. *Id.*

This is profoundly improper. Tesla cannot save Judge Smith's opinion through new allegations that no court has accepted or reviewed. That Tesla believes it necessary to shade this Court's review with such allegations only highlights the clarity of the error below.

II. A GVR IS UNIQUELY WARRANTED HERE.

Unable to defend Judge Smith's opinion on the merits, Tesla tries to avoid a GVR on various non-substantive grounds, none availing.

First, Tesla tries to downplay Judge Smith's opinion in an overt effort to minimize the damage from the opinion. By Tesla's telling, Judge Smith's "single-judge opinion" is not "necessarily precedential" in the Fifth Circuit and thus does not warrant this Court's intervention. BIO.21 n.2.[1] That argument is misplaced

[1] Tesla takes its argument from one judge's suggestion (without supporting authority) that there is no "quorum" for a single-judge opinion and thus the opinion lacks precedential effect. As far as Petitioners can tell, only two Fifth Circuit judges have ever

given (a) the published and reported status of Judge Smith's decision, *Tesla, Inc. v. Louisiana Automobile Dealers Association*, 113 F.4th 511 (5th Cir. 2024), and (b) the fact that the upshot of Tesla's view is that Judge Smith's opinion immunizes Tesla entirely from regulation by the Commission. That argument also is misplaced given that Tesla's attempts to save other regulatory boards in the Fifth Circuit rest on the same failed legal arguments described above, which could be raised against virtually every board. *See* BIO.21–22 (attempting to distinguish other boards by recycling Tesla's allegations and arguments). These facts illustrate the importance of this case both to Louisiana and other States in the Fifth Circuit. And that the erroneous decision below was joined by only one judge *reinforces*, rather than *negates*, the need for intervention.

Second, Tesla recites the usual certiorari criteria in protesting that "this case does not implicate a circuit split" or "an unsettled area of law." BIO.23. Petitioners have never claimed as much. Instead, Petitioners have expressly sought only a GVR—an order that "conserves the scarce resources of this Court that

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subscribed to that view. *See Trafigura Trading LLC v. United States*, 29 F.4th 286, 295 n.2 (5th Cir. 2022) (Graves, J., dissenting); *Indest v. Freeman Decorating, Inc.*, 168 F.3d 795, 796 n.1 (5th Cir. 1999) (Wiener, J., concurring). Moreover, this theory is difficult to understand—for, through Judge Haynes' concurrence in the judgment below, App. 4a n.*, there was plainly a "quorum" for the judgment reversing the district court's grant of Petitioners' motion to dismiss the due process claim. 28 U.S.C. § 46(d). And that (erroneous) judgment is precedential. *Cf., e.g.*, *Jennings v. Stephens*, 574 U.S. 271, 277 (2015) ("This Court ... does not review lower courts' opinions, but their *judgments*.").

might otherwise be expended on plenary consideration" and "assists the court below by flagging a particular issue that it does not appear to have fully considered." *Lawrence*, 516 U.S. at 167. As the Court has explained, this route properly ensures "the fairness and accuracy of judicial outcomes ... in cases whose precedential significance does not merit [this Court's] plenary review." *Id.* at 168.

Finally, Tesla protests the use of a GVR here. Tesla accuses Petitioners of "invent[ing] a new" GVR test—"that a GVR may be appropriate whenever a lower court has 'apparent[ly]' failed 'to fully consider an issue.'" BIO.13. But that is quite literally what this Court has said, *see Lawrence*, 516 U.S. at 167–68, and done, *see Andrus*, 590 U.S. 806; *Youngblood*, 547 U.S. 867. Indeed, Tesla immediately backtracks by making up its own standard—that such uses of the GVR tool, where there are no intervening developments,[2] should be limited to "egregious oversights in criminal cases where the petitioner's life or liberty is at stake." BIO.13. Setting aside that neither *Andrus* nor *Youngblood* identified any error (much less an "egregious" one), this Court has never drawn Tesla's new line. For good reason: There is no principled justification for a criminal-defendants-only rule, while excluding, for example, a sovereign State whose agency has

[2] In the vein of inventing standards, Tesla invents another by claiming that the Court "requires *some* intervening development following the lower court's decision, or at minimum a recent development that the court below likely did not consider." BIO.12 (cleaned up). As Tesla appears to recognize, that is wrong because *Andrus* and *Youngblood* involved no such developments.

been deemed unconstitutional in a single-judge opinion that misapplies this Court's cases.

In addition, Tesla misdirects by repeating the general principle that "[t]his Court should not just GVR a case because it finds the opinion, though arguably correct, incomplete and unworkmanlike." BIO.15 (quoting *Lawrence*, 517 U.S. at 173). The decision below is *not* arguably correct—it plainly misapplies *Gibson* and *Friedman* by failing to identify the requisite substantial pecuniary interest beyond an industry participant's mere competitor status. *Lawrence*'s principle thus has no bearing here.

Last, Tesla misdirects by suggesting that Petitioners have asked the Court to take a "rare" and "contested" step by issuing a GVR. BIO.13 (citing *Andrus*, 590 U.S. at 824 (Alito, J., dissenting)). Justice Alito's point in *Andrus* was that the majority issued a GVR "on a ground that is hard to take seriously"—the claim that it was "unclear" whether a Texas court considered *Strickland* prejudice, when the Texas court in fact "said explicitly that Andrus failed to show prejudice." 590 U.S. at 824–25 (Alito, J., dissenting). Here, by contrast, it is not hard to take seriously the fact that Judge Smith's opinion never identifies a commissioner's substantial pecuniary interest in the underlying Commission proceedings that would permit Tesla's due process claim to survive a motion to dismiss. Similarly, the Chief Justice's point in *Myers* was that, barring a new development, the Court "should vacate the judgment of a lower federal court only after affording that court the courtesy of reviewing the case on the merits and identifying the controlling legal error." 587 U.S. at 982 (Roberts, C.J., dissenting). That

is Petitioners' request here: grant, vacate on the basis of Judge Smith's failure to identify a substantial pecuniary interest as required by this Court's cases, and remand for further proceedings. That is far more than the justifications for issuing GVRs in *Andrus* (the Texas court "may have failed properly" to assess prejudice, 590 U.S. at 808) and *Youngblood* ("it would be better to have the benefit of the view of the full Supreme Court of Appeals of West Virginia on the *Brady* issue," 547 U.S. at 870). Accordingly, Petitioners—here in their official capacities on behalf of a sovereign State—respectfully request equal treatment in this *a fortiori* case.

CONCLUSION

The Court should grant the petition, vacate the decision below, and remand with instructions for the Fifth Circuit to identify what, if any, "substantial pecuniary interest" (apart from mere competitor status) allegedly creates a due process violation.

Respectfully submitted,

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