Nos. 15-1213, 15-1218

In The Supreme Court of the United States

DEERE & COMPANY, CNH AMERICA LLC, AND AGCO CORPORATION,

Petitioners,

v.

STATE OF NEW HAMPSHIRE, et al.,

Respondents.

HUSQVARNA PROFESSIONAL PRODUCTS, INC.,

Petitioner,

v.

STATE OF NEW HAMPSHIRE,

Respondent.

On Petition For A Writ Of Certiorari To The New Hampshire Supreme Court

BRIEF FOR RESPONDENT STATE OF NEW HAMPSHIRE IN OPPOSITION

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INTRODUCTION

The New Hampshire Supreme Court properly found that 2013 Senate Bill 126 ("SB 126") did not violate the contract clause. The court arrived at this conclusion by applying the methodology set forth in this Court's previous decisions. The petitioners, through a strained reading of the New Hampshire court's opinion, argue that the state court misconstrued federal contract clause jurisprudence, and that the decision is at odds with those from other courts. Neither premise is accurate. The lower court did not diverge from this Court's established contract clause analysis.

STATEMENT

Like many states, New Hampshire regulates the contractual relationships between manufacturers and dealers within certain industries. Two such manufacturer-dealer regulatory schemes are at issue here: New Hampshire RSA chapter 357-C, which regulates dealership agreements in the automobile, motorcycle, snowmobile, and all-terrain vehicle industries; and RSA chapter 347-A, which regulated dealership agreements in the equipment industry. In 2013, the New Hampshire legislature repealed the latter and, through SB 126, expanded the former – a more comprehensive scheme – to encompass dealership agreements in the

equipment industry.[1] It did so in recognition of the fact that the relationships are "nearly identical" in the two industries, and that equipment dealership agreements, like automobile dealership agreements, were one-sided and reflected an autocratic relationship. As the New Hampshire Supreme Court explained, the legislature was concerned that equipment manufacturers, like automobile manufacturers previously, were abusing their powers, and that New Hampshire businesses and consumers were being harmed as a result. Husq. App. 15a-16a (citing N.H.H.R. Jour. 765 (May 22, 2013)).[2]

Petitioners – all of whom are equipment manufacturers – challenged the legislation. Husqvarna Professional Products, Inc., ("Husqvarna"), and Deere & Company, CNH America, LLC, and AGCO Corporation (the "Deere petitioners"), claimed the amendment violated the contract clauses of both the New Hampshire and United States Constitutions, as well as the supremacy clause of the United States Constitution.

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[1] The legislature accomplished this by relocating definitional language from RSA chapter 347-A into RSA chapter 357-C's definition of motor vehicle. Thus, the term "motor vehicle" now includes "equipment," defined as "farm and utility tractors, forestry equipment, industrial equipment, construction equipment. . . ." RSA 357-C:1, I.

[2] In this brief, "Husq. App." refers to Husqvarna's Appendix; "Deere App." refers to the Deere petitioners' appendix; "Deere Br." refers to the Deere petitioners' petition; "Husq. Br." refers to Husqvarna's petition; and "N.H. App." refers to the State's Appendix.

Husqvarna also raised claims under the equal protection and dormant commerce clauses of the United States Constitution.

With regard to their contract clause claim, the Deere petitioners argued that the legislation impaired various sections of their 21 separate New Hampshire dealership agreements. As the Deere petitioners explained: "Deere has three different types of dealership agreements and eight total dealership agreements at issue here. CNH has four different types of dealership agreements and ten total dealership agreements at issue. AGCO has one type of dealership agreement and three total dealership agreements at issue." Deere App. at 35a. Husqvarna similarly claimed that SB 126 impaired certain components of its three different New Hampshire dealer agreements. *See* Husq. App. 127a. With respect to their supremacy clause claims, the petitioners asserted that the Federal Arbitration Act ("FAA") preempted RSA 357-C:3, III(p)(3) and RSA 357-C:6, III, which pertain to pre-dispute agreements to arbitrate.

On cross-motions for summary judgment the trial court in *Deere* held that SB 126 "does not substantially impair the plaintiffs' existing contracts." Deere App. 43a. Specifically, the trial court stated:

> According to the plaintiffs, 'SB 126 impairs [their] existing contracts in at least 10 respects.' The court disagrees. Upon review of each individual contract, it is clear that all ten factors do not affect all of the agreements. The court must therefore analyze the plaintiffs'

> substantial impairment argument as it pertains to each individual contract – not all the contracts listed as a whole.
>
> A review of each individual contract does not support a conclusion of substantial impairment. The provisions of RSA 347-A previously governed the plaintiffs' agreements. Thus, as the defendant correctly notes, 'SB 126's assignment of tractors and other equipment to RSA 357-C is not equivalent to an entirely unregulated industry suddenly being faced with extensive regulation.' The plaintiffs' agreements were subject to a statutory scheme that regulated the behavior of the manufacturers and dealers. While including the plaintiffs within the purview of RSA 357-C has created added requirements by which the plaintiffs must act, such additions represent refinements in the law.

Id. at 41a-42a (internal citations omitted). The trial court in *Deere* further found that "a contrary conclusion would not be helpful to the plaintiffs because the plaintiffs have also not sustained their burden of showing that SB 126 is not reasonable and necessary to serve an important public purpose." *Id.* at 43a. The trial court reached the same conclusion in *Husqvarna*, finding that "[b]ecause the plaintiff was previously subject to regulation under RSA 347-A, the assignment of equipment to RSA 357-C does not represent an unregulated industry unexpectedly facing regulation. . . . the court concludes that SB 126 does not substantially

impair the plaintiff's existing contracts." Husq. App. 51a-52a.

With regard to the supremacy clause challenge, the trial court agreed with the petitioners that, as applied to equipment manufacturers, RSA chapter 357-C's provisions regarding arbitration conflicted with the FAA, and therefore, violated the supremacy clause. Deere App. 48a-49a. But the trial court concluded that the statutory provisions invalidated by the FAA were severable from the remainder of RSA chapter 357-C in light of the chapter's severability provision. *Id.* at 49a (citing RSA 357-C:16). Finally, the trial court determined that SB 126 did not violate Husqvarna's rights under the federal equal protection clause or the dormant commerce clause. The Deere petitioners and Husqvarna appealed.

The New Hampshire Supreme Court (or "the state court") affirmed in all respects relevant to the instant petitions. In its opinion, the court noted that some of the petitioners' claims of contractual impairment were "questionable" but, for the purposes of the appeal, it assumed that a substantial impairment of contract existed. Husq. App. 15a. Nonetheless, the state court concluded that "SB 126 does not violate the State and Federal Contract Clauses because it has a 'significant and legitimate public purpose' and because the legislature's 'adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose' justifying the adoption of SB 126." *Id.* (quoting *Energy Reserves Group v. Kansas Power & Light*,

459 U.S. 400, 411 (1983)). The state court further explained that "[b]ecause the contracts at issue are private and, thus, there is no danger that the State is using its regulatory power to serve its own pecuniary interests, we 'refuse 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.* at 25a (quoting *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 506 (1987)).

With regard to the supremacy clause claim, the only issue before the state court was whether the challenged provisions, which the trial court deemed violative of the FAA, were severable from the remainder of the chapter. Husq. App. 28a. The court concluded that they were, rejecting the Deere petitioners' argument that the challenged provisions were inseparable from the provisions pertaining to administrative proceedings before the Motor Vehicle Industry Board ("Board"). *Id.* at 29a. The court declined to address the argument that the Board provisions themselves conflicted with the FAA, finding that the Deere petitioners had not developed that argument sufficiently for review. It also denied Husqvarna's request for a declaratory judgment on the issue, noting that Husqvarna could raise the argument in any future litigated cases between it and a dealer. *Id.* at 29a-30a.

Finally, the New Hampshire court rejected Husqvarna's equal protection claim, concluding that Husqvarna "failed to establish that classifying yard and garden equipment as motor vehicles for purposes

of RSA chapter 357-C 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." *Id.* at 32a. The Deere petitioners and Husqvarna filed separate petitions with this Court.

REASONS FOR DENYING THE PETITION

I. THE NEW HAMPSHIRE SUPREME COURT'S HOLDING THAT SB 126 DOES NOT OFFEND THE CONTRACT CLAUSE DOES NOT CONFLICT WITH DECISIONS OF THIS COURT.

The state court followed this Court's precedent in analyzing the contract clause claim, and its conclusion is well supported. This Court has set forth the contract clause inquiry as follows:

> If [a] state regulation constitutes a substantial impairment [of contract], the State, in justification, must have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem. . . .
>
> Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's

> adoption. Unless the State itself is a contracting party, as is customary in reviewing economic and social regulation, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

Energy Reserves, 459 U.S. at 411-13 (quotations, brackets, and citations omitted). This is precisely the analysis that the state court followed.

Dissatisfied with the result, the petitioners are contorting the lower court's analysis to create the impression of a misapplication of federal law and, thus, the need for guidance from this Court. As discussed below, this Court's contract clause jurisprudence is sufficiently articulated, and this case does not present a meaningful opportunity to revisit the doctrine.

A. The State Court Not Only Established a Level of Impairment, it did so in a Manner Favorable to the Petitioners.

The Deere petitioners claim that the "New Hampshire Supreme Court . . . never analyzed the extent to which Senate Bill 126 impaired private contracts between manufacturers and dealers." Deere Br. at 15. To the contrary, the court specifically addressed the issue of impairment. The court stated:

> Although, with regard to some of their challenges, it is questionable whether SB 126 substantially impairs the petitioners' existing

> agreements with their New Hampshire dealers, for the purposes of this appeal, we assume that it does.

Husq. App. 15a.

As RSA chapter 357-C had yet to apply to the Deere petitioners due to a lower court stay, and as Husqvarna, although subject to the law for months before filing suit, did not identify any dispute between it and a dealer arising under chapter 357-C, the actual level of impairment before the court was indeterminate. Without concrete facts of a dealer-manufacturer dispute under chapter 357-C or any assertion by a petitioner that it planned to take a specific contractual action, but could no longer do so because of SB 126's enactment, any harm resulting from an application of the law was hypothetical. Despite this, the state court assumed substantial impairment and proceeded to the next step of the contract clause analysis.

The approach adopted by the state court is akin to the methodology in *Keystone*. There, this Court found that although it could not determine the full extent of the impairment at issue, the legislation served a public purpose and the adjustment of rights of the contracting parties was reasonable, and thus, the law would withstand scrutiny even if substantial impairment was assumed. 480 U.S. at 504, n. 31. Specifically, the *Keystone* Court noted in its takings claim analysis that the plaintiffs, in making a facial challenge, "presented no concrete controversy concerning either application of the Act to particular surface mining operations or its

effect on specific parcels of land." *Id.* at 495. Despite the Court having no evidence of a concrete controversy and, thus, "no basis on which to conclude just how substantial a part of the support estate the waiver of liability is[,]" *id.* at 504, n. 31, the *Keystone* Court continued on to analyze the purpose of the legislation under the above-referenced standard – the same standard used by the state court – and, ultimately, "refuse[d] to second-guess the Commonwealth's determination" of the most appropriate ways of dealing with the problem at issue. *Id.* at 505-06. The state court in this case did not deviate from this required analysis.

The Deere petitioners seem to assert that courts must make the substantial impairment determination with mathematical precision by choosing among a continuum of possible impairments, and then fashioning a concomitant level of review for each category of harm. To support this proposition, the Deere petitioners cite to general language from this Court stating that the applicable level of scrutiny depends on how severely the statute impairs the contractual relationship at hand. *See* Deere Br. at 14-15 (citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245 (1978); *Keystone*, 480 U.S. at 501). The cited language, however, does not stand for the proposition noted. Rather, it simply recognizes that courts need not reach the second prong of the analysis unless the impairment is truly substantial – *i.e.*, that "minimal alteration of contractual obligations may end the inquiry at its first stage." *Allied Structural Steel*, 438 U.S. at 245.

The petitioners point to no case in which this or any other court actually denoted a specific level of impairment from an array of possible harms. Instead, courts have either: 1) deemed the contract substantially impaired so as to necessitate further review; 2) found no substantial impairment and thus ended the inquiry; or 3) in the alternative, explained why, even if there was a substantial impairment, the legislation satisfied the second prong of the test. *See, e.g.*, *Keystone*, 480 U.S. at 504 ("We agree that the statute operates as a substantial impairment of a contractual relationship and therefore proceed to the asserted justifications for the impairment.") (internal citations and quotations omitted); *Energy Reserves*, 459 U.S. at 416-18 (finding no impairment and then concluding that, even if there was impairment, "the Act rests on . . . significant and legitimate state interests."); *Equip. Mfrs. Inst. v. Janklow*, 300 F.3d 842, 850 (8th Cir. 2002) ("If there is no substantial impairment on contractual relationships, the law does not violate the contract clause. If, however, the law does constitute a substantial impairment, the second part of the test is addressed[.]").

Husqvarna cites *Soc'y Ins. v. Labor & Indus. Review Comm'n*, 326 Wis. 2d 444 (Wis. 2010) as evidence that the state court deviated from the analysis undertaken by the Wisconsin court and, by analogy, this Court's required analysis. Not so. In *Soc'y Ins.*, the Wisconsin Supreme Court found the impairment at issue to be substantial and, thus, concluded that there needed to be a legitimate public purpose behind the

legislation. *Id.* at 483. Aside from the fact that the New Hampshire court "assumed" – as opposed to found – that a substantial impairment existed, the two state courts' analyses are identical. The New Hampshire court, after making its assumption regarding impairment, proceeded directly to the second part of the contract clause analysis. Its assumption that the impairment was substantial did not impact the second half of the analysis in any way; the New Hampshire court recognized that the legislation needed to be reasonable and necessary to serve a legitimate public purpose and, after further analysis, concluded that it did. It applied the same standard of review as the Wisconsin court. Husqvarna's assertion that the courts' analyses are irreconcilable is simply unfounded.

B. New Hampshire Supreme Court did Not Misapply this Court's Contract Clause Analysis in Determining That the Legislation Served a Legitimate Public Purpose.

Husqvarna claims that the state court erroneously applied a rational basis standard of review and failed to examine the legislative record in determining the purpose behind the legislation. Husq. Br. 17-22. In support of this claim, Husqvarna relies on an isolated passage in the state court's decision in which the court noted that although its "review in a contract clause case involving purely private contracts is not identical to rational basis review in the equal protection context or due process context, it is similar." Husq. App. 22a.

Husqvarna's assertion is without merit. The New Hampshire court referred to this principle only in response to Husqvarna's argument that the legislature's findings were unsupportable and made in an "evidentiary vacuum." *Id.* The court rejected that argument, noting only that contract clause analysis in the context of private contracts does not require "courtroom fact-finding," and instead allows for "rational speculation." *Id.*[3] A review of the state court's opinion as a whole reveals that the court did not apply rational basis review, but rather, applied precisely the level of scrutiny established by this Court – statutes that substantially impair contract rights "must have a significant and legitimate public purpose." Husq. App. 14a.

The petitioners argue that the court erred in relying solely on the legislature's statement of intent in finding a significant and legitimate public purpose behind SB 126. As an initial matter, the court's review was not so limited.[4] For example, the state court looked to case law from other jurisdictions that found dealer statutes, such as those at issue here, to be legitimate

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[3] *Cf. National Paint & Coatings Ass'n v. City of Chicago*, 45 F.3d 1124, 1127 (7th Cir. 1995) (concluding district court erred in conducting evidentiary hearing on dormant commerce clause and substantive due process challenges to local legislation and stating "a legislative decision 'is not subject to courtroom factfinding. . . .' ") (quoting *FCC v. Beach Commc'ns*, 508 U.S. 307, 313 (1993)).

[4] Nowhere in the New Hampshire court's opinion does it state that the court declined to consider the legislative history as a whole. The court had no obligation to provide the plaintiffs with an exhaustive listing of the materials that it considered in reaching its determination.

areas of general economic legislation. *Id.* at 16a-18a. In summarizing that review, the court stated that "numerous federal and state courts, addressing constitutional challenges to laws similar to RSA chapter 357-C, have concluded that protecting dealers and consumers from the oppressive acts of manufacturers constitutes a legitimate public purpose." *Id.* (collecting cases) (citations omitted).

The state court's determination that the private contracts analysis under the contract clause does not require *de novo* fact finding of the legislative record does not run contrary to this Court's previous decisions. *See, e.g.*, *Energy Reserves*, 459 U.S. at 417, n. 25 (referring without specificity to legislative history in a footnote); *Keystone*, 480 U.S. at 485-866, n. 14 (referencing a brief, codified statement of intent and making a passing reference to legislative findings in a one sentence footnote). Pointing to *Allied Structural Steel*, 438 U.S. 234 (1978), Husqvarna claims that the state court was required to conduct an exhaustive analysis of the legislative record. This is incorrect. In *Allied Structural Steel*, this Court merely noted that the only legislative history in the court record was a single sentence from the lower court's opinion. 438 U.S. at 247-48.[5] "[C]ourtroom factfinding" of legislative

[5] The Deere petitioners argued before the New Hampshire court that any examination of the legislative history as a means of determining whether the law had a legitimate public purpose was prohibited. *See* Husq. App. 21a. Yet, here, the Deere petitioners make several references to the statements of individual legislators in support of its position regarding the statute's purpose. *See, e.g.*, Deere Br. at 4, 8.

determinations is simply not mandated by the contract clause analysis. *See generally id*. Notably, the petitioners do not point to a case requiring this type of review.

Here, the state court considered specific legislative findings. Husq. App. 15a-16a. The fact that Husqvarna disagrees with the court's conclusions and contends that it should have looked more closely at the legislative record does not amount to a misapplication of the contract clause. There is no need for this Court to clarify how, or the degree to which, lower courts must focus upon legislative history – along with other sources – to determine whether legislation has a legitimate public purpose. This Court's existing precedent on this topic, which establishes that courts can, at their discretion, use legislative history as a guide to understanding legislative intent, is sufficient.

C. The New Hampshire Court gave the Proper Deference to State Legislative Enactments in Determining the Reasonableness and Necessity of the Act.

The petitioners suggest that by relying on legislative findings the state court failed to adequately evaluate whether SB 126 was reasonable and necessary. To the contrary, because the instant legislation affected private and not public contracts, the state court was required to accord considerable deference to the legislature as to the reasonableness and necessity of the act. *See Keystone*, 480 U.S. at 505 ("[W]e have repeatedly held that unless the State is itself a contracting

party, courts should 'properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.'"); *see also United States Trust Co. v. New Jersey*, 431 U.S. 1, 22-23 (1977). Trial court deference to economic legislation challenged under the contracts clause is widely accepted by appellate courts. *See*, *e.g.*, *Buffalo Teachers Fed'n v. Tobe*, 464 F.3d 362, 369 (2d Cir. 2006) ("[I]n analyzing public contracts courts use a different approach than that employed in analyzing private ones. When a law impairs a private contract, substantial deference is accorded."); *Assoc. of Surrogates & Supreme Court Reporters v. New York*, 940 F.2d 766, 771 (2d Cir. 1991) ("Generally, legislation which impairs the obligations of private contracts is tested under the contract clause by reference to a rational-basis test. . . . 'As is customary in reviewing economic and social regulation, however, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.'"); *Kargman v. Sullivan*, 582 F.2d 131, 134 (1st Cir. 1978) ("[w]ith respect to the reasonableness and necessity of laws affecting private obligations, a very substantial if not total deference to legislative judgments is in order. . . . [i]t is not for the courts to second-guess the necessity of this specific application of Boston's rental control law."). The state court's deference to the legislature was entirely appropriate.

D. This Court Need Not Address Whether Leveling the Playing Field Within an Industry is a Legitimate Public Purpose.

The Deere petitioners argue that certiorari is appropriate based on a circuit split as to whether " 'leveling the playing field' between private contracting parties is a legitimate and substantial public purpose." Deere Br. at 22-25. Even assuming that such a split exists, it is not a basis upon which to grant certiorari in this case because the state court did not find that " 'leveling the playing field' between private contracting parties" was a legitimate public purpose. Rather, the court found that "[t]he purpose of SB 126 – [is] to protect equipment dealers *and consumers* from perceived abusive and oppressive acts by manufacturers. . . ." Husq. App. 16a (emphasis added). The court rejected the Deere petitioners' and Husqvarna's arguments that SB 126 had a narrow purpose, and concluded that "SB 126 was expressly enacted to address 'a broad, generalized economic or social problem.' " *Id.* at 20a (citing *Allied Structural Steel*, 438 U.S. at 250; *N.H.H.R.* Jour. 765 (May 22, 2013); *Alliance of Auto. Mfrs. v. Gwadosky*, 430 F.3d 30, 43 (1st Cir. 2005)). The court distinguished the purpose of SB 126 from the law at issue in *Janklow*, *supra* – cited by the Deere petitioners – explaining that: "*Janklow* is distinguishable because SB 126 has a broader purpose 'than a simple reallocation of existing contractual rights.' " Husq. App. at 19a (citations omitted). The court went on to explain that the legislature "was specifically concerned that

manufacturers shifted costs 'onto dealers and ultimately consumers' through the use of 'one-sided, nonnegotiable contracts.'" *Id.* As evidenced by those findings, the state court found a broader purpose behind SB 126 than simply leveling the playing field between contracting parties. For that reason, the purported circuit split on that more narrow issue does not warrant a grant of certiorari in this case.

II. THE NEW HAMPSHIRE SUPREME COURT'S DECISION DOES NOT CONFLICT WITH THIS COURT'S EQUAL PROTECTION ANALYSIS.

Husqvarna argues that the state court failed to engage in "any review of the record at all, much less review satisfying the rational basis test," before rejecting the claim that including yard and garden equipment manufacturers under RSA chapter 357-C was arbitrary. Husq. Br. 26. Specifically, Husqvarna claims that the legislative findings on which the state court based its decision were "false and groundless" as applied to forestry and yard and garden equipment manufacturers, and that had the state court conducted a thorough review of the legislative record, it would have found no evidentiary support for those findings.

What Husqvarna fails to consider is that the legislature, through its enactment of the former RSA chapter 347-A, had already identified equipment dealership agreements as problematic and in need of

regulation. Incorporating them under the more comprehensive regulatory scheme of RSA chapter 357-C was merely an additional step in its desire to regulate those relationships.

Husqvarna acknowledges that: 1) New Hampshire previously regulated its agreements as well as larger tractor manufacturers' agreements under RSA chapter 347-A, *see* Husq. App. 119a-120a; and 2) like New Hampshire, other states also regulate Husqvarna's agreements under the same statute as those involving manufacturers of larger pieces of equipment. N.H. App. at 3-4, 12 (table created by Husqvarna's counsel citing numerous state statutes including a New York law defining "Equipment" as "vehicles and machinery . . . which are designed to be used for farm and agricultural purposes, lawn, garden . . . or maintenance. . . ." and a Connecticut law applying to "farm and utility tractors, forestry equipment, light industrial or construction equipment, farm implements, farm machinery, yard and garden equipment. . . ."). Thus, to the extent that Husqvarna claims that New Hampshire's act of regulating it under the same statutes as farm equipment is arbitrary, *see* Husq. Br. at 11, Husqvarna's own trial court exhibit shows that such governance is commonplace. *See generally* N.H. App.

Moreover, because its New Hampshire dealership agreements were previously regulated by RSA chapter 347-A, in order to prevail on its equal protection claim, Husqvarna needed to demonstrate precisely why SB 126's specific refinement of the existing substantive law could not be rationally applied to it. It failed to

make these arguments before the state court. Instead, Husqvarna predicated its rational basis contention solely on the alleged insufficiency of the legislative record, and on this ground argued that, as applied to it, the entirety of RSA chapter 357-C was unconstitutional. Yet, RSA chapter 357-C contains multiple provisions that overlap with those found in RSA chapter 347-A. It is inconceivable that those provisions were rational and constitutional under RSA chapter 347-A, which Husqvarna does not dispute, but arbitrary and unconstitutional under RSA chapter 357-C.[6] By focusing its argument on the fact that the legislature did not hear testimony from forestry and yard and garden equipment dealers, Husqvarna side-stepped the fact that New Hampshire rationally regulated those agreements in the past and that, substantively, SB 126

[6] For example, both RSA 347-A and RSA 357-C contain provisions pertaining to transfers of dealership interests. *Compare* RSA 347-A:6 ("No supplier shall unreasonably withhold consent to the transfer of the dealer's interest in the dealership to a member . . . of the family. . . .") *with* RSA 357-C:8 ("Any designated family member . . . may succeed the dealer . . . unless there exists good cause for refusal. . . ."). Husqvarna offered no support for its broad contentions that all of RSA 357-C, which would include its modification of this existing RSA 347-A protection, was arbitrary simply by virtue of the fact that the statute also applies to the automobile industry. Further, Husqvarna did not endeavor to explain why the former RSA 347-A provisions regarding dealer termination may be rationally applied to its agreements, but the application of similar termination regulation in RSA 357-C is arbitrary. Essentially, Husqvarna argued it is reasonable for its New Hampshire dealers to have some protection from manufacturer termination, but refinement of the principle in SB 126 is arbitrary as applied to it.

merely refined the regulations. In that context, it is impossible to say that the legislature's act was wholly irrational.

Under a rational basis review, courts are required "to accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational-basis review because it 'is not made with mathematical nicety or because in practice it results in some inequality.'" *Heller v. Doe*, 509 U.S. 312, 321 (1993). The "problems of government are practical ones and may justify, if they do not require, rough accommodations – illogical, it may be, and unscientific." *Id.* (quoting *Metropolis Theatre Co.* v. *Chicago*, 228 U.S. 61, 69-70 (1913)). Thus, so long as the rational basis test is satisfied, an "imperfect fit between means and ends" will not be overturned. *See id.* at 321. As the state court correctly observed, Husqvarna must plead claims of imperfection to the legislature, not the judiciary. Husq. App. at 23a; *see Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981) ("States are not required to convince the courts of the correctness of their legislative judgments."). The New Hampshire Supreme Court properly applied this Court's rational basis test, which is firmly established and need not be reexamined here.

III. HUSQVARNA PREVAILED ON ITS SUPREMACY CLAUSE CLAIMS, THEREFORE ITS CONTENTIONS REGARDING ARBITRATION DO NOT PRESENT A DISPUTE FOR THIS COURT.

The New Hampshire Supreme Court affirmed the trial court's determination that RSA 357-C:3, III(p)(3) and RSA 357-C:6, III are preempted by the FAA, and that they are severable from the remaining provisions of RSA chapter 357-C. Husq. App. 28a-29a. Husqvarna does not challenge the severability determination, but instead argues that the court erred in failing to consider whether additional provisions of RSA chapter 357-C were also preempted by the FAA. Husq. Br. 29-32. The New Hampshire court did not undertake such an analysis because it determined that the petitioners had not developed that argument sufficiently for review. Husq. App. 29a. While Husqvarna claims in its petition to this Court that "[t]he issue was ripe for decision," it fails to demonstrate that it sufficiently briefed this issue for the state court to review. *See generally* Husq. App., Appendix I (Excerpts from Husqvarna's brief to the New Hampshire Supreme Court).

Husqvarna's present claim that SB 126 "has effectively destroyed Husqvarna's arbitration rights by requiring all dealer disputes be adjudicated by the Motor Vehicle Industry Board" is incorrect and without a basis in the record below. Husq. Br. at 5. The State did not appeal the trial court's ruling that "SB 126 and RSA chapter 357-C are void under the Supremacy

Clause to the extent that they attempt to render void and unenforceable arbitration agreements in existing contracts," Husq. App. 78a, and the New Hampshire Supreme Court expressly stated that Husqvarna could raise its challenge to the Board provisions "in any future litigated case between it and a dealer," *id.* at 29a-30a. As such, Husqvarna's assertions regarding the supremacy clause do not present a reason for this Court to grant certiorari review.

IV. THIS CASE DOES NOT PRESENT A MATTER OF GREAT IMPORTANCE AND URGENCY.

Husqvarna contends that this case presents a matter of great urgency. Husq. Br. 33. The assertion is severely undercut by the fact that Husqvarna was subject to RSA chapter 357-C for approximately 6 months in 2013 before it filed its complaint. *See* Husq. Br. 6 ("Husqvarna filed a complaint on March 20, 2014. . . ."); Deere App. 103a (demonstrating that SB 126 went into effect on September 23, 2013). Despite that passage of time, Husqvarna did not allege in its complaint that it was engaged in any specified, concrete contractual dispute with one of its dealers under chapter 357-C. Nor did it allege that it planned to undertake a specific action in relation to one of its dealership agreements that was now forestalled by the enactment of SB 126. Rather, Husqvarna generally challenged the law's retrospective application to all of

its existing agreements.[7] This uneventful history under chapter 357-C, coupled with the fact that Husqvarna's petition before this Court does not substantiate its claims to impending harm, demonstrates that the instant case does not present a matter of great urgency.

In recent history this Court has only once used the contract clause to strike down a law affecting private contracts. *See generally Allied Structural Steel*, *supra*. In doing so, the Court explained that the law "was not even purportedly enacted to deal with a broad, generalized economic or social problem . . . [and] invaded an area never before subject to regulation by the State." *Allied Structural Steel*, 438 U.S. at 250. By contrast, manufacturer-dealer agreements in the equipment industry are subject to regulation in many states. Indeed, the State of New Hampshire had regulated the agreements at issue for nearly 20 years when the legislature enacted SB 126. As discussed earlier, the stated purpose of the legislation was to protect both dealers and consumers. Husq. App. at 19a ("The legislature was specifically concerned that manufacturers shifted costs 'onto dealers and ultimately consumers' through the use of 'one-sided, non-negotiable contracts.'") (quoting N.H.H.R. Jour. 765 (May 22, 2013)).

[7] The Deere petitioners, although receiving an injunction prior to the statute's effective date, also did not base their complaint on a specified, concrete dispute or planned action that was foreclosed by a provision of chapter 357-C, but rather, like Husqvarna, urged the court to find substantial impairment based on their reading of the law unilluminated by any real interaction between the law and one of its dealerships.

And, as the state court noted, there is ample case law standing for the proposition that regulating this type of business relationship serves a legitimate public purpose. *See id.* The facts before the New Hampshire court are, therefore, plainly distinct from those before this Court in *Allied Steel*. Husqvarna and the Deere petitioners demand more than is required by this Court's jurisprudence. This case does not present a matter of great importance that warrants this Court's review.

CONCLUSION

For the foregoing reasons, this Court should deny the petitions for writs of certiorari.

Respectfully submitted,

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STATE LAWS REGARDING THE RELATIONSHIP BETWEEN MANUFACTURERS AND DEALERS OF FORESTRY, YARD AND GARDEN AND OUTDOOR POWER EQUIPMENT

State	Equipment Definition	Citation
Alabama	Machines designed for or adapted and used for agriculture, horticulture, irrigation for agriculture or horticulture, livestock, grazing, lawn and garden, and/or light industrial purposes. (§8-21A-2(5)). This includes lawn and garden dealers and light industrial dealers not primarily engaged in the farm equipment business. (§8-21A-2(6)).	The Tractor, Lawn and Garden and Light Industrial Equipment Franchise Act, Ala. Code §§8-21A-1 *et seq*.
Arkansas	"Inventory" means farm implements, machinery, utility and industrial equipment, lawn and garden outdoor powered machinery and equipment, attachments, and repair parts. (§4-72-301(4)).	Ark. Code Ann. §§4-72-301 *et seq*.

California	"Equipment" means all-terrain vehicles and other machinery, equipment, implements, or attachments used for, or in connection with, any of the following purposes: (A) Lawn, garden, golf course, landscaping, or grounds maintenance. (B) Planting, cultivating, irrigating, harvesting, and producing agricultural or forestry products. (C) Raising, feeding, or tending to, or harvesting products from, livestock and any other activity in connection with those activities. (D) Industrial, construction, maintenance, mining, or utility activities or applications, including, but not limited to, material handling equipment. (§22901(j)(I)).	Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act, Cal. Bus. and Prof. Code §§22901, *et seq*.

Colorado	"Equipment" means a machine designed for or adapted and used for agriculture, livestock, grazing, light industrial, utility, and outdoor power equipment. "Equipment" does not include earth-moving and heavy construction equipment, mining equipment, or forestry equipment. (§35-38-102(2)).	Farm Equipment Fair Dealership Act, Colo. Rev. Stat. §§35-38-101 *et seq*.
Connecticut	"Dealer" means a person primarily engaged in the business of retail sales of farm and utility tractors, forestry equipment, light industrial or construction equipment, farm implements, farm machinery, yard and garden equipment, or attachments, accessories or repair parts for such items, but does not include a single line dealer primarily engaged in	Conn. Gen. Stat. §§42-345 *et seq*.

	the retail sale and service of industrial, forestry and construction equipment. (§42-345(2)).	
Delaware	"Dealer" means a person, firm or corporation engaged in the business of selling, at retail, construction, farm, industrial or outdoor power equipment and who maintains a total inventory of new equipment and repair parts valued at $50,000 or over and provides repair service for the above-mentioned equipment. (Del. Code Ann. Tit. 6, §2720(4)).	Equipment Dealer Contracts Act, Del. Code Ann. tit. 6, §§2720 *et seq*.
Florida	"Outdoor power equipment" means two-cycle and four-cycle gas, diesel, and electric engines and any other type of equipment used to maintain commercial, public, and residential lawns and	Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act, Fla. Stat. Ann.

	gardens or used in landscape, turf golf course, green nursery, or forestry or tree maintenance. (§686.602(11)).	§§686.600 *et seq*.
Idaho	"Equipment" means machines designed for or adapted and used for agriculture, horticulture, livestock and grazing and related industries but not exclusive to agricultural use. (§28-24-102(5)). Equipment also includes "outdoor power equipment" (§28-24-102(5)(b)) and "industrial and construction equipment," which "means equipment used in building and maintaining structures and roads including, but not limited to, loaders, loader backhoes, wheel loaders, crawlers, graders and excavators" (§28-24-102(5)(e)).	Idaho Code §§28-24-101 *et seq*.

Illinois	"Inventory" shall mean farm implements, farm machinery, attachments, accessories and repair parts, outdoor power equipment including but not limited to all-terrain vehicles or off-highway motorcycles, construction equipment, industrial equipment, attachments, accessories and repair parts. (715/2(2)).	Equipment Fair Dealership Law, 815 Ill. Comp. Stat. 715/1 *et seq*.
Iowa	"Equipment" means agricultural equipment, construction equipment, industrial equipment, utility equipment, or outdoor power equipment. Equipment does not include self-propelled machines designed primarily for the transportation of persons or property on a street or highway. (§322F.1(6)).	Iowa Code §§322F.1 *et seq*.

Kansas	"Outdoor power equipment" means and includes machinery, equipment, attachments or repair parts therefor, used for industrial, construction, maintenance or utility purposes. (§16-1302(a)).	Outdoor Power Equipment Dealership Act, Kan. Stat. Ann. §§16-1301 *et seq*.
Louisiana	"Farm equipment", "construction equipment", "heavy industrial equipment", "material handling equipment", "utility equipment" and "lawn and garden equipment" shall include every vehicle designed or adapted and used exclusively for agricultural, construction, industrial material handling, utility or lawn and garden operations, although incidentally operated or used upon the highways. (§51:481(B)(1)).	La. Rev. Stat. Ann. §§51:481 *et seq*.

Maine	"Inventory" means farm, forestry, utility or industrial equipment, construction equipment, implements, machinery, yard and garden equipment, attachments or repair parts. (§1285(4)).	Me. Rev. Stat. Ann. tit. 10, §§1285 *et seq*.
Maryland	"Dealer" means a person engaged in the business of selling at retail construction, farm, utility, or industrial equipment, . . . outdoor power equipment, outdoor power sports equipment, or repair parts. (§19-101(e)(1)).	Equipment Dealer Contract Act, Md. Code Ann., Com. Law §§119-101 *et seq*.
Massachusetts	"Inventory" means farm, utility, forestry, or light industrial equipment, implements, machinery, yard and garden equipment, attachments or repair parts; provided, however, that inventory shall not include	Mass. Gen. Laws, ch. 93G, §§1 *et seq*.

	heavy construction equipment. (§1).	
Michigan	"Equipment" means motorized machines designed for or adapted and used for agriculture, horticulture, livestock raising, forestry, grounds maintenance, lawn and garden, construction, materials handling, and earth moving. (§445.1452(d)).	Farm and Utility Equipment Act, Mich. Comp. Laws §§445.1451 *et seq*.
Minnesota	"Heavy and utility equipment", "heavy equipment", or "equipment" means equipment and parts for equipment including but not limited to: (1) excavators, crawler tractors, wheel loaders, compactors, pavers, backhoes, hydraulic hammers, cranes, fork lifts, compressors, generators, attachments and repair parts for them, and other equipment, including	Heavy & Utility Equipment Manufacturers and Dealers Act, Minn. Stat. §§325E.068 *et seq*.

	attachments and repair parts, used in all types of construction of buildings, highways, airports, dams, or other earthen structures or in moving, stock piling, or distribution of materials used in such construction; (2) trucks and truck parts; or (3) equipment used for, or adapted for use in, mining or forestry applications. (§325E.068(2)(1)).	
Mississippi	"Retailer" means a person engaged in the business of selling and retailing farm implements, machinery, utility and industrial equipment, outdoor power equipment, attachments or repair parts, and does not include retailers of petroleum products. (§75-77-1(c)).	Miss. Code Ann. §§75-77-1 *et seq*.

Missouri	Outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, and repair parts therefor (§407.895)	Mo. Rev. Stat. §§407.895 *et seq*.
	"Retailer" means any person engaged in the business of selling, repairing and retailing (a) farm implements, machinery, attachments or repair parts, (b) industrial, maintenance and construction power equipment or (c) outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, but does not include retailers of petroleum and motor vehicles (§407.850(5)).	Mo. Rev. Stat. §§407.850 *et seq*.

New Hampshire	"Equipment" means farm and utility tractors, forestry equipment, industrial equipment, construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories, and repair parts. (§357-C:1)	N.H. Rev. Stat. Ann. §§357-C:1. *et seq*.
New York	"Equipment" means vehicles and machinery and the accessories and parts thereto which are designed to be used for farm and agricultural purposes, lawn, garden, golf course, landscaping or grounds and maintenance/utility activities, provided however that self-propelled vehicles primarily for the transportation of persons or property on a street or highway are specifically excluded. (§696-a(3)).	N.Y. Gen. Bus. Law §§696-a *et seq*.

North Carolina	"Dealer" means a person engaged in the business of selling at retail farm, construction, utility or industrial, equipment, implements, machinery, attachments, outdoor power equipment, or repair parts. (§66-180(4)).	N.C. Gen. Stat. §§66-180 *et seq*.
Oklahoma	"Equipment" means a. all-terrain vehicles, utility task vehicles and recreational off-highway vehicles, in each case, regardless of how used, and b. other machinery, equipment, implements or attachments therefor, used for or in connection with the following purposes: (1) lawn, garden, golf course, landscaping or grounds maintenance, (2) planting, cultivating, irrigating, harvesting, and	Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act, Okla. Stat., tit. 15, §§244 *et seq*.

	producing of agricultural and/or forestry products, (3) raising, feeding, tending to or harvesting products from livestock or any other activity in connection therewith, or (4) industrial, construction, maintenance, mining or utility activities or applications. (§245(7)).	
Oregon	"Farm implements" means: (a) any vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highways; (b) auxiliary items, such as trailers, used with vehicles designed or adapted for agricultural operations; (c) other consumer products for agricultural purposes, including lawn and garden equipment powered by an	Or. Rev. Stat. §§646A.300 *et seq*.

	engine, supplied by the supplier to the retailer pursuant to a retailer agreement; (d) attachments and accessories used in the planting, cultivating, irrigating, harvesting and marketing of agricultural, horticultural or livestock products; and (e) outdoor power equipment, including, but not limited to, self-propelled equipment used to maintain lawns and gardens or used in landscape, turf or golf course maintenance, (§646A.300(8)).	
Pennsylvania	"Equipment" [means] machines designed for or adapted and used for agriculture, horticulture, floriculture, livestock raising, silviculture, landscaping and grounds maintenance, even though incidentally	Fair Dealership Law, Pa. Stat. Ann., tit. 73, §§205-1 *et seq*.

	operated or used upon the highways, including, but not limited to, tractors, farm implements, loaders, backhoes, lawn mowers, rototillers, etc., and any business signs purchased by requirement of the supplier which are less than five years old. The term shall not include: 1) equipment manufactured solely for the purpose of industrial construction; or 2) all-terrain vehicles as defined in 75 Pa.C.S. §7702. (§205-2).	
Rhode Island	"Inventory" means farm, utility, forestry, industrial or construction equipment, implements, machinery, yard and garden equipment, attachments or repair parts. (§6-46-2(4)).	Equipment Dealership Act, R.I. Gen. Laws §§6-46-1 *et seq*.

South Carolina	"Inventory" means farm implements, machinery, utility and industrial, and yard and garden equipment, attachments, or repair parts. (§39-59-10(4)).	S.C. Code Ann. §§39-59-10 *et seq*.
	"Equipment" means machinery, implements, or mechanical devices or apparatuses used in farming, construction, or industry and any outdoor power equipment but does not include motor vehicles subject to the motor vehicle code (§56-3-110), motorcycles, all-terrain vehicles, cranes or outdoor power equipment powered by a two-cycle or electric motor. (§39-6-20(7)).	Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act, S.C. Code Ann. §§39-6-10 *et seq*.
South Dakota	"Merchandise" means (1) automobiles, trucks, motorcycles, motor homes or travel trailers of the type and kind required to be titled	Dealer Protection Act, S.D. Codified Laws §§37-5-1 *et seq*.

	and registered pursuant to chapters 32-3 and 32-5, and accessories; (2) farm tractors, farm implements, farm machinery, and attachments; (3) industrial and construction equipment and attachments; (4) boats and personal watercraft; (5) snowmobiles and all-terrain vehicles, including multipurpose utility vehicles, side by sides, and similar type vehicles whether powered by electricity or by combustion engine; (6) office furniture, equipment, supplies, and attachments; (7) outdoor power equipment and attachments; (8) a temperature control unit; and (9) an auxiliary idle reduction and temperature management system or auxiliary power unit. (§37-5-12.2.)	

Tennessee	"Retailer" means a person engaged in the business of selling and retailing farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, attachments and repair parts, (§47-25-1301(4)).	Tenn. Code Ann. §§47-25-1301 *et seq*.
Texas	"Equipment" means machinery or attachments to machinery used for or in connection with "(i) lawn, garden, golf course, landscaping or grounds maintenance; (ii) planting, cultivating, irrigating, harvesting, or producing agricultural or forestry products; (iii) raising, feeding, or tending to livestock . . . ; (iv) industrial, construction, maintenance, mining, or utility activities or	Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act, Tex. Bus. & Com. Code §§57.001 *et seq*.

	applications. . . .” (§57.002(7)(A).)	
Utah	“Dealer” means any person, firm, or corporation engaged in the business of selling and retailing farm equipment, implements, utility and light industrial equipment, attachments, or repair parts, and includes retailers of yard and garden equipment not primarily engaged in the farm equipment business. (§ 13-14a-1(a)).	Utah Code Ann. §§13-14a-1 *et seq*.
Vermont	“Inventory” means farm, utility, forestry, or industrial equipment, implements, machinery, yard and garden equipment, attachments, or repair parts. These terms do not include heavy construction equipment (§4071(4)).	Vt. Stat. Ann., tit. 9, §§4071 *et seq*.

Virginia	"Dealer" means a person engaged in the business of selling at retail farm, construction, utility or industrial equipment, implements, machinery, attachments, outdoor power equipment, or repair parts. (§59.1-352.1).	Equipment Dealers Protection Act, Va. Code Ann. §§59.1-352.1 *et seq*.
Washington	"Dealer" means a person engaged in the retail sale and service of farm equipment, including a person engaged in sale of outdoor power equipment who is primarily engaged in retail sale of farm equipment. It does not include a person primarily engaged in the retail sale of outdoor power equipment. (§19.98.008(4).) "Equipment" includes farm equipment and outdoor power equipment. (§19.98.008(9)(a).)	Wash. Rev. Code Ann. §§19.98.008 *et seq*.

West Virginia	"Dealer" means any person, firm, partnership, association, corporation or other business entity engaged in the business of selling, at retail, farm, construction, industrial or outdoor power equipment or any combination of the foregoing and who maintains a total inventory of new equipment and repair parts having an aggregate value of not less than twenty-five thousand dollars at current net price and who provides repair service for such equipment. (§47-11F-2(3)). "Inventory" means the tractors, implements, attachments, equipment, and repair parts that the dealer purchased from the supplier, including, but not limited to, any data processing hardware and software, special	Farm Equipment Dealer Contract Act, W. Va. Code §§47-11F-1 *et seq*.

	service tools, and business signs the supplier has required the dealer to purchase and maintain. (§47-11F-2(4)).	
Wyoming	"Equipment" means (a) all-terrain vehicles and (b) machinery, equipment, implements or attachments used for or in connection with (1) lawn, garden, golf course, landscaping or grounds maintenance, (2) planting, cultivating, irrigating, grazing, harvesting and producing of agricultural products, (3) raising, feeding, tending to or harvesting products from livestock or (4) industrial, construction, maintenance or utility activities or applications. (§40-20-113(a)(vii)).	Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act, Wyo. Stat Ann. §§40-20-101 *et seq*.