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It's Not Easy Green: Metropolitan Taxicab Reveals Hurdles Posed by Federal Preemption to State and Local Environmental Initiatives

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IT’S NOT EASY BEING GREEN: METROPOLITAN TAXICAB REVEALS HURDLES POSED BY FEDERAL PREEMPTION TO STATE AND LOCAL ENVIRONMENTAL INITIATIVES

I. INTRODUCTION

Being green has never before been so popular. From the supermarket to the office park, and from the classroom to the construction site, a wave of environmentalism is sweeping the nation. The justifications for going “green” range from the selfish to the altruistic: cutting energy costs during hard economic times, mitigating the country’s dependence on foreign oil, and combating climate change through the reduction of so-called carbon footprints. Regardless of why many Americans are becoming environmentally conscious, scientists welcome this behavioral shift because of the harmful implications of maintaining the status quo.

1. For examples of the increasing popularity of environmentally friendly behavior, see infra note 2.


4. See, e.g., U.S. Envtl. Prot. Agency, Climate Change Frequent Questions – Effects, http://www.epa.gov/climatechange/fq/effects.html#q3 (last visited Feb. 28, 2010) (enumerating likely detrimental consequences of climate change). Warming global temperatures are expected to have a predominately negative impact on biodiversity, with some ecosystems already affected. Id. In terms of human health, more heat-related deaths and illness, as well as a higher incidence of insect-borne disease, may result from climate change. Id. Rising sea levels, caused by melting glaciers, may contribute to enhanced coastal erosion and an increased risk of property loss from storm surges. Id. Moreover, scientists expect climate change to cause an increase in the number of heat waves, more intense hurricanes, and a greater likelihood of floods and droughts. Id.
One notable place where individuals are increasingly going green is America's roadways, which have long allowed personal automobiles to be the greatest polluter in cities nationwide.\(^5\) According to the U.S. Environmental Protection Agency (EPA), "[d]riving a private car is probably a typical citizen's most 'polluting' daily activity" between the vehicle's exhaust and the evaporation of its fuel.\(^6\) Burning fossil fuels, such as gasoline and diesel, releases carbon dioxide and other greenhouse gases into the atmosphere that contribute to climate change.\(^7\) Consequently, the emissions from passenger cars and trucks account for at least one-fifth of U.S. carbon dioxide emissions and nearly one-third of the country's total air pollution.\(^8\) Although efforts by the federal government and automotive industry have greatly reduced vehicle emissions since 1970, this progress has been effectively wiped out as the number of miles driven by Americans doubled during the same period.\(^9\)

One widely embraced solution to this dilemma is hybrid-electric vehicles (hybrids), which have greater fuel economy and lower emissions than conventional automobiles because they utilize both a gasoline engine and an electric motor.\(^10\) Since the first hybrid car


\(^6\) Id. (reiterating link between driving and pollution).


\(^9\) See Automobile Emissions, supra note 5, at 4 (describing limited progress of emission controls to date). On-road carbon monoxide emissions are less than half of what they were in 1970 and five times less than they would have been without the controls that have been implemented since then. See U.S. Envtl. Prot. Agency, On-Road Sources, http://www.epa.gov/otaq/inventory/overview/results/onroad.htm (last visited Feb. 28, 2010) (depicting impact of regulatory controls on on-road vehicle emissions). EPA studies also show that today's cars emit seventy to ninety percent less pollution for each mile driven than their 1970 counterparts as a result of advancements in vehicle and fuel technology. See U.S. Envtl. Prot. Agency, Solutions that Reduce Pollution, http://www.epa.gov/otaq/inventory/overview/solutions/vech_engines.htm (last visited Feb. 28, 2010) (applauding technological improvements for reducing vehicle emissions).

became commercially available in the U.S. in 1999, over 1.5 million hybrids have been sold, and manufacturers expect continued growth in this sector of the otherwise-distressed automotive industry. Federal tax incentives have encouraged the sale of hybrids since the mid-2000s, but many of these programs have since ended or are being phased out without decreasing the vehicles' popularity among consumers.

Despite the current strength of the environmental movement, the road to going green is a bumpy one, riddled with legislative potholes, influential pedestrians and other obstacles slowing the country's progress. Environmental initiatives of cities and states, in particular, have been hindered by recent court decisions finding these efforts preempted by federal law. One such case is Metropolitan Taxicab Board of Trade v. City of New York (Metropolitan Taxicab), in which the District Court for the Southern District of New York


13. For a discussion of the hurdles faced by state and local environmental initiatives, see infra notes 172-82 and accompanying text.


struck down the city’s attempt to move toward exclusively hybrid taxicabs.16

This Note evaluates the district court’s decision in Metropolitan Taxicab and reflects on its implications for state and local environmental initiatives. Part II discusses the factual background and procedural history of this case.17 Part III provides an overview of two pertinent federal statutes, the doctrine of preemption, and the limited amount of applicable case law.18 Part IV describes the district court’s reasoning in Metropolitan Taxicab.19 Part V scrutinizes the outcome of this case and explains why the court’s overall decision was sound even though particular points could have been addressed in greater detail.20 Finally, Part VI predicts the impact that this decision will have on environmental federalism and suggests various courses of action still available to cities and states following Metropolitan Taxicab.21

II. FACTS

In 2003, New York City first acted to incorporate hybrid vehicles into its taxicab fleet by enacting a law permitting the city’s Taxi- cab and Limousine Commission (TLC) to issue additional taxicab licenses if at least nine percent were granted to fuel-efficient vehicles.22 The TLC only began approving hybrids for use as taxicabs in

17. For a further discussion of the facts of Metropolitan Taxicab, see infra notes 22-52 and accompanying text.
18. For a further discussion of the legal background applicable to Metropolitan Taxicab, see infra notes 53-104 and accompanying text.
19. For a narrative analysis of the court’s decision, see infra notes 105-34 and accompanying text.
20. For a critical analysis of the court’s decision in Metropolitan Taxicab, see infra notes 155-61 and accompanying text.
21. For a further discussion of the potential impact of this case, see infra notes 162-82 and accompanying text.
22. See Opinion & Order, Metro. Taxicab Bd. of Trade v. City of New York, No. 08 Civ. 7837 (PAC), 2008 WL 4866021, at *3 (S.D.N.Y. Oct. 31, 2008) (portraying history of city’s efforts to have more hybrid taxicabs). Created in 1971, the TLC “is the agency responsible for licensing and regulating New York City’s medallion (yellow) taxicabs, for-hire vehicles (community-based liveries and black cars), commuter vans, paratransit vehicles (ambulettes) and certain luxury limousines.” New York City Taxi & Limousine Commission, About TLC, http://www.nyc.gov/html/tlc/html/about/about.shtml (last visited Feb. 28, 2010) (describing functions of TLC). According to the city’s Charter, one purpose of the TLC is to establish an overall public transportation policy governing the vehicles under its purview. See Metro. Taxicab, 2008 WL 4866021, at *2. The TLC notably has the power to set
October 2005, however, after adopting new requirements regarding interior room. On May 22, 2007, one month after introducing a broad package of environmental initiatives dubbed “PlaNYC 2030,” Mayor Michael Bloomberg announced that the city planned to turn its taxicab fleet completely hybrid by 2012. While nearly 1,500 of the city’s 13,237 yellow taxicabs were already hybrids, the remainder consisted primarily of Ford’s Crown Victoria model, which averages twelve to fourteen miles per gallon (mpg).

The TLC accordingly adopted new rules (25/30 Rules) on December 11, 2007, that established minimum fuel economy requirements for all new taxicabs. These rules called for new taxicabs to be either wheelchair accessible or to have a minimum city rating of twenty-five mpg by October 1, 2008, with a scheduled increase to thirty mpg by October 1, 2009. While the 25/30 Rules did not explicitly require a switch to hybrids, only vehicles with hybrid-electric or clean diesel engines were capable of meeting these minimum mileage requirements. With mandatory retirement for New York City taxicabs every three to five years, depending on use, the TLC regulations would have resulted in a virtually all-hybrid taxicab fleet by 2012.

Shortly before the first deadline of the 25/30 Rules, various parties related to the taxicab industry filed suit in federal court seeking an injunction. On October 31, 2008, the District Court

23. See Metro. Taxicab, 2008 WL 4866021, at *3 (explaining how hybrids did not meet TLC’s previous interior room requirements for taxicabs).


27. See id. (explicating provisions of 25/30 Rules).

28. See id. at *2 (clarifying impact of minimum mileage requirements).

29. See id. (illustrating eventual implications of 25/30 Rules).

30. See id. at *1 (providing full list of parties involved in lawsuit). The plaintiffs included: Metropolitan Taxicab Board of Trade, a trade association made up of yellow medallion taxi fleets in New York City; Midtown Operating Corp., a private yellow taxicab garage that leases taxis to hundreds of independent contrac-
for the Southern District of New York granted the plaintiffs' motion for a preliminary injunction in part because the plaintiffs would be irreparably harmed if forced to comply with the new rules. The court further held that the plaintiffs had demonstrated they were likely to succeed in showing that these rules were preempted by the federal Energy Policy and Conservation Act (EPCA). Notably, the court rejected the plaintiffs' argument that the TLC regulations were also preempted by the federal Clean Air Act (CAA).

Disappointed by this roadblock in his administration's attempt to reduce greenhouse gas emissions, Mayor Bloomberg lashed out against the "archaic Washington regulations" behind the ruling for preventing cities "from choosing to create cleaner air and a healthier place to live." The mayor elaborated, "The sad irony here is that the laws being relied on by the plaintiff[s] . . . were designed to reduce air pollution and reduce our dependence on foreign oil, which is exactly what moving to fuel efficient cabs will do." Determined to find a detour to achieving a cleaner taxicab fleet, Mayor Bloomberg instructed the TLC to develop a program of financial incentives and disincentives to promote the use of fuel-efficient vehicles.

On March 26, 2009, the TLC repealed the 25/30 Rules and enacted new regulations (Lease Cap Rules) that altered the maximum lease rate vehicle owners could charge drivers for leasing taxicabs in twelve-hour shifts. First, these regulations reduced the

tors; Sweet Irene Transportation Co., Inc., a private corporate that owns and leases taxis; Osman Ali, a self-employed independent contractor who buys, leases, and drives taxis; and Kevin Healy, a frequent taxi passenger. See id. The defendants included: the City of New York; the TLC; Mayor Michael Bloomberg, in his official capacity; Matthew Daus, in his capacity as Commissioner, Chair, and Chief Executive Officer of the TLC; Peter Schenkman, in his capacity as the Assistant Commissioner for Safety and Emissions of the TLC; and Andrew Salkin, in his capacity as TLC First Deputy Commissioner. See id.

32. See id. (holding that EPCA preempts 25/30 Rules). For a further discussion of the EPCA, see infra notes 62-67 and accompanying text.
33. See id. at *14 (finding that CAA does not preempt 25/30 Rules). For a further discussion of the CAA, see infra notes 68-72 and accompanying text.
34. Chan, supra note 25 (quoting Mayor Bloomberg's response to decision striking down 25/30 Rules).
35. Id. (elaborating on Mayor Bloomberg's qualms with district court's decision).
36. See id. (observing Mayor Bloomberg's resolve to turn taxicab fleet completely hybrid through different approach than 25/30 Rules).
37. See Metro. Taxicab Bd. of Trade v. City of New York, 633 F. Supp. 2d 83, 88-89 (S.D.N.Y. 2009) (noting origins of Lease Cap Rules). Prior to the new TLC regulations, the maximum lease rates were "$105 for all day shifts; $115 for the night shift
maximum lease rate, otherwise known as the lease cap, for all taxicabs that were not hybrids, clean diesel, or wheelchair accessible.  

An initial reduction of $4 per shift was scheduled to go into effect on May 1, 2009, with the reduction increasing to $8 per shift on May 1, 2010, and $12 per shift on May 1, 2011. Second, the regulations raised the lease cap by $3 per shift for vehicles meeting certain specifications. Although the Lease Cap Rules did not expressly mandate the purchase of hybrids, the only vehicles that met the specifications warranting an increase were the same hybrids that satisfied the abandoned 25/30 Rules.  

According to the city, the Lease Cap Rules corrected a structural disincentive preventing many taxicab owners from switching their fleets to hybrid vehicles. Under the existing framework of regulations and industry custom, taxicab drivers, rather than vehicle owners, paid for gasoline. With fuel costs therefore irrelevant to owners, and the cost of transforming a hybrid into a taxicab higher than transforming a conventional vehicle, most owners resorted to purchasing the cheaper, time-tested Crown Victoria. Hence, the goal of the Lease Cap Rules was to shift the cost of gasoline, which is higher for conventional vehicles, from drivers to owners by reducing the lease income of those who owned nonhybrid taxicabs.  

Mayor Bloomberg was not ambiguous about his intentions with the new TLC regulations: "By offering incentives that will encourage more taxi fleet owners to purchase hybrids, we have found another avenue to reach our goal of greening our yellow cabs, im-
proving our air quality, and reducing our carbon emissions." As
the TLC Commissioner elaborated, the Lease Cap Rules were ex-
pected to "incentivize the purchase of cleaner vehicles, while ensur-
ing that taxi drivers are not penalized because a taxicab owner is
reluctant to make the wiser purchase of a hybrid vehicle." Once
again, however, members of the taxi industry challenged the TLC
regulations shortly before the revised first deadline.

On April 17, 2009, the trade association that had opposed the
25/30 Rules, as well as various taxicab fleet owners, filed an
amended complaint. The plaintiffs alleged that the Lease Cap
Rules, much like the 25/30 Rules, were preempted by the EPCA
and CAA because they were "essentially a mandate to purchase vehi-


cles with a certain mpg or emissions rating." After the plaintiffs
moved for a preliminary injunction, an evidentiary hearing was
held on May 20, 2009, to determine the effect of the Lease Cap
Rules on the plaintiffs and whether the rules indeed forced the
plaintiffs to purchase hybrids. Granting the plaintiffs’ motion on
June 22, 2009, the district court held that the plaintiffs had demon-
strated irreparable harm and a likelihood of success in showing that
both the EPCA and CAA preempted the de facto mandate imposed
by the TLC’s new regulations.

47. Id. (declaring anticipated consequences of Lease Cap Rules).
49. See id. (describing plaintiffs’ suit to prevent enforcement of Lease Cap Rules). The plaintiffs specifically consisted of Metropolitan Taxicab Board of Trade, Midtown Car Leasing Corp., Bath Cab Corp., Ronart Leasing Corp., Geid Cab Corp., Linden Maintenance Corp., and Ann Taxi Inc. See id. at 83. Together, the plaintiffs controlled one-quarter of all taxicabs in New York City. See id. at 91. For a list of the defendants, which were identical in the initial complaint, see supra note 90.
50. Metro. Taxicab, 633 F. Supp. 2d at 91 (offering plaintiffs’ claims in support of injunction against Lease Cap Rules).
51. See id. (relating procedural posture of case).
52. See id. at 105-06 (granting preliminary injunction and holding Lease Cap Rules preempted by EPCA and CAA).
III. BACKGROUND

The U.S. federal government has not always been at the forefront of protecting the environment.\textsuperscript{53} With the government unwilling to inhibit technological or economic progress for the better part of the nation's history, the only possible redress for environmental transgressions came from common law actions.\textsuperscript{54} Beginning with President Theodore Roosevelt, the federal government began taking on greater regulatory powers throughout the twentieth century.\textsuperscript{55} Nevertheless, unbridled growth of various industries by the 1950s created highly visible forms of pollution and rendered the traditional method of addressing environmental grievances inadequate.\textsuperscript{56}

Ultimately, the federal government responded to growing concern about the environment by creating the EPA in 1970.\textsuperscript{57} Congress passed the CAA that same year, directing the EPA to set national air standards.\textsuperscript{58} Following the 1973-1974 Arab oil embargo and resulting energy crisis in the U.S., Congress passed the EPCA in 1975.\textsuperscript{59} The EPCA's primary legislative goals were energy conservation and efficiency, but in practice these efforts offered additional environmental protections.\textsuperscript{60} While the CAA and EPCA grant different powers to the federal government, their regulation of vehi-


\textsuperscript{54} See id. (noting initial difficulty of redressing environmental grievances).

\textsuperscript{55} See id. (illustrating growth of U.S. regulatory framework).

\textsuperscript{56} See id. (describing impact of booming chemical, plastics, petroleum, automotive, aviation, and munitions industries). The problem was not so much the number of environmental actions at common law, but rather the difficulty in deciding them. Id. Expert witnesses would often argue for both sides of any case "to the consternation and confusion of judges and juries," and many cases involved multistate metropolitan areas "with a crazy quilt of conflicting state laws and local ordinances." Id.

\textsuperscript{57} See id. (explaining origins of Environmental Protection Agency).


icles is closely related, and both laws play a significant role in the ongoing debate surrounding preemption.\textsuperscript{61}

A. Energy Policy and Conservation Act

The EPCA charges the federal Department of Transportation (DOT) with establishing the maximum feasible average fuel economy for U.S. automobile manufacturers in a given model year.\textsuperscript{62} This duty is carried out within the DOT by the National Highway Traffic Safety Administration (NHTSA), which sets fuel economy standards for passenger cars and light trucks using various factors supplied by statute.\textsuperscript{63} Accordingly, NHTSA's Corporate Average Fuel Economy (CAFE) framework allows manufacturers to sell any combination of vehicles provided that the average fuel economy of their nationwide fleets meets the applicable mileage standard.\textsuperscript{64} CAFE currently requires a fleet average of 27.5 mpg, but Congress recently increased this standard to thirty-five mpg beginning with model year 2020.\textsuperscript{65}

An express preemption clause within the EPCA declares:

\textsuperscript{61} For a further discussion of these statutes and how their objectives are intrinsically linked, see infra notes 62-72, 96-104 and accompanying text.

\textsuperscript{62} See 49 U.S.C. § 32902(a) (2006) (establishing how fuel economy standards are prescribed). "Fuel economy is defined as the average mileage traveled by an automobile per gallon of gasoline . . . consumed as measured in accordance with the testing and evaluation protocol set forth by the [EPA]." CAFE Overview, supra note 59. Basically, the EPA measures exhaust emissions of hydrocarbons, carbon monoxide, and carbon dioxide per mile traveled and uses a formula known as the carbon balance equation to calculate the amount of fuel burned per mile driven. See Raymond B. Ludwiszewski & Charles H. Haake, Cars, Carbon, and Climate Change, 102 Nw. U. L. Rev. 665, 687 (2008) (explaining how vehicle fuel economy is measured).

\textsuperscript{63} See 49 U.S.C. § 32902(f) (2006) (listing considerations for determining maximum feasible average fuel economy). The factors that must be considered are technological feasibility, economic practicability, the effect of other federal motor vehicle standards on fuel economy, and the country's need to conserve energy. See id. NHTSA has interpreted economic practicability "to include consideration of consumer choice, economic hardship for the automobile industry, and vehicle safety." Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie, 508 F. Supp. 2d 295, 307 (D. Vt. 2007) (explicating process undertaken by NHTSA to set fuel economy standards). Light trucks with a gross vehicle weight rating exceeding 8,500 pounds—such as certain pickup trucks, sport utility vehicles, and large vans—do not have to comply with CAFE standards through model year 2010. See CAFE Overview, supra note 59 (differentiating types of vehicles subject to CAFE standards).

\textsuperscript{64} See Ludwiszewski & Haake, supra note 62, at 682 (explaining CAFE system).

When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.\textsuperscript{66}

A savings clause exists, however, which permits a state or political subdivision to “prescribe requirements for fuel economy for automobiles obtained for its own use.”\textsuperscript{67}

**B. Clean Air Act**

Part of the EPA’s mandate under the CAA is to establish emissions standards for new motor vehicles.\textsuperscript{68} A preemption clause associated with this responsibility provides, in relevant part, that “[n]o State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part.”\textsuperscript{69} The same section of the CAA also contains two exceptions to this express preemption clause.\textsuperscript{70} First, California is permitted to receive a waiver from the EPA Administrator if it meets certain qualifications, and can thereby set its own emissions standards.\textsuperscript{71} Second, other states may adopt California’s standards that receive a waiver from the EPA.\textsuperscript{72}


\textsuperscript{67} 49 U.S.C. § 32919(c) (2006) (providing exception to EPCA express preemption clause).

\textsuperscript{68} See 42 U.S.C. § 7521(a) (2006) (delegating authority to regulate vehicle emissions to EPA Administrator). The EPA dictates how much pollution new motor vehicles may emit, but automakers get to decide how to abide by this limitation. See Automobile Emissions, supra note 5, at 3 (discussing EPA emissions standards).

\textsuperscript{69} 42 U.S.C. § 7543(a) (2006) (promulgating CAA express preemption provision).

\textsuperscript{70} See 42 U.S.C. § 7543(b) (2006) (offering exceptions to CAA express preemption clause).


\textsuperscript{72} See 42 U.S.C. § 7543(b)(3) (2006) (extending possibility of waiver to every state). If California’s standards are granted a waiver of preemption, compliance with them is treated as compliance with federal standards. Id. At least eleven states have adopted California’s emissions standards since 1994. See Ludwiszewski & Haake, supra note 62, at 675 (discussing California’s special status under CAA). On March 6, 2008, the EPA generated some controversy by initially denying a waiver to California’s restrictions on greenhouse gas emissions from new automo-
C. Doctrine of Preemption

The doctrine of preemption is grounded in the Supremacy Clause of the U.S. Constitution, which asserts that the Constitution and U.S. laws "shall be the supreme Law of the Land," notwithstanding any contrary state laws or constitutions. Various types of preemption exist, including express preemption and implied preemption. Additionally, implied preemption may be divided into so-called field preemption and conflict preemption. State and local laws may therefore be preempted by "express language in a congressional enactment, by implication from the depth and breadth of a congressional scheme that occupies the legislative field, or by implication because of a conflict with a congressional enactment." 

Congressional intent is the touchstone in every preemption analysis for determining the scope of a statute with alleged preemptive power. Even where Congress has spoken expressly about pre-emption, a well-established presumption against preemption is recognized when Congress legislates in a field traditionally occupied by the states. Thus, courts start with the assumption that federal law does not supersede the historic police powers of states unless that is the clear and manifest purpose of Congress.

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73. U.S. Const. art. VI, cl. 2 (rendering state and local laws subordinate to federal law).
75. See id. (characterizing forms of implied preemption).
76. Id. (quoting Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 541 (2001)) (explaining multiple ways preemption may apply to state and local laws).
78. See id. at 1194-95 (citing Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996)) (describing traditional presumption against preemption).
D. Environmental Federalism

Although the Supreme Court’s preemption jurisprudence is often inconsistent and difficult to apply, various cases are relevant to the preemption provisions within the EPCA and CAA. In *Engine Manufacturers Ass’n v. South Coast Air Quality Management District (Engine Manufacturers)*, the Court invoked CAA preemption against rules enacted by a political subdivision of California that prohibited the purchase or leasing of vehicles which failed to meet certain emissions requirements. The Court found that a state law need not actually interfere with federal law to be considered “related to” the latter for the purposes of preemption. Even though the challenged rules had a limited impact on the objectives of the CAA, the Court also noted that allowing one state or political subdivision to enact such rules would lead to an aggregate effect that eventually “would undo Congress’s carefully calibrated regulatory scheme.”

In multiple decisions unrelated to environmental regulation, the Supreme Court has broadly interpreted the statutory meaning of the phrase related to. Derivations of this phrase are important because the preemption provisions of the EPCA and CAA apply respectively to regulations “related to fuel economy standards” and “relating to the control of emissions.” In *Travelers Indemnity Co. v. Bailey (Bailey)*, for example, the Court expressed that the phrase “in relation to” is expansive when used in a statute. The Court

82. Id. at 258-59 (invoking CAA preemption against rules established by entity responsible for air pollution control in Los Angeles metropolitan area). The Court held that the challenged rules set “standards” within the meaning of the CAA express preemption clause even though the rules regulated the purchase of new vehicles rather than vehicle sales. Id. at 253-55.
83. See id. at 255 (clarifying meaning of “related to” in any preemption clause).
84. Id. (offering rationale for applying CAA preemption).
88. See id. at 2203 (reiterating observation on phrase “in relation to” from *Smith*).
further demonstrated in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.* that understanding related to requires comparing the objectives of the supposedly preemptive federal statute with the purpose and effects of the challenged state or local law.

There are no precedents in which fuel economy standards were directly challenged on the basis of EPCA and CAA preemption, but two 2007 cases discuss this issue incidentally: *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie (Crombie)* and *Central Valley Chrysler-Jeep, Inc. v. Goldstene (Goldstene).* In these cases, automobile manufacturers filed essentially identical lawsuits challenging California's stringent emissions standards for new vehicles. Both federal district courts held that these standards would be valid if and when the EPA granted a waiver of preemption under the CAA. Regarding the applicability of a presumption against preemption, the court in *Crombie* determined that the regulation of vehicle emissions cannot be categorized as either a traditional area of state regulation or an area in which federal control is predominate.

Another notable conclusion in these cases was the lack of inherent conflict between the EPA's authority under the CAA and

90. See id. at 656-59 (exhibiting process for interpreting "related to" language in preemption clause).
92. 529 F. Supp. 2d 1151 (E.D. Cal. 2007).
94. See *Crombie*, 508 F. Supp. 2d at 397 (expressing that CAA preemption is not applicable if EPA grants waiver to California's emissions standards); *Goldstene*, 529 F. Supp. 2d at 1189 (concluding that California regulations become immune from preemption once granted waiver of preemption). The decisions in these twin cases take on new meaning considering that the EPA recently granted the waiver sought by California. For a discussion of the controversy involving this waiver application, see *supra* note 72.
95. See *Crombie*, 508 F. Supp. 2d at 350-51 (comparing regulation of vehicle emissions to other regulatory areas in which state or federal control clearly dominates). Since the beginning of federal involvement in this area, the regulation of environmental pollution has been regarded as a cooperative legislative effort, characterized by overlapping spheres of state and federal authority. See id.
NHTSA's authority under the EPCA. While the CAA does not mention vehicle fuel economy, emissions standards essentially double as mileage standards because the only way to reduce a vehicle's carbon emissions is to improve its fuel economy. When state or local regulations specifically target vehicle emissions—by mandating the sale of "zero-emission vehicles," for example—courts have had no difficulty finding such regulations preempted by the CAA. The preemption analysis becomes more complicated when regulations target vehicle mileage standards but remain silent on emissions.

The court in Crombie also found that Congress's undoubted intent with the EPCA's express preemption clause "was to make the setting of fuel economy standards exclusively a federal concern . . . " Yet, Crombie and Goldstene both demonstrate that regulations preempted by the EPCA are not necessarily preempted by the CAA. Despite the scientific overlap between these two types of regulations, certain courts will not find mileage standards preempted by the CAA unless one of their stated objectives is address-

96. See id. at 350 (concluding that preemption doctrines do not apply to interplay between CAA and EPCA); Goldstene 529 F. Supp. 2d at 1169-70 (observing that conflict is possible but not inevitable between purposes of CAA and EPCA).

97. See Ludwiszewski & Haake, supra note 62, at 667 (explaining how carbon dioxide emissions are direct function of burning fossil fuels). "Improving fuel economy so that vehicles burn less gasoline is the only known practical way for a manufacturer of today's gasoline-powered automobiles to reduce tailpipe emissions of CO₂." Id. at 687. See supra note 62 for an explanation of how fuel economy is measured, which underscores the link between fuel economy and vehicle emissions.

98. See, e.g., Ass'n of Int'l Auto. Mfrs., Inc. v. Comm'r, Mass. Dept. of Envtl. Prot., 208 F.3d 1, 6-7 (1st Cir. 2000) (finding zero-emission vehicle mandates are standards relating to control of emissions within meaning of CAA preemption clause); Am. Auto. Mfrs. Ass'n v. Cahill, 152 F.3d 196, 199-200 (2d Cir. 1998) (holding requirement that zero-emission vehicles comprise certain percentage of new lightweight vehicles to be preempted by CAA). Even though the challenged regulations in Cahill did not impose a precise limit on emissions, the Second Circuit expressed that there were sufficient grounds for preemption because the requirement had "no purpose other than to effect a general reduction in emissions" and was "in the nature of a command having a direct effect on the level of emissions." Cahill, 152 F.3d at 200.


100. Crombie, 508 F. Supp. 2d at 354 (describing Congressional intent behind EPCA preemption clause).

101. See id. at 353 (asserting that emissions regulations are not equivalent to fuel economy standards when compliance is not achieved solely through improving fuel efficiency); Goldstene, 529 F. Supp. 2d at 1176 (rejecting notion that emissions regulation requiring substantial improvement in mileage standards constitutes de facto regulation of fuel economy without one-to-one correlation).
ing vehicle emissions. As the Supreme Court concluded in Massachusetts v. Environmental Protection Agency, a landmark decision solidifying the authority of the EPA to regulate greenhouse gases, inconsistency between the EPA’s obligations under the CAA and the DOT’s obligations under the EPCA is not inevitable.

IV. NARRATIVE ANALYSIS

In Metropolitan Taxicab, the District Court for the Southern District of New York found the TLC’s Lease Cap Rules to be a de facto mandate on taxicab owners to purchase hybrids and held that this mandate is preempted by the EPCA and CAA because it relates to both fuel economy and emissions standards. Before embarking on its analysis, the court acknowledged that no one questions the desirability of fuel-efficient vehicles or the ability of New York City to incentivize the purchase of certain types of taxicabs. Instead, the narrow issue in this case was whether the TLC’s regulations interfered with Congressional intent to preserve exclusive jurisdiction over the regulation of fuel economy and vehicle emissions.

A. De Facto Mandate Determination

To resolve this question, the court first sought to determine if the Lease Cap Rules mandated the purchase of hybrid taxicabs.

102. See, e.g., Opinion & Order, Metro. Taxicab Opinion, 2008 WL 4866021, at *14 (finding CAA preemption not applicable to rules that are silent on emissions even if emissions reduction is likely result).


104. See id. at 592 (discussing relationship between responsibilities of EPA and DOT). A certain amount of consistency can actually be expected given the similarity in the factors that the EPA and NHTSA must consider when setting their respective standards. See Goldstene, 529 F. Supp. 2d at 1169.

105. See Metro. Taxicab Bd. of Trade v. City of New York, 633 F. Supp. 2d 83, 105-06 (S.D.N.Y. 2009) (granting preliminary injunction against Lease Cap Rules). This holding marked a slight retreat from the court’s prior decision regarding the TLC’s 25/30 Rules, which were deemed to be preempted by the EPCA but not the CAA. See Metro. Taxicab, 2008 WL 4866021, at *14-15.

106. See Metro. Taxicab, 633 F. Supp. 2d at 87 (clarifying parameters of case). There were no legal challenges to incentives such as the city issuing new taxicab medallions exclusively for hybrid vehicles, extending the life of hybrid taxicabs from three to five years, or increasing the maximum lease rate for hybrid taxicabs by $3 per shift. See id. Furthermore, the court expressed that “[i]ncreasing the number of hybrid taxicabs is an appropriate and important government priority.” Id.

107. See id. (elucidating case’s narrow issue). Because the plaintiffs moved for a preliminary injunction against the Lease Cap Rules, the court could grant this motion only upon a showing of irreparable harm and demonstration of a likelihood of success on the merits. See id. at 92.

108. See id. at 87 (describing first step in court’s preemption analysis).
Due to the lack of controlling cases, the parties drew comparisons to preemption cases involving the federal Employee Retirement Income Security Act of 1974 (ERISA). From these cases, the court concluded that

a local law is preempted if it directly regulates within a field preempted by Congress, or if it indirectly regulates within a preempted field in such a way that effectively mandates a specific, preempted outcome . . . Conversely, a local law is not preempted when it only indirectly regulates parties within a preempted field and presents regulated parties with viable, non-preempted options.

Although the ERISA cases provided a framework for analyzing the interplay between a de facto mandate and preemption, they failed to reveal how to determine whether particular economic incentives established a mandate. Hence, the court asked the parties to present expert evidence on the consequences of the Lease Cap Rules.

Ultimately, the plaintiffs’ evidence convinced the court that the profit disparity between owning a Crown Victoria taxicab and owning a hybrid taxicab would become so great that no rational owner would choose the former. The court concluded that the Lease Cap Rules presented an offer which realistically could not be refused, thereby rejecting the defendants’ argument that the rules were not a mandate as long as owners of conventional taxicabs continued to earn any profit. This conclusion was bolstered by the

109. See id. at 93 (relating how parties resorted to ERISA preemption cases due to lack of cases on point).
110. Id. at 95-96 (synthesizing rule from various ERISA cases with differing outcomes). The cases relied on by the court were New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645 (1995); California Div. of Labor Standards Enforcement v. Dillingham Constr., 519 U.S. 316 (1997); Retail Indus. Leaders Ass’n v. Fielder, 475 F.3d 180 (4th Cir. 2007); and Retail Indus. Leaders Ass’n v. Suffolk County, 497 F. Supp. 2d 403 (E.D.N.Y. 2007).
111. See Metro. Taxicab, 633 F. Supp. 2d at 96 (explaining that ERISA cases alone are insufficient to make determination about Lease Cap Rules).
112. See id. (suggesting need for particular evidence to complete preemption analysis).
113. See id. at 97 (discussing evidence presented by both parties regarding impact of Lease Cap Rules). The plaintiffs’ expert economist estimated that, by 2011, annual profits from owning a Crown Victoria taxicab would be reduced to $581 while profits from owning a hybrid taxicab would reach $7,099. See id. at 96.
114. See id. at 97-99 (rebuffing claims by defendants’ expert in favor of those made by plaintiffs’ expert). The taxicab industry is profit-oriented, according to the court, and therefore fleet owners will always take a larger profit over a smaller one. See id. at 100.
fact that the Lease Cap Rules were expressly adopted to encourage the purchase of hybrids. Consequentially, the court held that the TLC’s rules effectively mandated the purchase of hybrids by providing no viable alternatives to taxicab owners.

B. EPCA Preemption

Once the court deemed the Lease Cap Rules a mandate, it turned its attention to whether they were related to fuel economy or emissions standards so as to be preempted by the EPCA or CAA. The defendants tried to distinguish the Lease Cap Rules from the TLC’s previous 25/30 Rules, which they admitted were preempted under the EPCA, by arguing that the new rules simply required hybrid taxicabs without requiring vehicles of a certain mpg rating. The court rejected this narrow construction of related to, however, in light of the U.S. Supreme Court’s broad interpretation of that phrase in Bailey. Regardless of whether the Lease Cap Rules mentioned specific mileage standards, the district court explained, they effectively forced taxicab owners to meet a certain mpg threshold set by the fuel economy of TLC-approved hybrid or clean diesel vehicles.

In addition to the effect of the Lease Cap Rules, the court looked to the purpose of the regulation to determine if preemption was justified. Based on the statements of New York City officials, it was clear that the rules were intended to address fuel efficiency. The court asserted that “creative drafting and the absence of specific reference to mileage do not make the effect—or the purpose—of the Lease Cap Rules any different than the prior...

115. See id. at 96 (noting justification for implementing rules). For statements made by New York City officials that reveal the objectives of the Lease Cap Rules, see supra notes 46-47 and accompanying text.
116. See Metro. Taxicab, 633 F. Supp. 2d at 100 (holding Lease Cap Rules to be de facto mandate to purchase hybrids).
117. See id. at 87 (discussing next step in preemption analysis).
118. See id. at 101-02 (reiterating arguments made by New York City in favor of Lease Cap Rules).
119. See id. at 102 (rejecting defendants’ proposed interpretation of “related to”).
120. See id. (emphasizing practical consequences of Lease Cap Rules).
121. See Metro. Taxicab, 633 F. Supp. 2d at 102 (bolstering conclusion about effect of rules with their ostensible purpose).
122. See id. at 102-03 (drawing inference from statements made by proponents of Lease Cap Rules). In announcing the Lease Cap Rules, for example, the TLC Commissioner stated, “Our goal from the beginning was to get fuel efficient taxis on the road using whatever appropriate methods required . . . .” Id.
preempted [25/30 Rules].” 123 Sidestepping the question of how the EPCA holds up in light of a presumption against preemption, the court simply noted that the express language of the EPCA’s preemption clause and recent conduct by the federal government led to the sole conclusion that fuel economy standards are a federal matter. 124 Thus, the EPCA preempted the Lease Cap Rules because they related to fuel economy standards in violation of the federal government’s exclusive jurisdiction. 125

C. CAA Preemption

Turning to the CAA, the court set out to determine if the Lease Cap Rules also related to the control of vehicle emissions. 126 First, the court reexamined the purpose of these rules and distinguished them from the TLC’s abandoned 25/30 Rules. 127 Unlike the 25/30 Rules, which the court previously held did not relate to emissions standards because they were silent on emissions, one of the stated purposes of the Lease Cap Rules was to incentivize the purchase of “cleaner vehicles.” 128 Relying on the Supreme Court’s interpretation of “alternative-fuel vehicles” in Engine Manufacturers and the definition of “hybrid vehicle” within the Lease Cap Rules, the district court remarked that it is a matter of common sense that cleaner vehicles refers to the control of emissions. 129

In terms of the emissions-related effect of the Lease Cap Rules, the court observed that their impact on nationwide regulation and

123. Id. at 103 (criticizing New York City’s attempt to pass off preempted rules under misleading guise).
124. See id. (asserting exclusive federal jurisdiction over fuel economy standards). The court pointed to a May 2009 proposal by President Barack Obama, which suggested that new CAFE standards require a fleet average of 35.5 mpg by 2016, to demonstrate that the federal government is actively involved in the regulation of fuel economy. See id. at 101.
125. See id. at 103 (finding Lease Cap Rules preempted by EPCA).
126. See Metro. Taxicab, 633 F. Supp. 2d at 103 (repeating preemption analysis with CAA).
127. See id. at 104 (comparing Lease Cap Rules to 25/30 Rules).
128. See id. (highlighting differences in language of old rules and new rules).
129. See id. at 104-05 (surmising true meaning of plain language in Lease Cap Rules). The court explained how it was assumed in Engine Manufacturers that regulations requiring “alternative-fuel vehicles” related to the control of emissions simply because the term was defined as vehicles not powered by gasoline or diesel. See id. at 105. Under the Lease Cap Rules, a “hybrid vehicle” was defined as a “commercially available mass production vehicle originally equipped by the manufacturers with a combustion engine system together with an electric propulsion system that operates in an integrated manner.” Id. The court deemed these definitions sufficiently similar not to require expert testimony to demonstrate the close connection between hybrids and vehicle emissions. See id.
vehicle production would be minimal. Nevertheless, in light of the rationale for preemption promulgated by *Engine Manufacturers*, the court could not allow such minor intrusions to stand because of the harmful snowball effect they could create. Much like how the Lease Cap Rules were related to fuel economy despite their failure to impose a specific mpg requirement, the court found the rules to also be related to vehicle emissions despite the absence of a precise limit on emissions. Regardless of the rules’ overt language, it was sufficient in the eyes of the court that the rules attempted to have a general effect of reducing taxicab emissions. Thus, the CAA also preempted the Lease Cap Rules because their purpose and effect related to the control of vehicle emissions.

V. Critical Analysis

A. Alternative Routes to Environmental Federalism

In the area of environmental regulation, the issue of preemption often arises because different levels of government rarely limit themselves to what legal scholars have deemed to be their appropriate domains. Some commentators argue that states have been at the forefront of environmental policy for decades, but their leadership and experimentation are being threatened by expanding regulatory ceilings imposed via federal preemption. Although every

130. *See id.* (evaluating consequences of Lease Cap Rules in terms of vehicle emissions).

131. *See Metro. Taxicab*, 633 F. Supp. 2d at 105 (applying Supreme Court’s reasoning to facts of this case). For a discussion of the Supreme Court’s justification for CAA preemption in *Engine Manufacturers*, see *supra* notes 82-84 and accompanying text.


133. *See id.* (relying on reasoning of Second Circuit in *Cahill*). For a discussion of the Second Circuit’s analysis in *Cahill*, see *supra* note 98.


136. *See, e.g.*, Brian T. Burgess, *Note, Limiting Preemption in Environmental Law: An Analysis of the Cost-Externalization Argument and California Assembly Bill 1493*, 84 N.Y.U. L. REV. 258, 258 (2009) (criticizing increased occurrence of federal preemption). Federal laws that establish minimum environmental standards and preclude less stringent state measures create “federal floors,” while federal laws that prevent more protective state regulations establish “federal ceilings.” *See id.* at 259. “Federal ceiling preemption has expanded in environmental law as the result of broad interpretations of existing statutes by courts and agencies as well as the enactment of new legislation by Congress expressly displacing state regulatory au-
state took some action to address climate change by 2006, for example, the federal government has failed to follow suit in the face of intense lobbying by industry groups to broaden the preemptive force of existing environmental laws.\textsuperscript{137}

Other commentators support federal preemption on the grounds that uniform, centralized regulation is easier on American industries and more appropriate for tackling major environmental challenges.\textsuperscript{138} A middle ground approach advocates combined roles for local, state, and federal governments in environmental regulation because of the strengths each brings to the table.\textsuperscript{139} The benefits of overlapping jurisdictions include the ability of the federal government to speed the adoption of innovative policies developed by states, which have long been considered "laboratories of democracy" with a valuable diversity of experience and knowledge.\textsuperscript{140}

B. Metropolitan Taxicab Decision Passes Inspection

Regardless of one's personal views on environmental federalism, there is little doubt that Metropolitan Taxicab properly applied existing law to find the TLC's latest regulations preempted by the EPCA and CAA.\textsuperscript{141} Few cases previously touched upon EPCA preemption of local mileage regulations, but the Lease Cap Rules were clearly related to fuel economy regulations given the U.S. Supreme Court's broad interpretation of related to.\textsuperscript{142} As two legal comment-
tators observed, “Longstanding Supreme Court precedents support the breadth and inviolability of the EPCA’s express preemption provision. The Supreme Court has consistently held that preemption provisions ‘related to’ a particular field ‘express a broad preemptive purpose’ and are ‘clearly expansive.’”

The EPCA’s legislative history, although somewhat lacking, lends support to a broad interpretation of its express preemption clause. The intended scope of this clause is never directly discussed, but Congress’s rejection of more limited forms of preemption indicates that it intended the EPCA to broadly preempt all nonfederal regulation of fuel economy. The original Senate bill would only have preempted laws “inconsistent” with federal fuel economy standards, while the original bill from the House of Representatives would have merely preempted those laws not “identical to” federal requirements. Therefore, because Congress would have used different language if it intended the EPCA to have narrow preemptive power, a broad interpretation of the preemption clause as enacted is appropriate.

The district court also adeptly found that the Lease Cap Rules did not need to specifically include mileage standards to be preempted by the EPCA. As the court in Goldstone noted, “The narrowest interpretation consistent with the plain language of [the] EPCA’s preemptive provision is that it encompasses only those state regulations that are explicitly aimed at the establishment of fuel economy standards, or that are the de facto equivalent of mileage regulation . . . .” Not only did the financial mechanisms imposed

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144. See id. (evaluating legislative history of EPCA).

145. Id. (drawing inferences from legislative process culminating in EPCA).


147. See Ophir v. City of Boston, 647 F. Supp. 2d 86, 94 (D. Mass. 2009) (discussing legislative history of EPCA). One likely reason why Congress rejected a narrower preemption clause was that it did not want to restrict consumers’ purchase options or cause adverse economic consequences to the automotive industry, both concerns embodied in the existing statutory language. See 49 U.S.C. § 32902(f) (2006) (listing factors that must be considered when setting maximum feasible average fuel economy).

148. For a discussion of the district court’s determination that the practical consequences of the Lease Cap Rules outweigh the lack of overt mileage standards, see supra notes 117-20 and accompanying text.

by the Lease Cap Rules revolve around the inherent difference in fuel economy between conventional and hybrid taxicabs, but New York City officials made it clear that the rules were targeted at improving the taxicab fleet’s fuel efficiency.\textsuperscript{150} Thus, EPCA preemption of the Lease Cap Rules was appropriate because they were unmistakably related to fuel economy standards.\textsuperscript{151}

While local regulations preempted by the EPCA are not necessarily preempted by the CAA, the court in \textit{Metropolitan Taxicab} correctly held that the Lease Cap Rules were preempted by both.\textsuperscript{152} Some have criticized the district court’s 2008 ruling that found the 25/30 Rules preempted by the EPCA as misguided.\textsuperscript{153} Yet, that decision was arguably generous to New York City in holding that CAA preemption did not apply when the TLC’s rules were silent on emissions.\textsuperscript{154} Notwithstanding the holdings in \\textit{Crombie} and \\textit{Goldstone}, fuel economy standards are scientifically tantamount to vehicle emissions standards.\textsuperscript{155} It follows logically that local regulations ostensibly related to fuel economy are also related to vehicle emissions.\textsuperscript{156} Accordingly, the court properly found that the CAA preempted the Lease Cap Rules even though they too failed to specifically reference emissions standards.\textsuperscript{157}

\textsuperscript{150.} For a discussion of the Lease Cap Rules’ connection to fuel economy, see \textit{supra} notes 36, 42-47 and accompanying text.
\textsuperscript{151.} For a discussion of the district court’s ruling concerning EPCA preemption, see \textit{supra} notes 117-25 and accompanying text.
\textsuperscript{152.} For a discussion of the district court’s ruling concerning CAA preemption, see \textit{supra} notes 126-34 and accompanying text.
\textsuperscript{153.} \textit{See Recent Case, Southern District of New York Holds that New York City Hybrid Taxi Regulations are Likely Preempted by the EPCA - Metropolitan Taxicab Board of Trade v. City of New York, No. 08 Civ. 7837 (PAC), 2008 WL 4866021 (S.D.N.Y. Oct. 31, 2008), 122 HARV. L. REV. 2275, 2279-80 (2009) (arguing that court should have interpreted “use” broadly in EPCA savings clause). This article claims that the 25/30 Rules were related to fuel economy but should have been exempt from preemption because the taxicabs subject to the rules were obtained for New York City’s “own use.” \textit{See id.} at 2279.
\textsuperscript{155.} \textsuperscript{157.} For a discussion of the district court’s holding regarding CAA preemption, see \textit{supra} notes 126-34 and accompanying text.
C. A Minor Speed Bump in the District Court’s Analysis

One point that the court could have addressed more fully, although it would not have changed the outcome of the case, is the traditional presumption against preemption.158 Given Crombie’s assessment that the regulation of vehicle emissions is not exclusively an area of federal concern, courts seemingly cannot assert CAA or EPCA preemption without explaining why such legislation does not fall into a field traditionally occupied by the states.159 Rather than dodge the issue, the court in Metropolitan Taxicab could have discussed how there has been a significant federal presence in the regulation of fuel economy and vehicle emissions for decades even though taxicab regulation is traditionally a local matter.160 In addition, the court could have pointed to prior decisions where these types of regulations were deemed to be of federal concern.161

VI. IMPACT

Considering the lack of case law addressing federal preemption of local fuel economy standards, Metropolitan Taxicab will likely have a significant impact on environmental law pertaining to vehicles.162 This notion is bolstered by the fact that this case influenced decisions in two other jurisdictions within barely three months of being decided.163 First, the District Court for the District of Massachusetts relied heavily on Metropolitan Taxicab to strike down a Boston ordinance that effectively mandated an all-hybrid taxicab fleet

158. For a discussion of the court’s half-hearted approach to the presumption against preemption, see supra note 124 and accompanying text.

159. For a discussion of the traditional presumption against preemption and the relevant holding in Crombie, see supra notes 78-79, 95 and accompanying text.

160. See Ophir v. City of Boston, 647 F. Supp. 2d 86, 91-92 (D. Mass. 2009) (demonstrating better way of addressing presumption against preemption). The presumption against preemption “is not triggered when a state regulates in an area ‘where there has been a history of significant federal presence.’” Id. at 91 (quoting United States v. Locke, 529 U.S. 89, 108 (2000)).

161. See, e.g., Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie, 508 F. Supp. 2d 295, 354 (D. Vt. 2007) (describing Congress’ intent with EPCA preemption clause). The fact that the EPCA and CAA both include broad express preemption clauses supports the notion that it was the clear and manifest purpose of Congress to supersede the historic police powers of the state in these environmental areas. For the elements of the presumption against preemption, see supra notes 78-79 and accompanying text.

162. For a discussion of the lack of cases on point, see supra note 109 and accompanying text.

163. See, e.g., Ophir, 647 F. Supp. 2d 86 (finding city ordinance likely preempted by EPCA); Green Alliance Taxi Cab Ass’n v. King County, No. C08-1048RAJ, 2009 WL 3185745 (W.D. Wash. Sept. 30, 2009) (permitting plaintiffs to amend complaint to include EPCA preemption claim).
by 2015.164 Subsequently, the District Court for the Western District of Washington used Metropolitan Taxicab to justify allowing two taxicab associations to amend their complaint against the local government and include an additional claim of federal preemption under the EPCA.165

Following Metropolitan Taxicab, it will be nearly impossible for cities and states to mandate the use of hybrids unless one of the narrow exceptions to the EPCA and CAA preemption clauses is met.166 Nevertheless, increasing social pressure and market realities make it likely that taxicab owners, as well as drivers among the general population, will voluntarily transition to more fuel-efficient vehicles.167 As one environmentalist noted, “Every other industry has faced the need to retool in light of technological innovations,

164. See Ophir, 647 F. Supp. 2d at 87-88 (providing facts of case). Boston Police Department Rule 403 required that every vehicle used as a taxicab as of August 29, 2008, "be a new Clean Taxi vehicle or must have been purchased before August 29, 2008." Id. As defined in the rule, only hybrid vehicles approved by the Hackney Carriage Unit of the Boston Police Department qualified as a "Clean Taxi." See id. While Rule 403 did not explicitly require a minimum fuel economy, the court found 403's requirement to be more stringent than that of the Lease Cap Rules and thus preempted by the EPCA. See id. at 91, 94. Hailing Metropolitan Taxicab as persuasive and well-reasoned, the Ophir court cautioned that Boston "has a long row to hoe." Id. at 91.

165. See Green Alliance, 2009 WL 3185745, at *5-6 (describing rationale for allowing amended complaint). The plaintiffs originally sued King County and the City of Seattle to challenge a new county rule establishing requirements that taxicab associations must satisfy to participate in a test project and receive additional taxicab licenses. See id. at *1. Although the court granted the defendants' motion for summary judgment, it found that a new claim under the EPCA would not be futile in light of Metropolitan Taxicab. See id. at *6. In particular, the plaintiffs argued that the county rule was preempted by the EPCA because one of its requirements is that the selected associations agree to purchase hybrid vehicles. See id. at *5.

166. For a discussion of the preemption provisions and related exceptions within the EPCA and CAA, see supra notes 66-72 and accompanying text. In addition to the exceptions provided in these statutes, "[a]ctions taken by a state or political subdivision may not be preempted in some circumstances where the state acts as a market participant, rather than as a market regulator." Metro. Taxicab Opinion, 2008 WL 4866021, at *7 (citing Bldg. & Constr. Trades Council v. Associated Builders & Contractors, Inc., 507 U.S. 210, 227 (1993)). It is difficult to qualify for the market participant doctrine, however, because governments act much more frequently as regulators than as industry participants. See id. at *10-11.

and so must the taxi industry.” By the time Metropolitan Taxicab was decided, hybrids accounted for approximately sixteen percent of New York City’s taxicab fleet, some 2,060 taxicabs. This number marked a nearly thirty-seven percent increase in the number of hybrid taxicabs in the city in just six months. Regardless of existing fuel economy and emissions standards, it appears that the dismal state of the economy and dramatic fluctuations in the cost of gasoline have caused a natural market shift toward vehicles with better fuel economy and lower emissions.

Although federal inaction on major environmental issues created a regulatory void that many cities and states have attempted to fill, Metropolitan Taxicab reveals the hurdles facing state and local initiatives. In terms of improving vehicle fuel economy and emissions, cities and states may have to wait for results to materialize from the Energy Policy and Security Act of 2007 or President Barack Obama’s proposed new policy on national fuel efficiency.

debate-hybrid-taxis/ (comparing opposition by taxicab industry to hybrid requirements in New York City and Boston).


170. For a discussion of the number of hybrid taxicabs in New York City at the time of the district court’s 2008 decision, see supra note 25 and accompanying text.

171. See Burgess, supra note 136, at 295 (discussing natural market shift toward hybrid vehicles).

172. See Klass, supra note 80, at 1682 (describing policy void created by EPA’s failure to even attempt limiting greenhouse gas emissions). When the federal government failed to curb greenhouse gas emissions, various northeastern and mid-Atlantic states banded together to establish a cap-and-trade system to reduce power plant emissions. See Dean Scott, Legislation: Governors Urge Congress to Set Carbon Cap but Want to Protect States from Preemption, ENV’T REP., (BNA) No. 38 ER 2452 (Nov. 16, 2007) (explaining creation of Regional Greenhouse Gas Initiative). Numerous western states likewise launched an initiative to curb greenhouse gas emissions in their region of the country. See id. (relating formation of Western Climate Initiative).


174. For a discussion of President Obama’s proposal to raise fuel economy standards, see supra note 124.
Should cities and states not wish to merely sit in traffic, however, an alternative route might entail creating incentives to encourage the use of hybrid vehicles. In order to increase the number of fuel-efficient taxicabs in particular, governments may release additional taxicab licenses exclusively to hybrids or offer financial rewards for switching to hybrids. The validity of such policies is dubious following Metropolitan Taxicab, but the taxicab industry appears less inclined to mount a legal challenge when the government encourages green behavior using carrots rather than sticks.

The Bloomberg administration has already appealed the Metropolitan Taxicab decision to the Second Circuit, but reversal is unlikely unless existing federal law is amended or replaced. Critics argue that the EPCA and CAA preemption provisions and savings clauses, largely unchanged since the 1970s, are outdated because Congress did not contemplate many of today's environmental is-


176. For examples of hybrid incentives that have been embraced by the taxicab industry, see supra note 106.

177. For further discussion demonstrating the attractiveness of incentives and disincentives, see supra note 106.

issues.\textsuperscript{179} Yet, it is uncertain whether fundamental policy change can be achieved in the near future.\textsuperscript{180} Despite support by state and local officials for bold new federal environmental regulations, the influence of industry organizations is strong and disagreement persists over the role of federal preemption in any new legislation.\textsuperscript{181} The failings of global climate change negotiations in Copenhagen and acrimony in Congress resulting from the debate over health care reform further complicate efforts to overhaul federal environmental laws.\textsuperscript{182} As long as the current regulatory framework remains, Metropolitan Taxicab serves as a significant impediment to cities and states on the road to going green.

Paul Liebeskind\textsuperscript{a}

\textsuperscript{179} See Klass, \textit{supra} note 80, at 1671-72 (expressing negative opinion of EPCA and CAA shared by some). According to critics, greater scientific evidence about the scope and origin of major environmental challenges, such as climate change, underscores the need for updated federal legislation. See id. at 1682.


\textsuperscript{181} See \textit{Clean Air Rep.}, \textit{supra} note 180 (portraying contest between proponents of strong climate change legislation and lobbyists of polluting industries). The National Governors Association and National Council of State Legislatures, both representing officials from across the political spectrum, have spoken out against federal preemption. See id. Simultaneously, “many industry organizations have made federal preemption one of their top legislative priorities for any climate change bill.” Id. The result is mixed signals from federal lawmakers regarding their positions on federal preemption. See id.


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