FEDERAL PREEMPTION IN *METRO TAXICAB BOARD OF TRADE V. CITY OF NEW YORK*: A RED LIGHT FOR LOCAL GREEN LAWS?

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I. INTRODUCTION

In a press release dated November 14, 2008, Mayor Michael Bloomberg announced new incentives for fuel efficient taxicabs in New York City (hereinafter "the City").[1] The Mayor sought these incentives with the goals of greening yellow cabs, improving air quality, and reducing carbon emissions in the City.[2] In response, the City's taxicab fleet owners, alongside the Metropolitan Taxicab Board of Trade, brought an action against the City, the Mayor, and other officials, seeking a preliminary injunction against the new rules. In *Metro. Taxicab Bd. of Trade v. City of New York*[3] (hereinafter "*Metro Taxicab*"), the U.S. District Court for the Southern District of New York enjoined the City from enforcing the regulation.[4] The court found that the regulation effectively mandated the use of hybrid cabs and was, therefore, preempted by federal legislation.[5]

This Comment examines federal preemption in the context of fuel efficiency and emissions standards as discussed in *Metro Taxicab*. Section II outlines the factual and procedural background that is necessary for a complete understanding of the case. Section III scrutinizes the City's regulations and the standards pertinent to federal preemption. Section IV outlines the implications of *Metro Taxicab*, with a particular focus on the direction of future litigation when state and local governments attempt to incentivize low emission of hybrid vehicles.

II. RELEVANT HISTORY AND PROCEDURAL POSTURE

Metro Taxicab arose out of an ongoing dispute between the City's Mayor, Michael Bloomberg, and the City's taxicab companies.[6] Prior to

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[1] Press Release, Office of the Mayor, Mayor Bloomberg Announces New Incentive/Disincentive Program to Reach Goal of Green Taxi Fleet (Nov. 14, 2008), *available at* http://nyc.gov (search date under "News and Press Releases").

[2] *Id.*

[3] Metro. Taxicab Bd. of Trade v. City of New York, 633 F. Supp. 2d 83 (S.D.N.Y. 2009).

[4] *Id.* at 87.

[5] *Id.*

[6] *Id.* at 85.

the promulgation of the disputed regulations in *Metro Taxicab*, the City's Taxicab & Limousine Commission (hereinafter, "TLC") had attempted to require the City's taxicabs to "meet a specific miles-per-gallon (hereinafter, "mpg") rating."[7] Specifically, the TLC rule would have required that all new taxicabs in the City have a minimum fuel efficiency of 25 mpg with an increase to 30 mpg by October 1, 2009.[8] In September 2008, a group of plaintiffs, similar to those in *Metro Taxicab,* moved to enjoin the proposed TLC rule.[9] In that case (hereinafter, "*25/30 Rule Case*"), the court enjoined the TLC rule and found it to be a clear mandate that owners purchase hybrid or clean diesel taxicabs.[10] The court found this mandate to be preempted by the Federal Energy Policy and Conservation Act (hereinafter, "EPCA"), because Congress enacted legislation adopting federal fuel efficiency standards which left no room for local mpg standards.[11] As a result, the district court granted a preliminary injunction.[12]

The City's second attempt at pursuing the goals of "'greening the taxi fleet'" and making New York a "'cleaner, healthier city'"[13] resulted in *Metro Taxicab*. In March 2009, the TLC repealed its prior rule and enacted TLC Rule 1-78(a)(3).[14] This regulation, which meant to incentivize the purchase of hybrid taxicabs and diminish the use of conventional non-hybrid taxicabs, provided the hourly rates at which an owner may lease a vehicle to a driver.[15] The regulation increased the rate for a hybrid taxicab by $3 per 12-hour shift and reduced the rate for a non-hybrid taxicab by increasing amounts in subsequent years.[16] These rates were "reduced by $4 immediately, $8 in May 2010, and $12 in May 2011."[17] The Plaintiffs challenged this revised regulation and sought a preliminary injunction.[18]

The Plaintiffs in *Metro Taxicab* are city taxicab fleet owners and the Metropolitan Taxicab Board of Trade, a trade association of such fleet owners. Fleet owners operate by leasing their vehicles to drivers who pay hourly rates to the fleet owners for operating the taxicabs.[19] The Plaintiffs control more than 25% of the taxicabs in the City.[20] The Defendants in

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[7] *Id.*

[8] *Id.* at 88. The court referred to this standard as the "25/30 Rule." *Id.*

[9] *Metro. Taxicab,* 633 F. Supp. 2d at 88.

[10] *Id.*

[11] *Id.* at 85, 87.

[12] *Id.* at 88.

[13] *Id.* at 85 (quoting Mayor Michael Bloomberg).

[14] *Id.* at 88.

[15] *Metro. Taxicab,* 633 F. Supp. 2d at 85. These rules will be further referred to as "lease cap rules."

[16] *Id.*

[17] *Id.*

[18] *Id.* at 86–87.

[19] *Id.* at 91.

[20] *Id.*

Metro Taxicab are the City of New York, Mayor Michael Bloomberg, and several TLC officials in their official capacities.[21]

III. THE COURT'S ANALYSIS IN *METRO TAXI*

A plaintiff seeking a preliminary injunction faces a heavy burden because enjoining a city regulation prior to a full consideration by the court carries with it significant due process concerns.[22] In these cases, the plaintiffs must (1) show that the behavior they seek to enjoin will cause them irreparable injury, and (2) establish a likelihood of success on the merits.[23] This standard framed the court's analysis in *Metro Taxicab.*

In determining whether irreparable harm had occurred, the court in *Metro Taxicab* relied on the *25/30 Rule Case*,[24] where the court found that no private cause of action existed under the EPCA.[25] According to *Metro Taxicab*, this lack of private cause of action was a sufficient showing of irreparable damages to the Plaintiffs.[26]

Next, the court analyzed the Plaintiffs' likelihood of success on the merits. The court in *Metro Taxicab* recognized the "hot button" nature of the issues and stressed the narrow confines upon which the decision turned.[27] Neither party disputed the desirable motives behind the new regulations. A cleaner, more environmentally friendly city, the parties agreed, was certainly a legitimate governmental interest and inured to everyone's benefit.[28] The Plaintiffs instead focused their argument on the significant economic burden of the de facto mandate presented by the new regulations.[29] The City conceded that it could not plainly require that new motor vehicles in the city meet mileage or emissions standards beyond those required by federal law.[30]

A local law can be preempted if it *indirectly* regulates within an area preempted by an act of Congress such that it "effectively mandates a specific, preempted outcome."[31] Thus, the case turned on the narrower issue of whether the City's lease cap rules interfered with "[c]ongressional intent to preserve exclusive jurisdiction" for the federal government in this area.[32] To resolve this issue, the court used a two-part analysis. First, the court

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[21] *Metro. Taxicab*, 633 F. Supp. 2d at 91.
[22] *See id.* at 92.
[23] *Id.*
[24] *Id.*
[25] *See id.* at 88.
[26] *Id.*
[27] *Metro. Taxicab*, 633 F. Supp. 2d at 87.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.* at 95.
[32] *Id.* at 87.

asked whether the regulations constituted a mandate.[33] The second inquiry, assuming the new rules did constitute such a mandate, was whether the new rules were "related to" mileage or emission standards as to be preempted by federal regulations.[34]

A. The Rules Represent a de Facto Mandate

Before addressing the issues of preemption, the court turned to the Plaintiff's argument that the lease cap rules limited a party's freedom of choice to the point that it became a de facto mandate.[35] In essence, it must be determined if the regulation operates in such a way as to provide actors with only one "real" choice.[36] For guidance, the court looked at cases involving state laws that facially presented choices, but which in effect mandated outcomes in the areas regulated by the Employee Retirement Income Securities Act of 1974 (hereinafter "ERISA").[37]

The court found *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.* particularly useful. In that case, the court recognized "'that a state law might produce such acute, albeit indirect, economic effects, by intent or otherwise, as to force an ERISA plan to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers, and that such a state law might indeed be pre-empted.'"[38] From this analysis the *Metro Taxicab* court concluded that state-promulgated incentives and disincentives could be so extreme as to constitute economic coercion, which would force parties into a behavioral scheme preempted by federal law.[39] While the precise level of incentives that constitute a mandate is uncertain, a plaintiff must prove by a "clear showing" that the rules effectively create such a mandate.[40]

The Plaintiffs in *Metro Taxicab* met this burden through expert testimony at an evidentiary hearing. The Plaintiffs' expert witness, Dr. Levinsohn, testified regarding the economic effect of the regulations on fleet owners.[41] He concluded that under the lease cap rules, owners who operated hybrid taxicabs saw a substantial increase in profitability, while those operating non-hybrid taxicabs saw profit margins diminish significantly as the lease rates for these vehicles decreased over time.[42] Dr.

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[33] *Metro. Taxicab*, 633 F. Supp. 2d at 87.
[34] *Id.*
[35] *Id.* at 93.
[36] *Id.*
[37] *Id.*
[38] *Id.* (quoting *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 668 (1995)).
[39] *Metro. Taxicab*, 633 F. Supp. 2d at 93.
[40] *Id.* at 96.
[41] *Id.* at 92.
[42] *See id.* at 96–97.

Levinsohn estimated that in 2011, when the lease cap rules would operate to their full effect, the relative advantage of using a hybrid taxicab as opposed to a conventional taxicab would reach approximately $6,500 per year.[43] In later years, Dr. Levinsohn suggested that owners of conventional taxicabs could even be operating at a loss.[44] Given the size of the profit disparity between the two choices, Dr. Levinsohn concluded that no rational taxicab owner would choose to operate conventional, less fuel efficient, taxicabs.[45] The court found this testimony very persuasive in showing that the lease cap rules' economic effect was a de facto mandate toward more fuel efficient vehicles.[46]

The City was unable to effectively rebut Dr. Levinsohn's testimony. While the City's witnesses questioned his methodology, they did not present competing conclusions.[47] Primarily, the City argued that a mandate did not exist because owners were free to continue purchasing non-hybrid vehicles as long as they could still earn $1 in profits while doing so, even though higher profits were available by opting for hybrid vehicles.[48] As long as some profit margin existed under both options, actors could choose, and thus, no mandate existed.

The court rejected this argument due to its narrow view of the type of economic coercion that would constitute a mandate.[49] Even one of the City's expert witnesses, upon cross-examination, conceded that when given the choice of renting a room to one tenant for $100 or to another for $200, a rational landlord would prefer to rent to the tenant paying the higher rent.[50] The court recognized this economic effect as a matter of common sense, suggesting:

> [e]ven a first-grader who has nothing recognizes that getting $100 is much better than getting $1, even though the first-grader is better off with $1 than with $0. Given a choice, the first-grader will always take $100, just as the Fleet Owners will always take a profit of $7,100 (hybrids) over a profit of $580 (Crown Victorias), the expected differential in May 2011 under Dr. Levinsohn's analysis.[51]

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[43] *Id.* at 97.
[44] *Id.*
[45] *Metro. Taxicab*, 633 F. Supp. 2d at 97.
[46] *See id.* at 99–100.
[47] *Id.* at 99.
[48] *See id.* at 97.
[49] *Id.* at 99.
[50] *Id.* at 98.
[51] *Metro. Taxicab*, 633 F. Supp. 2d at 100.

Consequently, the court determined that the lease cap rules presented taxicab fleet owners with the option of either purchasing conventional taxicabs with significantly decreasing marginal profits, or purchasing hybrid taxicabs with higher profit margins. The court concluded that since there was only one sound economic choice, the lease cap rules constituted a mandate for the purchase of hybrid taxicabs in the City.[52]

B. The Lease Cap Rules are Preempted Because they Operate within the Scope of Federal Law

Next, to address the issue of preemption, the court asked whether a regulatory mandate for more efficient taxicabs was sufficiently related to federal mileage or emission standards. Federal fuel economy and efficiency standards had been addressed by Congress in the form of the EPCA and the Clean Air Act (hereinafter, "CAA"). Thus, the preemption inquiry turned on the congressional intent to cover the field in enacting these standards, leaving no room for state or municipal legislation within the regulatory sphere of these statutes.[53]

i. Federal Fuel Efficiency Standards in the EPCA Preempted New York City's Lease Cap Rules

To determine whether the lease cap rules were preempted by federal fuel efficiency standards, the court looked to the procedure established by the EPCA and its express preemption provision.[54] Through textual interpretation, the court determined that Congress clearly intended "to make . . . fuel efficiency standards exclusively a federal concern."[55] In reaching this conclusion, the court noted the EPCA's finely-tuned federal procedures for establishing nationwide fuel efficiency standards and the EPCA's express preemption provision.[56]

In the EPCA, Congress delineated a precise procedure for determining fuel efficiency standards.[57] This procedure, the court noted, was delicately crafted to ensure that consideration was given equally to the competing concerns at issue when developing fuel efficiency standards.[58] Precisely, the EPCA delegated the task of establishing federal fuel economy standards to the Department of Transportation (hereinafter "DOT").[59] In

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[52] *Id.*
[53] *Id.* at 87.
[54] *Id.* at 101.
[55] *Id.*
[56] *See id.*
[57] *See Metro. Taxicab*, 633 F. Supp. 2d at 101.
[58] *Id.*
[59] *Id.*

carrying out this task, the DOT, through the National Highway Traffic Safety Administration (hereinafter "NHTSA"), would weigh four factors: "'[(1)] technological feasibility, [(2)] economic practicability, [(3)] the effect of other motor vehicle standards of the Government on fuel economy, and [(4)] the need of the United States to conserve energy.'"[60]

The NHTSA's interpretation of economic practicability is particularly important. The NHTSA chose to interpret this factor broadly in order to maintain choice and prevent undue hardship.[61] By taking this approach, the NHTSA critically viewed any economic burden that a fuel efficiency standard would impose and tried to avoid an overly stringent standard. The current standards require that a manufacturer's line of new passenger vehicles must average at least 27.5 mpg.[62] This figure would rise to 35 mpg by 2020.[63] Therefore, the court concluded that the federal government, through the EPCA, intended to establish its own regulatory regime that provided uniform national fuel efficiency standards.[64] Moreover, the EPCA had an express preemption provision:

> [w]hen an average fuel economy standard prescribed under this chapter . . . is in effect, a State or 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.[65]

The City argued that even if the lease cap rules constituted a mandate, they were not preempted by the EPCA because they were not sufficiently *related to* fuel efficiency standards.[66] The City believed that a mandate for hybrid taxicabs was not sufficiently related to fuel efficiency standards because vehicles were not required to meet a specific mpg rating. The court recognized that while the regulation did not require a specific mpg rating, it effectively required taxicab owners to purchase taxicabs that operate over a specific mpg threshold.[67] Moreover, the court expressed

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[60] *Id.* (quoting 49 U.S.C. §32902(f) (2006)).

[61] *Id.* (citing Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie, 508 F. Supp. 2d 295, 307 (D.Vt. 2007)).

[62] *Id.* (citing 49 U.S.C. § 32902(b) (2006)).

[63] *Metro. Taxicab,* 633 F. Supp. 2d at 101 (citing 49 U.S.C. § 32902(b) (2006)). These requirements have since become more stringent. In April 2010, the EPA and NHTSA announced new standards that required all passenger cars, light-duty trucks, and medium-duty passenger vehicles to meet an average 35.5 mpg standard by the year 2016. The change has no substantive effect on the analysis of the court. EPA Regulations and Standards, http://www.epa.gov/otaq/climate/regulations.htm (last visited April 15, 2010).

[64] *Id.*

[65] *Id.* (quoting 49 U.S.C. § 32919(a) (2006)) (emphasis added).

[66] *Id.* at 102.

[67] *Id.* at 101.

concern that construing "related to" narrowly would promote state and municipal intrusions into Congress's established standards, causing an aggregate effect that would "'undo Congress's carefully calibrated regulatory scheme.'"[68] As a result, the lease cap rules in effect imposed fuel efficiency standards that were preempted by the EPCA.[69]

Additionally, the court observed that the City's purpose in enacting the lease cap rules was to impose fuel efficiency standards that were preempted under the EPCA.[70] Referencing the *25/30 Rule Case*, the *Metro Taxicab* court noted that through the lease cap rules the City tried to effectuate the same outcome that the earlier court had deemed to be explicitly preempted.[71] While the lease cap rules may be deemed creative drafting by the City, such creative drafting did not avoid the conclusion that the new rules had the same purpose as prior rules: therefore, both in purpose and effect, the lease cap rules were meant to impose mpg fuel efficiency standards.[72]

ii. Federal Emissions Standards in the CAA Preempted New York City's Lease Cap Rules

The CAA operates similarly to the EPCA. It delegates a task of creating regulations to prevent the further deterioration of air quality to the Environmental Protection Agency (hereinafter "EPA").[73] Like the EPCA, the CAA contains an express preemption provision. The court relied on the congressional purpose and the language of the express preemption provision in order to find that the City's lease cap rules were also preempted by federal emission standards.

The CAA's express preemption provision provided that no political subdivision may promulgate "any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines."[74] To analyze this provision, the court relied upon *American Automobile Manufacturers Ass'n v. Cahill*[75]. In *Cahill*, the court found a New York law that required a certain percentage of cars sold within the state to be zero-emissions vehicles was preempted by the CAA and federal emissions standards.[76] In *Cahill*, the challenged statute did not provide precise limits

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[68] *Id.* at 103 (quoting Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246, 255 (2004)).

[69] *Metro. Taxicab*, 633 F. Supp. 2d at 103.

[70] *Id.* at 102–103.

[71] *Id.* at 103.

[72] *Id.*

[73] *Id.*

[74] *Id.* at 103–104 (quoting 42 U.S.C.§ 7543(a) (2006)).

[75] Am. Auto. Mfrs. Ass'n v. Cahill, 152 F.3d 196 (2d Cir. 1998).

[76] *Metro. Taxicab*, 633 F. Supp 2d at 104 (citing Am. Auto. Mfrs. Ass'n v. Cahill, 152 F.3d 196, 197, 200 (2d Cir. 1998)).

on emissions, but its purpose and effect was to control and limit emissions.[77] Using similar reasoning, the court in *Metro Taxicab* found the lease cap rules also had the purpose and effect of regulating emissions. "It [was] a matter of common sense that a rule with the stated purpose of increasing the number of 'cleaner vehicles' and with the effect of requiring the purchase of hybrid taxicabs [was] a rule 'relating to the control of emissions.'"[78] Consequently, the court determined that the lease cap rules represented a de facto mandate for the purchase of hybrid taxicabs, and that the purpose and effect of such a mandate was to reduce emission levels.[79] The CAA expressly preempted such local regulations.

The court concluded that the Plaintiffs were likely to succeed in showing that the lease cap rules operated as a de facto mandate of fuel economy and emission standards preempted by Congressional action.[80] The rules operated as a de facto mandate because they contained strong economic incentives meant to induce the purchase of hybrid taxicabs. This mandate, in purpose and effect, created fuel efficiency and emission standards that frustrated the elaborate regulatory scheme established by Congress. For these reasons, the court found the City's lease cap rules were preempted under the Supremacy Clause of the U.S. Constitution, and ordered a preliminary injunction against enforcement of these rules.[81]

IV. THE IMPLICATIONS OF *METRO TAXICAB*

Is there any room left for drafting local green laws and regulations? In *Metro Taxicab,* the court lauded the City's admirable environmental goals, yet still enjoined the City from enforcing the lease cap rules. The Plaintiffs, taxicab owners who will continue to purchase, lease, and operate conventional vehicles, succeeded. The Mayor's Office fumed in reaction to the defeat of its first proposed set of regulations, claiming that the court upheld an archaic law.[82] Despite this outcome, federal preemption is unlikely to close the door on local green laws and regulations. The court in *Metro Taxicab* recognized the historic police powers retained by state and local governments and indicated that acts of Congress, operating within areas historically covered by the scope of these police powers, should be construed narrowly. Further, even if the federal law in question is meant to be comprehensive, the state and municipal governments may certainly provide incentives and disincentives as part of their police power.

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[77] *Id.* (citing Am. Auto. Mfrs. Ass'n v. Cahill, 152 F.3d 196, 200 (2d Cir. 1998)).
[78] *Id.* at 105 (citing 42 U.S.C.§ 7543(a) (2006)).
[79] *Id.* at 105–106.
[80] *Id.*
[81] *Id.*
[82] Press Release, *supra* note 1.

In *Metro Taxicab,* the court's two-part analysis of the CAA and the EPCA Acts is significant. While federal preemption will often be construed broadly in order to avoid frustrating the congressional regulatory scheme, the courts may be inclined to construe a de facto mandate narrowly. If a municipality can show that a statute or regulation merely offers incentives to promote admirable environmental goals without mandating only one choice, then the courts will not be as constrained by federal preemption in allowing the municipality to pursue such goals. By avoiding the federal preemption question, municipalities will find the courts more deferential to the exercise of their police powers.

Finally, while the court in *Metro Taxicab* concluded that the economic disparity between purchasing conventional and hybrid vehicles was so great as to constitute a de facto mandate, this issue of mandate will always be a fact-sensitive inquiry. Particularly relevant to this inquiry will be the degree to which a new standard departs from previous incentives and standards, or conflicts with prevailing local business norms. Many courts may be hesitant to suggest that anything short of the extreme profit disparities present in *Metro Taxicab* constitute a de facto mandate. Nevertheless, *Metro Taxicab* stands as a stark example of why incentives may only go so far, and arguments that a particular regulation does not *compel* an outcome will be insufficient to defeat claims of preemption.

V. CONCLUSION

In *Metro Taxicab*, the court found that regulations by the City meant to incentivize the purchase of hybrid taxicabs, were preempted by federal law because they constituted a de facto mandate in areas where Congress had devised an intricate regulatory scheme supported by express rules preempting state and local action. The court's opinion is likely to be influential because concerns about the harm caused by greenhouse gas emissions and the exhaustion of finite natural resources increasingly draw citizens to the polls. While the court's analysis suggests that state and municipal regulations on these issues are susceptible to preemption by federal standards, it seems likely that litigation will often turn on fact-sensitive inquiries as to what constitutes a de facto mandate.