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2010]

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.¹ From the supermarket to the office park, and from the classroom to the construction site, a wave of environmentalism is sweeping the nation.² 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.³ Regardless of why many Americans are becoming environmentally conscious, scientists welcome this behavioral shift because of the harmful implications of maintaining the status quo.⁴

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

2. See, e.g., Andrew Martin, *Whole Foods Chain to Stop Use of Plastic Bags*, N.Y. TIMES, Jan. 23, 2008, <http://www.nytimes.com/2008/01/23/business/23bags.html?fta=y> (reporting supermarket chain’s decision to offer customers only recycled paper or reusable grocery bags); Bryan Walsh, *The Four-Day Workweek is Winning Fans*, TIME, Sept. 7, 2009, <http://www.time.com/time/magazine/article/0,9171,1919162,00.html> (describing how Utah’s government offices being closed on Fridays reduces energy costs and cuts greenhouse gas emissions); Laurie Tarkan, *Where Green Gets High Marks*, N.Y. TIMES, Apr. 26, 2009, <http://query.nytimes.com/gst/fullpage.html?res=9B07E0DF143DF935A15757C0A96F9C8B63> (recounting one elementary school’s efforts to reduce waste, save energy, and recycle supplies); Abby Gruen, *Trend in Green Building Accelerates in Westchester*, N.Y. TIMES, Jan. 16, 2009, <http://www.nytimes.com/2009/01/18/nyregion/westchester/18greenwe.html> (detailing green building trend within one New York county).

3. See FuelEconomy.gov, *Why is Fuel Economy Important?*, <http://fuel.economy.gov/feg/why.shtml> (last visited Feb. 28, 2010) (suggesting various reasons to be aware of vehicle fuel efficiency).

4. See, e.g., U.S. Evtl. 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

5. See OFFICE OF MOBILE SOURCES, U.S. ENVTL. PROT. AGENCY, EPA 400-F-92-007, AUTOMOBILE EMISSIONS: AN OVERVIEW I (1994), <http://www.epa.gov/otaq/consumer/05-autos.pdf> [hereinafter AUTOMOBILE EMISSIONS] (describing relationship between cars and pollution).

6. *Id.* (reiterating link between driving and pollution).

7. See FuelEconomy.gov, Reduce Climate Change, <http://www.fueleconomy.gov/feg/climate.shtml> (last visited Feb. 28, 2010) (explaining connection between driving, greenhouse gas emissions, and climate change).

8. See OFFICE OF TRANSP. & AIR QUALITY, U.S. ENVTL. PROT. AGENCY, EPA 420-F-01-006, GREEN VEHICLE GUIDE 1 (2001), <http://www.epa.gov/otaq/consumer/f01006.pdf> (quantifying aggregate pollution from American cars and trucks). Trucks include pickups, minivans, vans and sport utility vehicles. *Id.*

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).

10. See FuelEconomy.gov, How Hybrids Work, <http://www.fueleconomy.gov/feg/hybridtech.shtml> (last visited Feb. 28, 2010) (explaining technology behind hybrid-electric vehicles). While gas-electric hybrids are the most popular fuel-efficient vehicles, car companies are also actively developing and marketing entirely electric cars as well as plug-in hybrids. See Hiroko Tabuchi, *Industry Slumps, but Prius Inspires Waiting List*, N.Y. TIMES, June 12, 2009, <http://www.nytimes.com/>

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.¹¹ 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.¹²

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.¹³ Environmental initiatives of cities and states, in particular, have been hindered by recent court decisions finding these efforts preempted by federal law.¹⁴ One such case is *Metropolitan Taxicab Board of Trade v. City of New York (Metropolitan Taxicab)*,¹⁵ in which the District Court for the Southern District of New York

2009/06/13/business/global/13prius.html [hereinafter *Industry Slumps*] (describing Toyota's market strategy regarding hybrids).

11. See HybridCars.com, November 2009 Dashboard: 10th Anniversary of US Hybrid Market, Dec. 11, 2009, <http://www.hybridcars.com/hybrid-sales-dashboard/november-2009-dashboard.html> (estimating total number of hybrids currently on U.S. roads). Although the world's first mass-produced hybrid-electric vehicle, the Toyota Prius, became available in Japan in 1997, it did not hit the U.S. market until the year after the U.S. release of the Honda Insight in 1999. See HybridCars.com, History of Hybrid Vehicles, Mar. 27, 2006, <http://www.hybridcars.com/history/history-of-hybrid-vehicles.html> (providing timeline of events related to hybrid vehicles). One auto analyst recently projected that global sales of eco-friendly vehicles could grow from 0.8 million in 2009 to 11.2 million in 2020. See Hiroko Tabuchi, *Toyota to Sell Plug-In Hybrid in 2011*, N.Y. TIMES, Dec. 14, 2009, <http://www.nytimes.com/2009/12/15/business/global/15toyota.html> (describing expert predictions of changes within auto industry).

12. See generally FuelEconomy.gov, New Energy Tax Credits for Hybrids, http://www.fueleconomy.gov/feg/tax_hybrid.shtml (last visited Feb. 28, 2010) (supplying deadlines and other pertinent information about government tax credits). Although Prius sales are down sharply from when gasoline prices topped \$4 per gallon, waiting lists accumulated at some U.S. car dealers for Toyota's newest Prius model for more than a year. See *Industry Slumps*, *supra* note 10. Hybrid sales in November 2009 accounted for 2.8% of total U.S. car sales and were 21% higher than a year earlier despite growth in the overall market remaining essentially flat. See HybridCars.com, November 2009 Dashboard: 10th Anniversary of US Hybrid Market, Dec. 11, 2009, <http://www.hybridcars.com/hybrid-sales-dashboard/november-2009-dashboard.html> (comparing annual hybrids sales).

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

14. See, e.g., *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246 (2004) (finding state motor vehicle pollution standards preempted by Clean Air Act); *Ophir v. City of Boston*, 647 F. Supp. 2d 86 (D. Mass. 2009) (finding local fuel efficiency ordinance preempted by Energy Policy and Conservation Act).

15. 633 F. Supp. 2d 83 (S.D.N.Y. 2009).

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 Taxicab 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

16. See Michael M. Grynbaum, *Judge Blocks City's Penalty for Nonhybrid Cab Owners*, N.Y. TIMES, June 22, 2009, <http://www.nytimes.com/2009/06/23/nyregion/23taxi.html> (relating decision of U.S. District Judge Paul A. Crotty striking down New York City's most recent taxicab regulations).

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 135-61 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.²³ 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 2012.²⁴ 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).²⁵

The TLC accordingly adopted new rules (25/30 Rules) on December 11, 2007, that established minimum fuel economy requirements for all new taxicabs.²⁶ 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, 2009.²⁷ 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.²⁸ 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 2012.²⁹

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.³⁰ On October 31, 2008, the District Court

standards for taxicabs regarding safety, design, comfort, convenience, noise and air pollution, as well as efficiency. *See id.*

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

24. *See id.* (discussing origin of New York City's first attempt to make its taxicab fleet completely hybrid). Among the many goals of "PlaNYC 2030," New York City hopes to reduce its global warming emissions by thirty percent and achieve the cleanest air of any major U.S. city by 2030. *See NYC.gov, PlaNYC Background*, <http://www.nyc.gov/html/planyc2030/html/challenge/challenge.shtml> (last visited Feb. 28, 2010) (stating objectives of New York City's ambitious environmental initiatives).

25. *See Sewell Chan, Judge Blocks Hybrid Taxi Requirement*, N.Y. TIMES, Oct. 31, 2008, <http://cityroom.blogs.nytimes.com/2008/10/31/judge-blocks-hybrid-taxi-requirement/#more-4613> (providing makeup of New York City's taxicab fleet). For a definition of "fuel economy," *see infra* note 62.

26. *See Metro. Taxicab Opinion*, 2008 WL 4866021, at *2 (revealing origin and adoption of TLC's 25/30 Rules).

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.³¹ 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).³² Notably, the court rejected the plaintiffs' argument that the TLC regulations were also preempted by the federal Clean Air Act (CAA).³³

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."³⁴ 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."³⁵ 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.³⁶

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.³⁷ First, these regulations reduced the

tors; Sweet Irene Transportation Co., Inc., a private corporate that owns and leases taxis; Ossman 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.*

31. *See Metro. Taxicab*, 2008 WL 4866021, at *15 (granting plaintiffs' motion for preliminary injunction against 25/30 Rules).

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.³⁸ 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, 2011.³⁹ Second, the regulations raised the lease cap by \$3 per shift for vehicles meeting certain specifications.⁴⁰ 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.⁴¹

According to the city, the Lease Cap Rules corrected a structural disincentive preventing many taxicab owners from switching their fleets to hybrid vehicles.⁴² Under the existing framework of regulations and industry custom, taxicab drivers, rather than vehicle owners, paid for gasoline.⁴³ 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.⁴⁴ 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.⁴⁵

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-

on Sunday, Monday, and Tuesday; \$120 for the night shift on Wednesday; and \$129 for the night shifts on Thursday, Friday, and Saturday." *Id.* at 89.

38. *See id.* at 89 (illuminating details of Lease Cap Rules).

39. *See id.* (describing financial disincentives within Lease Cap Rules).

40. *See id.* (detailing financial incentive within Lease Cap Rules).

41. *See id.* (exposing underlying goal of new financial incentive).

42. *See Metro. Taxicab*, 633 F. Supp. 2d at 90 (sharing New York City's justification for Lease Cap Rules).

43. *See id.* (examining existing financial arrangement between taxicab owners and taxicab drivers).

44. *See id.* (highlighting result of system in which taxicab drivers pay fuel costs rather than taxicab owners).

45. *See id.* (explaining cost-shifting purpose of Lease Cap Rules). The TLC calculated the amount of its financial incentives and disincentives by comparing the approximate costs of gasoline, the approximate costs of purchasing and converting a hybrid into a taxicab, the maximum number of shifts per year, and the average fuel economy of a Crown Victoria with the same attributes of a Ford Escape, the most popular brand of hybrid taxicab. *See id.* at 90-91.

proving our air quality, and reducing our carbon emissions.”⁴⁶ As the TLC Commissioner elaborated, the Lease Cap Rules were expected to “incentivize the purchase of cleaner vehicles, while ensuring that taxi drivers are not penalized because a taxicab owner is reluctant to make the wiser purchase of a hybrid vehicle.”⁴⁷ Once again, however, members of the taxi industry challenged the TLC regulations shortly before the revised first deadline.⁴⁸

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.⁴⁹ 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 vehicles with a certain mpg or emissions rating.”⁵⁰ 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.⁵¹ Granting the plaintiffs’ motion on June 22, 2009, the district court held that the plaintiffs had demonstrated 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.⁵²

46. Press Release, Office of the Mayor, Bloomberg Announces New Incentive/Disincentive Program to Reach Goal of Green Taxi Fleet (Nov. 14, 2008), <http://www.nyc.gov/> (search for “Bloomberg Announces New Incentive/Disincentive Program to Reach Goal of Green Taxi Fleet” and follow “Press Release - Mayor Michael R. Bloomberg” hyperlink in search results) (announcing aim of Lease Cap Rules).

47. *Id.* (declaring anticipated consequences of Lease Cap Rules).

48. *See Metro. Taxicab*, 633 F. Supp. 2d at 91 (discussing initiation of most recent legal action).

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 30.

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.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.⁵⁴ Beginning with President Theodore Roosevelt, the federal government began taking on greater regulatory powers throughout the twentieth century.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.⁵⁶

Ultimately, the federal government responded to growing concern about the environment by creating the EPA in 1970.⁵⁷ Congress passed the CAA that same year, directing the EPA to set national air standards.⁵⁸ Following the 1973-1974 Arab oil embargo and resulting energy crisis in the U.S., Congress passed the EPCA in 1975.⁵⁹ The EPCA's primary legislative goals were energy conservation and efficiency, but in practice these efforts offered additional environmental protections.⁶⁰ While the CAA and EPCA grant different powers to the federal government, their regulation of vehi-

53. See Jack Lewis, *Looking Backward: A Historical Perspective on Environmental Regulations*, EPA JOURNAL, Mar. 1988, available at <http://www.epa.gov/history/topics/regulate/01.htm> (narrating historical background on U.S. environmental regulations).

54. See *id.* (noting initial difficulty of redressing environmental grievances).

55. See *id.* (illustrating growth of U.S. regulatory framework).

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.*

57. See *id.* (explaining origins of Environmental Protection Agency).

58. See William D. Ruckelshaus, *Environmental Regulation: The Early Days at EPA*, EPA JOURNAL, Mar. 1988, available at <http://www.epa.gov/history/topics/regulate/02.htm> (recounting issues underlying passage of Clean Air Act).

59. See Nat'l Highway Traffic Safety Admin., CAFE Overview, <http://nhtsa.gov/portal/site/nhtsa/menuitem.43ac99aefa80569eea57529cdba046a0/> (follow "CAFE Overview" hyperlink under "Frequently Asked Questions" heading) (last visited Feb. 28, 2010) [hereinafter CAFE Overview] (relating origin of Energy Policy and Conservation Act).

60. See generally S. REP. NO. 94-516 (1975) (Conf. Rep.), reprinted in 1975 U.S.C.C.A.N. 1956 (offering objectives of Energy Policy and Conservation Act).

334 VILLANOVA ENVIRONMENTAL LAW JOURNAL [Vol. XXI: p. 325

cles is closely related, and both laws play a significant role in the ongoing debate surrounding preemption.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.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.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.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 2020.⁶⁵

An express preemption clause within the EPCA declares:

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.

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. Ludwizewski & Charles H. Haake, *Cars, Carbon, and Climate Change*, 102 Nw. U. L. Rev. 665, 687 (2008) (explaining how vehicle fuel economy is measured).

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).

64. See Ludwizewski & Haake, *supra* note 62, at 682 (explaining CAFE system).

65. See 49 U.S.C. § 32902(b) (2006) (providing automobile fuel economy average for model years 2011 through 2020); Energy Independence and Security Act of 2007, Pub. L. No. 110-140, § 102, 121 Stat. 1492, 1499 (increasing average fuel economy beginning with model year 2020).

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.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.”⁶⁷

B. Clean Air Act

Part of the EPA’s mandate under the CAA is to establish emissions standards for new motor vehicles.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.”⁶⁹ The same section of the CAA also contains two exceptions to this express preemption clause.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.⁷¹ Second, other states may adopt California’s standards that receive a waiver from the EPA.⁷²

66. 49 U.S.C. § 32919(a) (2006) (promulgating EPCA express preemption provision).

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

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).

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

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

71. See 42 U.S.C. § 7543(b)(1) (2006) (providing grounds for waiver of preemption). While the statute specifically allows the EPA Administrator to grant a waiver to any state which adopted emission standards for new vehicles prior to March 30, 1966, California is the only state that meets this description. See *Cent. Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F. Supp. 2d 1151, 1156 (E.D. Cal. 2008).

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 Ludwizewski & 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.⁷³ Various types of preemption exist, including express preemption and implied preemption.⁷⁴ Additionally, implied preemption may be divided into so-called field preemption and conflict preemption.⁷⁵ 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.”⁷⁶

Congressional intent is the touchstone in every preemption analysis for determining the scope of a statute with alleged preemptive power.⁷⁷ Even where Congress has spoken expressly about preemption, a well-established presumption against preemption is recognized when Congress legislates in a field traditionally occupied by the states.⁷⁸ 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.⁷⁹

biles. See U.S. Evtl. Prot. Agency, California Greenhouse Gas Waiver Request, <http://www.epa.gov/OMS/climate/ca-waiver.htm> (last visited Feb. 28, 2010) (relating California’s waiver process). With a new Administration in the White House, however, the EPA ultimately reconsidered its decision and granted a waiver of preemption on June 30, 2009. *Id.* California accordingly leads the nation in vehicle fuel economy and the number of registered alternative-fuel vehicles. See Michael Grunwald, *Why California is Still America’s Future*, TIME, Oct. 23, 2009, <http://www.time.com/time/nation/article/0,8599,1931582,00.html> (explaining how California is at forefront of national energy debate as greenest state in America).

73. U.S. CONST. art. VI, cl. 2 (rendering state and local laws subordinate to federal law).

74. See Opinion & Order, *Metro. Taxicab Bd. of Trade v. City of New York*, No. 08 Civ. 7837 (PAC), 2008 WL 4866021, at *7 (S.D.N.Y. Oct. 31, 2008) (distinguishing types of preemption).

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).

77. See *Wyeth v. Levine*, 129 S. Ct. 1187, 1194 (2009) (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)) (establishing framework for preemption analysis).

78. See *id.* at 1194-95 (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)) (describing traditional presumption against preemption).

79. See *id.* (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)) (defining 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.⁸⁰ In *Engine Manufacturers Ass'n v. South Coast Air Quality Management District (Engine Manufacturers)*,⁸¹ 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.⁸² 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.⁸³ 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."⁸⁴

In multiple decisions unrelated to environmental regulation, the Supreme Court has broadly interpreted the statutory meaning of the phrase related to.⁸⁵ 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."⁸⁶ In *Travelers Indemnity Co. v. Bailey (Bailey)*,⁸⁷ for example, the Court expressed that the phrase "in relation to" is expansive when used in a statute.⁸⁸ The Court

80. See Alexandra B. Klass, *State Innovation And Preemption: Lessons From State Climate Change Efforts*, 41 LOY. L.A. L. REV. 1653, 1658 (2008) (criticizing Supreme Court precedents involving preemption).

81. 541 U.S. 246 (2004).

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).

85. See, e.g., *Smith v. United States*, 508 U.S. 223, 237 (1993) (portraying phrase "in relation to" as expansive); *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 653 (1995) (construing phrase "relate to" as having a connection with or making reference to).

86. See 49 U.S.C. § 32919(a) (2006) (promulgating EPCA express preemption provision); 42 U.S.C. § 7543(a) (2006) (promulgating CAA express preemption provision).

87. 129 S. Ct. 2195 (2009).

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.*⁸⁹ 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.⁹⁰

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*)⁹¹ and *Central Valley Chrysler-Jeep, Inc. v. Goldstene* (*Goldstene*).⁹² In these cases, automobile manufacturers filed essentially identical lawsuits challenging California's stringent emissions standards for new vehicles.⁹³ Both federal district courts held that these standards would be valid if and when the EPA granted a waiver of preemption under the CAA.⁹⁴ 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.⁹⁵

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

89. 514 U.S. 645 (1995).

90. See *id.* at 656-59 (exhibiting process for interpreting "related to" language in preemption clause).

91. 508 F. Supp. 2d 295 (D. Vt. 2007).

92. 529 F. Supp. 2d 1151 (E.D. Cal. 2007).

93. See *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295, 300-01 (D. Vt. 2007) (discussing initiation of case); *Cent. Valley Chrysler-Jeep, Inc. v. Goldstene* 529 F. Supp. 2d 1151, 1154-55 (E.D. Cal. 2007) (providing procedural history). Vermont adopted California's regulations in anticipation of the latter receiving a waiver of CAA preemption. See 42 U.S.C. § 7543(b)(3) (2006) (extending possibility of waiver to states complying with California's standards previously granted a waiver).

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.⁹⁶ 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.⁹⁷ 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.⁹⁸ The preemption analysis becomes more complicated when regulations target vehicle mileage standards but remain silent on emissions.⁹⁹

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”¹⁰⁰ Yet, *Crombie* and *Goldstene* both demonstrate that regulations preempted by the EPCA are not necessarily preempted by the CAA.¹⁰¹ 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 light-duty-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.

99. See, e.g., Opinion & Order, *Metro. Taxicab Bd. of Trade v. City of New York*, No. 08 Civ. 7837 (PAC), 2008 WL 4866021, at *14 (S.D.N.Y. Oct. 31, 2008) (finding CAA preemption unlikely based on purpose of rules despite their potential effect).

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.¹⁰² As the Supreme Court concluded in *Massachusetts v. Environmental Protection Agency*,¹⁰³ 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.¹⁰⁴

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.¹⁰⁵ 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.¹⁰⁶ 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.¹⁰⁷

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.¹⁰⁸

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).

103. 549 U.S. 497 (2007).

104. See *id.* at 532 (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).¹⁰⁹ 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.¹¹⁰

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.¹¹¹ Hence, the court asked the parties to present expert evidence on the consequences of the Lease Cap Rules.¹¹²

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.¹¹³ 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.¹¹⁴ 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.¹¹⁵ Consequently, the court held that the TLC's rules effectively mandated the purchase of hybrids by providing no viable alternatives to taxicab owners.¹¹⁶

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.¹¹⁷ 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.¹¹⁸ 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*.¹¹⁹ 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.¹²⁰

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.¹²¹ Based on the statements of New York City officials, it was clear that the rules were intended to address fuel efficiency.¹²² 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.¹³⁰ 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.¹³¹ 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.¹³² 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.¹³³ Thus, the CAA also preempted the Lease Cap Rules because their purpose and effect related to the control of vehicle emissions.¹³⁴

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.¹³⁵ 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.¹³⁶ 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.

132. See *Metro. Taxicab*, 633 F. Supp. 2d at 105 (conferring more weight to practical effect of rules rather than their explicit terms).

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.

134. See *Metro. Taxicab*, 633 F. Supp. 2d at 105 (finding Lease Cap Rules preempted by CAA).

135. See David E. Adelman & Kirsten H. Engel, *Adaptive Federalism: The Case Against Reallocating Environmental Regulatory Authority*, 92 MINN. L. REV. 1796, 1796 (2008) (describing incidence of preemption cases related to environmental regulation).

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.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.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.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.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.¹⁴¹ Few cases previously touched upon EPCA preemption of local mileage regulations, but the Lease Cap Rules were clearly related to fuel economy standards given the U.S. Supreme Court’s broad interpretation of related to.¹⁴² As two legal commen-

thority.” *Id.* at 266. In general, both federal ceilings and floors prevent states from tailoring regulations to their unique preferences and local conditions. *See id.* at 271.

137. *See id.* at 262, 268 (offering instance of states taking lead in environmental regulation where federal government has not acted).

138. *See, e.g.,* Ludwiszewski & Haake, *supra* note 62, at 667 (touting federal environmental regulation of global climate change over state regulation). Because greenhouse gas emissions disperse throughout the atmosphere and cannot be contained within the jurisdiction where they are produced, for example, independent state regulations would have little impact on the overall problem of global warming. *See id.* at 679. Those in favor of preemption also argue that it is more efficient for businesses like automobile manufacturers to meet uniform federal standards rather than fifty different state standards. *See id.* at 682.

139. *See, e.g.,* Adelman & Engel, *supra* note 135, at 1831-33 (advocating dynamic system of concurrent jurisdiction for environmental regulation).

140. *See id.* at 1824-25, 1847-48 (discussing advantages to joint regulatory involvement by states and federal government). On more than one occasion, a new environmental standard established by California was subsequently adopted by the EPA as a national standard. *Id.* at 1840.

141. For a discussion of the district court’s application of existing law, see *supra* notes 117-34 and accompanying text.

142. For a discussion of the Supreme Court’s interpretation of the phrase “related to,” see *supra* notes 85-90 and accompanying text.

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.’”¹⁴³

The EPCA’s legislative history, although somewhat lacking, lends support to a broad interpretation of its express preemption clause.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶ 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.¹⁴⁷

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.¹⁴⁸ As the court in *Goldstene* 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”¹⁴⁹ Not only did the financial mechanisms imposed

143. Ludwiszewski & Haake, *supra* note 62, at 689 (citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383-84 (1992); *Egelhoff v. Egelhoff*, 532 U.S. 141, 146-47 (2001)) (summarizing Supreme Court’s position on phrase related to in connection with preemption cases).

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

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

146. *See* S. REP. NO. 94-179, at 25 (1975); H.R. REP. NO. 94-340, at 274 (1975) (§ 507 as introduced, § 509 as reported) (revealing language in proposed EPCA preemption provisions).

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.

149. *Cent. Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F. Supp. 2d 1151, 1175 (E.D. Cal. 2008) (describing two circumstances when EPCA preemption may apply).

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.¹⁵⁰ Thus, EPCA preemption of the Lease Cap Rules was appropriate because they were unmistakably related to fuel economy standards.¹⁵¹

While local regulations preempted by the EPCA are not necessarily preempted by the CAA, the court in *Metropolitan Taxicab* correctly held that the Lease Cap Rules were preempted by both.¹⁵² Some have criticized the district court's 2008 ruling that found the 25/30 Rules preempted by the EPCA as misguided.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.¹⁵⁴ Notwithstanding the holdings in *Crombie* and *Goldstene*, fuel economy standards are scientifically tantamount to vehicle emissions standards.¹⁵⁵ It follows logically that local regulations ostensibly related to fuel economy are also related to vehicle emissions.¹⁵⁶ Accordingly, the court properly found that the CAA preempted the Lease Cap Rules even though they too failed to specifically reference emissions standards.¹⁵⁷

150. For a discussion of the Lease Cap Rules' connection to fuel economy, see *supra* notes 36, 42-47 and accompanying text.

151. For a discussion of the district court's ruling concerning EPCA preemption, see *supra* notes 117-25 and accompanying text.

152. For a discussion of the district court's ruling concerning CAA preemption, see *supra* notes 126-34 and accompanying text.

153. 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." See *id.* at 2279.

154. See Opinion & Order, *Metro. Taxicab Bd. of Trade v. City of New York*, No. 08 Civ. 7837 (PAC), 2008 WL 4866021, at *14 (S.D.N.Y. Oct. 31, 2008) (rejecting CAA preemption because 25/30 Rules did not specifically say anything about emissions).

155. For a discussion of the scientific link between fuel economy and vehicle emissions standards, see *supra* note 97 and accompanying text.

156. See *id.* (supporting conclusion that vehicle emissions regulations are effectively fuel economy regulations).

157. For a discussion of the district court's holding regarding CAA preemption, see *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.

167. See Jonathan Saltzman, *Hybrid Mandate for Taxis Reversed*, BOSTON GLOBE, Aug. 15, 2009, http://www.boston.com/lifestyle/green/articles/2009/08/15/hybrid_mandate_for_taxis_reversed/ (suggesting market realities will ultimately result in more hybrid taxicabs); Richard Stengel, *For American Consumers, a Responsibility Revolution*, TIME, Sept. 10, 2009, <http://www.time.com/time/nation/article/0,8599,1921444,00.html> (describing rise of ethical consumerism in U.S.). Perhaps due to differences in local culture, the introduction of hybrid taxicabs has gone more smoothly in cities such as San Francisco and Denver than in New York and Boston. See Kate Galbraith, *Boston, Other Cities Debate Hybrid Taxis*, N.Y. TIMES, Apr. 1, 2009, <http://greeninc.blogs.nytimes.com/2009/04/01/boston-other-cities->

and so must the taxi industry.”¹⁶⁸ By the time *Metropolitan Taxicab* was decided, hybrids accounted for approximately sixteen percent of New York City’s taxicab fleet, some 2,060 taxicabs.¹⁶⁹ This number marked a nearly thirty-seven percent increase in the number of hybrid taxicabs in the city in just six months.¹⁷⁰ 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.¹⁷¹

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.¹⁷² 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 2007¹⁷³ or President Barack Obama’s proposed new policy on national fuel efficiency.¹⁷⁴

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

168. George Bachrach, *The Greening of Boston’s Taxi Fleet*, BOSTON GLOBE, July 12, 2008, http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2008/07/12/the_greening_of_bostons_taxi_fleet/ (advocating reasons why Boston taxicab owners should embrace buying hybrids).

169. See *Metro. Taxicab Bd. of Trade v. City of New York*, 633 F. Supp. 2d 83, 89 (S.D.N.Y. 2009) (offering statistics regarding number of hybrid taxicabs in New York City).

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).

173. See Energy Independence and Security Act of 2007, Pub. L. No. 110-140, § 102, 121 Stat. 1492, 1499 (2007) (increasing average fuel economy beginning with model year 2020). Congress passed this legislation to reduce America’s dependence on oil by increasing CAFE standards on new cars and trucks to thirty-five mpg by model year 2020. See FuelEconomy.gov, Reduce Oil Dependence Costs, <http://www.fueleconomy.gov/feg/oildep.shtml> (last visited Feb. 28, 2010) (describing justification and projected effect of Energy Independence and Security Act of 2007). It is estimated that this change could reduce U.S. petroleum consumption by twenty-five billion gallons by 2030. *Id.*

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.¹⁷⁵ 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.¹⁷⁶ 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.¹⁷⁷

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.¹⁷⁸ 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-

175. For examples of incentives used by New York City to promote the use of hybrid taxicabs, see *supra* note 106. Even President Obama seems to be getting impatient with Congress's failure to pass comprehensive environmental legislation. See John M. Broder, *E.P.A. Moves to Curtail Greenhouse Gas Emissions*, N.Y. TIMES, Sept. 30, 2009, <http://www.nytimes.com/2009/10/01/science/earth/01epa.html> (detailing Obama Administration moving forward with new rules to regulate greenhouse gas emissions from power plants and large industrial facilities). In August 2009, the Obama Administration awarded more than \$2 billion in grants from the economic stimulus package to give the U.S. a leg up in the production of fuel-efficient vehicles. See Matthew L. Wald, *\$2 Billion in Grants to Bolster U.S. Manufacturing of Parts for Electric Vehicles*, N.Y. TIMES, Aug. 5, 2009, <http://www.nytimes.com/2009/08/06/business/06battery.html> (providing recipients and objectives of grants geared toward nascent electric car industry). The Obama Administration also paved the way for greater EPA regulation of emissions from vehicles and other sources by issuing an "endangerment finding" in December 2009 regarding carbon dioxide and five other greenhouse gases. See H. Josef Herbert & Dina Cappiello, *Historic EPA Finding: Greenhouse Gases Harm Humans*, ABC NEWS, Dec. 7, 2009, <http://abcnews.go.com/Business/wireStory?id=9268865> (relating EPA announcement that man-made greenhouse gases should be reduced because they threaten public health and welfare).

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.

178. See Posting of Amy Garber to Global Climate Law Blog, <http://www.globalclimatelaw.com/2009/07/articles/climate-change-litigation/new-york-city-hybrid-taxi-plan-winding-its-way-through-court/> (July 21, 2009) (discussing *Metropolitan Taxicab* decision and subsequent appeal by New York City). Although the Bloomberg administration prevailed over various state law-based claims against the Lease Cap Rules, the trial court acknowledged that its decision does not affect whether the TLC's regulations are preempted by federal law. See *Metro. Taxicab Bd. of Trade v. New York City Taxi & Limousine Comm'n*, No. 110594/09, 2009 WL 4016650, at *8 (N.Y. Sup. Nov. 18, 2009) (holding that TLC acted appropriately within its authority regardless of whether regulations are preempted).

352 VILLANOVA ENVIRONMENTAL LAW JOURNAL [Vol. XXI: p. 325

sues.¹⁷⁹ Yet, it is uncertain whether fundamental policy change can be achieved in the near future.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.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.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*

179. See Klass, *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.

180. See *States Unite to Oppose Industry Efforts to Preempt GHG Programs*, CLEAN AIR REP., Aug. 23, 2007, 2007 WLNR 16316710 [hereinafter CLEAN AIR REP.] (discussing resistance of many state officials to continued federal preemption in realm of environmental regulation). In June 2009, the House of Representatives passed sweeping legislation, dubbed the American Clean Energy and Security Act, "intended to address global warming and transform the way the nation produces and uses energy." John M. Broder, *House Passes Bill to Address Threat of Climate Change*, N.Y. TIMES, June 26, 2009, <http://www.nytimes.com/2009/06/27/us/politics/27climate.html> (reporting on House passage of much-anticipated climate change bill). The outlook for this legislation is bleak, however, because climate change has been pushed to the backburner as Congress addresses other pressing domestic issues. See *id.* Moreover, sharp political divisions and regional differences in the Senate make passage difficult. See *id.*

181. See CLEAN AIR REP., *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.*

182. See Peter Baker, *Compromising on 2 Issues, Obama Gets Partial Wins*, N.Y. TIMES, Dec. 19, 2009, <http://www.nytimes.com/2009/12/20/us/politics/20obama.html> (describing how President Obama's policy agenda on health care and climate change reform has given way to imperfect political compromises). While nearly all of the countries attending the United Nations climate change convention in Copenhagen, Denmark agreed to back an interim accord forged on the final day of negotiations, many were disappointed that a stronger, binding agreement could not be reached. See Andrew C. Revkin & John M. Broder, *A Grudging Accord in Climate Talks*, N.Y. TIMES, Dec. 19, 2009, <http://www.nytimes.com/2009/12/20/science/earth/20accord.html> (discussing international agreement to begin taking certain actions to address global warming).

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