

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2009
(Argued: January 22, 2010 Decided: July 27, 2010)
Docket No. 09-2901-cv

-----x
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.,

Plaintiffs-Appellees,

MIDTOWN OPERATING CORP., SWEET IRENE TRANSPORTATION CO.
INC., OSSMAN ALI, and KEVIN HEALY,

Plaintiffs,

-- v. --

CITY OF NEW YORK; MICHAEL R. BLOOMBERG, in his official
capacity as Mayor of the City of New York; THE NEW YORK
CITY TAXICAB & LIMOUSINE COMMISSION; MATTHEW W. DAUS, in
his official capacity as Commissioner, Chair, and Chief
Executive Officer of the TLC; PETER SCHENKMAN, in his
official capacity as Assistant Commissioner of the TLC
for Safety & Emissions; ANDREW SALKIN, in his official
capacity as First Deputy Commissioner of TLC,

Defendants-Appellants.

-----x
B e f o r e : WALKER, STRAUB, and LIVINGSTON, Circuit
Judges.

The City of New York, the New York City Taxicab & Limousine
Commission, and City officials appeal the grant of a preliminary
injunction by the United States District Court for the Southern
District of New York (Paul A. Crotty, Judge), that enjoined the
enforcement of the City's recently amended lease rates for

1 taxicabs on the basis that the new rules are likely preempted
2 under the Energy Policy and Conservation Act ("EPCA"), 49 U.S.C.
3 § 32919(a), and the Clean Air Act ("CAA"), 42 U.S.C. § 7543(a).
4 We conclude that the preliminary injunction was appropriate and
5 therefore AFFIRM.

6 ELIZABETH S. SAYLOR,
7 (Richard D. Emery and
8 Matthew D. Brinckerhoff,
9 on the brief), Emery
10 Celli Brinckerhoff &
11 Abady LLP, New York, NY,
12 for Plaintiffs-Appellees.
13

14 SUSAN PAULSON (Francis F.
15 Caputo, Michael A.
16 Cardozo, Ramin Pejan, and
17 Adam Stolorow, on the
18 brief), Corporation
19 Counsel of the City of
20 New York, for Defendants-
21 Appellants.
22

23 MARK B. STERN, Attorney,
24 Appellate Staff, Civil
25 Division, Department of
26 Justice, Washington, D.C.
27 (Robert S. Rivkin,
28 General Counsel,
29 Department of
30 Transportation; Scott
31 Fulton, General Counsel,
32 Environmental Protection
33 Agency; Tony West and
34 Ignacia S. Moreno,
35 Assistant Attorneys
36 General; Preet Bharara,
37 United States Attorney
38 for the Southern District
39 of New York; Jean-David
40 Barnea, Assistant United
41 States Attorney; R.
42 Justin Smith and Peter
43 McVeigh, Attorneys,

1 Environment and Natural
2 Resources Division; H.
3 Thomas Byron, III,
4 Attorney, Appellate
5 Staff, Civil Division,
6 Department of Justice, on
7 the brief), for the
8 United States as Amicus
9 Curiae.

10
11 JOHN M. WALKER, JR., Circuit Judge:

12
13 The Taxicab & Limousine Commission of New York City ("TLC")
14 and several New York City officials (collectively, "the City")
15 appeal the grant of a preliminary injunction by the United States
16 District Court for the Southern District of New York (Paul A.
17 Crotty, Judge), that enjoined the enforcement of the City's
18 revisions to the maximum lease rates for taxicabs that
19 effectively shifted fuel costs from drivers of fleet taxis to
20 fleet owners to incentivize the use of hybrid-engine and fuel-
21 efficient vehicles. The district court held that the new rules
22 likely related to fuel economy standards and new vehicle
23 emissions and were thus preempted under the Energy Policy and
24 Conservation Act ("EPCA"), 49 U.S.C. § 32919(a), and the Clean
25 Air Act ("CAA"), 42 U.S.C. § 7543(a). Metro. Taxicab Bd. of
26 Trade v. City of N.Y., 633 F. Supp. 2d 83, 105-06 (S.D.N.Y.
27 2009).

28 **BACKGROUND**

29 In December 2007, the City issued rules requiring that new
30 taxicabs that were put into service on or after October 1, 2008

1 achieve at least 25 city miles per gallon of fuel, and those that
2 were put into service beginning October 1, 2009 achieve 30 city
3 miles per gallon (the "25/30 MPG rule"). In September 2008, the
4 plaintiffs, including the Metropolitan Taxicab Board of Trade and
5 several taxi fleet operators, sued the City, seeking to enjoin
6 the 25/30 MPG rule on the basis that it violated preemption
7 clauses in the EPCA and the CAA.¹ The district court granted a
8 preliminary injunction after determining that the 25/30 MPG rule
9 related to fuel economy standards and was thus preempted by the
10 EPCA. Metro. Taxicab Bd. of Trade v. City of N.Y., No. 08 Civ.
11 7837, 2008 WL 4866021 (S.D.N.Y. Oct. 31, 2008).² The City did
12 not appeal that decision.

13 On March 26, 2009, the City repealed the 25/30 MPG rule, and
14 issued new rules that regulated taxicab "lease caps" - the

¹ The EPCA states, in relevant part: "[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." 49 U.S.C. § 32919(a).

The CAA states, in relevant part: "No 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." 42 U.S.C. § 7543(a).

² The district court, having "limited its review to the stated purpose of the rules, as published in the City Record," rejected the plaintiffs' argument under the CAA. Metro. Taxicab, 2008 WL 4866021, at *14. The district court held that the plaintiffs had failed "to show how the 25/30 Rules are a standard relating to the control of emissions from new motor vehicles." Id. (internal quotation marks omitted).

1 maximum dollar amount per shift for which taxis can be leased -
2 to provide incentives for reduced fuel usage and cleaner taxis.
3 Under the new rules, the lease caps for hybrid and "clean diesel"
4 taxis are raised by \$3 per shift.³ 35 RCNY § 1-78(a)(3)(i). At
5 the same time, the new rules reduce the lease caps for
6 non-hybrid, non-clean diesel vehicles, nearly all of which are
7 Ford Crown Victorias, in three phases. The new rules lower the
8 per shift lease caps on the Crown Victorias, except those that
9 are wheelchair accessible, by \$4 on May 1, 2009; by \$8 on May 1,
10 2010; and by \$12 on May 1, 2011. The current baseline lease caps
11 from which these adjustments are made are: \$105 for all day
12 shifts; \$115 for night shifts on Sunday, Monday, and Tuesday;
13 \$120 for night shifts on Wednesday; and \$129 for night shifts on
14 Thursday, Friday, and Saturday. 35 RCNY § 1-78(a)(1). After the
15 third phase is implemented, the lease cap difference between
16 hybrids and Crown Victorias would be \$15 per shift, reflecting
17 the \$3 upward adjustment for the hybrid lease caps and the \$12
18 downward adjustment for the Crown Victoria lease caps. The new
19 rules are designed to effectively shift fuel costs from taxi
20 drivers, who currently pay for fuel, to fleet owners, who

³ A hybrid vehicle for purposes of the new rules is a "commercially available mass production vehicle originally equipped by the manufacturer with a combustion engine system together with an electric propulsion system that operates in an integrated manner." 35 RCNY § 3-03.1(b). We use the term "hybrid" to encompass both hybrid vehicles as defined under the new rules and vehicles propelled by a "clean diesel" engine.

1 currently make vehicle purchasing decisions without the need to
2 internalize fuel costs.

3 The plaintiffs amended their initial complaint to challenge
4 these new rules and moved for a preliminary injunction against
5 the enforcement of the Crown Victoria lease caps, again citing
6 the preemption provisions of both the EPCA and the CAA. For
7 obvious reasons, the plaintiffs did not challenge the \$3 upward
8 adjustment of the lease caps for hybrid taxis, which benefitted
9 them, and that adjustment went into effect on May 1, 2009.

10 At an evidentiary hearing on the plaintiffs' motion, experts
11 for both sides testified on the economic impact of the new rules
12 on taxi fleet owners. The testimony of the plaintiffs' expert
13 James Levinsohn tended to demonstrate that fleet owners would
14 earn between \$5,500 and \$6,500 less per year for each Crown
15 Victoria leased under the eventual \$12 downward adjustment in
16 comparison to leasing a hybrid under the \$3 upward adjustment.
17 The plaintiffs' expert estimated the current annual profit of
18 leasing a Crown Victoria to be \$8,518 per car per year. Thus,
19 the lease cap reduction would lower profits by 65% to 75% for
20 each Crown Victoria. The City did not challenge this estimated
21 impact on plaintiffs' profits. The City's expert testified,
22 however, that fleet owners could still make a "reasonable rate of
23 return" on their purchase of a Crown Victoria notwithstanding the
24 \$12 downward adjustment.

1 On June 22, 2009, the district court granted a preliminary
2 injunction on the grounds that the plaintiffs were likely to
3 succeed on their claims that the new rules were preempted under
4 the EPCA and the CAA. The district court accepted the
5 plaintiffs' expert's view of the economic impact of the new rules
6 on fleet owners' profits and concluded that such a severe
7 disparity in the expected profits from leasing a hybrid as
8 compared to a Crown Victoria would leave the fleet owners with no
9 rational alternative to leasing the former and thus amounted to a
10 de facto mandate to purchase hybrid vehicles. The district court
11 found such a mandate to be related to both fuel economy standards
12 and the reduction of vehicle emissions, and thus sufficiently
13 likely to be preempted under the EPCA and the CAA so as to
14 warrant a preliminary injunction.

15 The City appeals the grant of the preliminary injunction.
16

17 **DISCUSSION**

18 This Court reviews the grant of a preliminary injunction for
19 abuse of discretion. See Almontaser v. N.Y. City Dep't of Educ.,
20 519 F.3d 505, 508 (2d Cir. 2008) (per curiam); Grand River Enter.
21 Six Nations, Ltd. v. Pryor, 481 F.3d 60, 66 (2d Cir. 2007) (per
22 curiam). "A district court abuses its discretion when it rests
23 its decision on a clearly erroneous finding of fact or makes an
24 error of law." Almontaser, 519 F.3d at 508. In order to justify

1 a preliminary injunction, a movant must demonstrate 1)
2 irreparable harm absent injunctive relief; 2) "either a
3 likelihood of success on the merits, or a serious question going
4 to the merits to make them a fair ground for trial, with a
5 balance of hardships tipping decidedly in the plaintiff's favor,"
6 id.; and 3) that the public's interest weighs in favor of
7 granting an injunction. Winter v. Natural Res. Def. Council,
8 Inc., 129 S. Ct. 365, 374 (2008). "When, as here, the moving
9 party seeks a preliminary injunction that will affect government
10 action taken in the public interest pursuant to a statutory or
11 regulatory scheme, the injunction should be granted only if the
12 moving party meets the more rigorous likelihood-of-success
13 standard." County of Nassau, N.Y. v. Leavitt, 524 F.3d 408, 414
14 (2d Cir. 2008) (brackets and internal quotation marks omitted).
15 In this case, the City's sole challenge to the preliminary
16 injunction is that the plaintiffs are not likely to succeed on
17 their preemption claims.

18
19 **I. Preemption Under the EPCA**

20 The EPCA preemption clause states:

21 [A] State or a political subdivision of a State may not
22 adopt or enforce a law or regulation related to fuel
23 economy standards or average fuel economy standards for
24 automobiles covered by an average fuel economy standard
25 under this chapter.

26
27 49 U.S.C. § 32919(a).

1 "Since [preemption] claims turn on Congress's intent, we
2 begin as we do in any exercise of statutory construction with the
3 text of the provision in question, and move on, as need be, to
4 the structure and purpose of the Act in which it occurs." N.Y.
5 State Conference of Blue Cross & Blue Shield Plans v. Travelers
6 Ins. Co., 514 U.S. 645, 655 (1995) (citations omitted). In the
7 context of judging the scope of the preemption provision of the
8 Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §
9 1144(a), the Supreme Court has held that determining whether a
10 state law relates to a preempted subject matter requires
11 examining whether the challenged law contains a "reference" to
12 the preempted subject matter or makes the existence of the
13 preempted subject matter "essential to the law's operation."
14 Cal. Div. of Labor Standards Enforcement v. Dillingham Constr.,
15 N.A., Inc., 519 U.S. 316, 324-25 (1997). If the law contains
16 such a reference or makes the existence of preempted subject
17 matter essential to the law's operation, then that state law is
18 preempted by the federal law. See id. at 325 ("Where a State's
19 law acts immediately and exclusively upon ERISA plans . . . , or
20 where the existence of ERISA plans is essential to the law's
21 operation . . . , that 'reference' will result in
22 [preemption].").⁴

⁴ Even if there is no reference to or essential incorporation of the preempted subject matter, courts must still ask whether the law nevertheless contains requirements that

1 As a threshold matter, we may rely on ERISA preemption
2 precedents such as Travelers and Dillingham because the pertinent
3 language in that statute is virtually identical to the text in
4 the preemption provision of the EPCA, which preempts state laws
5 that are "related to fuel economy standards." Compare 29 U.S.C.
6 § 1144(a), with 49 U.S.C. § 32919(a). Although the same
7 "relate[] to" provision arises in different preemption statutes,
8 we discern no basis for concluding that the meaning of the
9 language in each provision was not intended to be the same. Cf.
10 Travelers Indem. Co. v. Bailey, 129 S. Ct. 2195, 2203 (2009)
11 (noting generally that, "[i]n a statute, 'the phrase "in relation
12 to" is expansive'" and applying that statutory reading to the
13 interpretation of a private settlement agreement). We note that
14 the City itself relies on Travelers in challenging the district
15 court's ruling. See Appellants Br. at 57, 60. For purposes of
16 assessing preemption under the EPCA, the Supreme Court's
17 discussions of the phrase "relate to" in ERISA cases is directly
18 applicable.

19 Thus, our first inquiry in determining whether the new rules

"amount[] to 'connection[s] with'" the preempted subject matter. Dillingham, 519 U.S. at 328 (second alteration in original) (quoting Travelers, 514 U.S. at 658). However, because we find that the City's new rules contain a reference to fuel economy standards or make fuel economy standards essential to the operation of those rules, we need not specifically address whether the new rules have a connection with fuel economy standards.

1 relate to "fuel economy standards," 49 U.S.C. § 32919(a), is
2 whether they contain a reference to fuel economy standards or
3 make fuel economy standards essential to the operation of those
4 rules. Dillingham, 519 U.S. at 324-25. We conclude that they
5 do.

6 The new rules expressly rely on a distinction between hybrid
7 and non-hybrid vehicles. 35 RCNY § 1-78(a)(3) (providing for the
8 upward and downward lease cap adjustments on hybrid and non-
9 hybrid vehicles, respectively). The requirement that a taxi be a
10 hybrid in order to qualify for the upwardly adjusted lease cap
11 does nothing more than draw a distinction between vehicles with
12 greater or lesser fuel-efficiency. The equivalency of the term
13 "hybrid" with "greater fuel efficiency" for purposes of the new
14 rules is self-evident. First, the EPCA specifically requires the
15 separate consideration of "dual fueled" vehicles, including
16 hybrids, in the determination of national fuel economy standards.
17 See 49 U.S.C. § 32901(a)(1)(J) (defining "electricity" as one
18 form of "alternative fuel"); see also id. § 32905(b) (requiring
19 the Administrator of the Environmental Protection Agency to
20 measure the fuel economy of certain "dual fueled" automobile
21 models in part with reference to the fuel economy of that model
22 when operating on "alternative fuel"). Second, imposing reduced
23 lease caps solely on the basis of whether or not a vehicle has a
24 hybrid engine has no relation to an end other than an improvement

1 in fuel economy across the taxi fleets operating in New York
2 City.

3 Indeed, the City is unable to identify any plausible
4 alternative reason for the imposition of such an engine-based
5 rule. The City argues that the new rules “correct[] a structural
6 problem with the standard vehicle lease arrangement that
7 artificially insulates fleet owners from fuel costs.” Appellants
8 Br. at 1. This proffered reason, however, still aims at the
9 improvement of fuel economy, which underlies the “structural
10 problem” relied upon by the City. This argument, moreover,
11 ignores the City’s mechanism for its structural correction, which
12 is to shift costs solely on the basis of a vehicle’s level of
13 fuel efficiency, i.e., whether the vehicle is a hybrid. Indeed,
14 the City’s current list of approved vehicles includes every car
15 approved for use under the now-repealed 25/30 MPG rule. The
16 City’s list of approved vehicles under the new rules, with the
17 exception of wheelchair accessible vehicles (which are exempt
18 from the lease cap adjustments) and the Crown Victoria, are
19 either hybrids or achieve at least 25 miles per gallon. See New
20 York City Taxi & Limousine Commission, Taxicab Vehicles in Use,
21 available at <http://www.nyc.gov/html/tlc> (follow “Safety &
22 Emissions” hyperlink; then follow “Taxicab Vehicles In Use”
23 hyperlink) (last visited June 1, 2010). The virtually complete
24 overlap of the approved vehicles under the 25/30 MPG rule and the

1 new rules underlines further that, in furtherance of the City's
2 regulatory purpose, "hybrid" is simply a proxy for "greater fuel
3 efficiency." In sum, the new rules are not applicable to
4 gasoline costs in general, nor are they neutral to the fuel
5 economy of the vehicles to which they apply. Rather, they are
6 directly related to fuel economy standards because they rely on
7 fuel economy, and on nothing else, as the criterion for
8 determining the applicable lease cap.

9 Because the parties appear to have assumed before the
10 district court that the new rules did not directly reference fuel
11 economy standards or incorporate those standards into the new
12 rules' operation, they and the district court focused on whether
13 the new rules effectively mandate the use of fuel efficient
14 vehicles through their economic impact. In that context, the
15 district court rejected the City's argument that the new rules
16 are permissible because they only provide an incentive, rather
17 than create a de facto mandate, for the purchase of hybrid
18 vehicles. Appellants Br. at 7, 28. This attention to economic
19 impact was misguided, however, because the rules in question
20 directly regulate the relevant preempted subject matter.

21 22 **II. The Plaintiffs' Preliminary Injunction**

23 Although we find the district court's conclusion that the
24 rules effected a mandate irrelevant to our analysis, the district

1 court's preliminary injunction was appropriate. The City does
2 not challenge the district court's determination that the
3 plaintiffs face irreparable harm absent injunctive relief, nor
4 does it challenge the preliminary injunction on either the
5 balance of hardships or public interest prongs of the preliminary
6 injunction standard. The sole issue before us is whether the
7 plaintiffs have established a likelihood of success on the
8 merits. Leavitt, 524 F.3d at 414.

9 The City's new rules, based expressly on the fuel economy of
10 a leased vehicle, plainly fall within the scope of the EPCA
11 preemption provision. The plaintiffs, therefore, have
12 demonstrated a likelihood, indeed a certainty, of success on the
13 merits, and we affirm the district court's preliminary injunction
14 on this ground. Because preemption under the EPCA is sufficient
15 to affirm the preliminary injunction, there is no need to reach
16 the question of whether the preemption provision of the CAA would
17 invalidate the City's new rules.

18 19 **CONCLUSION**

20 We AFFIRM the district court's order granting the
21 preliminary injunction.