SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK **PART** IAS MOTION 52EFM

Justice

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ZEHN-NY LLC,ZWEI-NY LLC,ABATAR LLC,UNTER LLC,UBER TECHNOLOGIES INC.,

Plaintiffs,

- v -

THE CITY OF NEW YORK, SAMASSA TIDIANE, MOUHAMADOU ALIYU, AMARA SANOGO, TABISH SYED,

Defendant.

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INDEX NO. 151730/2019

MOTION DATE 10/22/2019

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 93, 94, 95, 96, 97, 98, 105, 109, 111, 112, 113, 114, 115, 125, 127

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 99, 100, 101, 102, 103, 104, 106, 110, 116, 117, 118, 119, 120, 121, 122, 126, 128

were read on this motion to/for DISMISS.

The plaintiffs (collectively referred to as "Uber") have brought a declaratory judgment action to annul Local Law 147 of 2018, which was enacted August 14, 2018.[1] The City of New York (the "City") and the intervenors both move to dismiss the petition. For the reasons set forth below, both motions are granted, and the action dismissed.[2]

First, as the City has now taken steps to implement LL 147, all parties at oral argument conceded that the matter is now ripe. During oral argument intervenors raised the argument that the amended complaint as it relates to the initial study is now moot, as the study has now been completed. This argument was not opposed.

[1] The Court would like to thank Amanda Gerstman for her assistance in this matter.
[2] An amicus brief was requested to be considered by this Court without objection as part of this motion. The Court did review these papers. The amicus papers dealt almost exclusively with policy considerations. As a result, the amicus brief will not be discussed in this decision.

Delegation

This Court does not find that the City has impermissibly delegated its legislative authority. What the plaintiffs are asking is for the judiciary to strike down an act of the legislature in that it gives too much authority to the executive. This case is particularly important because delegations like in Local Law 147 are likely to occur more and more as there are further advances in technology. The Court declines to strike down this statute due to impermissible delegation for the reasons indicated below.

The City correctly points out that many delegations with far fewer specifics have been found to be permissible, including in *Greater N.Y. Taxi Ass'n v TLC*, 25 NY3d 600, 613 [2015], where the Court of Appeals upheld New York City Taxi and Limousine Commission ("TLC") rules specifying a single vehicle model that must be used by all medallion taxicab licensees (with certain exceptions). The Court based its conclusion on "the broad statutory powers granted to the TLC to set policy as guided by enumerated safeguards and guidelines" *id.*

The legislature may give agencies discretion to implement legislative directives, but must make the "the primary policy decisions," however the separation of power doctrine does not require that the [administrative] agency be given rigid marching orders. Administrative entities possess technical expertise and may be vested with considerable discretion to flesh out a policy broadly outlined by legislators. *LeadingAge, Inc. v Shah*, 32 NY3d 249, 258 [2018]. In addition, the legislature may not "cede its fundamental policy-making responsibility to an administrative agency." *Boreali v Axelrod*, 71 NY2d 1, 3 [1987]. Within these limits, "[t]he Legislature may constitutionally confer discretion upon an administrative agency ... if it limits the field in which that discretion is to operate and provides standards to govern its exercise." *Levine v Whalen*, 39 NY2d 510, 515 [1976].

In the instant case, the initial cap on the number of FHV licenses currently in effect in New York City was enacted directly by the City Council in LL 147 § (1)(a). [3] Moreover, section 3 of this Local Law, which establishes a new section 19-550 of the Administrative Code, requires the TLC to review and regulate annually the number of for-hire vehicle licenses and sets forth a lengthy set of variables which the TLC must consider in its decision-making process. Moreover, subdivision j of this new section requires an annual report on these findings and decision-making to the City Council. While there is a miscellaneous provision in these variables that would allow the TLC to make decisions based on any standard that they choose, the Court agrees with the City that this provision simply allows TLC in consultation with the Department of Transportation, to use its expertise to determine other factors that might determine whether there should remain a cap.[4] Needless to say, if those agencies were arbitrary and capricious in those decisions, an Article 78 action could be brought, and in fact, as noted in footnote 2 above, an Article 78 action has been brought by these same plaintiffs. To rule for the plaintiffs on this issue would seem to require the TLC to get approval whenever the number of licenses were to change. The Court simply will not require for that to occur.

The cases cited by the plaintiffs are simply unavailing. The Court agrees with the City that these cases, several of which are discussed above, deal with instances where the executive went above what the legislature permitted them to do, or where there was simply no legislative

[3] "[TLC] shall not issue new for-hire vehicle licenses for 12 months after the effective date of this local law, during which period the commission shall submit a report to the council every 3 months on the impact of this section on vehicle ridership throughout the city." LL 147, § 1(a).

[4] TLC would not be writing "on a clean slate, creating [their] own comprehensive set of rules without benefit of legislative guidance." *Boreali v Axelrod*, 71 NY2d 1 [1987]. Moreover, it is telling that the Local Law would in fact require this annual review, thus evincing the legislature's intent to have this issue be one that is constantly reviewed, with a report to the City Council as part of this review.

action taken. Those cases are simply not on point. Any language that appears favorable to the plaintiffs in these cases is simply taken out of context.

Preemption

As to state preemption argument, the Court is simply not persuaded that any state laws act to preempt Local Law 147. Plaintiffs allege that Article 29-C of the N.Y. Tax Law preempts LL 147. Article 29-C does not include any legislative declarations or statements of legislative intent; nor is the legislative history particularly instructive. As such, the type of strong statements from the legislature and Governor that Courts look to in order to determine the State's intent to preempt an entire field are lacking. For instance, in *Robin v Hempstead*, 30 NY2d 347, 350 [1972], the Court determined that the State "reserved to itself regulation of the practice of medicine in general and of the performance of abortions in particular." In reaching this determination, the Court assessed declarations of State policy by the legislature that clearly demonstrated "the State's purpose and design to pre-empt the subject of abortion legislation and occupy the entire field so as to prohibit additional regulation by local authorities." *Id.* at 351. Similarly, in *Con Edison*, the Court greatly relied upon statements by the Legislature, which stressed the importance of streamlining the approval of steam electric generating facilities into one proceeding before a single State entity. *Con Edison v Town of Redhook*, 60 NY2d 99, 104 [1983]. In *People v DeJesus*, the Court assessed the Legislature's preemptive intent based on language in the State law itself, which indicated the broad scope of the Alcoholic Beverage Control Law and the Legislature's clear intent to preempt the entire field. 54 NY2d 465 [1981]. The tax law imposing an FHV surcharge for certain rides is by no stretch "a comprehensive and detailed regulatory scheme in a particular area" such that field preemption can be found. *Con Edison*, 60 NY2d at 105. Thus, as to this provision, the Court agrees with the City and the

intervenors that there is simply no preemption, including field preemption because Plaintiff's heavy reliance on the *Fix NYC Report* as a basis for arguing preemption is misplaced.[5]

The Court is specifically persuaded by the intervenors point on this topic, that the overriding goal of the congestion pricing law is to reduce congestion within the Central Business District ("CBD"), as the fee to for hire vehicles appears meant to dissuade them from coming into the CBD. As such, it would appear that LL 147, rather than being in conflict with the congestion pricing law, in fact appears to complement it. Additionally, the fact remains that the congestion pricing law regulates trips and not vehicles, where LL147 specifically discusses vehicle licenses. While there could of course possibly be some reduction in the revenue to the MTA as a result of Local Law 147, it is hard to believe based on the above that it would not be incidental.

Again, none of this is to say that any further action of the City with respect to this law might not run afoul of aspects of the new Tax Law provision, or other action taken by New York State with respect to the issue of reducing traffic congestion. If it does, then certainly an Article 78 action would be in order. However, there is nothing on its face that so conflicts with the "congestion pricing" statutes that LL147 should be struck down.

As to the plaintiffs arguments with respect to General Municipal Law Section 181, the Court is persuaded by the City's argument, that read together, Municipal Home Rule Law Section 10(1)(ii)(a)(12) and General Municipal Law Section 181 do permit the City to adopt the regulations that they have adopted to regulate the businesses that make up the for-hire vehicle. Section 10(1)(ii)(a)(12) expressly provides that the power to enact local laws "shall include but

[5] An advisory report and recommendation is simply not a legislative enactment. Despite plaintiffs' attempts to frame the Fix NYC Report as a series of legislative enactments, thereby giving a non-binding report and recommendation the effect of law for purposes of field preemption, the Fix NYC Report cannot be relied upon as a basis for arguing preemption as it is not part of the legislative record.

not be limited to the power to adopt local laws providing for the regulation or licensing of occupations or businesses." Hence, the plain and very broad language of the home rule statute makes clear that LL 147 regulation of the businesses of for-hire vehicles is permissible.[6] Therefore , the Court agrees that the Municipal Home Rule Law Provision rendered General Municipal Law Section 181 superfluous when it comes all localities except counties, as the Municipal Home Rule Law provision cited above specifically exempts counties, requiring there to be another specific enactment in order for the county to regulate occupations and businesses as permitted in the Municipal Home Rule Law.[7]

The plaintiffs' alternative argument that regulation does not include capping is simply unavailing. The TLC's regulation of the number of for-hire vehicle licenses does constitute a regulation of the business of for-hire vehicle transportation of passengers and/or a licensing of the occupation of for-hire vehicle driver. See *Main Private Car Service, Inc. v Mayor of City of Yonkers*, 71 Misc 2d 417, 419 [Sup Ct, Westchester County 1971]. While regulation may not include eliminating all such licenses, by its plain meaning, regulation most certainly includes a determination as to the number of licenses to be issued. To rule otherwise would restrict regulation to render it toothless.

Finally, the Court finds the plaintiffs' remaining arguments unavailing, including those related to the Donnelly Act and the New York State Constitution, as the Court is convinced by the City and intervenors arguments that they are inapplicable to this case.

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[6] While the Court finds for the defendants on this issue, it should be noted that the Court was not persuaded by the defendants' other argument related to taxicabs. While taxicabs are not defined in General Municipal Law Section 181, the fact that the state legislature on multiple occasions added types of vehicles to that statute does support the position that this section does not cover for-hire vehicles unless otherwise noted. Again, the Court does not reach that argument due to the successful argument regarding the Municipal Home Rule Law.

[7] "Except in a case where and to the extent that a county is specifically authorized to regulate or license an occupation or business, the exercise of such power by a county shall not relate to the area therein in any city, village or area of any town outside the village or villages therein during such time as such city, village or town is regulating or licensing the occupation or business in question." Municipal Home Rule Section 10(1)(ii)(a)(12)(b).

Standing

The intervenors but not the City, move to dismiss the action, arguing that Uber does not have standing. The Court does not reach this issue. While there is disagreement as to which party has the burden on this issue at this juncture, and even assuming the plaintiffs do in fact have standing, the action is dismissed based on the reasons set forth above. Accordingly, it is hereby

ORDERED defendants' and intervenors' motions to dismiss are granted; and it is further

ORDERED, that the clerk is directed to enter judgment of dismissal for all defendants.

This constitutes the Decision and Order of the Court.

10/28/2019
DATE

LYLE E. FRANK, J.S.C.

HON. LYLE E. FRANK J.S.C.

CHECK ONE:	[X]	CASE DISPOSED			[ ]	NON-FINAL DISPOSITION	
	[X]	GRANTED	[ ]	DENIED	[ ]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER			[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN			[ ]	FIDUCIARY APPOINTMENT	[ ] REFERENCE