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IV. FRANCHISE LAW

Jimenez v. BP Oil, Inc.: The Fourth Circuit's Response to Congress' Attempt to Balance The Interests of Petroleum Franchisors and Franchisees in the Petroleum Marketing Practices Act

The Petroleum Marketing Practices Act of 1978 (PMPA)¹ established federal standards that govern a franchisor's ability to terminate or to fail to renew a franchise for the retail distribution of petroleum products.² In enacting the PMPA, Congress sought to develop a uniform system for regulating petroleum franchises.³ Congress, to facilitate a uniform system for regulating petroleum franchises, provided that the PMPA preempts state laws that regulate subject areas that the PMPA covers.⁴ In interpreting the

1. 15 U.S.C. §§ 2801-2841 (1982).

2. See 15 U.S.C. § 2802(b) (1982) (identifying grounds upon which franchisor may terminate or fail to renew franchise agreement). The Petroleum Marketing Practices Act (PMPA) provides an exhaustive list of the grounds upon which a franchisor either may terminate a franchise agreement during the course of a franchise, or may fail to renew a franchise agreement upon the natural expiration of the franchise. *Id.* at § 2802(b)(2)-(b)(3). Section 2802(b)(2) of the PMPA provides five separate grounds for a valid termination or nonrenewal of a petroleum franchise. *Id.* at § 2802(b)(2). First, a franchisor may terminate or fail to renew a franchise if the franchisee fails to comply with a reasonable and material condition of the franchise agreement. *Id.* at § 2802(b)(2)(A). Second, a franchisor may terminate or fail to renew a franchise under the PMPA if the franchisee fails to exert a good faith effort in carrying out the provisions of the franchise agreement. *Id.* at § 2802(b)(2)(B). Third, if an event occurs that makes termination or nonrenewal reasonable, a franchisor validly may terminate or fail to renew a franchisee's franchise. *Id.* at §2802(b)(2)(C). Fourth, a franchisor may terminate or fail to renew a franchise agreement if the franchisor and franchisee agree in writing to terminate or not to renew a franchise agreement. *Id.* at § 2802(b)(2)(D). Fifth, a franchisor may terminate or fail to renew a franchise agreement if the franchisor makes a good faith determination, based on changes in relevant circumstances, to withdraw from the geographic market. *Id.* at § 2802(b)(2)(E). The PMPA further provides that a franchisor may fail to renew, but may not terminate, a franchise if a franchisee refuses to accept the franchisor's changes or additions to the franchise agreement, if the franchisor proposed the changes or additions in good faith and in the normal course of the franchisor's business. *Id.* at § 2802(b)(3)(A).

3. See S. REP. NO. 731, 95th Cong., 2d Sess. 15, 19, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 873, 877 (discussing Congress' recognition of need for uniform set of laws to regulate grounds for termination or nonrenewal of petroleum franchises). The Senate Report to the PMPA notes that prior to the PMPA many states had enacted legislation which regulated petroleum franchises. *Id.* at 19, 1978 U.S. CODE CONG. & ADMIN. NEWS at 877. The Senate Report further noted that states had regulated petroleum franchises differently, thus producing an uneven set of state rules that governed franchise relationships. *Id.*

4. See 15 U.S.C. § 2806(a) (1982) (identifying PMPA's preemptive scope over state laws that regulate petroleum franchises). Section 2806(a) of the PMPA stipulates that the PMPA preempts state laws that regulate the termination or nonrenewal of petroleum franchises inconsistently with the terms of the PMPA. *Id.*

scope of the PMPA's preemption clause, courts generally have agreed that the PMPA preempts state statutes that regulate the termination or nonrenewal of petroleum franchises inconsistently with the terms of the PMPA.⁵ Courts, however, have defined consistency with the PMPA in different ways.⁶ Some courts have interpreted the PMPA's preemption clause to preempt all state laws that regulate any aspect of the termination or nonrenewal of petroleum franchises.⁷ Other courts have interpreted the PMPA's preemption clause to preempt only state laws that regulate the grounds, procedures, and notice requirements for termination or nonrenewal of petroleum franchises.⁸ Finally, a third group of courts has found that

5. See, e.g., *In re Herbert*, 806 F.2d 889, 892 (9th Cir. 1986) (holding that PMPA preempts all state laws that are inconsistent with PMPA); *Esso Standard Oil Co. v. Department of Consumer Affairs*, 793 F.2d 431, 434 (1st Cir. 1986) (holding that state laws which regulate termination, renewal, or notice requirements for termination of petroleum franchises must follow provisions in PMPA); *Bellmore v. Mobil Oil Corp.*, 783 F.2d 300, 305 (2d Cir. 1986) (holding that state laws which regulate areas that PMPA covers must follow provisions in PMPA); see generally U.S. CONST. art. VI, cl. 2 (containing supremacy clause, which states that federal laws are superior to state laws that contradict federal laws); *Michigan Canners & Freezers Ass'n v. Agricultural Mktg. & Bargaining Bd.*, 467 U.S. 461, 469 (1984) (noting that doctrine of federal preemption of state laws arises under supremacy clause of United States Constitution); *Gibbons v. Ogden*, 9 Wheat. 1, 17 (1824) (noting that underlying rationale of preemption doctrine is that supremacy clause invalidates state laws that interfere with or contradict federal laws).

If Congress expressly has claimed exclusive authority to regulate a given field, then federal laws preempt conflicting state laws that regulate the same field. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). In the absence of express congressional intent that federal laws will preempt state laws in a given field, federal laws still may preempt state laws if Congress has shown an intent to occupy a field with federal regulation, and thus to preclude states from supplementing the federal regulation with state laws. *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 203-204 (1983). Furthermore, if Congress permits simultaneous state and federal regulation of a substantive area, federal laws preempt state laws if the state laws frustrate Congress' accomplishment of Congress' objectives in enacting the federal laws. *Id.* at 204. If state and federal laws conflict courts may engage in statutory construction and, in examining a federal act's legislative history, may attempt to determine the extent to which federal laws preempt state laws. *Bellmore*, 783 F.2d at 303. In determining the extent of federal preemption of state laws, courts should examine the federal law as a whole to determine the congressional objectives and policies behind the law. *Philbrook v. Glodgett*, 421 U.S. 707, 713 (1975).

6. See *infra* notes 7-9 and accompanying text (discussing courts' varying interpretations of consistency with PMPA's regulation of termination and nonrenewal of petroleum franchises).

7. See *In re Herbert*, 806 F.2d 889, 894 (9th Cir. 1986) (holding that PMPA preempts state law that provides franchisees rights additional to rights that PMPA provides); *Continental Enters. v. American Oil Co.*, 808 F.2d 24, 28 (8th Cir. 1986) (holding that PMPA preempts state law if state law action arises out of termination of franchise or is incident of termination).

8. See *Consumers Petroleum Co. v. Texaco, Inc.*, 804 F.2d 907, 915 (6th Cir. 1986) (noting that Congress limited PMPA's scope of preemption to preempt only state laws that substantially address grounds, procedures, and notice requirements for termination or nonrenewal of petroleum franchises); *Esso Standard Oil Co. v. Department of Consumer Affairs*, 793 F.2d 431, 434 (1st Cir. 1986) (reasoning that because PMPA regulates only grounds, procedures, and notice requirements for termination or nonrenewal, PMPA does not give franchisors substantive right to be free of all state regulation of petroleum franchise agree-

the PMPA preempts state statutes that regulate substantive aspects of petroleum franchises if the courts' enforcement of the state statutes effectively would interfere with a franchisor's right to terminate or to fail to renew a franchise relationship under the PMPA.⁹ In *Jimenez v. BP Oil, Inc.*¹⁰ the United States Court of Appeals for the Fourth Circuit considered the extent to which Congress intended the PMPA to preempt a Maryland law that regulated petroleum franchises.¹¹

In *Jimenez* the plaintiffs, Jimenez, Horcasitas, and Palmer, each operated several petroleum franchises in Baltimore and Washington, D.C. under franchise agreements with the defendant, BP Oil, Inc. (BP).¹² Pursuant to BP's decision to withdraw from the Baltimore-Washington, D.C. market, BP sold BP's interest in all of BP's Baltimore-Washington, D.C. franchises to Crown Central Petroleum Corporation (Crown).¹³ Crown offered the plaintiffs new franchise agreements with terms that differed from BP's terms.¹⁴ Furthermore, Crown notified the plaintiffs that Crown would offer the plaintiffs the right to purchase any stations that Crown did not plan to franchise.¹⁵

The plaintiffs sued BP in the United States District Court for the District of Maryland.¹⁶ The plaintiffs alleged in the plaintiffs' complaint

ments); *Bellmore v. Mobil Oil Corp.*, 783 F.2d 300, 304 (2d Cir. 1986) (holding that PMPA does not preempt all state laws that relate to any aspect of termination or nonrenewal but instead preempts only state laws that regulate grounds, procedures, or notice requirements for termination or nonrenewal).

9. See *Humboldt Oil Co. v. Exxon Co.*, 823 F.2d 373, 375 (9th Cir. 1987) (holding that PMPA preempted state law because state law interfered with franchisor's right under PMPA to disassociate from franchisee), *cert. denied*, 108 S. Ct. 1575 (1988); *Consumers Petroleum Co. v. Texaco, Inc.*, 804 F.2d 907, 915 (6th Cir. 1986) (holding that PMPA preempted state law misrepresentation claim because claim improperly extended PMPA's notice requirements for termination). *But see Bellmore*, 783 F.2d at 306 (holding that PMPA did not preempt state law provision that required franchisor to compensate franchisee for goodwill that franchisor appropriated because such provision only tenuously and speculatively affected PMPA's notice requirements); *Davis v. Gulf Oil Corp.*, 485 A.2d 160, 169 (D.C. 1984) (concluding that, because state law did not address termination directly, PMPA did not preempt state law that prevented petroleum distributors from operating retail stations even if state law has effect on franchisor's termination options under PMPA).

10. 853 F.2d 268 (4th Cir. 1988).

11. *Jimenez v. BP Oil, Inc.*, 853 F.2d 268, 270-71 (4th Cir. 1988).

12. *Id.* at 269.

13. *Id.* In *Jimenez* the franchise agreements between the plaintiffs and BP Oil, Inc. (BP) expired on April 30, 1985, but BP extended the franchises until October 31, 1985. *Id.* On October 17, 1985, BP notified the plaintiffs that BP had sold all of BP's retail stations to Crown Central Petroleum Corp. (Crown). *Id.* BP then notified the plaintiffs that BP had extended the franchise agreements between BP and the plaintiffs until April 1, 1986, the date on which Crown would assume ownership of the stations. *Id.*

14. *Id.* In *Jimenez* the franchise agreements that Crown offered to the plaintiffs differed from the BP franchise agreements in that Crown would not allow franchisees, as the franchisees had done under BP's franchise agreements, to operate more than one franchised station. *Id.*

15. *Id.* at 273; see also *Jimenez v. BP Oil, Inc.*, 652 F. Supp. 329, 331 (D. Md. 1987) (noting that Crown offered multistation franchisees right to purchase any stations that Crown did not plan to franchise).

16. *Jimenez*, 853 F.2d at 269. In *Jimenez* the plaintiffs, who each operated more than

that BP, by failing to offer the plaintiffs the right to purchase the additional stations that the plaintiffs had operated under franchise agreements with BP, violated the PMPA.¹⁷ In addition to the plaintiffs' claims under the PMPA, the plaintiffs sought to recover compensation under the Maryland Gasohol and Gasoline Products Marketing Act (Maryland Act)¹⁸ for the goodwill that the plaintiffs allegedly lost when BP terminated the plaintiffs' franchises.¹⁹ After granting BP's motion for summary judgment on the plaintiffs' claim under the PMPA,²⁰ the district court determined that the PMPA did not preempt the Maryland Act's provision that requires franchisors, upon terminating franchises, to make goodwill payments to franchisees.²¹ In determining that the PMPA did not preempt the Maryland Act, the district court in *Jimenez* reasoned that the state law was supplemental to, not inconsistent with, the PMPA.²² The district court, therefore, concluded that the plaintiffs could recover goodwill payments from BP for loss of goodwill under the Maryland Act.²³ BP appealed the decision of the

one station under agreements with BP, rejected Crown's franchise proposals because Crown refused to allow the plaintiffs to operate more than one station. *Id.* In *Jimenez* Crown instead offered multiple franchisees like the plaintiffs only one station, at a location of Crown's choosing, with options to buy the remaining stations that Crown did not select for franchise agreements. *Jimenez*, 652 F. Supp. at 331.

17. *Jimenez*, 853 F.2d at 269; *see also Jimenez*, 652 F. Supp. at 332 (discussing plaintiffs' claim that BP violated PMPA by failing to make timely offer to plaintiffs of right to purchase remaining stations).

18. MD. COM. LAW CODE ANN. §§ 11-301-08 (1983).

19. *Jimenez*, 853 F.2d at 270; *see also* MD. COM. LAW CODE ANN. § 11-304(i) (requiring franchisor, if termination is without franchisee's written consent, to pay franchisee full value of any business goodwill that franchisee enjoyed at time of notification of termination).

20. *See Jimenez*, 853 F.2d at 270 (noting that district court granted summary judgment in favor of BP on plaintiffs' claims under PMPA). The district court in *Jimenez* determined that BP did not violate the PMPA's requirement that a franchisor offer a franchisee the right to purchase terminated franchises. *Jimenez*, 652 F. Supp. at 332-33. The district court, therefore, granted summary judgment in favor of BP on the PMPA issue, a decision which the plaintiffs did not appeal to the Fourth Circuit. *Id.* at 335; *see also Jimenez*, 853 F.2d at 270 (listing claims before appellate court in *Jimenez*).

21. *Jimenez*, 652 F. Supp. at 334-35.

22. *Jimenez*, 853 F.2d at 270; *see also Jimenez*, 652 F. Supp. at 334-35 (holding that because Maryland Act's goodwill provision does not regulate terminations or nonrenewals, but instead merely compensates franchisees for value of goodwill that franchisees lost, Maryland Act's goodwill provision is supplemental to, and does not conflict with, PMPA).

23. *Jimenez*, 652 F. Supp. at 334-35. In *Jimenez* the district court determined that the Maryland Act does not regulate terminations or nonrenewals of petroleum franchises but instead provides compensation to franchisees if franchisors lawfully end the franchisees' franchises. *Id.* at 334. The district court in *Jimenez* noted that unjust enrichment may result if, by continuing to operate stations under new franchise agreements, franchisees recover goodwill payments while the franchisees retain the franchisees' goodwill. *Id.* at 334 n.7. The district court further noted that Crown's imposition of twenty-four hour service requirements and noncompetition clauses in Crown's franchise agreements partially offset the possibility of the franchisees' unjust enrichment resulting from the franchisees recovering goodwill payments while still operating the franchises. *Id.* The district court further reasoned that Crown probably compensated BP for the value of the franchisees' goodwill when BP transferred BP's interest in the franchises to Crown. *Id.*

district court to the United States Court of Appeals for the Fourth Circuit.²⁴

On appeal, the Fourth Circuit reversed the district court's ruling that the plaintiffs could recover, under the Maryland Act, goodwill payments from BP.²⁵ The Fourth Circuit in *Jimenez* initially addressed whether the district court properly applied the Maryland Act to the *Jimenez* facts.²⁶ In determining whether the Maryland Act required BP to make goodwill payments to the plaintiffs, the Fourth Circuit determined that the Maryland Act did not state clearly whether the Maryland Act's goodwill provision applied to a franchisor's complete withdrawal from a particular market.²⁷ To facilitate analysis of the preemption question, however, the appellate court in *Jimenez* assumed that the Maryland Act requires a petroleum franchisor to compensate a franchisee for the goodwill that the franchisee loses when the franchisor conducts a complete withdrawal from the franchisee's market.²⁸

After addressing the application of the Maryland Act to the facts in *Jimenez*, the *Jimenez* court addressed the plaintiffs' claim that the Fourth Circuit, in considering whether the PMPA preempted the Maryland Act's goodwill provision, should adopt a grounds/effects interpretation of the PMPA.²⁹ Under a grounds/effects interpretation of the PMPA, the PMPA

24. *Jimenez*, 853 F.2d at 270. In *Jimenez* BP claimed on appeal that the Maryland Act applied only to franchisors' wrongful conduct, such as unreasonable terminations and nonrenewals, but not to franchisors' complete withdrawals from geographic markets. *Id.* BP further claimed on appeal that the PMPA preempted the Maryland Act's goodwill provision. *Id.*

25. *Id.* at 274; see *infra* notes 26-57 and accompanying text (discussing Fourth Circuit's holding that BP did not have to make goodwill payments to plaintiffs).

26. See *infra* notes 27-28 and accompanying text (discussing Fourth Circuit's determination whether district court properly applied Maryland Act to *Jimenez* facts).

27. *Jimenez*, 853 F.2d at 270. In *Jimenez* the Fourth Circuit noted that the Maryland legislature intended the Maryland Act to discourage oil companies, in an attempt to eliminate price competition among petroleum retail operations, from forcing franchisees to comply with the oil companies' marketing policies. *Id.* The *Jimenez* court further noted that the Maryland Act's goodwill provision serves the Maryland Act's intended purpose of deterring oil company takeovers of retail operations only when an oil company forces its way into a market. *Id.* The *Jimenez* court reasoned that the Maryland Act's goodwill provision did not serve the Act's intended purpose if an oil company withdrew from a market, as BP did in *Jimenez*. *Id.* The Fourth Circuit reasoned that the Maryland legislature probably did not intend that the Maryland Act's goodwill provision would act as a "toll" on franchisors that exit a market. *Id.*

28. *Id.* The Fourth Circuit in *Jimenez* noted that, because no statutory or common law interpretations of the Maryland Act existed in Maryland law, the *Jimenez* court was unable to analyze completely whether the Maryland Act applied to market withdrawals. *Id.* As a result, the *Jimenez* court assumed that the Maryland legislature did intend the Maryland Act to apply to franchisors' complete market withdrawals. *Id.*

29. *Id.* at 272; see *infra* notes 30-49 and accompanying text (discussing Fourth Circuit's evaluation of grounds/effects interpretation of PMPA's scope of preemption over state laws that regulate termination or nonrenewal of petroleum franchises). In *Jimenez* the plaintiffs argued that the Fourth Circuit in *Barnes v. Gulf Oil Corp.* had interpreted the language of the Senate Report to mean that Congress intended the PMPA to preempt only state statutes that regulate grounds and procedures for termination or nonrenewal of petroleum franchises, but not statutes that regulate the effects of termination or nonrenewal. *Jimenez*, 853 F.2d at

preempts only state laws that regulate the grounds for, but not the effects of, termination or nonrenewal of petroleum franchises.³⁰ The plaintiffs argued that under a grounds/effects interpretation of the PMPA, the PMPA would not preempt the Maryland Act's goodwill provisions because the PMPA does not preempt state laws that regulate the effects, such as goodwill payments, of petroleum franchise termination.³¹ The *Jimenez* court determined that the grounds/effects analysis was not persuasive under the *Jimenez* facts.³² In rejecting a narrow grounds/effects interpretation of the PMPA, the Fourth Circuit distinguished the *Jimenez* facts from the facts in other cases in which courts, upholding state law goodwill provisions, have utilized the grounds/effects analysis.³³

In distinguishing the *Jimenez* facts from other cases in which courts have adopted a grounds/effects analysis, the Fourth Circuit first distinguished BP's complete withdrawal from the Baltimore-Washington, D.C. petroleum market from the facts in other cases in which franchisors had not withdrawn completely from franchisees' markets.³⁴ The Fourth Circuit in *Jimenez* reasoned that, by completely withdrawing from the Baltimore-Washington, D.C. market, BP, unlike franchisors that do not conduct complete market withdrawals, no longer could benefit from the plaintiffs' continued operation of the retail stations.³⁵ Because BP could not benefit from the plaintiffs' continued operation of the retail stations, the *Jimenez* court further reasoned that BP did not appropriate the plaintiffs' goodwill.³⁶ The Fourth Circuit in *Jimenez* noted that the PMPA expressly preempts state laws that regulate remedies or penalties that apply to the termination

272; see also *Barnes v. Gulf Oil Corp.*, 795 F.2d 358, 364 (4th Cir. 1986) (noting that Congress, in enacting PMPA, intended to establish uniform rules that would govern grounds for terminating petroleum franchises).

30. See *Jimenez*, 853 F.2d at 272 (discussing basis of grounds/effects analysis).

31. See *id.* (discussing plaintiffs' claim that under grounds/effects interpretation PMPA does not preempt Maryland Act's goodwill provision).

32. *Id.* at 273; see *infra* notes 33-49 and accompanying text (discussing Fourth Circuit's conclusion that grounds/effects analysis did not apply to *Jimenez* facts).

33. *Jimenez*, 853 F.2d at 272-73, 273 n.1; see *infra* notes 34-49 and accompanying text (discussing Fourth Circuit's rationale for distinguishing *Jimenez* facts from facts in cases in which other courts have applied narrow grounds/effects interpretation to PMPA's scope of preemption); see also *supra* note 8 (listing courts that have used grounds/effects analysis to interpret narrowly PMPA's scope of preemption).

34. *Jimenez*, 853 F.2d at 272; see *infra* notes 35-38 and accompanying text (discussing Fourth Circuit's rationale for distinguishing *Jimenez* from cases in which other courts adopted grounds/effects interpretation of PMPA).

35. *Jimenez*, 853 F.2d at 273.

36. *Id.* The *Jimenez* court noted that other courts have construed goodwill payments as compensation of a franchisee for the value of goodwill that a franchisor received when the franchisor took over a franchisee's station. *Id.* at 272. The *Jimenez* court recognized that, if a franchisor has appropriated a franchisee's goodwill by continuing to operate the deposed franchisee's franchise, then the goodwill payments under state law compensate the franchisee for lost goodwill. *Id.*

or nonrenewal of petroleum franchises.³⁷ The *Jimenez* court therefore concluded that because BP did not appropriate the plaintiffs' goodwill, if the Fourth Circuit applied the Maryland Act's goodwill provision to BP's complete market withdrawal, the goodwill provision of the Maryland Act impermissibly would penalize BP.³⁸

Second, in distinguishing the *Jimenez* facts from the facts before the courts that have adopted the grounds/effects analysis, the *Jimenez* court noted that, unlike the franchisee in at least one other case, the *Jimenez* plaintiffs did not lose goodwill when BP withdrew from the plaintiffs' market.³⁹ In determining that the *Jimenez* plaintiffs did not lose goodwill, the Fourth Circuit noted that after Crown purchased the BP franchises, the plaintiffs continued to operate a franchised station.⁴⁰ The Fourth Circuit further noted that the *Jimenez* plaintiffs did not lose goodwill because Crown gave the plaintiffs the option to purchase the other stations that the plaintiffs previously had operated.⁴¹ The Fourth Circuit then reasoned that because the plaintiffs in *Jimenez* did not lose goodwill, BP's goodwill payments to the plaintiffs, unlike the goodwill payments in at least one other case, would not compensate the plaintiffs for goodwill that the plaintiffs lost upon the franchisor's termination of the franchise.⁴²

Third, the Fourth Circuit in *Jimenez* rejected other courts' narrow interpretations of the PMPA's preemption clause because the Fourth Circuit determined that the other courts incorrectly had interpreted the legislative history of the PMPA.⁴³ The *Jimenez* court reasoned that other courts, in

37. *Id.* at 273; see also 15 U.S.C. § 2806(a) (1982) (stating PMPA's express preemption of state laws that regulate penalties or remedies for violations of PMPA's termination or nonrenewal provisions).

38. *Jimenez*, 853 F.2d at 272. The *Jimenez* court reasoned that because BP did not appropriate the plaintiffs' goodwill by conducting a market withdrawal, the Maryland Act's goodwill provision, by requiring BP to compensate the plaintiffs for goodwill that BP did not receive, would penalize BP. *Id.*

39. *Id.* at 273; see *infra* notes 40-41 and accompanying text (discussing Fourth Circuit's determination that because plaintiffs did not lose goodwill, BP's goodwill payments could not compensate plaintiffs for lost goodwill); see also *Bellmore v. Mobil Oil Corp.*, 783 F.2d 300, 305 (2d Cir. 1986) (concluding that because state act's goodwill provision compensated franchisee for franchisee's lost goodwill, PMPA did not preempt state act's goodwill provision).

40. *Jimenez*, 853 F.2d at 273. The Fourth Circuit in *Jimenez* contrasted the fact that in *Jimenez* the plaintiffs continued to operate the plaintiffs' franchises, with the fact that in *Bellmore*, because the franchisor failed to renew the franchises, the franchisees were no longer operating any franchised stations. *Id.*; see also *Bellmore*, 783 F.2d at 303 (noting that franchisor's failure to renew franchise agreement, because franchisor owned premises, left franchisee without retail station). The *Jimenez* court concluded that, unlike the franchisees in *Jimenez*, the franchisees in *Bellmore* lost the goodwill that the franchisees had established in the business. *Id.*; see also *Bellmore*, 783 F.2d at 305 (noting that franchisor appropriated franchisee's goodwill).

41. *Jimenez*, 853 F.2d at 273.

42. *Id.*

43. *Id.* at 272-73; see *infra* note 45 and accompanying text (discussing Fourth Circuit's conclusion that PMPA's legislative history does not support other courts' narrow interpretation of PMPA's scope of preemption); see also *supra* note 8 (listing other courts that have

improperly analyzing Congress' intentions in enacting the PMPA, placed undue emphasis on protecting franchisees' interests at the expense of franchisors' interests.⁴⁴ The *Jimenez* court interpreted the legislative history of the PMPA to indicate Congress' intention to prevent states, by enacting legislation that is too adverse to the interests of franchisors, from disrupting the PMPA's balance of interests between franchisors and franchisees.⁴⁵

Finally, the Fourth Circuit in *Jimenez* reasoned that other courts, in determining whether the PMPA preempts state law goodwill provisions, incorrectly had failed to address the state legislatures' failure to accommodate franchisors' complete withdrawals from franchisees' markets.⁴⁶ The Fourth Circuit noted that the PMPA expressly provides that franchisors may withdraw completely from a market without incurring a penalty.⁴⁷ The *Jimenez* court further acknowledged that the Maryland Act, as well as similar state acts which other courts have addressed, does not recognize the unique circumstances of complete market withdrawals, but instead provides for goodwill payments for all types of terminations or nonrenewals.⁴⁸ The Fourth Circuit, therefore, concluded that, contrary to the decisions of other courts, in the limited case of a franchisor's complete market withdrawal, the PMPA preempts the goodwill provisions of state statutes that penalize franchisors for conduct that the PMPA allows without penalty.⁴⁹

After refusing to adopt the grounds/effects analysis in the limited case of a franchisor's complete market withdrawal, the Fourth Circuit in *Jimenez* considered whether a grounds/effects analysis was an appropriate method under any circumstances for determining the PMPA's scope of preemption.⁵⁰

interpreted PMPA's legislative history and concluded that PMPA's scope of preemption is narrow).

44. *Jimenez*, 853 F.2d at 273.

45. *Id.* The *Jimenez* court observed that although other courts that have interpreted the PMPA have emphasized the need to protect franchisees from manipulative franchisors, the other courts have failed to give proper recognition to Congress' intention to allow franchisors to terminate or to fail to renew franchises in response to changing economic conditions. *Id.*

46. *Id.*; see *infra* notes 47-49 and accompanying text (discussing failure of state acts to accommodate franchisors' complete market withdrawals when assessing goodwill payments on franchisors for termination or nonrenewal of petroleum franchises).

47. *Jimenez*, 853 F.2d at 273; see also 15 U.S.C. § 2802(b)(2)(E) (1982) (allowing franchisor to terminate or fail to renew petroleum franchise based on franchisor's decision, which decision franchisor made in good faith and in normal course of franchisor's business, to withdraw completely from geographic market area).

48. See *Jimenez*, 853 F.2d at 273 (noting that Maryland Act provides for goodwill payments on all types of terminations or nonrenewals); see also MD. COM. LAW CODE ANN. §11-304(i) (1983) (requiring franchisor to make goodwill payments to franchisee upon franchisor's termination or nonrenewal of petroleum franchise for any reason except the franchisee's material breach of franchise agreement).

49. See *Jimenez*, 853 F.2d at 273 (discussing Fourth Circuit's conclusion that Maryland Act penalizes franchisors for conduct PMPA allows); *supra* notes 35-38 and accompanying text (discussing Fourth Circuit's rationale for determining that Maryland Act penalizes BP for conducting activity that PMPA allows without penalty).

50. See *Jimenez*, 853 F.2d at 272-73 (discussing reasons for *Jimenez* court's rejection of

In deciding whether a grounds/effects analysis was an appropriate method for determining the PMPA's scope of preemption, the Fourth Circuit considered whether Congress intended the PMPA to preempt all state laws that regulate any aspect of termination or nonrenewal of petroleum franchises.⁵¹ In examining the PMPA's legislative history, the Fourth Circuit noted that Congress, before enacting the PMPA, recognized the need for a uniform set of guidelines that would govern termination and nonrenewal of petroleum franchises.⁵² The Fourth Circuit further noted that the broad language that Congress used in discussing and drafting the PMPA's preemption clause indicated that Congress intended the PMPA to preempt state laws that regulated any aspect, substantive or procedural, relating to the termination and nonrenewal of petroleum franchises.⁵³ The *Jimenez* court, after applying a traditional supremacy clause analysis to the preemption clause of the PMPA,⁵⁴ determined that Congress intended the PMPA to be

grounds/effects analysis); *supra* notes 29-49 and accompanying text (discussing Fourth Circuit's conclusion that grounds/effects analysis did not support plaintiffs' claim that PMPA does not preempt Maryland Act's goodwill provision); *infra* notes 51-57 and accompanying text (discussing Fourth Circuit's consideration of whether grounds/effects analysis was appropriate method, under any circumstances, for determining PMPA's scope of preemption).

51. *Jimenez*, 853 F.2d at 273.

52. *Id.* at 271. The *Jimenez* court, in examining the PMPA's legislative history, found that the Senate Report for the PMPA stated that Congress recognized a need for a single set of uniform rules that would control the grounds and notification procedures for the termination and nonrenewal of petroleum franchises. *Id.* The Fourth Circuit further noted that Congress enacted the PMPA to prevent franchisors, by threatening franchisees with termination or nonrenewal of the franchisees' franchise agreements, from controlling franchisees' retail marketing policies. *Id.* The Fourth Circuit, however, also noted that Congress intended to allow franchisors flexibility to withdraw from a geographic market in response to changing circumstances. *Id.* at 273.

53. *Id.* The *Jimenez* court noted that the PMPA's preemption clause prevents states from adopting or enforcing any provisions of state laws "with respect to" termination or nonrenewal of petroleum franchises. *Id.*; see 15 U.S.C. § 2806(a) (1982) (containing PMPA's preemption clause). The *Jimenez* court also noted that the Senate Report stated that the preemption clause of the PMPA applies to state laws "dealing with" termination or nonrenewal of petroleum franchises. *Jimenez*, 853 F.2d at 273. The *Jimenez* court, in determining that Congress intended the PMPA to preempt state laws that regulate any aspect of termination or nonrenewal of petroleum franchises, emphasized the broad scope of the words "with respect to" in the PMPA's preemption clause and "dealing with" in the legislative history of the PMPA. *Id.*

54. See *supra* note 5 (discussing traditional supremacy clause standards for determining whether federal law preempts state laws). By analyzing the PMPA as a whole, including the PMPA's legislative history, the *Jimenez* court applied traditional supremacy clause standards to determine the congressional intent behind the PMPA's preemption clause. See generally *Philbrook v. Glodgett*, 421 U.S. 707, 713 (1975) (noting that courts should look to federal act as a whole to determine extent of federal preemption of state laws). In further applying traditional supremacy clause analysis to the facts in *Jimenez*, the *Jimenez* court determined that the broad language that Congress used in the PMPA's preemption clause and legislative history evidenced Congress' intent to preclude states from supplementing the PMPA's regulation of termination or nonrenewal of petroleum franchises. *Jimenez*, 853 F.2d at 273; see *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 203-04 (1983) (noting that federal laws preempt state laws in given field if Congress has shown intent to occupy field, thus precluding state regulation in field).

the comprehensive and only source of government regulation of termination and nonrenewal of petroleum franchises.⁵⁵ The Fourth Circuit then concluded that because Congress intended the PMPA to be the only source of regulation of the termination and nonrenewal of petroleum franchises, the PMPA preempted the Maryland Act's goodwill provision.⁵⁶ Consequently, the Fourth Circuit held that, under the Maryland Act, the plaintiffs could not recover goodwill payments from BP.⁵⁷

The Fourth Circuit in *Jimenez* properly determined that the PMPA preempts the Maryland Act's goodwill provisions in the limited case of a franchisor that conducts a complete market withdrawal.⁵⁸ If courts enforce state goodwill payment provisions against franchisors that intend to withdraw completely from a geographic market, the state goodwill provisions, in violation of the supremacy clause of the United States Constitution, would interfere with Congress' objectives in enacting the PMPA.⁵⁹ In enacting the PMPA, Congress intended to allow franchisors, without penalty, to alter in good faith the franchisors' marketing strategies in response to adverse changes in market conditions.⁶⁰ The Fourth Circuit's conclusion in *Jimenez* that the PMPA preempts state laws which require a franchisor to pay a franchisee for the value of goodwill that the franchisee loses when

55. See *Jimenez*, 853 F.2d at 273 (discussing Fourth Circuit's conclusion that Congress intended PMPA to be exclusive source for government regulation of franchise termination and nonrenewal); *supra* note 54 (discussing *Jimenez* court's use of traditional supremacy clause standards); *supra* notes 51-53 and accompanying text (discussing *Jimenez* court's determination that Congress intended PMPA to preempt all state laws that regulate termination or nonrenewal of petroleum franchises).

56. *Jimenez*, 853 F.2d at 274.

57. *Id.*

58. See *supra* notes 29-49 and accompanying text (discussing Fourth Circuit's conclusion that PMPA preempted Maryland Act's goodwill provision in limited case of complete market withdrawal); *infra* notes 59-78 and accompanying text (analyzing Fourth Circuit's conclusion that, in limited case of complete market withdrawal, PMPA preempted Maryland Act's goodwill provision).

59. See S. REP. NO. 731, 95th Cong., 2d Sess. 15, 19, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 873, 877 (recognizing importance of allowing franchisors adequate flexibility to adapt to changing market conditions and consumer preferences); *supra* notes 43-45 and accompanying text (discussing Fourth Circuit's conclusion that goodwill provisions of Maryland Act frustrate Congress' goal of allowing franchisors to react to economic changes in market by withdrawing from market).

60. See S. REP. NO. 731 at 37, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS at 895-96 (discussing Congress' intent to allow franchisors to use franchisors' subjective good faith in making decisions to terminate or to fail to renew petroleum franchises); 15 U.S.C. § 2802(b)(2)(E) (1982) (allowing franchisor to terminate franchise, without penalty, if franchisor decides in good faith and in normal course of franchisor's business, to withdraw from geographic market in response to changes in relevant facts and circumstances); see also *Esso Standard Oil Co. v. Department of Consumer Affairs*, 793 F.2d 431, 432 (1st Cir. 1986) (noting that Congress intended PMPA to allow franchisor to use subjective good faith in demanding changes to franchise agreement); *Siecko v. Amerada Hess Corp.*, 569 F. Supp. 768, 771 (E.D. Pa. 1983) (noting that legislative history of PMPA establishes that franchisors' subjective good faith, and not objective reasonableness of franchisors' acts, is proper standard for franchisors' compliance with PMPA).

the franchisor conducts a complete market withdrawal, therefore, is consistent with Congress' intent to allow franchisors to withdraw completely from a market without incurring a penalty.⁶¹ Furthermore, the Fourth Circuit's decision in *Jimenez* that the PMPA preempts the Maryland Act's goodwill provisions in the case of complete market withdrawals is consistent with the holdings of other federal courts that the PMPA preempts state laws that interfere with a franchisor's ability under the PMPA to terminate or to fail to renew a petroleum franchise.⁶²

In determining that the PMPA, in the case of a complete market withdrawal, preempts the goodwill provisions of the Maryland Act, the Fourth Circuit properly distinguished the facts in *Jimenez* from the facts that were before the United States Court of Appeals for the Second Circuit in *Bellmore v. Mobil Oil Corp.*⁶³ In *Bellmore*, after the franchisee rejected a new franchise proposal that increased the franchisee's rent, the franchisor refused to renew the franchisee's franchise.⁶⁴ The franchisee then brought suit in the United States District Court for the District of Connecticut under the Connecticut Gasoline Dealers Act (Connecticut Act).⁶⁵ The *Bellmore* franchisee sought compensation from the franchisor for the fair market value of the goodwill that the franchisee enjoyed when the franchisor refused to renew the franchise agreement.⁶⁶ The district court in *Bellmore*, in addressing the franchisee's claim, determined that the franchisee could, under the Connecticut Act, recover goodwill compensation from the franchisor.⁶⁷ The *Bellmore* franchisor appealed the district court's decision to

61. See *supra* notes 46-49 and accompanying text (discussing Fourth Circuit's conclusion that PMPA preempts state laws which require goodwill payments upon franchisors' complete market withdrawals); *supra* notes 59-60 and accompanying text (discussing Congress' intent to allow franchisors to withdraw from market without incurring penalty).

62. See *Humboldt Oil Co. v. Exxon Co.*, 823 F.2d 373, 375 (9th Cir. 1987) (holding that PMPA preempted state law that allowed franchisee's assignment of franchise, because assignment interfered with franchisor's right under PMPA to terminate operations with franchisee), *cert. denied*, 108 S. Ct. 1575 (1988); *Continental Enters. v. American Oil Co.*, 808 F.2d 24, 28 (8th Cir. 1986) (holding that PMPA preempted state law because state law allowed franchisee to bring suit after expiration of PMPA's statute of limitations); *Consumers Petroleum Co. v. Texaco, Inc.*, 804 F.2d 907, 916 (6th Cir. 1986) (holding that PMPA preempted state law misrepresentation claim because such claim extended PMPA's notice requirements for termination).

63. 783 F.2d 300 (2d Cir. 1986); see *infra* notes 73-78 and accompanying text (analyzing Fourth Circuit's distinction of *Jimenez* facts from *Bellmore* facts); *infra* notes 64-72 and accompanying text (discussing facts and Second Circuit's reasoning in *Bellmore*).

64. *Bellmore v. Mobil Oil Corp.*, 783 F.2d 300, 303 (2d Cir. 1986).

65. *Bellmore*, 783 F.2d at 303; see CONN. GEN. STAT. ANN. § 42-133(l)(b) (West 1987).

66. *Bellmore*, 783 F.2d at 303; see also CONN. GEN. STAT. ANN. § 42-133(l)(b) (West 1987) (requiring franchisor, upon termination or nonrenewal of franchise, to compensate franchisee for value of franchisee's goodwill). In *Bellmore* the franchisee also sought, under the PMPA, declaratory and injunctive relief that would prevent the franchisor from failing to renew the franchisee's franchise agreement. *Bellmore*, 783 F.2d at 303.

67. See *Bellmore*, 783 F.2d at 303 (discussing district court's decision in *Bellmore*). In *Bellmore* the district court determined that because the franchisor complied with the PMPA's good faith requirement in demanding changes to the franchise agreement, the franchisor did

the United States Court of Appeals for the Second Circuit.⁶⁸

On appeal the franchisor in *Bellmore* contended that because the Connecticut Act's goodwill provisions related to the termination or nonrenewal of petroleum franchises, the PMPA preempted the Connecticut Act's goodwill provisions.⁶⁹ In affirming the district court's holding that the PMPA did not preempt the goodwill provisions of the Connecticut Act, the Second Circuit determined that Congress intended the PMPA to protect franchisees from franchisors' arbitrary and discriminatory terminations and nonrenewals of franchises.⁷⁰ Furthermore, the *Bellmore* court determined that Congress intended the PMPA to regulate only the grounds and procedures for termination or nonrenewal of petroleum franchises, not the substantive aspects of franchise relationships beyond such grounds and procedures for termination and nonrenewal.⁷¹ The *Bellmore* court concluded that the goodwill provisions of the Connecticut Act did not regulate the grounds, procedures, or notification requirements for termination or nonrenewal but instead compensated franchisees for the value of the franchisees' goodwill that franchisors appropriated when franchisors terminated or failed to renew the franchisees' franchises.⁷²

The Fourth Circuit in *Jimenez* properly distinguished *Bellmore* because, although in *Jimenez* the franchisor withdrew completely from the market, in *Bellmore* the franchisor did not withdraw from the market.⁷³ As the Fourth Circuit in *Jimenez* correctly determined, BP, by conducting a complete market withdrawal, did not appropriate the plaintiffs' goodwill.⁷⁴ BP did not appropriate the plaintiffs' goodwill because, when Crown assumed

not violate the PMPA. *Id.* The district court in *Bellmore*, therefore, denied the franchisee's claim for injunctive relief. *Id.*

68. *Id.*

69. *Id.* In *Bellmore* the franchisor claimed on appeal that the legislative history of the PMPA and the relevant case law would support a finding that the PMPA preempts state laws that regulate any issue that relates to the termination or nonrenewal of petroleum franchises. *Id.* at 304.

70. *Id.* In *Bellmore* the Second Circuit noted that Congress, in enacting the PMPA, sought to minimize the strong bargaining position that franchisors held over franchisees. *Id.*

71. *Id.* at 305. In *Bellmore* the Second Circuit noted that the Senate Report for the PMPA indicated that Congress, in drafting the PMPA, sought to establish a uniform set of rules that would govern the grounds and notice requirements for termination and nonrenewal of petroleum franchises. *Id.* The *Bellmore* court concluded that Congress did not intend the PMPA to preempt state laws that regulate any aspects of petroleum franchises other than the grounds and procedures for termination or nonrenewal of petroleum franchises. *Id.*

72. *See id.* (discussing *Bellmore* court's conclusion that Connecticut Act's goodwill provision compensates franchisees for franchisees' lost goodwill). In *Bellmore* the Second Circuit concluded that the Connecticut Act's goodwill provisions did not penalize the franchisor but instead recognized the value of the franchisee's goodwill that the franchisor appropriated when the franchisor terminated or failed to renew the franchisee's franchise. *Id.*

73. *See infra* notes 74-78 and accompanying text (analyzing Fourth Circuit's distinction of *Jimenez* facts from *Bellmore* facts); *supra* notes 34-45 and accompanying text (reporting Fourth Circuit's reasons for distinguishing *Jimenez* facts from *Bellmore* facts).

74. *See infra* notes 75-77 and accompanying text (reasoning that because BP conducted complete market withdrawal, BP did not appropriate plaintiffs' goodwill).

BP's interest in the plaintiffs' franchises, BP no longer was participating in the operation of the franchises, and thus BP could not benefit from the plaintiffs' goodwill.⁷⁵ In contrast, in *Bellmore* the franchisor, by remaining in the franchisee's geographic market and transferring the deposed franchisee's business to a new franchisee, appropriated the goodwill that the deposed franchisee had established.⁷⁶ Thus, in *Bellmore* the franchisor's goodwill payment to the franchisee compensated the franchisee for goodwill that the franchisee actually had lost to the franchisor.⁷⁷ In contrast, in *Jimenez* BP's goodwill payment to the plaintiffs, by compensating the plaintiffs for goodwill that the plaintiffs had not lost, would have penalized BP in violation of the PMPA.⁷⁸

Although the Fourth Circuit in *Jimenez* properly interpreted the PMPA to preempt state law if a franchisor completely withdraws from a franchisee's market, the Fourth Circuit improperly interpreted the PMPA to preempt state laws that regulate any aspect of termination or nonrenewal of petroleum franchises.⁷⁹ The legislative history of the PMPA does not support the Fourth Circuit's broad interpretation of the PMPA's scope of preemption.⁸⁰ In enacting the PMPA, Congress, by protecting franchisees from arbitrary and discriminatory terminations and nonrenewals, primarily intended to balance the interests of petroleum franchisors and franchisees.⁸¹

75. *Jimenez v. BP Oil, Inc.*, 853 F.2d 268, 269 (4th Cir. 1988); see *Bellmore*, 783 F.2d at 305 (reasoning that Connecticut legislature designed goodwill provision of Connecticut Act to compensate franchisee for value of goodwill that franchisee established in business, which goodwill franchisor received when franchisor terminated franchisee).

76. See *Bellmore*, 783 F.2d at 305 (noting that franchisor received deposed franchisee's goodwill).

77. See *id.* (discussing Second Circuit's conclusion that franchisor's goodwill payment compensated franchisee for value of franchisee's goodwill that franchisor appropriated).

78. See *supra* notes 34-38 and accompanying text (discussing Fourth Circuit's conclusion that Maryland Act's goodwill provision impermissibly penalizes BP for withdrawing from market); *supra* notes 73-77 and accompanying text (noting that in *Bellmore* the franchisor's goodwill payments to franchisee were not penalty but were instead compensation for goodwill franchisor appropriated from franchisee).

79. See *infra* notes 80-85 and accompanying text (analyzing Fourth Circuit's broad interpretation of PMPA's scope of preemption); *supra* notes 50-57 and accompanying text (discussing Fourth Circuit's conclusion that PMPA preempts state law that regulates any aspect of termination or nonrenewal of petroleum franchises).

80. See *infra* notes 81-85 and accompanying text (supporting conclusion that Congress did not intend PMPA's preemption clause to have broad scope of preemption).

81. See S. REP. NO. 731, 95th Cong., 2d Sess. 15, 17, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 873, 875-76 (discussing Congress' rationale for protecting franchisees from arbitrary and discriminatory termination or nonrenewal of petroleum franchises). The Senate Report notes that franchisors' strong bargaining positions in negotiating franchise agreements led to franchise agreements that imposed onerous terms on franchisees. *Id.* at 17, 1978 U.S. CODE CONG. & ADMIN. NEWS at 876. The Senate Report further notes that franchisors often drafted franchise agreements that allowed franchisors to terminate or to fail to renew franchise agreements if a franchisee breached only an onerous or minor provision of the franchise agreement. *Id.* at 17-18, 1978 U.S. CODE CONG. & ADMIN. NEWS at 875-76. The Senate Report concludes that franchisees needed statutory protection in the form of restrictions

In an attempt to achieve a balance of interests, Congress established in the provisions of the PMPA an exhaustive list of the grounds and procedures that franchisors may use in terminating or failing to renew a petroleum franchise.⁸² Congress, however, intended to allow states to continue regulating the substantive aspects of the operation of petroleum franchises.⁸³ Because the PMPA protects franchisees from arbitrary and discriminatory terminations and nonrenewals, and because a broad preemptive scope would interfere with state legislatures' protection of franchisees, the preemptive scope of the PMPA should extend only to regulating grounds and procedures for termination or nonrenewal.⁸⁴ The Fourth Circuit's broad interpretation of the preemptive scope of the PMPA, by eliminating many statutory protections that franchisees may have under state laws, thwarts Congress'

on the permissible grounds and procedures for termination or nonrenewal of franchise agreements. *Id.*; see also *Barnes v. Gulf Oil Corp.*, 795 F.2d 358, 360 (4th Cir. 1986) (noting that Congress designed PMPA to protect franchisees from arbitrary or discriminatory termination or nonrenewal); *Esso Standard Oil Co. v. Department of Consumer Affairs*, 793 F.2d 431, 434 (1st Cir. 1986) (same); *Bellmore v. Mobil Oil Corp.*, 783 F.2d 300, 304 (2d Cir. 1986) (same).

82. See 15 U.S.C. § 2802(b) (1982) (establishing exhaustive list of grounds upon which franchisor may terminate or fail to renew franchise agreement); S. REP. NO. 731 at 18, 1978 U.S. CODE CONG. & ADMIN. NEWS at 876 (discussing necessity of providing exhaustive list in PMPA of permissible grounds for termination); *Esso Standard Oil Co. v. Department of Consumer Affairs*, 793 F.2d 431, 434 (1st Cir. 1986) (noting that PMPA, in preventing arbitrary and discriminatory terminations and nonrenewals, contains exhaustive list of grounds for termination or nonrenewal).

83. See *Esso Standard Oil Co. v. Department of Consumer Affairs*, 793 F.2d 431, 434-35 (1st Cir. 1986) (holding that Congress did not intend PMPA to preempt state laws that regulate elements of franchise agreements other than grounds and procedures for termination or nonrenewal of petroleum franchises); *Bellmore v. Mobil Oil Corp.*, 783 F.2d 300, 305 (2d Cir. 1986) (determining that conclusion that PMPA preempts state laws which regulate areas that Congress left to control of states is contrary to Congress' purpose in enacting PMPA); *Exxon Corp. v. Georgia Ass'n of Petroleum Retailers*, 484 F. Supp. 1008, 1017 (N.D. Ga. 1979) (holding that states may regulate aspects of petroleum franchises other than aspects Congress specifically drafted PMPA to cover), *aff'd sub nom. Exxon Corp. v. Busbee*, 644 F.2d 1030 (5th Cir.) (affirmed on different grounds), *cert. denied*, 454 U.S. 932 (1981); *Lasko v. Consumers Petroleum of Conn., Inc.*, 547 F. Supp. 211, 216 (D. Conn. 1981) (holding that Congress did not intend to preempt all state laws that regulate substantive aspects of petroleum franchises).

84. See *Esso Standard Oil Co. v. Department of Consumer Affairs*, 793 F.2d 431, 436 (1st Cir. 1986) (holding that PMPA did not preempt state law that placed limits on amount of rent franchisor may charge franchisee); *Bellmore v. Mobil Oil Corp.*, 783 F.2d 300, 304-06 (2d Cir. 1986) (holding that PMPA did not preempt state law that required franchisor to compensate franchisee for value of franchisee's goodwill that franchisor received upon franchisor's failure to renew franchise agreement); *Exxon Corp. v. Georgia Ass'n of Petroleum Retailers*, 484 F. Supp. 1008, 1018 (N.D. Ga. 1979) (holding that PMPA did not preempt state law that limited business hours during which franchisor may require franchisee to operate franchise), *aff'd sub nom. Exxon Corp. v. Busbee*, 644 F.2d 1030 (5th Cir.) (affirmed on different grounds), *cert. denied*, 454 U.S. 932 (1981); *Lasko v. Consumers Petroleum of Conn., Inc.*, 547 F. Supp. 211, 216-17 (D. Conn. 1981) (holding that PMPA did not preempt state law that required petroleum franchises to have minimum three year duration with automatic renewal unless parties properly terminated franchise agreement).

intent to ensure protection of franchisees from abusive franchisors.⁸⁵

The Fourth Circuit's broad interpretation of the preemptive scope of the PMPA in *Jimenez* has several distinct implications for parties to petroleum franchises both within and outside of the Fourth Circuit.⁸⁶ First, the decision of the Fourth Circuit in *Jimenez* extends a split in judicial interpretations of the PMPA among federal circuit courts.⁸⁷ The split between judicial interpretations of the PMPA's scope of preemption hampers achievement of Congress' goal under the PMPA to create a uniform system for regulating petroleum franchises.⁸⁸ Second, after *Jimenez*, the balance between the interests of franchisors and the interests of franchisees in the Fourth Circuit is less proportionate than the balance of interests between franchisors and franchisees in other circuits.⁸⁹ The Fourth Circuit's decision in *Jimenez* hampers the legislatures of states in the Fourth Circuit that wish to protect the interests of local franchisees against the dominating influence of out-of-state franchisors.⁹⁰ By preventing the states in the Fourth Circuit from regulating elements of petroleum franchises other than the grounds, procedures, and notice requirements for termination or nonrenewal, the Fourth Circuit's decision in *Jimenez* reduces the states' ability to protect franchisees from unfair franchise agreements that are subject only to a standard of the franchisors' subjective good faith.⁹¹

85. See *supra* notes 79-84 and accompanying text (reasoning that broad preemptive scope of PMPA thwarts Congress' intent to protect franchisees from powerful franchisors).

86. See *infra* notes 87-91 and accompanying text (discussing implications of Fourth Circuit's decision in *Jimenez*).

87. Compare *Jimenez v. BP Oil, Inc.*, 853 F.2d 268, 273 (4th Cir. 1988) (adopting broad reading of scope of PMPA's preemption clause and preventing states from regulating any aspect of termination or nonrenewal of petroleum franchises) and *In re Herbert*, 806 F.2d 889, 894 (9th Cir. 1986) (same) with *Esso Standard Oil Co. v. Department of Consumer Affairs*, 793 F.2d 431, 435 (1st Cir. 1986) (interpreting narrowly preemptive scope of PMPA and allowing states to regulate any aspect of petroleum franchises other than grounds and procedures for termination and nonrenewal) and *Bellmore v. Mobil Oil Corp.*, 783 F.2d 300, 305 (2d Cir. 1986) (same).

88. See *supra* note 52 and accompanying text (discussing Congress' goal, in enacting PMPA, to create uniform system for regulation of petroleum franchises).

89. See *supra* notes 82-83 and accompanying text (discussing Congress' recognition of need to protect franchisees from franchisors' strong bargaining position in franchise agreements); *infra* notes 90-91 and accompanying text (discussing how Fourth Circuit's decision in *Jimenez* favors interests of franchisors over interests of franchisees).

90. See *supra* notes 83-85 and accompanying text (establishing that allowing states to regulate substantive elements of franchises protects franchisees from onerous franchise agreements).

91. See *Esso Standard Oil Co. v. Department of Consumer Affairs*, 793 F.2d 431, 434 (1st Cir. 1986) (noting that Congress intended PMPA to balance interests of franchisors and franchisees). The *Esso* court noted that Congress, in enacting the PMPA, intended to limit franchisors' ability to terminate or to fail to renew petroleum franchises but allowed franchisors to use the franchisors' subjective good faith in changing terms of franchise agreements. *Id.*; see also S. REP. NO. 731, 95th Cong., 2d Sess. 15, 37, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 873, 895-96 (discussing franchisors' ability under PMPA to follow standard of subjective good faith in permissibly terminating or in failing to renew petroleum franchises).

In *Jimenez* the Fourth Circuit ruled that the PMPA preempted the goodwill provision of the Maryland Act.⁹² In holding that the PMPA preempts the Maryland Act's goodwill provision, the Fourth Circuit determined that the PMPA broadly preempts all state laws that regulate any aspect of termination or nonrenewal of petroleum franchises.⁹³ Because in the limited case of a franchisor's complete withdrawal from the franchisee's market a goodwill payment penalizes the franchisor and contravenes the terms of the PMPA, the Fourth Circuit in *Jimenez* correctly determined that the PMPA preempts state laws that require a franchisor to make goodwill payments to a franchisee.⁹⁴ The Fourth Circuit, however, incorrectly determined that the PMPA preempts state laws that regulate any aspect of termination or nonrenewal of petroleum franchises.⁹⁵ In adopting a broad interpretation of the preemption clause of the PMPA, the Fourth Circuit has allowed courts in the Fourth Circuit impermissibly to hamper state legislatures' ability to protect franchisees.⁹⁶ Moreover, the *Jimenez* court, by interpreting broadly the PMPA's scope of preemption, has added to a split in reasoning among the federal circuit courts that have addressed the scope of the PMPA's preemption clause.⁹⁷ Consequently, the Fourth Circuit in *Jimenez* has interfered with Congress' goal under the PMPA of establishing a uniform system for regulating the termination or nonrenewal of petroleum franchises.⁹⁸ Finally, the Fourth Circuit's decision in *Jimenez*, by reducing states' ability to provide franchisees with protection against abusive franchisors, impermissibly interferes with Congress' goal, under the PMPA, to balance the interests of petroleum franchisors and franchisees.⁹⁹

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92. *Jimenez v. BP Oil, Inc.*, 853 F.2d 268, 274 (4th Cir. 1988).

93. See *supra* notes 50-57 and accompanying text (discussing Fourth Circuit's conclusion that PMPA preempts state laws that regulate any aspect of termination or nonrenewal of petroleum franchises).

94. See *supra* notes 58-78 and accompanying text (supporting Fourth Circuit's conclusion that PMPA preempts, in limited case of franchisor's complete market withdrawal, goodwill provisions of the Maryland Act).

95. See *supra* notes 79-85 and accompanying text (criticizing Fourth Circuit's conclusion that PMPA preempts state laws that regulate any aspect of termination or nonrenewal of petroleum franchises).

96. See *supra* notes 83-85 and accompanying text (asserting that PMPA's broad scope of preemption over state laws interferes with state legislatures' protection of franchisees).

97. See *supra* note 87 and accompanying text (noting that Fourth Circuit's decision in *Jimenez* extends split in judicial interpretations of preemptive scope of PMPA).

98. See *supra* note 88 and accompanying text (noting that split in judicial interpretations of PMPA's scope of preemption interferes with Congress' goal under PMPA to create uniform system for regulation of termination or nonrenewal of petroleum franchises).

99. See *supra* notes 89-91 and accompanying text (discussing implications of Fourth Circuit's broad interpretation of PMPA's scope of preemption).