HELD: The Sixth Circuit affirmed the jury's verdict finding that the City violated Hoback's rights under the ADA.

DISCUSSION: On appeal, the City argued that the jury verdict should be set aside as it was "categorically inconsistent" with Hoback's request for disability benefits and because Hoback made false statements to his doctor at the VA for the purpose of increasing his disability benefits. The Sixth Circuit noted that the City's two arguments were essentially arguments for equitable estoppel, but the Circuit Court declined to set aside the jury's verdict on these bases. The court based its decision on the fact that Hoback never indicated that he was "unable to work" and the City could point to no "obvious inconsistencies" between Hoback's application for the disability benefits and his position taken in the litigation – i.e., that he was able to work. *See Johnson v. Oregon*, 141 F.3d 1361, 1370 (9th Cir. 1998) ("As we have explained, the law does not require plaintiffs to choose between applying for benefits and pursuing an ADA claim. They may do both.") As far as the false statements that Hoback made to his doctor to increase his benefits, the Sixth Circuit found that particular fact went to Hoback's credibility, which the jury had weighed when it found in his favor. The Sixth Circuit therefore adopted the reasoning of the district court and affirmed its decision.

http://www.ca6.uscourts.gov/opinions.pdf/13a1046n-06.pdf (last accessed Jan. 7, 2014)

Equal Protection: City Limit on Total Taxicab Permits and Requirement that New Permits Be Issued in Groups of At Least Ten Is Rationally Related to Legitimate Purpose

Kansas City Taxi Driver's Assoc. v. City of Kansas, No. 13-1343 (8th Cir. Dec. 19, 2013).

In Kansas City a taxi permit is required in order to pick up passengers. For some time the number of taxis was unlimited. However, in 2005 the city enacted ordinance 76-73, which caps the number of permits at 500. At the time there were 554 permits and thus no new permits would be issued until the number dropped below 500. Additionally, the ordinance required that new applicants only be permitted if they apply for a package of at least ten permits. As a result if the number dropped to 499 only existing permit holders could get the one available taxi permit, and in order for a new driver or company to enter the market the total permits in circulation must drop to 490 or less.

Two cabdrivers and the Kansas City Taxi Cab Divers Association sued to overturn the ordinance, arguing it excludes new entrants from the market. They contended the disparate treatment of existing and new taxi drivers violated the Equal Protection Clause. The District Court granted summary judgment for Kansas City. The cab drivers appealed.

HELD: The Eighth Circuit affirmed the district court, holding the ordinance was rationally related to a legitimate government purpose.

DISCUSSION: The Eighth Circuit began by noting that cab drivers are not a suspect class and that driving a cab is not a fundamental right, meaning the ordinance would survive an Equal

Protection Clause challenge so long as "there [was] any conceivable state of facts that could provide a rational basis for the classification."

Kansas City's stated purpose for the ordinance was that there was insufficient demand for taxicabs in Kansas City, to which the cab drivers responded that the provision of the law – the minimum-permit requirement – did not rationally relate to this purpose. The court pointed out, however, that it is not bound by a municipality's *stated purpose*; for the court must only find any conceivable state of facts that is rationally related to the purpose. It thus noted, as the district court had, that other purposes, such as forcing existing firms to invest in cabs or improving the quality of the industry by increasing the size of each taxi company, are purposes rationally related to the provisions at issue.

The cab drivers then cited *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002), a Sixth Circuit case that struck down an ordinance requiring funeral directors to be certified in order to sell caskets, as support for the proposition that the city cannot protect a monopoly. But the Court countered with Fifth Circuit precedent dealing specifically with taxicabs, wherein that Circuit stated "even if the City is motivated in part by economic protectionism, there is no real dispute that promoting full-service taxi operations is a legitimate government purpose under the rational basis test." It went on to state that the *Craigmiles* case only confirmed that cities cannot have "naked economic preferences" when those preferences hurt consumers, but that no such harm of consumers was evidenced in the case at hand. Finding these statements persuasive, and that the Kansas City ordinance did not harm consumers and was neither wholly arbitrary nor invidious discrimination, it held the cab drivers failed to rebut "every conceivable set of facts" that support the classification and affirmed the judgment.

http://media.ca8.uscourts.gov/opndir/13/12/131343P.pdf (last accessed Jan. 8, 2014)

Guns: New York's SAFE Law Restricting Assault Weapons and Limiting Magazine Size to Ten Rounds Is Upheld under "Intermediate Scrutiny."

New York State Rifle & Pistol Assoc. v. Cuomo, No. 13-CV-291S (W.D.N.Y. Dec. 31, 2013).

On January 15, 2013 New York State enacted the Secure Ammunition and Firearms Act (SAFE), which supplemented a network of laws in the state from the penal law to family law to criminal procedure and, at its core, increased regulation of firearms and penalties for illegal possession. Various parties joined together to challenge the law, including associations of gun owners and advocates, firearms companies, and individual gun owners, alleging it violated their Second Amendment rights, the Equal protection Clause, the Dormant Commerce Clause, and asserted that parts of it were unconstitutionally vague.

The District Court had three motions pending before it: a preliminary injunction by the plaintiffs, a summary judgment by the defendant, and a responsive motion for summary judgment by the plaintiffs. Because of the dispositive summary judgment motions, the court determined the