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

preliminary injunction motion was moot, and decided the case based on the summary judgment motions.

HELD: The district court struck down three parts of the law as unconstitutionally vague and one specific provision – the seven-round ammunition limit - as impermissibly infringing on the Second Amendment, but otherwise upheld the bulk of the law against Second Amendment and vagueness challenges.

DISCUSSION: SAFE was passed in the wake of the Sandy Hook Elementary shooting and extensively alters all aspects of New York gun law, including requiring background checks for all sales (except those to immediate family), mandating that counties re-certify all gun licenses at minimum every five years, and establishing a statewide gun-license database. Plaintiffs challenged two specific provisions in the suit:

First, SAFE's stringent regulation of weapons categorized by the law as "assault weapons" and the rule that possession of them is a Class D felony. (The law does not ban these weapons, however--current owners are allowed to keep them as long as they were registered, and sales are allowed if made through authorized dealers only).

Second, SAFE's prohibition against possession of magazines that can hold more than 10 rounds of ammunition. The law mandates that owners sell them out of state, transfer them to an authorized dealer, turn them over to law enforcement or modify the magazine. Additionally, unless being used at a shooting range, users may only input seven rounds into these magazines despite their capacity for ten. Possession of a magazine over ten rounds is also a Class D felony. And finally anyone selling ammunition in the state is required to get a license to do so.

The court first tackled the plaintiff's Second Amendment challenge, citing *Heller* and applying a three-tiered inquiry: First, were the firearms being regulated commonly used for lawful purposes when the Second Amendment was enacted? Second, did the challenged provision of SAFE substantially burden a Second Amendment right? And finally, if the regulations did burden a Second Amendment right, what level of scrutiny would apply?

Evaluating the first issue, the court noted both party's briefs dedicated substantial space to arguing about whether SAFE applied to weapons "in common use at the time," the *Heller* standard of whether the Second Amendment protects the right to use the weapon at issue. The court pointed out that being in common use is only half the puzzle under *Heller* because the weapons also need to be used for lawful purposes – another point on which the parties differed. The court recognized "the inherent ambiguities in making such a determination, [but] for purposes of th[e] decision, this Court assume[d] that the weapons at issue [were] commonly used for lawful purposes." This led to the determination that "because the SAFE Act renders acquisition of these weapons illegal under most circumstances, this Court finds that the restrictions at issue more than 'minimally affect' Plaintiffs' ability to acquire and use the firearms, and they therefore impose a substantial burden on Plaintiffs' Second Amendment rights."

The court followed the same process in analyzing SAFE's magazine regulation, noting that defendants conceded that such magazines were in common use in the country, for legal purposes. It also found that limiting the amount of ammunition one can load into a weapon – whether seven or ten rounds – was "more than a marginal, incremental" restraint on an individual's Second Amendment rights.

Thus, the court moved to determine the level of scrutiny it would apply to the SAFE provisions. Although SAFE undoubtedly restricts the rights of gun owners in their homes – the "core" of the Second Amendment – the court found that intermediate scrutiny was appropriate for three reasons. First, the court noted that intermediate scrutiny has been applied almost uniformly to every gun law that has been challenged across the country – even those restricting owner's rights in the home. Second, it noted that strict scrutiny appeared to be inconsistent with *Heller* and *McDonald*, where the Supreme Court noted several "presumptively lawful regulatory measures." And finally, the district court agreed with the Third Circuit's view that First Amendment jurisprudence is a "useful guidepost" and determined that the provisions at issue here were akin to time, place, and manner restrictions, rather than the more stringent content-based limits in a public forum. (For example, the regulations do not altogether disarm individuals, but rather leave open alternative forms of gun ownership akin to alternative channels of communication).

Under intermediate scrutiny the court found the assault weapons restrictions passed muster and that "substantial evidence supports [New York's] judgment that the banned features are unusually dangerous, commonly associated with military combat situations, and are commonly found on weapons used in mass shootings." The court was also quick to point out a logical flaw in the plaintiff's argument: in the beginning of their brief they claimed many of the outlawed features on assault weapons simply make the guns easier to use, then claimed later that those same features increase the utility of the guns for self-defense. It went on to note that "New York present[ed] evidence that its regulations will be effective," highlighting for the court a study showing the now-expired 1994 federal ban on such weapons lowered the criminal use of such weapons independent of trends in gun crime overall. The court acknowledged the plaintiff's point that studies show criminals will keep their assault-style guns while law-abiding citizens are deprived of them, but dismissed it by pointing out that under intermediate scrutiny the "fit between the governmental objective and the challenged regulation need only be substantial, not perfect."

As for the large-capacity magazine limit, the court found SAFE's restrictions and the state's interest in public safety were even more closely aligned. The court held, first, that the state's evidence was "far more comprehensive" on the issues, and second, that in the "context of firearm regulation, the legislature is far better equipped than the judiciary to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks."

When the court reached the provision of the seven-round limit however, it took the plaintiff's side. It "stretch[ed] the bounds of the Court's deference to the predictive judgments of the legislature" to presume that individuals harming others will only load seven rounds in their weapons. Moreover, the home is the zenith of the Second Amendment right and this provision raised the possibility – more than the others – of "pitting a criminal with a fully-loaded magazine against a law-abiding citizen limited to seven rounds. It did not survive intermediate scrutiny.

Moving to the plaintiff's second set of arguments the court agreed with the plaintiffs that where SAFE described the banned features of assault weapons the law was, at times, void for vagueness.

https://www.casetext.com/case/new-york-state-rifle-pistol-association-v-cuomo (last accessed Jan. 9, 2014)