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# THOROUGHBRED OWNERS VS. CLAIMING RACE REGULATIONS: THE FIGHT CONTINUES TO THE UNITED STATES SUPREME COURT

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In a recent decision, the Kentucky Supreme Court found that Kentucky's Article 6 regulation on claiming races was not in violation of the Commerce Clause.[i]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn1) The court reasoned as follows:

"Notwithstanding a modicum of discrimination, Article 6 is part of a larger, non-discriminatory racing regulation, not a trade regulation, and its protectionist effect is negligible compared with its important racing benefits. More importantly, this regulation is knowingly and voluntarily agreed to by an owner seeking the advantages of a claiming race purchase; it is the legal consequence of a particular type of business transaction, not an unavoidable governmental regulation affecting all commerce in thoroughbred horses in the Commonwealth."<sup>[ii]</sup>  
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn2)

While it is true that the regulation does not *literally* affect all commerce in thoroughbred horses in the Commonwealth, it affects a substantial amount of it because claiming races are a popular, less expensive way of acquiring a horse in the racing industry.<sup>[iii]</sup> (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn3) A claiming race allows buyers to "claim" a horse for a specified price before the start of the race.<sup>[iv]</sup>

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn4) Article 6 provides that a horse claimed in a claiming race "shall not race elsewhere until the close of entries of the meeting at which it was claimed," a period that can take up to sixty days depending on the length of the meet.<sup>[v]</sup>

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn5) The regulation is even-handed in that it prohibits both in-state and out-of-state winners from racing outside Kentucky, a fact the Kentucky

Supreme Court relied upon in its commerce clause analysis.[vi]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn6) However, the regulation's effect on the thoroughbred industry furthers only the State's interest of having a large pool of available race horses while keeping other states from gaining just that.



California recently declined to continue imposing its own claiming race regulation.[vii]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn7) In 2003, then deputy attorney general, Derry L. Knight, provided the following informal advice while California's Horse Racing Board considered the future of the regulation: "Other states imposing similar, or perhaps conflicting, restrictions on the out-of-state racing of horses claimed in their states could lead to the very inconsistent projection of one state regulatory regime into the jurisdiction of another state." [viii]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn8) Knight further advised "it would seem undeniable that the proposed 60-day post-race meeting prohibition of out-of-state racing of a California-claimed horse would have the effect of controlling commercial activity occurring wholly outside the boundary of the state." [ix] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn9) A member of the board, John Harris, recognized the rule's problematic effects, stating "[w]e're really dealing in interstate commerce." [x] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn10)

On August 2, 2016, Jamgotchian filed a petition for writ of certiorari with the United States Supreme Court. [xi] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn11) Petitioner notes in his reply brief that the Supreme Court has previously declared "such facial discrimination by itself may be a fatal defect, regardless of the State's purpose, because the 'evil of protectionism can reside in legislative means as well as legislative ends.'" [xii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_edn12) Under this view, the regulation cannot stand. The United States Supreme Court ought to grant review of this case and find the regulation to be in violation of the commerce clause.

[i]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref1)  
*Jamgotchian v. Kentucky Horse Racing Comm'n*, 488 S.W.3d 594, 620 (Ky, 2016).

[ii]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref2)  
*Id.* at 610.

[iii]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref3)  
*Acquiring A Thoroughbred*, Thoroughbred Owners of California, <http://www.toconline.com/racingownership/owner-handbook/acquiring-a-thoroughbred/> (last visited Nov. 2, 2016).

[iv]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref4)

*Racing Terminology*, Keeneland, <http://www.keeneland.com/racing/terms> (last visited Nov. 2, 2016).

[v]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref5)

810 Ky. Admin. Regs. 1-015, § 6(b).

[vi]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref6)

*Jamgotchian*, 488 S.W.3d at 604.

[vii]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref7)

Gregory A. Hall, *Horse Claiming Rule Before Ky. Supreme Court*, *Courier-Journal* (June 4, 2015, 11:35 PM), <http://www.courier-journal.com/story/money/2015/06/04/horse-claiming-rule-ky-supreme-court/28473635/>.

[viii]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref8)

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[ix]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref9)

*Id.*

[x]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref10)

*Id.*

[xi]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref11)

*Jamgotchian v. Kentucky Horse Racing Comm'n*, 488 S.W.3d 594 (Ky. 2016), *petition for cert. filed*, No. 16-171 (U.S. Aug. 5, 2016)

[xii]

(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Rippe%20Post.docx#\_ednref12)

Reply Brief for Petitioner at 1, *Jamgotchian v. Kentucky Horse Racing Comm'n*, No. 16.171 (U.S. Oct. 27, 2016)

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