



HOME (/)
ABOUT
JOURNAL (/ABOUT)
SUBSCRIBE (/SUBSCRIBE)
MASTHEAD (/NEW-PAGE)
PROSPECTIVE MEMBERS (/PROSPECTIVE-MEMBERS)
STAFF RESOURCES (/STAFF-RESOURCES)

RESULTS GO TO THE TICKET

FAST TRACK TO THE 2nd 4th 5th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th

PUBLICATION ARCHIVE (/PUBLICATION-ARCHIVE)
VOLUME 1 (2005) (/VOLUME-1-2005-2006)
VOLUME 2 (2007) (/VOLUME-2-2007-2008)
VOLUME 3 (2009) (/VOLUME-3-2009-2010)
VOLUME 4 (2011) (/VOLUME-4-2011-2012)
VOLUME 5 (2012) (/VOLUME-5-2012-2013)
VOLUME 6 (2013) (/VOLUME-6-2013-2014)
VOLUME 7 (2014) (/VOLUME-7-2014-2015)
VOLUME 8 (2015) (/VOLUME-8-2015-2016)
VOLUME 9 (2016) (/VOLUME-9-2016-2017)
VOLUME 10 (2017) (/VOLUME-10-2017)
VOLUME 11 (2018) (/VOLUME-11-2018-2019)
SYMPOSIUM INFORMATION (/SYMPOSIUM-INFO)
SYMPOSIUM MATERIALS (/SYMPOSIUM-MATERIALS-2020)
CLE CREDIT INFORMATION (/CLE)
PREVIOUS SYMPOSIUMS (/PREVIOUS-SYMPOSIUMS)
BLOG
FULL BLOG (/FULL-BLOG)
BLOG ARCHIVE (/BLOG-ARCHIVE)
PODCASTS
ABOUT THE SHOW (/ABOUT-THE-SHOW)
EPISODES (/EPISODES)

SUBMISSIONS (/SUBMISSIONS)

DERBY AND KEENELAND CORONAVIRUS RESPONSES AND CONSTITUTIONAL CLAIMS FOR ADVERSELY AFFECTED BUSINESSES



BY: PAIGE KREGOR

Kentuckians and sports fans all over the world will now have to wait until September to witness the "greatest two minutes in sports" after Churchill Downs announced they were to reschedule the 146th Kentucky Derby amidst the COVID-19 pandemic.[i] Additionally, Keeneland's Spring Meet has been canceled following the Center for Disease Control's recommendations.[ii] Sporting events drawing large crowds outside of the equine context have also been canceled or rescheduled, such as the NCAA Basketball Tournament and the Master's Golf Tournament.[iii] The decision to postpone or cancel these events has been made during a time when a "patchwork" of regulations has emerged, with every governor declaring a state of emergency.[iv] Coronavirus has made our society delicately balance individual liberties with the desperate need to ensure public safety. Nevertheless, do Kentucky businesses in the equine industry adversely affected by these cancellations equine industry, have grounds for a Constitutional claim?[v]



Photo Credit:

[https://www.keeneland.com/media/news/keeneland-concludes-2018-spring-meet-near-record-all-sources-wagering-keeneland.](https://www.keeneland.com/media/news/keeneland-concludes-2018-spring-meet-near-record-all-sources-wagering-keeneland)
([https://www.keeneland.com/media/news/keeneland-concludes-2018-spring-meet-near-record-all-sources-wagering-keeneland.](https://www.keeneland.com/media/news/keeneland-concludes-2018-spring-meet-near-record-all-sources-wagering-keeneland))

Prior to 1937, state and federal courts adopted a "laissez-faire approach" to constitutional interpretation.[vi] In *Lochner v. New York*, the court held that "freedom of contract" is a liberty protected by the Due Process Clause.[vii] During the Lochner Era, Due Process was used to invalidate government regulations that interfered with the freedom to contract and very little

deference was given to state legislatures.[viii] The end of the *Lochner* Era culminated in the case of *West Coast Hotel v. Parrish*. Highlighting that the Constitution did not explicitly mention "freedom of contract", the Supreme Court took a textualist approach and effectively ended the *Lochner* era. Post-1937, so long as an economic regulation passes the rational basis test, it does not violate Due Process.[ix]

Regulations imposed by states intended to mitigate the spread of coronavirus would likely survive scrutiny under any rational basis review. Courts applying rational basis review ask whether the means are "rationally related" to a legitimate state end.[x] During the wake of the coronavirus pandemic, imposing restrictions on large-scale events such as the Keeneland Spring Meet and the Kentucky Derby are rationally related to the legitimate goal of slowing the spread of the coronavirus and heavily implicate the state's traditional police powers.

Unless courts begin to use a *Lochner* approach to constitutional interpretation and give states less deference when it comes to economic regulations in the near future, which is very unlikely, businesses negatively affected by the cancellation of time-honored equine events would be unsuccessful in making a constitutional claim. Kentucky businesses should look for another angle when thinking about potential legal remedies for their hardships.

[i] Mike MacAdam, *Kentucky Derby Moved to Sept. 5*, The Daily Gazette (March 17, 2020), <https://dailygazette.com/article/2020/03/17/kentucky-derby-moved-to-sept-5>.

[ii] Keeneland, *Keeneland Cancels 2020 Spring Race Meet Due to COVID-19 Health and Safety Concerns* (March 16, 2020), <https://keeneland.com/media/news/keeneland-cancels-2020-spring-race-meet-due-covid-19-health-and-safety-concerns>

[iii] Jason Frakes, *The 2020 Kentucky Derby is Postponing Due to the Coronavirus Outbreak*, Louisville Courier Journal (March 16, 2020), <https://www.courier-journal.com/story/sports/horses/kentucky-derby/2020/03/16/kentucky-derby-2020-postponed-because-coronavirus-pandemic/5056481002/>.

[iv] John Kruzal, *Coronavirus Restrictions Pit Businesses Against City Officials*, The Hill (March 17, 2020), <https://thehill.com/regulation/court-battles/487938-coronavirus-restrictions-pit-businesses-against-city-officials>.

[v] Although the decisions to cancel or postpone these events were made by the governing private bodies themselves, a constitutional argument could still be made against state regulations that have made the need to cancel events a reality.

[vi] Matthew J. Lindsay, *In Search of Laissez-Faire Constitutionalism*, 123 Harv. L. Rev. 55 (2010).

[vii] *Id.* at 56.

[viii] Barry Cushman, *Teaching the Lochner Era*, 62 St. Louis U.L.J. 537 (2018).

[ix] *United States v. Carolene Products Co.*, 304 U.S. 144 (1938).

[x] Legal Information Institute Cornell Law School, *Rational Basis Test*, https://www.law.cornell.edu/wex/rational_basis_test (last visited Apr. 15, 2020).

Tagged: [Equine \(/full-blog/tag/Equine\)](/full-blog/tag/Equine), [The Kentucky Derby \(/full-blog/tag/The+Kentucky+Derby\)](/full-blog/tag/The+Kentucky+Derby), [Keeneland \(/full-blog/tag/Keeneland\)](/full-blog/tag/Keeneland), [Constitutional \(/full-blog/tag/Constitutional\)](/full-blog/tag/Constitutional)

♥ 0 Likes ↪ Share

COMMENTS (0)

Newest First Subscribe via e-mail

[Preview](#) [POST COMMENT...](#)

Newer Post

Recent Trump Legal Opinion Puts Migratory Birds at Risk (</full-blog/lukensblog1>)

Older Post

Bailing Out Big Oil: An Economic and Moral Dilemma (</full-blog/lovellblog1>)

SEARCHABLE ARCHIVE (/PUBLICATION-ARCHIVE-1)

631 SOUTH LIMESTONE, LEXINGTON, KY

40508 (859) 257-4747 BLOG.KJEANRL@GMAIL.COM (MAILTO:BLOG.KJEANRL@GMAIL.COM)