

No: 17-1684

***In the Supreme Court
of the United States***

France, Petitioner
v.
Patrick, Respondent
State of Georgia, Respondent

***ON PETITION FOR A WRIT OF CERTIORARI
ON THE GEORGIA SUPREME COURT***

Petition for Rehearing

SHAUN M DAUGHERTY, ESQ.
FREEMAN, MATHIS AND GARY
100 Galleria Parkway, Suite 1600
Atlanta, Georgia 30339-5948

STATE OF GEORGIA
OFFICE OF THE ATTORNEY GENERAL
40 Capitol Square, SW
Atlanta, Georgia 30334

QUESTION PRESENTED

Whether the Official Code of Georgia § 9-11-9.1, also known as the "Affidavit Law," stands in violation of the Commerce Clause Article 1, Section 8, Clause 3 of the United States Constitution.

PARTIES TO THE PROCEEDINGS

Petitioner is Janice France, pro-se

Respondent is Mr. Shaun M. Daugherty, Esq

Counsel of Record for Respondent, Dr. Sharon Patrick

Respondent is Georgia, Office of the Attorney General

TABLE OF CONTENTS

Questions Presented	i
Parties to the Proceedings	ii
Table of Contents	iii
Table of Authorities	iv
Constitutional and Statutory Provisions	v
Introduction	1
Protectionism	3
Deterring Legitimate Business	8
Conclusion	11
Certificate of Good Faith	14

TABLE OF AUTHORITIES

Cases

Kassel v. Consolidated Freightways

Corp 2, 3

450 U.S. 662 (1981)

~~South Dakota Farm Bureau, Inc. v.~~

Hazeltine 1, 3, 4, 8

202 F. Supp.2d 1020 (D.S.D. 2002)

U.S. Constitutional Provisions

Article 1, Section 8 v

U. S. Constitutional Provisions

Article 1, Section 8 (relevant portion)

The Congress shall have power ... To regulate commerce
with foreign nations, and among the several states, and
with the Indian tribes;

INTRODUCTION

"The U.S. Supreme Court has recognized a dormant Commerce Clause which limits an individual state from adopting "regulations that discriminate against interstate commerce." *West Lynn Creamery, Inc., v. Healy*, 512 U.S. 186, 192, 114 SCt 2205, 129 L.Ed.2d 157 (1994)" *South Dakota Farm Bureau, Inc. v. Hazeltine*, 202 F. Supp. 2d 1020, (D.S.D. 2002)

~~O.C.G.A. § 9-11-9.1~~ stands in obstruction to the

Commerce Clause of the United States Constitution;

therefore, I am requesting that the U. S. Supreme Court

accept this Petition for Rehearing and grant my petition

for a writ of certiorari.

Kassel v. Consolidated Freightways Corp., 450 U.S. 662, 669 (1981). "The Clause permits Congress to legislate when it perceives that the national welfare is not furthered by the independent actions of the States. It is now well established, also, that the Clause itself is "a limitation upon state power even without congressional implementation." *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 350 (1977). The Clause requires that some aspects of trade generally must remain free from interference by the States. When a State ventures excessively into the regulation of these aspects of commerce, it "trespasses upon national interests," *Great AP Tea Co. v. Cottrell*, 424 U.S. 366, 373 (1976), and the courts will hold the state regulation invalid under the Clause alone."

O.C.G.A. § 9-11-9.1 discourages interstate commerce between Florida and Georgia in two very distinct ways; first, by encouraging professionals to set up shop in Georgia, and second, to deter legitimate business transactions.

PROTECTIONISM

"The Dormant Commerce Clause "prohibits economic protectionism — that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *West Lynn Creamery, Inc., v. Healy*, 512 U.S. 186, 192, 114 SCt 2205, 129 L.Ed.2d 157 (1994), quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273-274, 108 SCt 1803, 100 L.Ed.2d 302 (1988)." *South Dakota Farm Bureau, Inc. v. Hazeltine*, 202 F. Supp. 2d 1020, (D.S.D. 2002)

O.C.G.A. § 9-11-9.1 has the potential to lure superior performing professionals from adjoining States due to the benefit of the enhanced burden of proof protection placed upon plaintiffs when litigating under Georgia law. In serving this purpose, this law facilitates the enticing, stealing and retaining of professional talent who may be seeking that protection from surrounding States; providing for Georgia, denying of others.

"being protectionist in nature, is impermissible under the Commerce Clause." *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 684 (1981)

In judging Constitutional challenges to state statutes under the Dormant Commerce Clause, the US Supreme Court has developed a two-tier approach. *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579, 106 SCt 2080, 90 L.Ed.2d 552 (1986).

The first tier is simple enough. If the challenged state statute "directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests," the US Supreme Court has "generally struck down the statute without further inquiry." *Id.* at 579, 106 SCt 2080. *South Dakota Farm Bureau, Inc. v. Hazeltine*, 202 F. Supp. 2d 1020, (D.S.D. 2002)

But as a consumer, it's the bad actors that might eventually wind up in court with me. Under O.C.G.A. § 9-11-9.1, there exists a perverse incentive to lure bad actors into the Georgia marketplace. If a marginal, professionally licensed service provider wishes to conduct business, there are few safer States to do so than in Georgia, this places every consumer at risk.

In a prior Brief, I shared the conversation when I asked my former dentist the following, "What happens to marginal service providers in Florida?" He explained that eventually they get sued, their insurance rates go up, and the cost of their insurance drives them out of the marketplace.

This organic cleansing mechanism has been circumvented in Georgia. As a result of O.C.G.A. § 9-11-9.1, a bad actor can continue to conduct business in Georgia until they sufficiently ~~main~~ or harm a consumer as to draw the attention of an enterprising personal injury attorney who will determine whether the financial hurdle of acquiring an expert witness exceeds the anticipated bank roll at the conclusion of the litigation.

As a result of O.C.G.A. § 9-11-9.1, there is no purging of the marketplace which would expel those bad actors prior to acts of extreme negligence with their associated large pay-outs. But there certainly exists an unknown factor for the consumer, and I simply refuse to be the unfortunate patient who is subjected to a grossly negligent injury or costly injustice because this crucial marketplace purification mechanism has broken down in Georgia.

DETERRING LEGITIMATE BUSINESS

O.C.G.A. § 9-11-9.1 discourages interstate commerce by deterring legitimate business transactions. Because the litigation laws are more restrictive, this provides a disincentive for the out-of-state consumer to conduct business in Georgia.

“The second tier approach is utilized when a state statute only indirectly affects interstate commerce and regulates evenhandedly. *Brown-Forman Distillers Corporation v. New York State Liquor Authority*, 476 U.S. 573 at 579, 106 SCt 2080, 90 L.Ed.2d 552 (1986).

The inquiry is whether the state's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits. *Id.*, citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 90 SCt 844, 25 L.Ed.2d 174 (1970). This balancing test weighs the burdens of the statute on interstate commerce with the putative local benefits. *Cotto Waxo*, 46 F.3d at 793. *South Dakota Farm Bureau, Inc. v. Hazeltine*, 202 F. Supp. 2d 1020, (D.S.D. 2002)

As a result of this experience, I am now armed with the knowledge that the professional has preferential treatment in Georgia courts, and as a result, I will face a formidable barrier should the necessity arise to protect my financial interests.

I have not and will not seek the services of Georgia professionals, instead preferring to engage in those business transactions in Florida. This situation has cast a shadow upon ALL Georgia professionals and every business transaction for those services, and I can no longer trust the State's marketplace or laws. I can more equitably defend my financial interests in a court of law in Florida.

O.C.G.A. § 9-11-9.1 has incentivized stealing from the public. Bad Actors need only charge the amount for lacking services as to make it more cost effective for the citizen to walk away. For a bad actor, a Georgia professional license is a license to steal.

In Georgia, I have more legal recourse when hiring an unlicensed professional, than one who is licensed. If the unlicensed contractor performs unsatisfactorily, I can at least sue to get my money returned. This circumvents the entire premise of protecting the public, upon which foundation of professional licensing is based.

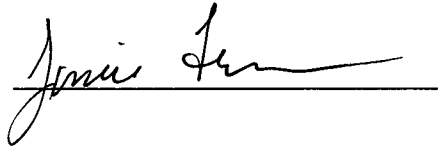
CONCLUSION

Georgia has imposed the burden of O.C.G.A. § 9-11-9.1 without significant countervailing interests. O.C.G.A. § 9-11-9.1 does not promote the public health or safety of consumers. The law is a form of protectionism and offers ~~shelter for bad actors, it deters legitimate business~~ transactions. Georgia has no proof that O.C.G.A. § 9-11-9.1 reduces frivolous lawsuits and this law is out of step with the laws in surrounding States.

Once more, I thank you Mr. Daugherty. You have been kind, compassionate and thoughtful throughout this process. In my effort to seek justice, you have exemplified all that is noble, pure, decent and honorable of your profession. You are a gift to your peers, as you have been a gift to me. My deepest regret is that as a result of my incompetence and inexperience in these proceeding, I have deprived you of an opportunity.

I ask that the Court accept this Petition for Rehearing
and grant my petition for writ of certiorari.

This 18th Day of October, 2018

A handwritten signature in black ink, appearing to read "Janice France", is written over a horizontal line.

Janice France, Petitioner, pro-se

2920 Callaway Road

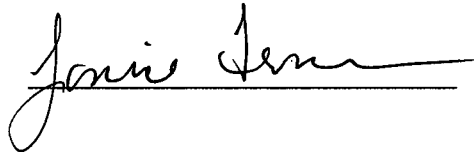
Tallahassee, Florida 32312

(850) 386-5864

CERTIFICATE OF GOOD FAITH

This Petition for Rehearing is presented on the grounds limited to intervening circumstances of substantial or controlling effect or to other grounds not previously presented. This Petition for Rehearing is presented in good faith and not for delay.

This 18th Day of October, 2018

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