IN THE SUPREME COURT OF IOWA

No. 22-0779

NATHANIEL DANIEL OLSEN,

Applicant-Appellant,

v

.

STATE OF IOWA,

Respondent-Appellee.

ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR SCOTT COUNTY
HONORABLE TOM REIDEL, JUDGE

APPELLANT'S FINAL BRIEF

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CERTIFICATE OF SERVICE

On February 16, 2023, the undersigned certifies that a true copy of the foregoing instrument was served upon the Plaintiff-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to:

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/s/ Philip B. Mears
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ROUTING STATEMENT

The District Court dismissed Nathan Olsen's request for modification to come off the registry under 692A.128 without addressing the merits. The judge dismissed the case because Nathan Olsen did not live in Iowa at the time of his application. In fact, he lives in Illinois.

The question presented is whether Olsen, an out of state resident, can bring an action under 692A.128. Olsen argues that if the statute precludes such an action, that discrimination against an out of state resident would violate the Privileges and Immunities Clauses of the Iowa and the United States Constitutions.

The Iowa Supreme Court, for reasons set out in Rule 6.1101, should retain the case.

1. The case presents a substantial question as to the constitutionality of the statute, Section 692A.128, assuming the statute is construed to prevent Olsen from bringing the action. See 6.1101(2)(a).
2. The case presents a substantial issue of first impression. No appeal court has yet addressed the question of whether an out of state residence can bring an action under 692A.128. See 6.1101(2)(a).

   What is this case about?

Nathan Olsen was given the equivalent of a deferred judgment for a sex offense in Wisconsin in 2009. Under Wisconsin law, he did not have to register for that offense.

He transferred his probation to Iowa. Iowa requires registration for a deferred judgment. He registered. The duration of that Iowa registration was 10 years.

In 2017, while in Iowa, he was convicted for a registration violation. Because of that conviction, the length of his registration obligation in Iowa was increased by 10 years. See 692A.106(4).

At that point, he moved to Illinois. Illinois does not require him to register because of Wisconsin's deferred judgment.

Olsen would like to move back to Iowa where he has family. He petitioned for modification to end his obligation to register in Iowa

The District Court found that the statute precluded an out of state residence, such as Olsen, from using 692A.128 to modify the Iowa registration requirement. Indeed the statute says that the Application shall be filed in the "county of residence."

Olsen asks the Iowa Supreme Court to retain the case and address this issue.

STATEMENT OF THE CASE

Nature of the Case

Nathan Olsen appeals from the dismissal of his Application for Modification off the sex offender registry, brought under 692A.128 of the Code.

In this rather unusual case, Olsen filed for relief in Scott County, even though he lived in Illinois. Scott County had been the last place he had lived before he moved to Illinois. Indeed, because Olsen did not live in Iowa when he filed the Application, Judge Tom Reidel dismissed the case without reaching the merits. Ruling dated March 3 2022, Appx.p.25.

Following that dismissal, Olsen filed a Motion to Amend or Enlarge the ruling. Appx.p.33. That was denied in an order dated April 11, 2022. Appx. p.39.

Olsen filed a Notice of Appeal on May 8, 2022. Appx. p.41.

Course of Proceeding

Nathan Olsen filed his Application for Modification in Scott County on August 5, 2021. Appx. p.5. Notice was given to appropriate parties. Appx. p.5. [01]

On December 6, 2021, an Assistant Scott County Attorney appeared, filing an Answer, which included an affirmative defense. Appx. p.9. His affirmative defense was that Olson has not filed his application for modification in his "county of residence." Indeed, Olsen at that time lived in Illinois. This defense was an issue

since 692A.128 does say that the Application should be filed in the "county of principal residence." 692A.128(3).

A hearing on the modification was scheduled for December 20, 2021. Appx. ____. The hearing was to be a virtual hearing. Appx. ____. [O2]At the time set for the hearing, the judge, perhaps appreciating some of the difficult issues presented, directed that the hearing should be reset and should be an in person hearing.

The hearing took place on February 10, 2022 at the Scott County courthouse. Both sides submitted written arguments as to the affirmative defenses. The Judge was Tom Reidel.

At the hearing, Olsen submitted an affidavit about his life's circumstances. He explained why he wished to move to back Iowa. Exhibit 11; Appx.p.43. He submitted other exhibits in support of his application. Those included the assessment report from the Department of Correctional Services. Exhibit 10; Appx. p.47. The Exhibits were admitted without objection. Hearing Trans. p. 3. ll. 2–8.

Aside from asserting its legal objections, the State did not particularly contest the merits of the Application. The hearing consisted primarily of a discussion of those legal issues.

Ruling from Judge

On March 3, 2022, Judge Tom Reidel entered his ruling. He dismissed the Application because Nathan Olsen did not live in Iowa. Appx.p.25.

Judge Reidel correctly identified the factual background. Ruling, p.1–2 (Appx. p.25-26). He understood that, while the original sexual offense occurred in Wisconsin, the duration of the registration requirement in Iowa had been extended by 10 years because of the 2017 registration violation in Muscatine, Iowa.

Judge Reidel discussed the two Iowa District Court cases that had addressed the "principle residence" requirement in section 692A.128. Those were State v. Brady, Tama County, Iowa FECR009867 (Ruling on Aug. 12, 2019) and Levke v. State, Polk County, Iowa CCV052897 (Ruling Nov. 22, 2017). Neither case had been appealed.

In both of those cases, as Judge Reidell observed, an out of state resident applied under 692A.128, where the sexual offense itself happened in Iowa.

Judge Reidell found Olsen's case to be distinguishable from those two other district court cases. He found the inability to bring the action did not violate the constitutional provisions. Here is what he said:

> The obvious distinction between *Brady*, *Leveke*, and Olsen's case is the applicants in *Brady* and *Leveke* were convicted in Iowa, and the acts that led to their need to register took place in Iowa. That is not the case with Olsen. Iowa does not have a significant connection to Olsen or the conviction. Ruling p. 5; Appx. p.29.
> . . .
> Olsen argues that to deny him the ability to use §629A.128 based solely on his out-of-state residency would violate the privileges and immunities clause. But his out-of-state residency is not the thing preventing him from taking advantage of the statute. It is the fact that

> Iowa is currently exercising no jurisdiction over Olsen and has no connection to the conviction requiring him to register in the first place. Olsen relies heavily on the *Leveke* case when making his claim regarding the privileges and immunities clause, but there is a huge distinguishing factor there – Leveke was originally convicted in Iowa. Not any person can bring a case to any court. The court must have some kind of connection to the controversy. The reason for Olsen's need to register did not arise in Iowa. Iowa simply does not have the jurisdiction to modify his registration requirement. As applied to Olsen's case, Iowa Code §692A.128(3) does not violate the privileges and immunities clause.
>
> Olsen has a simple remedy available to him. Simply move to Iowa, as he wishes to, comply with the registration requirements, and then Apply to Modify the registration requirements. While this path may not be convenient, it is the appropriate path. Ruling pp. 6–7; Appx. p.30-31.

Following the ruling, Olsen filed a Motion to Amend or Enlarge the findings, under Rule 1.904(2). Appx.p.33. The basis of the Motion was that the court concluded that Olsen's registration requirement did not have anything to do with Iowa. Olsen pointed out in his Motion that the 10 year initial registration that he had from the Wisconsin conviction had expired. Any continued obligation to register in Iowa was based solely on the Iowa conviction from Muscatine County for the registration violation in 2017.

On April 11, 2022 the court denied the motion to amend or enlarge. Appx.p.39.

Olsen filed a notice of appeal on May 8, 2022. Appx. p.41.

STATEMENT OF FACTS

Discussion of Olsen's history and his registration

Nathan Olsen was required to register when he moved to Iowa after his Wisconsin criminal case because Iowa regards a deferred judgment to be a "conviction" requiring registration. See 692A.101(7). He only had to register for 10 years. That is because the Iowa Department of Public Safety regards his Wisconsin offense as a non "aggravated" offense. That means it only carries ten years on the registry. See also Exhibit 10 (an email from the SOR office in Des Moines); Appx.p.47.

Because of a registration violation in Iowa, an additional 10 years was added to Olsen's requirement. See Exhibit 10; Appx. p.47. See 692A.106(4).

Nathan Olsen registered in Iowa from September of 2009 until 2017. At that point, after the conviction in Muscatine, he moved to Illinois. His registration is currently dormant in Iowa. However, the time continues to run towards the required registration.

Complete registration would be required if he were to move back to Iowa or even begin to work in Iowa. This dormant condition is no different than if his conviction were from Iowa and he moved out of state.

Olsen does not register at the moment since he lives in Illinois. Illinois does not require registration for the Wisconsin deferred judgment. Wisconsin does not require registration for the deferred judgment. Exhibit 11, p. 2; Appx.p.44.

Discussion of the criminal cases

On August 25, 2009, in Wisconsin case 2009CF000102, Olsen was sentenced for Second Degree Sexual Assault of a Child in violation of Wisconsin Code 948.02(2). He was given a deferred judgment with probation.

Olsen discharged the probation in 2016. Wisconsin does not require registration for deferred judgment cases. Exhibit 11; Appx.p.43.

In 2017 Olsen was convicted of the registration violation in Muscatine County. Exhibit 11; Appx.p.44.

Discussion of the merits of the request for modification

As set out in the DCS assessment, Exhibit 1, here were Olsen's reported risk scores from the different tests, or combination of tests. The State did not dispute that Olsen satisfied the threshold requirements under 692A.128. Of course, the judge did not reach the merits of the statute.

Test	Score	Adjusted for Time Free
STATIC 99-R	Above Average Risk or Risk Level IVa	Average Risk or Risk Level III

ISORA	Low risk	None was developed
STATIC 99-R/ ISORA combined	Low risk	None was developed
STABLE 2007	Low risk	None was developed
STABLE 2007/ STATIC 99-R combined	Below Average Risk or Risk Level II, which is low	None was developed

ARGUMENT

PROHIBITING AN OUT OF STATE RESIDENT FROM BRINGING A MODIFICATION CASE UNDER 692A.128, IN THE CIRCUMSTANCES PRESENTED BY NATHAN OLSEN, VIOLATES THE CONSITUTIONAL PROHIBITION FOUND IN THE PROVILEDGES AND IMMUNITIES CLAUSES OF THE IOWA AND UNITED STATES CONSTITUTION.

Standard of Review

With regard to matters of law, appellate review is for errors of law. Appellate review of rulings on statutory construction is for correction of errors at law. Schaefer v. Putnam, 841 N.W.2d 68, 74 (Iowa 2013).

To the extent that the legal argument touches on a constitutional claim, the review would be *de novo*. Lewis v Iowa District Court, 555 N.W.2d 216, 218 (Iowa 1996).

Preservation of Error

The Constitutional issue raised in this appeal was presented to the District Court who ruled on the merits of the Constitutional argument. As such, it is preserved for appeal.

Summary of Argument

In this somewhat unusual case, Nathan Olsen, a resident of Illinois sought to modify his Iowa registration obligation by filing an Application under 692A.128. As near as he could tell, that was the only procedural mechanism for being released from an obligation to register before it ends.

But 692A.128 contains a provision requiring an application for modification to be filed in the "county of principle residence." Section 692A.128(4). After an objection was made by the State, Judge Reidel dismissed the application finding Olsen, a non-resident of Iowa, could not seek modification. The judge made this finding despite Olsen's assertion that such a finding violates the Privileges and Immunity Clauses of the United States and Iowa's Constitutions.

This case requires the Court to address that Constitutional claim.

Privileges and Immunities clauses generally prohibit discrimination against noncitizens. Over the years, this claim has come up in the context of college tuition at state institutions, requirements for admission for the bar, hunting rights, and in some cases claims regarding access to the courts.

Generally, both state and federal courts have found the clause not to be an absolute on prohibition on all discrimination. What is prohibited would seem to be unreasonable discrimination as to certain fundamental concerns of the citizen.

One such fundamental concern is the right of access to the courts. In this case, the ruling below absolutely prohibits Olsen from bringing an application for modification because he does not live in Iowa.

It should be clear that Olsen currently has a registration obligation in Iowa. If he were to move back, he would have to register for perhaps the next ten years.

While that obligation originally arose with the Wisconsin criminal case, it was specifically extended by the 2017 Muscatine, Iowa registration violation conviction.

In this case, this Court should find the restriction on access to the courts is an absolute one. This Court should find that this restriction is unreasonable, given that there is no alternative. Olsen should not have to move back and register for months in order to get relief under the statute.

The Court should review this case of first impression and find that prohibition on out of state residents using 692A.128 is unconstitutional.

Statutes

Section 692A.128 provides in part that

> 1. A sex offender may file an application in district court seeking to modify the registration requirements under

> this chapter.
> . . .
> 4. The application shall be filed in the sex offender's county of principal residence.

The Privileges and Immunities Clause of the U.S. Constitution provides:

> The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. U.S. Const. art. IV, § 2, cl. 2;
>
> see also U.S. Const. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.").

Article I Section 6 of the Iowa Constitution provides

> All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

A. Major cases about P&I

There are three cases that are important to understanding the legal principles surrounding challenges based on the Privileges and Immunities Clause.

The first case is McBurney v. Young, 569 U.S. 221, 133 S. Ct. 1709 (2013). That case was decided by the United State Supreme Court in 2013. McBurney involved a challenge to a Virginia freedom of information statute. The Virginia

statute granted access to Virginia citizens to all public records. The statute made no such provision for non-Virginians.

McBurney and another noncitizen filed for request under the Act. After being denied because they were not citizens of Virginia, they sued.

In a unanimous opinion, the United State Supreme Court found no violation to the Privileges and Immunities Clause. Here are some of the things the Supreme Court said as it worked through the claims brought by McBurney:

> Under the Privileges and Immunities Clause, "[t]he Citizens of each State [are] entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const., Art. IV, § 2, cl. 1. We have said that "[t]he object of the Privileges and Immunities Clause is to 'strongly ... constitute the citizens of the United States [as] one people,' by 'plac[ing] the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned.'" *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 296, 118 S. Ct. 766, 139 L.Ed.2d 717 (1998) (quoting *Paul v. Virginia*, 8 Wall. 168, 180, 19 L. Ed. 357 (1869)). This does not mean, we have cautioned, that "state citizenship or residency may never be used by a State to distinguish among persons." *Baldwin v. Fish and Game Comm'n of Mont.*, 436 U.S. 371, 383, 98 S. Ct. 1852, 56 L.Ed.2d 354 (1978). "Nor must a State always apply all its laws or all its services equally to anyone, resident or nonresident, who may request it so to do." *Ibid.* Rather, we have long held that the Privileges and Immunities Clause protects only those privileges and immunities that are "fundamental." **1715 *See, e.g., id.*, at 382, 388, 98 S. Ct. 1852.

> McBurney v. Young, 569 U.S. 221, 226, 133 S. Ct. 1709, 1714–15 (2013).
>
> McBurney alleges that Virginia's citizens-only FOIA provision impermissibly burdens his "access to public proceedings." Brief for Petitioners 42. McBurney is correct that the Privileges and Immunities Clause "secures citizens of one State the right to resort to the courts of another, equally with the citizens of the latter State." *Missouri Pacific R. Co. v. Clarendon Boat Oar Co.*, 257 U.S. 533, 535, 42 S. Ct. 210, 66 L. Ed. 354 (1922). But petitioners do not suggest that the Virginia FOIA slams the courthouse door on noncitizens; rather, the most they claim is that the law creates "[a]n information asymmetry between adversaries based solely on state citizenship." Brief for Petitioners 42.
>
> The Privileges and Immunities Clause does not require States to erase any distinction between citizens and non-citizens that might conceivably give state citizens some detectable litigation advantage. Rather, the Court has made clear that "the constitutional requirement is satisfied if the non-resident is given access to the courts of the State upon terms which in themselves are reasonable and adequate for the enforcing of any rights he may have, even though they may not be technically and precisely the same in extent as those accorded to resident citizens." *Canadian Northern R. Co. v. Eggen*, 252 U.S. 553, 562, 40 S. Ct. 402, 64 L. Ed. 713 (1920).
>
> McBurney v. Young, 569 U.S. 221, 231, 133 S. Ct. 1709, 1717 (2013).

For other United States Supreme Court cases about whether access to the courts is "fundamental" see Chambers v. Baltimore & O.R. Co., 207 U.S. 142, 148 (1907) ("[The right to sue and defend in the courts] is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens

of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution."); Canadian N. Ry. Co. v. Eggen, 252 U.S. 553, 562, 40 S. Ct. 402, 404, 64 L. Ed. 713 (1920) (“The right to institute and maintain actions in the courts of another state is fundamental.”); McKnett v. St. Louis & S.F. Ry. Co., 292 U.S. 230, 233 (1934) ("The privileges and immunities clause (article 4, s. 2, cl. 1) requires a state to accord to citizens of other states substantially by the same right of access to its courts as it accords to its own citizens."); Miles v. Illinois Cent. R. Co., 315 U.S. 698, 704 (1942) ("To deny citizens from other states, suitors under F.E.L.A., access to its courts would, if it permitted access to its own citizens, violate the Privileges and Immunities Clause.").

The second case of importance is Democko v. Iowa Dep't of Nat. Res., 840 N.W.2d 281 (Iowa 2013). This is the latest discussion by the Iowa Supreme Court of the Privileges and Immunities Clauses.

Democko and others claimed there was improper discrimination by the DNR in issuing hunting licenses to them when they were not Iowa residents.

As an initial matter, there was the factual question before the court whether Joseph Democko was an Iowa resident. The ALJ found he was not. Review of that

factual determination is not particularly relevant to the question about the privileges and immunities argument.

The Iowa Supreme had this to say:

> The sole constitutional issue presented for our review is whether Iowa's distinction between resident and nonresident landowners for the purposes of granting special hunting privileges under section 483A.24 violates the Privileges and Immunities Clause of the United States Constitution.[2] To resolve this issue, we must first determine the proper analytical framework under the Clause. The Clause provides, "The citizens of each State shall be entitled to all Privileges and Immunities of citizens in the several States." U.S. Const. art. IV, § 2.
>
> Democko v. Iowa Dep't of Nat. Res., 840 N.W.2d 281, 292–93 (Iowa 2013).
>
> The United States Supreme Court has declared the Clause protects nonresidents from discrimination only with respect to "fundamental" privileges or immunities. *United Bldg. & Constr. Trades Council of Camden Cnty. & Vicinity v. Mayor of Camden*, 465 U.S. 208, 218, 104 S. Ct. 1020, 1027–28, 79 L.Ed.2d 249, 258–59 (1984); *see also Baldwin*, 436 U.S. at 383, 98 S. Ct. at 1860, 56 L.Ed.2d at 365 (noting the Clause only requires states to respect "those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity"). Exactly which privileges are fundamental is often a fighting issue.
>
> Democko v. Iowa Dep't of Nat. Res., 840 N.W.2d 281, 293 (Iowa 2013).

The Court then went on to conclude that in Iowa there was not a right to hunt on your own land. If there was no right, it could not be a fundamental right.

Therefore there was no constitutional problem. Obviously, the case did not involve a claim about access to the courts.

The last case to mention is an Iowa Court of Appeals decision from 2012. It was Nitsos v. Emp. Appeal Bd., 2012 WL 2122493 (Iowa Ct. App. 2012). This was an access to the courts case.

Georgia Nitsos, who was a Wisconsin resident, applied for unemployment insurance. Her Dubuque, Iowa, employer had terminated her. She pursued her Iowa state administrative remedies, ultimately losing before an Administrative Law Judge.

She petitioned for judicial review under Section 17A.19. However, she brought the action in Dubuque County. That was a mistake.

Under Section 10A.601(7), out-of-state residents who wish to file petitions for judicial review must do that in Polk County.

The Employment Appeal Board and the company filed Motions to Dismiss on the grounds that the action bought in the wrong county. They asserted that there was no jurisdiction in Dubuque over the claim. Nitsos responded by alleging that the restriction to Polk County for out-of-state residents was a violation of the United States and Iowa Constitutional provisions about privileges and immunities.

She lost.

Here is what some of what the Court of Appeals said:

The Privileges and Immunities Clause of the U.S. Constitution provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 2; *see also* U.S. Const. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.").

The guaranty contained in the federal constitution as originally adopted merely limits the power of a state to exclude citizens of other states from the privileges granted to its own citizens, and does not deprive the states of their power to deal with the rights of residents or of ingress or egress therein except to the extent of that limitation. The privileges and immunities so protected are the fundamental privileges of citizenship.

State v. Ronek, 176 N.W.2d 153, 156–57 (Iowa 1970); *see also* United Bldg. & Constr. Trades Council v. Mayor & Council of the City of Camden, 465 U.S. 208, 215–16 (1984) (noting the federal privileges and immunities clause "was designed to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned").

Although some interests or rights do not rise to the level of being fundamental, and accordingly, equality of treatment is not required, the United States Supreme Court has long held the Privileges and Immunities Clause of the federal Constitution protects the right of a citizen of one state to access the courts of another state. *See* Baldwin v. Fish & Game Comm'n of Mont., 436 U.S. 371, 388 (1978) ("Only with respect to those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, equally."); Canadian N. Ry. Co. v. Eggen, 252 U.S. 553, 560 (1920) (recognizing the "right of a citizen of one state . . . to institute and maintain actions of any kind in the courts of another").

Nevertheless, like several other constitutional provisions, the Privileges and Immunities Clause is not absolute in

> the protections it affords citizens, and a state need not extend to a visitor all of the same rights accorded to a resident. *See* Toomer v. Witsell, 334 U.S. 385, 396 (1948); *see also* Baldwin, 436 U.S. at 383 ("[A] State [need not] always apply all its laws or all its services equally to anyone, resident or nonresident, who may request it so to do."). The Clause does not require that a nonresident be given precisely identical rights in the courts of a state as resident citizens have. Canadian N. Ry. Co., 252 U.S. at 561.
>
> Nitsos v. Emp. Appeal Bd., 2012 WL 2122493, at *2 (Iowa App. 2012).

The Court of Appeals decided there was no violation. They first used the standard from the Canadian Northern Railway Co. v. Eggen case. In that case, the United States Supreme Court had explained:

> The . . . constitutional requirement is satisfied if the nonresident is given access to the courts of the state upon terms which in themselves are reasonable and adequate for the enforcing of any rights he may have, even though they may not be technically and precisely the same in extent as those accorded to resident citizens.
>
> Nitsos v. Emp. Appeal Bd., 2012 WL 2122493, at *3 (Iowa App. 2012).

The Court of Appeals then concluded:

> Iowa Code section 10A.601(7) clearly imposes a restriction on where out-of-state residents can file a petition for judicial review, and such restriction is not similarly imposed on Iowa residents. However, the distinction between where residents and nonresidents may file does not ipso facto constitute a violation of a nonresident's fundamental right to access to the courts as asserted by Nitsos. *See* Canadian N. Ry. Co., 252 U.S. at

> 561–62. Rather, Nitsos's right of access is not impermissibly infringed upon unless the terms of access are unreasonable or inadequate to secure her right. *Id.* at 562.
>
> Nitsos v. Emp. Appeal Bd., 2012 WL 2122493, at *3 (Iowa App. 2012).

Because the restriction was not unreasonable, there was no constitutional violation.

B. General principles from those cases

What are the general principles that come from these cases?

1. The Privileges and Immunities clauses address discrimination against out of state residents.
2. It makes a difference what the subject matter of the discrimination is. Put another way, only matters that would be considered "fundamental" are protected.
3. Access to the courts is clearly a fundamental right that is protected by the Privileges and Immunities Clause.
4. The ability to modify a collateral effect on a criminal sentence should also be "fundamental." While registration is not punitive, it is nevertheless a collateral consequence that is severe.

5. Some restrictions on access to courts are acceptable. Consideration must be given to whether there is a total ban and/or whether the restriction is unreasonable.

C. Application of principles

Olsen will use a two step process to show there is a constitutional problem in his circumstances.

As an initial matter, the Court should look at the example where a defendant commits a sex offense in Iowa but then at some point moves away. That was the circumstance considered by the two district court cases that Judge Reidel discussed in the Olsen ruling.

Those individuals presumably have an Iowa registration obligation that becomes dormant when the person moves to another state. See 692A.106. The person at that point is not on the website in Iowa. The person does not have to report to any sheriff in Iowa. But if the person moves back to Iowa, they would have to register.

More importantly, if their obligation to register in Iowa is for a term of years (as opposed to being lifetime), it continues to run while the person is out of state. While this running of the obligation does not appear specifically in the Code, 692A.107 does indentify the circumstances when the registration period is tolled. It is tolled during a period of incarceration or any such time as the person is not in

compliance with the registration provision. Since being out of state is not listed as a circumstance where registration is tolled, it follows that the time of the Iowa obligation continues to run when the person leaves Iowa.

If such an out of state person were to want to end the registration period early, the only procedural mechanism would be to file under 692A.128. That statute, however, requires that the application be filed in the "county of principal residence."

Under that circumstance, blocking those individuals from seeking modification anywhere in Iowa would be arbitrary and unreasonable. As such, a ban would violate the Privileges and Immunities Clause as found by the two district court judges.

Several facets of that situation demonstrate how it is unreasonable.

1. There is no other mechanism in Iowa for an individual to seek to end the registration period early.
2. The legislature has specifically provided that these registration periods are subject to being ended early, assuming that threshold criteria is satisfied and a judge approves it.
3. In many cases, the obligation in the other state may in fact depend on whether Iowa has a continuing registration requirement. States are free to develop their own rules. Other jurisdictions, however, could well decide that

if Iowa was done requiring registration, then the person in their state could be done too.

The court should conclude that denying an out of state resident who has an Iowa sexual conviction from access to 692A.128 would violate the Privileges and Immunities Clause as being unreasonable.

The second step in the analysis should look at Olsen's case and understand how it compares with the first example.

Clearly, it is different in that Olsen's initial obligation to register began with a criminal case in Wisconsin. Certainly, the applicants in those other two district court cases had their convictions from Iowa.

But when Judge Reidel said that Olsen's obligation to register had nothing to do with Iowa, he was not correct. Olsen's obligation based on the Wisconsin conviction was only 10 years. That has now expired. But for the Muscatine County registration violation, Olsen would no longer have an obligation in Iowa. He could move back to Iowa without registering.

Iowa is exercising some jurisdiction over Olsen. Iowa is telling Olsen he cannot live or work here without registering. That obligation will continue for another seven years, unless modified.

It logically follows that Olsen's current registration obligation in Iowa is the direct result of an Iowa conviction.

The Iowa legislature has said that an Iowa resident with essentially a twenty year obligation has the right to bring an action under 692A.128. They can have the merits considered. Olsen is prohibited from doing that.

Judge Reidel says that Olsen could always move to Iowa, so it is not that unreasonable to deny this application. There are real problems with this conclusion.

If Olsen moved back to Iowa, he would have to initiate a modification assessment again. Even if that went quickly, it would likely be six to nine months before he could realistically get into court and have a hearing on merits.

One very real problem in Olsen's case is presented because of the child endangerment statute. He lives with a person and is not married to that person. Between the two of them they have five children. Two are not Olsen's biological children. If Olsen moved to Iowa, he could not live with the other children.

The suggestion from the judge about the "easy" alternative is not reasonable.

Accepting the logic of the first example, the Court should find that Olsen's registration requirement has a connection to Iowa. There is an absolute prohibition on filing an action for modification. It is therefore unreasonable and contrary to the Privileges and Immunities Clauses.

D. What about "subject matter jurisdiction?"

Judge Reidel in his ruling suggested that the case was not about the Privileges and Immunities Clause. Instead, he said the issue was that he did not have subject matter jurisdiction. Ruling p.6; Appx. p.30. The judge cited Article V of the Iowa Constitution, which says the "district court shall have jurisdiction in . . . matters arising within their respective districts." Art. V, § 6. On some level, this begins to sound like a "standing " requirement. See Iowa Citizens for Cmty. Improvement v. State, 962 N.W.2d 780, 790–91 (Iowa 2021) (the question is whether Olsen has an injury that the District Court could address). See also Horsfield Materials, Inc. v. City of Dyersville, 834 N.W.2d 444, 452 (Iowa 2013); Godfrey v. State, 752 N.W.2d 413, 418 (Iowa 2008).

There are several specific ways that Olsen's facts satisfy the requirement for subject matter jurisdiction.

First, Olsen currently has an obligation to register in Iowa. It is dormant at the moment. That obligation would activate at the moment that he either got a job or resided in Iowa. This gets him a connection to Iowa.

His obligation to register is directly related to an Iowa conviction—the 2017 conviction in Muscatine.

He wishes to move to Iowa. His affidavit was not contested. Barring him from returning is an injury itself.

There is clear subject matter jurisdiction.

CONCLUSION

Nathan Olsen has an obligation to register in Iowa as a sex offender. That obligation lasts until 2029. It is dormant at the moment because he lives out of state. If he returned to Iowa either to live or to work, it would become active.

He has that obligation because of (1) a Wisconsin criminal case from 2009 and (2) because of a 2017 Muscatine County conviction for a sex offender registration violation. He registered in Iowa from 2009 to 2017. That was because he lived here.

He now lives and works in Illinois because Illinois does not require him to register at all. That is because Illinois, like Wisconsin, does not require registration for the equivalent of a deferred judgment.

Nathan Olsen wants to move back to Iowa. He filed an application to end that requirement under 692A.128. His application was dismissed by the District Court because he is from out of state.

Nathan Olsen asserts that to deny him any forum in Iowa to modify his Iowa registration status violates the constitutional Privileges and Immunity Clauses of the Iowa and United States Constitutions.

Indeed, this discrimination against a non-citizen is unreasonable, particularly since it is a total prohibition for bringing an action under 692A.128.

The Court should reverse the dismissal and return the case for consideration of the merits of his application.

RESPECTFULLY
SUBMITTED,

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REQUEST TO BE HEARD IN ORAL ARGUMENT

The Appellant hereby requests to be heard in oral argument in connection with this appeal.

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ATTORNEY'S CERTIFICATE OF COSTS

I, Philip B. Mears, Attorney for the Appellant, hereby certify that the cost of preparing the foregoing Appellant's Page Proof Reply Brief was $3.50

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

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/s/ Philip B. Mears | September 15, 2022

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