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 APPLICATION FOR FURTHER REVIEW OF THE DECISION OF THE IOWA COURT OF APPEALS FILED NOVEMBER 21, 2023

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QUESTIONS PRESENTED FOR REVIEW

1. Do the Constitutions of the United States and the State of Iowa require that the procedure for modifying a person's sex offender registration's obligation be available to a non resident who has a current registration obligation to the State of Iowa?

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STATEMENT SUPPORTING FURTHER REVIEW

On November 21, 2023 the Court of Appeals affirmed the District Court's dismissal of Nathan Olsen's request to end his Iowa registration obligation. Olsen had tried to end his registration obligation using 692A.128. The case was dismissed because Olsen did not live in Iowa.

There are good reasons for this Court to grant further review.

(1) The case involves an important question of constitutional law that needs to be addressed. It is a case of first impression. Olsen contents the Privileges and Immunities Clauses of the Iowa and United States Constitutions require that Iowa's modification statute be available to non citizens, particularly where the continuing obligation to register in Iowa is the result of an Iowa criminal case. The Court of Appeals did not address the constitutional claim.

(2) The Court of Appeals concluded that the case was not “ripe" for resolution. That is in conflict with cases from this court as to how "ripeness" should be interpreted. The ruling is contrary to State v. Wade, 757 N.W.2d 618, 627 (Iowa, 2008); Iowa Coal Min. Co., Inc. v. Monroe Cnty., 555 N.W.2d 418, 432 (Iowa, 1996) In those cases there was something that would happen in the future that could shape a court's analysis. There is nothing speculative about Olsen's registration obligation.

Background

Olsen's original "conviction" in 2009 was a deferred judgment from Wisconsin. Some states, like Wisconsin and Illinois, do not require registration for a deferred judgment. Olsen moved to Iowa. Iowa requires registration for deferred judgments. He only had to register for 10 years. That would have ended in 2019. However, in 2017, he had a registration violation case in Muscatine County, which extended his Iowa obligation to 20 years.

Olsen then moved to Illinois, which does not require registration. However for good reasons he wants to move to Iowa, or at least do business in Iowa. Both would require registration.

He sought to end that requirement.

The District Court dismissed Olsen's application because, as he does not live in Iowa, there is not "subject matter jurisdiction."

The Court of Appeals affirmed that dismissal. The Court of Appeals reached its conclusion for slightly different reasons.

The Court of Appeals concluded that because Olsen had no connection with Iowa at the moment, he did not even meet the definition of a "sex offender" in 692A. Moreover the appeal court concluded that Olsen's claim was not "ripe" for review as there was no real controversy.

Constitutional Claim

If Olsen was an Iowa resident he could use the modification statute. Residence can be thought to include working or going to school in Iowa. Olsen lives in Illinois so his registration obligation to Iowa, which is real, is "dormant." The moment he crosses the river into Iowa to live, work or attend a class, he would have to register. He would have to register until 2030.

There is no good reason for the Iowa courts to deny Olsen his chance at modification. It is a total ban on reducing his obligation in court. For that reason there is a constitutional basis for his argument based on the Privileges and Immunities Clauses.

The Court of Appeals did not address the constitutional claim at all. Olsen's Petition for a Rehearing to get the claim addressed was denied.

Ripeness

The Court of Appeals said that Olsen was seeking to modify a "hypothetical or speculative" obligation. In fact his obligation is very real, and will last until 2030. The District Court said Olsen could easily give the Iowa court's jurisdiction. He would just come to Iowa and register. Then he could seek modification. However that cost would be 6- 12 months on the registry, counting the time to get a new evaluation and then wait for a hearing.

Statutory Analysis

The Court of Appeals said Olsen, who is on "inactive" status, did not even meet the definition of "sex offender" under Chapter 692A. Olsen believes that construction is incorrect.

But perhaps most importantly, the Court of Appeals, after analyzing whether there was jurisdiction under the statute, did not reach the constitutional claim. Olsen has argued that limiting 692A.128 to residents violates the Privileges and Immunity clauses of the State and United States Constitutions.

Even if the Court of Appeals is correct about 692A.128 technically not being available for Olsen, the constitutional question remains. If Olsen was a resident, he could bring his application for modification, even though the original conviction was from Wisconsin. The modification statute still conditions the use of this modification statute on being a resident.

The Constitutions put limits on the ability of government to discriminate against non residents. This is particularly true when allowing access to that state's courts. Even if the Court of Appeals is correct with its statutory interpretation, the Supreme Court should still address the constitutional issue.

STATEMENT OF THE CASE

Nature of the Case

Nathan Olsen appealed the dismissal of his Application for Modification to get 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 in Iowa before he moved to Illinois.

Olsen sought to end his current obligation to register in Iowa that lasts until 2030. 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.

Olsen appealed. Appx. p.41.

Course of Proceeding

Nathan Olsen filed his Application for Modification in Scott County on August 5, 2021. Appx. p.5.

The Scott County Attorney's office raised an affirmative defense that Olsen has not filed his application for modification in his "county of residence." Appx. p.9.

The hearing took place on February 10, 2022.

Olsen submitted an affidavit about his life's circumstances. He explained why he wished to move back to 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.

Aside from asserting its legal objections, the State did not contest the merits of the Application.

District Court ruling

On March 3, 2022, the judge dismissed the Application because Nathan Olsen did not live in Iowa. Appx.p.25.

Judge Reidel discussed the two Iowa District Court cases that had addressed the "principle residence" requirement in section 692A.128. State v. Brady, Tama County, Iowa FECR009867 (Ruling on Aug. 12, 2019) and Levke v. State, Polk County, Iowa CCV052897 (Ruling Nov. 22, 2017). Those cases, finding a constitutional problem, allowed an out of state resident to use 692A.128, where the person's offense was in Iowa.

Judge Reidell distinguished those two cases as the sexual crimes had occurred in Iowa. Judge Reidel said:

> 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 that path may not be convenient, it is the appropriate path. Ruling p 7; Appx. p.31.

Following the ruling, Olsen filed a Motion to Amend or Enlarge the

findings. Appx.p.33. Olsen argued that the 10 year initial registration that he had from the Wisconsin conviction had expired. His 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. Appx.p.39.

Court of Appeals decision

The Court of Appeals affirmed the District Court's decision without addressing Olsen's constitutional claim.

The Court of Appeals found that as a textual matter, Olsen did not meet the basic requirement for modification that he be a "sex offender." Olsen's registration obligation is running, but technically "dormant". The court found that Olsen was not in fact a person "required to be registered" under the definition in 692A.101(26). The Court went further and said that Olsen's claim was also not "ripe for adjudication", involving only a "hypothetical or speculative" claim.

Olsen filed a timely Petition for Rehearing with the Court of Appeals. Olsen asked that the Court of Appeals to actually address the constitutional question. The Court of Appeals denied a petition for rehearing.

STATEMENT OF FACT

Some facts should be mentioned.

1. Nathan Olsen had his sex offense in Wisconsin in 2009. He was 18 years old at the time. He received a deferred judgment, with probation. He would not have to register in Wisconsin.

2. He moved to Iowa in 2009 and did his probation here.

3. Olsen was required to register in Iowa. Iowa regards a deferred judgment to be a "conviction" requiring registration. See 692A.101(7).

4. He only had to register for 10 years. Iowa classified his Wisconsin offense as a non “aggravated” offense.

5. In 2017 he had a registration violation in Muscatine County.

6. That registration violation added an additional 10 years to Olsen’s requirement. See Exhibit 10. See 692A.106(4).

7. Nathan Olsen registered in Iowa from September of 2009 until 2018. At that point, after the conviction in Muscatine, he moved to Illinois. He does not have to register there for a Wisconsin deferred judgment.

8. He still has a registration requirement in Iowa until 2030. That obligation is dormant in Iowa. See 692A.106. That means he is not on the Iowa website and has no obligation to go see any Iowa sheriff.

9. His Iowa registration requirement continues to run towards the 20 year obligation.

10. He would have to register in Iowa if he were to move back to Iowa or even begin to work in Iowa. His dormant condition is no different than if his conviction were from Iowa and he moved out of state.

Qualification for modification

Prior to filing for modification, the Department of Correctional Services completed an evaluation. Exhibit 1, Conf. App. p. 5. The report concluded that Olsen satisfied the threshold requirements for modification; including risk to reoffend.

At the hearing, the Assistant County Attorney did not contest the conclusion. Tr. p.8, line 11.

Intent on moving to Iowa

Olsen submitted an affidavit at his hearing rather than testifying in person. Exhibit 11; Appx. 43.

Olsen had two particular reasons for wanting to move to Iowa. He and his significant other have family in eastern Iowa. Contact with family was important since between the two of them they had 5 children. He also explained that he was in the trucking business. Because of the registration obligation, he is not able to do business in Iowa without having to register.

This evidence offered to show intent to move to Iowa was not contested by the State.

ARGUMENT

I

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

Review of constitutional claims is *de novo*. Lewis v Iowa District Court, 555 N.W.2d 216, 218 (Iowa 1996).

Preservation of Error

The District Court addressed the constitutional claim.

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 Privileges and Immunities

There are three cases that are important regarding the Privileges and Immunities Clauses.

The first is McBurney v. Young, 569 U.S. 221, 133 S. Ct. 1709 (2013), a United State Supreme Court case from 2013. McBurney did not live in Virginia. He wanted certain public records. The Virginia statute granted access to Virginia citizens. The statute made no such provision for non-Virginians. He brought the lawsuit after he was denied access to records because he was not citizens of Virginia.

In a unanimous opinion, the Supreme Court found no violation to the Privileges and Immunities Clause. Here are some of the things the Supreme Court said:

> 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.'" *(*citation omitted
> McBurney v. Young, 569 U.S. 221, 226, 133 S. Ct. 1709, 1714–15 (2013).

> 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." *citation omitted.*
>
> McBurney v. Young, 569 U.S. 221, 231, 133 S. Ct. 1709, 1717 (2013).

For other United States Supreme Court cases declaring access to the courts as "fundamental" see Chambers v. Baltimore & O.R. Co., 207 U.S. 142, 148

(1907); Canadian N. Ry. Co. v. Eggen, 252 U.S. 553, 562, 40 S. Ct. 402, 404, 64 L. Ed. 713 (1920).

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 claimed there was improper discrimination by the DNR in issuing hunting licenses when he was not an Iowa resident.

The Iowa Supreme had this to say about the Privileges and Immunities Clause.

> 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 such 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 is Nitsos v. Emp. Appeal Bd., 2012 WL 2122493 (Iowa Ct. App. 2012). This was an access to the courts case.

Georgia Nitsos, a Wisconsin resident, applied for unemployment insurance. Her Dubuque, Iowa, employer had terminated her. After losing her unemployment claim 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 file in Polk County.

She appealed after the District Court dismissed her claim, because it was brought in the wrong place. Nitsos argued that the restriction to Polk County for non 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:

> 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. *citations omitted.*

> 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. *citation omitted.*
> 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 that restrictions that are "reasonable and adequate" do not violate the constitutional provision. 2012 WL 2122493, at *2 (Iowa App. 2012).

The Court of Appeals 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. Matters that are considered "fundamental" are protected.
3. Access to the courts is clearly a fundamental right, protected by the Privileges and Immunities Clause.
4. The ability to modify a collateral effect on a criminal sentence should also be "fundamental." While the 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 case where a defendant commits a sex offense in Iowa but then 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 Iowa website. 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.

In the usual case when the person moves to another state, the registration requirement follows them. Most states, like Iowa, have provisions requiring registration if the person has a sexual offense from another state.

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 his case is the same as in the example just discussed.

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

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.

II

OLSEN'S CONSTITUTIONAL CLAIM SHOULD ADDRESSED AS IT PRESENTS A REAL CONTROVERSY AND THEREFORE IS RIPE FOR REVIEW

The Court of Appeals alternatively concluded there was no jurisdiction by deciding Olsen's claim was "not ripe for adjudication." Indeed, any number of cases holds that a court is without jurisdiction to hear a claim that is not ripe for adjudication.

But a claim is ripe for review if it involves "an actual present controversy as opposed to one that is merely hypothetical or speculative". State v. Tripp, 776 N.W.2d 855 (Iowa 2010). See also State v. Wade, 467 N.W.2d 283 (Iowa 1991) and State v. Bullock, 883 N.W.2d 536 (Iowa 2016).

The rationale for the ripeness doctrine is

> "to protect administrative agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties" State v. Bullock, 883 N.W.2d 536 (Iowa 2016).

If you look at the facts in Olsen his claim does not fit this rationale. His claim is not "hypothetical or speculative."

Olsen lived in Iowa and registered as a sex offender in Iowa from 2009 to 2018. He clearly knows what is required. Iowa added 10 years to his duration requirement because of a 2017 registration violation in Muscatine County. The is no administrative question about what would happen if he moved back.

There is a current, actively running time clock with the registry in Des Moines that has him being required to register in Iowa if he were here until 2029. There is nothing speculative about the registry. There is nothing speculative about any decisions of the administrative agency.

His affidavit before the district court stated that he had lived in Iowa and wanted to come back here to live. Presumably, this is a real consideration. Certainly the Iowa Tourism Bureau would stipulate that living in Iowa is a great thing. If Olsen were to have his registration obligation in Iowa ended that would make a real difference to him.

Another way of determining whether there is a real case or controversy is whether there is relief that a court can grant that will make a difference. If Olsen is

modified, and his registration obligation in Iowa is ended, this will make a big difference to him. He could move to Iowa. He could do work in Iowa. He could visit Iowa.

The district court said there was no big deal because Olsen could simply come here, register, and then seek modification. Being on the registry and wanting to avoid that is very real. Here is what Justice Appel said in the primary case about modification:

> The provisions of sex offender registration are onerous. The direct and collateral consequences of sex offender registration include stigmatization, challenges in finding employment, restrictions on residency and movement, and difficulty in finding housing. *citation omitted....* Any person in his position would desire to be relieved of the legal restrictions...
>
> Fortune v. State, 957 N.W.2d 696, 709 (Iowa, 2021)

III. THE COURT OF APPEALS' CONCLUSION THAT AS A TEXTUAL MATTER OLSEN CANNOT USE THE MODIFICATION STATUTE IS INCORRECT AND MAY BE IRRELEVANT

The Court of Appeals used a textual analysis of chapter 692A to conclude that Olsen, a non resident, cannot use the modification statute. This was an argument that had not been raised or used below. The Court decided that Olsen is not a "sex offender" within the meaning of chapter 692A.

> Because Olsen does not live, work, or attend school in Iowa, he need not register with the Iowa Sex Offender Registry. In fact, he does not meet the most basic requirement for modification, which is that he be a sex offender within the meaning of chapter 692A. *See id.* § 692A.128(1) (only permitting a "sex offender" to file an application for modification); *see also id.* §§ 692A.101(26) (defining "sex offender" as "a person who is required to be registered under this chapter"), 692A.103(1) (requiring a person to register under chapter 692A only if "the offender resides, is employed, or attends school in this state").
>
> Olsen v. State, 2023 WL 8067542, at *3 (Iowa App., 2023)

Using the ordinary rules of construction there is reason to believe that the Court's conclusion is incorrect. Moreover even with this conclusion the Court should address the constitutional claim.

The language itself

Section 692A.106(7) says quite clearly that a person who does not have a residence, employment or school attendance, in Iowa "shall no longer be required to register and the offender shall be placed on inactive status".

The term "sex offender" is defined in 692A.101(26) as " a person who is required to be registered under this chapter"

The language used says a "sex offender" is a person who is "required to be registered". This is different from "required to register."

Then there is this term "inactive status". That is a term that appears in 692A.106 but is not defined. If you leave the state while you are required to register, you become "inactive." What is clear from the statute is that if you are elsewhere and therefore you go on inactive status, your registration requirement does not end. Assuming you have a defined length of registration, as opposed to lifetime, when you leave the state, the clock is ticking. Olsen, who left the state in 2019, has 4 years less on his obligation than when he left. His obligation runs until 2030, but the clock is running, even though he is on "inactive" status.

Statutory construction rules

For a number of reasons, using the rules of construction, the modification section of 692A.128 should be interpreted to allow a person with an inactive registration requirement in Iowa to use the modification statute.

(1) The statute should be considered to be "ambiguous." "Reasonable persons could disagree as to its meaning." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 770 (Iowa 2016).

The term "inactive" is not defined. The words "required to be registered" could mean a person who has a current, but inactive, registration obligation. Reasonable persons could differ as to the modification statute applies to "inactive" registrants.

(2) If "ambiguous" the goal is to determine legislative intent.

> "To ascertain legislative intent, we examine 'the language used, the purpose of the statute, the policies and remedies implicated, and the consequences resulting from different interpretations.' "
> Carreras v. Iowa Department of Transportation, Motor Vehicle Division, 977 N.W.2d 438, 446 (Iowa, 2022)

Section 692A was intended to allow low risk persons subject to registration to not have to register. It was also to allow law enforcement not to waste time on individuals with little or no risk to reoffend.

(2) A statute should be interpreted to be "reasonable, best achieves the statute's purpose, and avoids absurd results." Chavez v. MS Technology LLC, 972 N.W.2d 662, 668 (Iowa, 2022).

It would be an "absurd" result to require an out of state person to move back to Iowa to end a registration requirement.

(3) "If fairly possible, a statute will be construed to avoid doubt as to constitutionality." Simmons v. State Public Defender, 791 N.W.2d 69, 74 (Iowa, 2010)

We live in a mobile society. People with sex offenses in Iowa sometime move out of state. Most likely, where the offender moves elsewhere, that state has a provision like Iowa's that requires registration if you have to register someplace else.

Nathan Olsen has a current registration obligation in Iowa that lasts until 2030. Denying him access to the only way to modify that obligation violates the Privileges and Immunities Clauses of the respective constitutions.

There is a bigger problem with the Court of Appeals analysis. Even if the Court was right and the statute does not allow a person who has left the state and gone inactive to use the modification statute, the constitutional question remains.

If Iowa created a provision that allows only residents to seek modification statute early that provision at least needs to be reviewed as to the Constitutional claim.

If the Iowa statute contextually does not allow a person who is a non resident to use it, then the Court needs to address the constitutional problem. The Court of Appeals did not do that.

CONCLUSION

Nathan Olsen has an obligation to register in Iowa as a sex offender. That obligation lasts until 2030. It is "dormant" at the moment because he lives in Illinois. 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 2018. 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 offered proof of that assertion, which was not contested. He filed an application to end his 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,

/s/ Philip B. Mears
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ATTORNEY FOR APPELLANT

ATTORNEY'S CERTIFICATE OF COSTS

I, Philip B. Mears, Attorney for the Appellant, hereby certify that the cost of preparing the foregoing Appellant's Application for Further Review was $3.60.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This application complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.1103(4) because:

[X] this application has been prepared in a proportionally spaced typeface using Times New Roman in size 14 and contains 5535 words, excluding the parts of the brief exempted by Iowa Rs. App. P. 6.903(1)(f)(1)

/s/ Philip B. Mears
Signature

December 11, 2023
Date

CERTIFICATE OF SERVICE

On December 11, 2023, the undersigned certifies that a true copy of the foregoing instrument was served upon the Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to:

Nathan Olsen
1826 100th Ave
Aledo IL 61231

RESPECTFULLY SUBMITTED,

/s/ Philip B. Mears
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2023 WL 8067542
Only the Westlaw citation is currently available.
NOTICE: FINAL PUBLICATION DECISION PENDING
Court of Appeals of Iowa.

Nathan Daniel OLSEN, Applicant-Appellant,
v.
STATE of Iowa, Respondent-Appellee.

No. 22-0779
|
Filed November 21, 2023

Appeal from the Iowa District Court for Scott County, Tom Reidel, Judge.

Nathan Olsen appeals the dismissal of an application to modify a requirement to register with the Iowa Sex Offender Registry. **AFFIRMED.**

Attorneys and Law Firms

Philip B. Mears of Mears Law Office, Iowa City, for appellant.

Brenna Bird, Attorney General, and Thomas J. Ogden, Assistant Attorney General, for appellee State.

Heard by Bower, C.J., and Ahlers and Chicchelly, JJ.

Opinion

CHICCHELLY, Judge.

*1 Nathan Olsen, an out-of-state resident, appeals the dismissal of his application to modify his requirement to register with the Iowa Sex Offender Registry. He challenges the constitutionality of Iowa Code section 692A.128(3) (2021), which requires an application to modify the registration requirements "be filed in the sex offender's county of principal residence." Olsen contends that this requirement limits modification actions to Iowa residents, violating both the Privileges and Immunities Clause of the United States Constitution and article I, section 6 of the Iowa Constitution. Because the district court properly dismissed Olsen's application based on lack of jurisdiction, we affirm.

I. Background Facts and Proceedings.

Olsen was convicted of a sex offense in Wisconsin in 2009. He was granted a deferred judgment and placed on probation. Wisconsin does not require those who receive a deferred judgment for sex offenses to register for the sex offender registry.

Because Olsen was living in Iowa at the time of his sentence, he transferred his probation to Iowa. Unlike Wisconsin, Iowa law treats a deferred judgment as a conviction for purposes of its sex offender registry. *See* Iowa Code § 692A.101(7) (including "a person who has received a deferred ... judgment" in the definition of "convicted" under Iowa Code chapter 692A). Based on the nature of his conviction, Olsen was required to register as a sex offender for ten years.

In 2017, while still living in Iowa, Olsen was convicted of a registry violation. This conviction resulted in a ten-year extension of his requirement to register as a sex offender. *See id.* § 692A.106(4). But Olsen then moved to Illinois later that year, ending his requirement to register in Iowa.[1] *See id.* § 692A.106(7).

In August 2021, Olsen applied for modification of the sex offender registry requirement in the Scott County District Court. The application states his desire "to return to Iowa, specifically Scott County, once he is no longer required to register in Iowa." To allow for his return to Iowa, Olsen asked the court to remove the registration requirement.

The State moved to dismiss Olsen's application, arguing the court cannot grant relief because Olsen does not live, work, or study in Iowa. Citing the section 692A.128(3) requirement that offenders file modification actions in their county of principal residence,[2] the State argued that the legislature limited or restricted the ability of Iowa courts to entertain actions to modify the sex offender registration requirement to offenders who live, work, or go to school in Iowa. It also argued that the limitation "does not impede the immediate, necessary, efficient, or basic functioning of the district courts. Rather it frees the courts from litigation the legislature has deemed unwarranted."

*2 The district court found that "Iowa simply does not have the jurisdiction to modify his registration requirement" and dismissed the application. The court did not find the failure to comply with section 692A.128(3) requirement to file in the applicant's county of principal residence fatal. Rather, it found it could not modify the registration requirement because at the time of filing, Olsen did not need to register:

> As of right now, Olsen is not required to register in Iowa, because he does not live, work, or go to school here. Iowa cannot modify the requirement because he was not convicted in the state. Olsen is not required to register in Illinois—where he is currently living. He will only be required to register in Iowa if he decides to move back. In his petition and brief, the only connection Olsen claims to have to the state is that he used to live here and would like to move back eventually. This is not enough for Iowa to modify the registration requirement.
>
> ....
>
> 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.... 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 appeals.

II. Scope of Review.

We review rulings on a motion to dismiss for correction of errors at law. *O'Hara v. State*, 642 N.W.2d 303, 305 (Iowa 2002). We also review the court's interpretation of Iowa Code section 692A.128 for correction of errors at law. *See Fortune v. State*, 957 N.W.2d 696, 702 (Iowa 2021). But we review rulings on constitutional challenges to a sex offender registration statute de novo. *State v. Hess*, 983 N.W.2d 279, 284 (Iowa 2022).

III. Discussion.

On appeal, Olsen reasserts that prohibiting an out-of-state resident from seeking modification of a sex offender registry requirement violates the Privileges and Immunities Clause of the United States Constitution and article I, section 6 of the Iowa Constitution. But the district court did not dismiss the application because of Olsen's status as a non-resident; it dismissed the application based on lack of jurisdiction. Iowa law requires a person to register with the Iowa Sex Offender Registry when two requirements are met. *See* Iowa Code § 692A.103(1). First, one must be convicted of a sex offense. *See id.* Second, the offender must reside, be employed, or attend school in Iowa. *Id.* Olsen's 2009 Wisconsin conviction satisfies the first criterion. While Olsen lived in Iowa, he satisfied the second criterion. But the registration requirement ended when Olsen moved to Illinois in 2017. *See* Iowa Code § 692A.106(7) ("If a sex offender ceases to maintain a residence, employment, or attendance as a student in this state, the offender shall no longer be required to register ...."). The requirement will not resume unless Olsen lives, works, or attends school here. *See id.* ("If the sex offender subsequently reestablishes residence, employment, or attendance as a student in this state, the registration requirement under this chapter shall apply ...."). So although the court would have jurisdiction over Olsen if he lived in Iowa, his non-resident status does not determine the jurisdiction issue. The court would also have jurisdiction if Olsen worked or studied in Iowa despite his non-residence.

***3** Because Olsen does not live, work, or attend school in Iowa, he need not register with the Iowa Sex Offender Registry. In fact, he does not meet the most basic requirement for modification, which is that he be a sex offender within the meaning of chapter 692A. *See id.* § 692A.128(1) (only permitting a "sex offender" to file an application for modification); *see also id.* §§ 692A.101(26) (defining "sex offender" as "a person who is required to be registered under this chapter"), 692A.103(1) (requiring a person to register under chapter 692A only if "the offender resides, is employed, or attends school in this state"). His application seeks to modify a hypothetical requirement based on an anticipated future move to this state. To be ripe for adjudication, an action must involve "an actual, present controversy, as opposed to one that is merely hypothetical or speculative." *State v. Tripp*, 776 N.W.2d 855, 859 (Iowa 2010). "If a claim is not ripe for adjudication, a court is without jurisdiction to hear the claim and must dismiss it." *Iowa Coal Mining Co. v. Monroe Cnty.*, 555 N.W.2d 418, 432 (Iowa 1996).

The facts before us are like those in *State v. Bullock*, 638 N.W.2d 728, 734 (Iowa 2002), in which the sentencing court ordered the defendant to register as a sex offender for life. On appeal, the defendant argued the order was erroneous because the nature of his conviction required that he register for only ten years. *Bullock*, 638 N.W.2d at 734. But the supreme court noted that (1) the registration requirement triggers after an

offender is released from prison and (2) how long an offender must register is decided by the Iowa Department of Public Safety, not the court. *Id.* at 735. Because the defendant in *Bullock* was still incarcerated and the department had not determined his registration requirements, the supreme court held the issue was not ripe for review:

> Until the Department has made a decision on the defendant's term of registration, there is no concrete controversy. Any adjudication by the district court prior to an administrative decision and a request for judicial review of that decision is premature. Therefore, the nature and extent of the defendant's registration obligation are issues that are not ripe for our review.

Id.

As in *Bullock*, the event Olsen anticipates will require him to register again—his relocation to Iowa—has not occurred. Olsen has stated his desire to return to the state. But until he does, there is no registration requirement. Without a registration requirement, there is nothing for the court to modify, and Olsen's application to modify the sex offender registration requirement is not ripe for review. Because the district court properly dismissed Olsen's application based on lack of jurisdiction, we affirm.

AFFIRMED.

All Citations

Slip Copy, 2023 WL 8067542 (Table)

Footnotes

1 There is no requirement for Olsen to register as a sex offender in Illinois based on the Wisconsin deferred judgment.

2 "Principal residence" is defined as "[t]he residence of the offender" or "[t]he place of employment or attendance as a student, or both, if the sex offender does not have a residence in the state." Iowa Code § 692A.101(20).

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