IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 17-0638
POLK COUNTY NO. LACL132565

MATTHEW JAHNKE,
Plaintiff-Appellee

vs.

DEERE & COMPANY, RICHARD CZARNECKI, and BERNHARD HAAS,
Defendants-Appellants

Appeal from the Iowa District Court for Polk County
The Honorable David Porter

PLAINTIFF-APPELLEE'S AMENDED FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

Paige Fiedler AT0002496
paige@employmentlawiowa.com
Nathan Borland AT0011802
nate@employmentlawiowa.com
FIEDLER & TIMMER, P.L.L.C.
8831 Windsor Parkway
Johnston, Iowa 50131
Telephone: (515) 254-1999; Facsimile: (515) 254-9923

Roxanne Barton Conlin
ROXANNE CONLIN & ASSOCIATES, P.C.
3721 SW 61st Street, Suite C
Des Moines, IA 50321
Phone: (515) 283-1111; Fax: (515) 282-0477
Email: roxlaw@aol.com
ATTORNEYS FOR PLAINTIFF-APPELLEE

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ROUTING STATEMENT

Having granted interlocutory appeal, the Supreme Court should retain this case under Iowa Rules of Appellate Procedure 6.1101(2)(c) and (f).

STATEMENT OF THE CASE

Does the Iowa Civil Rights Act apply to the decision made in Iowa by Iowa defendants to discriminate against an Iowa citizen on temporary assignment overseas when the employment relationship was formed in and has always been centered in Iowa, and the effects of the discrimination are experienced in Iowa?

Introductory Statement Regarding Defendants' Extraneous and Misleading Factual Allegations

The only legal issue before the Court is whether the Defendants' decision to demote and expatriate Plaintiff Matthew Jahnke is within the reach of the Iowa Civil Rights Act. The district court held the evidence was sufficient to allow a reasonable jury to decide that Defendants were motivated by discriminatory bias, and that holding is not under review.

Yet Defendants spend much of their factual summary arguing the merits of the case. They have included in their Brief various irrelevant allegations,[1] some of which

[1] Some of the allegations are true; some are false; some are genuinely disputed; and all have been set forth in the light most favorable to Defendants, the parties who moved for summary judgment. This, of course, is the opposite of the requirement in Iowa

sound salacious, solely in an attempt to vilify Matthew and persuade the Court that—regardless of any legal reasoning to the contrary—Matthew does not deserve to win this lawsuit. After all, judges are human beings and may naturally feel less compulsion to be scrupulously fair to a person who looks like a miscreant.

Defendants' inclusion of so many irrelevant and inflammatory facts leaves Matthew with no choice but to respond to those facts and include additional facts to counter Defendants' efforts.

STATEMENT OF FACTS

Matthew's Employment with Defendants Has Always Been Centered in Iowa

Matthew was hired by Deere & Company ("Deere") in 1998 in Waterloo, Iowa, and has held the following positions:

- Assembly Manager at the John Deere Engine Works in Waterloo;
- President of John Deere Reman in Springfield, Missouri;
- Redevelopment Manager at the Donald Street site in Waterloo (Deere's largest factory);
- Division Superintendent Drivetrain Assembly at the Westfield Avenue site in Waterloo;

Rule of Civil Procedure 1.981. By presenting factual contentions in this manner, Defendants do a profound disservice to the Court, which must try to sort out which "facts" are really true, which "facts" are actually disputed, and on which "facts" it can actually rely to decide the outcome of this case.

- Project Manager Manufacturing Engineering U8 Cab in Waterloo;
- Manager Manufacturing at John Deere Des Moines Works in Ankeny, Iowa;
- Global Manufacturing Engineering Manager for the John Deere Crop Care Product Line in Ankeny;
- Project Manager in Harbin, China, where he created a plan and secured funding for a new factory, including managing teams to construct and staff the facility and working with Chinese authorities to secure the various operating and business permits;
- Factory Manager in Harbin, where he met goals for safety, quality, on-time delivery, profitability, and environmental performance; and
- Program Manager for the 9RX tractor in Waterloo, where he was charged with the responsibility to meet goals related to the timing of the product introduction, quality, reliability, cost, price, and customer/product support.

Jahnke Aff. ¶ 1 (JA-I 469-70).

During 13 of the 18 years Matthew worked for Deere, he lived and worked in Iowa. Jahnke Aff. ¶ 2 (JA-I 470). He has maintained an Iowa address continuously since 2000. Jahnke Aff. ¶ 3 (JA-I 470).

The job assignment in Harbin was temporary in nature. It was scheduled to last only through December 2014. *See* Def. SOF 6, ¶ 37, (Jahnke Dep. 44:16-25) (JA-II 48).

Throughout the time Matthew worked in China, he never stopped considering Iowa to be his home, where he intended to return. Jahnke Aff. ¶ 11 (JA-I 471). When Matthew left for China in January 2011, his family continued to live in Iowa. Jahnke Aff. ¶ 4 (JA-I 470). They owned a home in Urbandale, his son attended high school at Dallas Center-Grimes, and his daughter attended Loras College in Dubuque. *Id.* In May 2011, Matthew and his family moved to Cedar Falls. Jahnke Aff. ¶ 5 (JA-I 470). As he continued to work in China, Matthew's son attended the University of Northern Iowa in Cedar Falls and later Hawkeye Community College in Waterloo. *Id.* Even after Matthew started working in China, he shared the home in Cedar Falls with his wife until their breakup. Jahnke Aff. ¶ 6 (JA-I 470). After that, Matthew kept a post office box in Bettendorf to receive mail until he came back to Iowa full-time. *Id.*

When Matthew filed for divorce in April 2012, he swore—under the penalty of perjury—that he had been a resident of the State of Iowa for the last year, notwithstanding also having temporarily resided in China. Petition for Dissolution ¶ 9 (JA-I 417-19).

When Deere repatriated Matthew in July 2014, he immediately began living in LaPorte City, Iowa. Jahnke Aff. ¶ 7 (JA-I 471). He bought a home there in September 2014. *Id.*

Throughout the time Matthew was assigned to work at China, he continued to maintain his Iowa voter's registration. Jahnke Aff. ¶ 8 (JA-I 471). He continued to own vehicles that were registered in Iowa. Jahnke Aff. ¶ 9 (JA-I 471).

During his stay in China, Matthew continued to do his banking in Iowa. Jahnke Aff. ¶ 10 (JA-I 471). Until his divorce, Matthew's paycheck from Deere was direct deposited into his account at Veridian Credit Union in Waterloo. *Id.* After that, it went into the Deere Employees Credit Union, which has multiple Iowa locations. *Id.*

Perhaps most importantly, *Defendants themselves* always considered Matthew to be an Iowa worker. Throughout the time Matthew was assigned to work at China, Deere records confirm that Matthew's "home unit" remained John Deere Des Moines Works in Ankeny. Petition & Answer ¶ 14. Matthew's home unit manager was Alisa Crandell, the Ankeny HR manager, who was Matthew's resource for everything related to compensation, benefits, housing, and home leave. Jahnke Affidavit ¶ 12 (JA-I 471).

Throughout the time Matthew was assigned to work at China, he reported to Richard Czarnecki, from Waterloo. Def. Resp. ICRC, p. 2 (JA-I 460). Czarnecki reported to Bernhard Haas, who had lived in Bettendorf since at least 2007 and had an office in Moline. Haas Dep. 16:2-13 (JA-I 355); Warranty Deed (JA-I 414-15).

Deere continued to cover Matthew under its benefit plans for employees in the United States. Letter 12.21.11, p. 3 (JA-II 303). Matthew and Deere continued to

make Social Security contributions on his behalf. *Id.* Matthew continued to receive the vacation time set forth in the policies of John Deere Des Moines Works in Ankeny. *Id.* at p. 10 (JA-II 310).

Throughout the time Matthew was assigned to China, he worked with Deere employees in Iowa on a daily basis.[2] Jahnke Affidavit ¶ 13 (JA-I 471). Matthew's work in China was closely tied to Deere's Iowa operations. Jahnke Affidavit ¶ 14 (JA-I 471). The China factory assembled cotton pickers manufactured in Ankeny, sprayers manufactured in Ankeny, large tractors manufactured in Waterloo, and seeding equipment manufactured in Bettendorf. *Id.*

Deere required Matthew to return to Iowa four or five times a year. During those visits, Matthew worked, visited customers, and attended meetings with engineers, quality assurance, and marketing. *Id.* Matthew was also involved in ensuring that all Deere products manufactured in Iowa met the legal requirements for sale in China. Jahnke Affidavit ¶ 16 (JA-I 472). These duties required him to meet with project managers in Ankeny, as well as other Iowa employees. *Id.* On one occasion Matthew traveled from China to Ankeny with Chinese government representatives who were considering buying cotton pickers and sprayers. Jahnke Affidavit ¶ 17 (JA-I 472).

[2] Defendants claim the opposite: "while on the expatriate assignment, Jahnke did not transact Deere business in Iowa." Def. Brief 79. They provide no citation to the record to support this unequivocally inaccurate representation.

During his tenure in Harbin, Matthew earned excellent performance evaluations. Appraisals 2011-13 (JA-II 322-57).

Deere's Policies Regarding Reporting Personal Relationships

Prior to October 26, 2012, Deere's employee handbook was called the "Business Conduct Guidelines." (JA-II 388). The Guidelines said nothing about personal relationships between employees and contained nothing requiring employees to report such relationships to the corporation. *See* JA-I 420-48, particularly the Conflicts of Interest policy at 215-18.[3] The Business Conduct Guidelines are the rules that applied to Matthew and Pei Feng at the time they worked on projects together from the fall of 2011 until January 2012. *See* JA-II 388 (Despite its obvious applicability to that time frame, Defendants did not even produce the Business Conduct Guidelines to the district court.)

Deere revised its handbook effective October 26, 2012, and renamed it the "Code of Business Conduct." (JA-I 388, 448, JA-II 325-62). It was these policies that Defendants accused Matthew and Pei Feng of violating—*even though the policies had not yet been written at the time Matthew and Pei Feng were accused of violating them*.

[3] Since the summary judgment record was closed, Plaintiff has discovered that the version of the Business Conduct Guidelines in the record is not the one that was in effect in 2011-12, but is instead a prior version. The relevant Conflict of Interest policy, however, was unchanged, so the version at pages 215-18 is accurate.

However, even the new Code of Business Conduct[4] did not require employees to disclose their personal romantic relationships to the corporation unless they were within each other's "span of control." (JA-I 68). "Span of control" meant that: (1) one or both employees had the ability to influence the other's career **and** (2) the employees were in the same "operating unit, functional area or direct reporting chain." *Id.*

The Code does not define "operating unit," "functional area," or "direct reporting chain." *See* JA-I 51-72, 121-36. According to Defendant Haas, examples of "operating units" include the Accounting or Marketing department within a factory. Haas Dep. 118:6 – 120:1 (JA-I 356). An entire factory might also be an "operating unit." Haas Dep. 118:8-9 (JA-I 356). Matthew and Pei Feng were never assigned to the same operating unit. His operating unit was Harbin and her operating unit was Jiamusi. Jahnke Affidavit ¶¶ 30-31(JA-I 475).

According to Defendants Haas and Czarnecki, an example of a "functional area" would be the Marketing or Engineering function throughout the entire company. Haas Dep. 119:22 – 120:1; Czarnecki Dep. 96:24 – 97:6 (JA-I 356, 328-29). Matthew and Pei Feng were never assigned to the same functional area. His

[4] It turns out the Code of Business Conduct produced by Defendants to the district court was not the one that was in effect in 2012, but instead was written even later. The conflict of interest policy that was effective during 2012 did not require employees to disclose "potential" conflicts of interest—only "actual" conflicts of interest. *See* JA-I 68.

functional area was Operations and her functional area was Finance. Jahnke Affidavit ¶ 31 (JA-I 475).

Finally, Matthew and Pei Feng were never within the same "direct (or indirect) reporting chain." Jahnke Dep. 54:10-16, 119:20-22 (JA-I 366, 370). They never had a solid-line nor a dotted-line reporting relationship. *Id.* She never worked for him in any capacity. Jahnke Dep. 143:9:11 (JA-I 376). "It didn't happen." *Id.* They were never within each other's span of control. Jahnke Dep. 119:15-19; Pei Affidavit ¶ 3 (JA-I 370, JA-I 466); *see also* JA-II 250 (Laurie Simpson acknowledging that Pei Feng was never in Matthew's "direct span of control.").

In March 2014, Vice President & Chief Compliance Officer Laurie Simpson visited Harbin. She provided training to Matthew and other managers about reporting conflicts of interest. (JA-II 241). She stressed that romantic relationships are difficult things, that Deere does not expect employees to come marching in and report a relationship within their span of control on the first day it starts because at that point, no one knows how it is going to turn out. Jahnke Dep. 33:20 – 34:7 (JA-I 364). Simpson said "private is private," and that Deere does not seek to regulate employees' personal lives. *Id.*

Matthew's Employment Contract

Defendants imply that they demoted Matthew based on provisions of his written employment contract. However, Defendants have never contended, either at the time they demoted Matthew or when they sought summary judgment from the district court, that Matthew's written employment contract played any part in their decisions. Defendants' investigative report made no mention of the contract, which expired in January 2014, prior to the time Defendants' investigation had even begun. *See* Investigation Summary (JA-II 102-15) and JA-I 198, ¶ 1.1.

Defendants' sole contention has been that they based their decision **entirely** on the 2014 Code of Business Conduct. They said so **seven** times in their Summary Judgment brief to the district court. *See* Memo. Support Def. Mot. SJ, 1, 9, 10, 12 n.5, 14, 16, 17. Unless Defendants' intent was to mislead, it is perplexing that they included excerpts from the contract in their recitation of facts to this Court.

Furthermore, Defendants completely ignore the fact that Pei Feng's employment contract contained the exact same provisions regarding conflicts of interest. Pei Contract; Fang Gann Affidavit (JA-II 284-91, JA-I 468). The contracts provide no excuse for their disparate treatment.

Pei Feng Never Reported to Matthew

Contrary to Defendants' factual allegations to this Court, Pei Feng never reported to Matthew. Pei Affidavit ¶ 2; Jahnke Affidavit ¶¶ 30-31 (JA-I 466, 475). No Deere records reflect any such reporting relationship. Of course, whether Pei ever

reported to Matthew has absolutely nothing to do with whether Matthew's claims are within the ICRA's geographic reach. Nevertheless, since Defendants have misconstrued the facts, Matthew must set the record straight. Here is what happened:

In July 2011, the Harbin project lost its controller. July 2011 Emails (JA-II 294). Matthew tried to get China Finance Manager Randy Lindstrom to allow him to hire Pei as the Harbin controller, but Lindstrom refused.[5] Jahnke Affidavit ¶ 19 (JA-I 472). Lindstrom then said Pei could take over the controller responsibilities at Harbin until they were able to hire an accounting/finance manager. Jahnke Affidavit ¶ 20 (JA-I 472). Lindstrom said he was going to establish a higher-level role for Pei as a regional controller with responsibilities over several factories. Jahnke Affidavit ¶ 20; Jahnke Dep. 120:13-17; Pei Dep. 60:8-16 (JA-I 472, 370, 342).

In July or August 2011, prior to getting the necessary approval to make Pei's promotion official, Lindstrom began giving her work assignments designed to assist Harbin's accounting team. Jahnke Dep. 121:13 – 122:4, 123:11-14, 131:1-7; Pei Dep. 63:2-16 (JA-I 371, 373, 343). For several months, Pei functioned as regional controller over northeast China, with responsibilities toward both Harbin and Jiamusu, even though she was never given the title. Jahnke Dep. 140:15-23 (JA-I 375).

[5] At that time, Pei Feng was the controller at the Deere factory in Jiamsu, China. Pei Affidavit ¶ 1 (JA-I 378). She and Matthew had no relationship. *See* Jahnke Dep. 17-19 (JA-I 361).

Deere never sent out any announcement that Pei Feng had been appointed to be a regional controller or assigned to any job related to Harbin. Jahnke Affidavit ¶ 21 (JA-I 472); *cf.* JA-I 416, JA-II 292-93, JA-II 299-300, JA-II 319-20.

If Lindstrom had taken over those responsibilities himself, no one would have said he was within Matthew's span of control. It was no different when Lindstrom delegated those responsibilities to Pei. Jahnke Affidavit ¶ 25 (JA-I 473).

Throughout the time period in which Pei Feng helped Harbin, she continued to report to Alan Sun with a dotted line to Lindstrom. Pei Dep. 12:19-21, 13:17–14:13 (JA-I 332-33). Lindstrom never planned for Pei to report to Jahnke, either directly or indirectly. Jahnke Dep. 134:14-16; Pei Dep. 61:14-15 (JA-I 374, 343).

On October 24, 2011, Deere hired Charlie Wang, a/k/a Wang HongSheng, to be the accounting/finance manager at Harbin. C. Wang Announcement (JA-II 299-300). Wang managed the finance team at Harbin and reported to Matthew. *Id.*; Jahnke Dep. 141:21 – 142:3 (JA-I 376). Lindstrom planned for Wang to continue reporting directly to Matthew, with a dotted line to Pei Feng. Jahnke Dep. 139:15 – 140:8 (JA-I 375); *see also* Draft Organizational Chart (JA-I 389).

Pei Feng and Matthew always worked for completely separate branches of the company. Jahnke Affidavit ¶ 23 (JA-I 473). She reported through the Harvesting business unit, and Matthew reported through the Tractor business unit. Throughout their entire chain of command, they shared no supervisor in common except for

Chairman/CEO Sam Allen. *See* Pl. SOF ¶ 30. Even the draft organizational chart shows no reporting relationship between Pei Feng and Matthew. (JA-II 389).

Ultimately, Lindstrom could not gather the corporate support necessary to create the position of regional controller. Karen Chapin was controller of the Harvesting business unit. Pei Dep. 68:18-20 (JA-I 344). In approximately December 2011, Chapin approached Pei to express her unhappiness. Pei Dep. 68:11-25, 70:3-4 (JA-I 344-45). She did not like Lindstrom's idea to establish a regional controller, and she directed Pei to stop helping Harbin. Pei Dep. 70:10-14, 92:5-12 (JA-I 345-46).

Lindstrom wanted to promote Charlie Wang to be the Harbin controller, but Wang declined. Jahnke Affidavit ¶ 22 (JA-I 472-73); JA-II 318. Barbara Wang was appointed controller of Harbin on January 31, 2012. (JA-II 319-20). Her announcement explained she was taking over for Wang HongSheng (Charlie Wang) as "the main point of contact for all finance matters relating to the Harbin operations." (JA-II 319).

Pei Feng and Matthew have never been within each other's "span of control" as Deere defines that term of art. Jahnke Dep. 119:17-19; Pei Affidavit ¶ 3 (JA-I 370, 466). They have never been within each other's chain of command; they have never had any kind of reporting relationship—either direct or indirect. Jahnke Affidavit ¶ 24; Pei Affidavit ¶¶ 2-3 (JA-I 473, 466). Neither Matthew nor Pei ever had any input in the other one's performance appraisals. Jahnke Affidavit ¶ 24; Pei Affidavit ¶ 3 (JA-I 473, 466).

Matthew and Pei Feng's Romantic Relationship

Deere's corporate culture does not discourage romantic relationships between coworkers as long as they do not create a conflict of interest. Jahnke Dep. 56:11-13, 57:17-20 (JA-I 366-67). Nor does the romantic relationship between Matthew and Pei Feng have anything to do with the questions Defendants present to this Court. Nevertheless, since Defendants have addressed the relationship, so must Matthew.

Matthew and Pei Feng were first intimate in late October 2011; however, they saw each other infrequently. Jahnke Dep. 10:5-6, 11:19-21 (JA-I 359). For a time, Matthew tried to reconcile with his estranged wife, and repeatedly flew back to the United States for marriage counseling. Jahnke Dep. 11:22 – 12:2 (JA-I 359). Neither Matthew nor Pei considered their relationship to be serious until April 2012, when they took a trip to Thailand. Jahnke Dep. 12:5-7, 28:1-8, 28:22-29:8; Pei Dep. 124:7-13 (JA-I 359, 362-63, 350). This was after Pei had stopped supporting Harbin. *See* Pei Dep. 68:11-25, 70:3-14, 92:5-12 (JA-I 344-46). Matthew and Pei are still in a romantic relationship today. Pei Dep. 123:21-124:6 (JA-I 350); Jahnke Dep. 6:23-25, 10:1-2, 16:16-23 (JA-I 358-60).

Matthew's Relationship with Xu MeiDuo

In 2013 and early 2014, during a time period in which Pei Feng and Matthew had temporarily broken up, Matthew had a short, very casual relationship with Xu MeiDuo, an independent contractor who did translating for Deere in Harbin. Jahnke Dep. 29:12–31:2 (JA-I 363). This relationship has even less to do with the questions

Defendants present to this Court because Deere's investigation found Matthew properly disclosed it.[6] Sometime in the spring of 2014, Matthew and Pei got back together and he ended his relationship with Xu. Jahnke Affidavit ¶ 28 (JA-I 475).

Until June 2014, no one from Deere ever discussed with Matthew his relationship with Xu or hinted it was a problem. Jahnke Affidavit ¶ 32 (JA-I 475). Even then, Matthew's bosses' only criticism was Matthew's age in comparison to Xu's age.

Czarnecki, Haas, and Others Involved in the Discriminatory Decisions Reveal Bias Related to Age, Gender, and National Origin

On June 5, 2014, Deere Investigator Danny Macdonald speculated to several individuals involved in the compliance investigation that Matthew was presently having relationships with both Pei Feng and Xu MeiDuo. (JA-II 277-78). This assumption was false. Jahnke Affidavit ¶ 28 (JA-I 475); Pei Dep. 110:1-5 (JA-I 349). Global Human Resources Director Andrew Jackson immediately adopted the same assumption and jumped to the conclusion that Matt should be repatriated. (JA-II 277).

During Matthew's relationship with Xu, she was 28 years old and he was 60. ICRC Narrative, p. 1 (JA-I 453). Macdonald revealed that his conclusions were tainted

[6] Despite that, Defendants tell this Court that Matthew "failed to properly disclose both his personal relationships." Def. Brief 19. This is false. Deere found out about his relationship with Xu MeiDuo through Matthew's self-report—not through the Compliance Investigation. *See* JA-II 277-80; Jahnke Dep. 30:2-5 (JA-I 363). Not only do Deere's own records reflect Matthew's disclosure (*see* JA-II 279), Deere's own investigation made no finding that Matthew did anything wrong either by dating Xu or in reporting their relationship. *See* Investigation Summary (JA-II 106-09, 111-12, 114-15).

by the stereotypes of both himself and others, stating that if Xu "is a youngish female (early 20's etc.,) there could be the obvious perception of an oldish factory manager abusing his influence/position—and create [sic] some possible exposure for the company." (JA-II 276). Jackson responded that China Country Manager Jinghui was also concerned about "in Country embarrassment/distraction/gossip/negative perception etc." *Id.* The reasonable inference to be drawn is that Deere thought it looked bad for them to have an older American man mixing socially outside the workplace with younger Chinese women.

On June 6, 2012, Jackson emailed Human Resources Executives Max Guinn and Marc Howze to suggest they talk privately with Czarnecki or Haas about the investigation and possible roles Matthew might be able to assume back in the United States. (JA-II 241). Laurie Simpson responded that she had already spoken to Bernhard Haas about the investigation. *Id.*

Howze asked whether the female employees with whom Matthew had had relationships were within his hierarchy. (JA-II 252). In response, Simpson appeared to acknowledge that Pei and Matthew were never within each other's "span of control." *See* JA-II 251. Simpson said Pei (Diana) had supported the Harbin accounting function "on a fairly limited part-time basis (from mid-2011 through early 2012) while Harbin was ramping up and getting the accounting team pulled together. Diana did not report directly to Matt, nor did he act as a Manager 2 for her [performance evaluation.]" *Id.*

On June 10, 2014, Simpson confirmed that "Diana wasn't in [Matthew's] direct span of control" even assuming she *had* actually functioned as the acting controller at Harbin. (JA-II 250). Nevertheless, Simpson told Defendant Haas to be thinking about actions he would want to take after receiving Human Resources' recommendation to discipline Matthew. *Id.*

During a phone conference on June 10, 2014, Simpson and Richard Czarnecki repeatedly discussed Matthew's age. *See* Simpson Notes (JA-II 365-66). Simpson noted that Czarnecki believed Matthew was around 62 years old. *Id.* Simpson later clarified that Matthew would turn 61 on August 24, 2014. *Id.*

All this took place before anyone bothered to speak to Matthew or Pei about the allegations, which did not take place until June 17, 2014. *See* JA-II 264. Investigators ambushed Matthew and Pei simultaneously at their separate offices 1,500 miles apart. Jahnke Dep. 158:8-11, 160:17:24 (JA-I 377); (JA-II 270, 264-67). Mathew and Pei were peppered with questions concerning their private relationship and its inception over two years earlier. (JA-II 264-67).

On June 17, 2014, Macdonald emailed several individuals and provided them notes from that day's interviews of Matthew, Pei, and Xu MeiDuo. (JA-II 225-30). On the same day, Jackson stated that the China Compliance Committee and Laurie Simpson were meeting "to discuss this and make appropriate *recommendations* for review by corporate/stay tuned." (JA-II 224-25) (emphasis added). Macdonald set forth the recommendation that Simpson would "liaise with Rich Czarnecki and provide details

of the interviews. Rich will be asked to have a face to face meeting with Matt next week (and possibly a call in the interim to inform Matt that he will be meeting with him next week to discuss)." (JA-II 263). Macdonald also stated that "a decision on the outcome will be provided by Rich [Czarnecki]." *Id.*

On June 18, Simpson and Global HR Director Robin Singh had a phone conference with Czarnecki. (JA-II 197-98). Simpson stated, "We don't have any firm decisions yet. Rich is considering whether there might be any potential roles for Matt back in the U.S." (JA-II 198).

Also on June 18, Jackson called Matthew to tell him "the results of the investigation have been discussed with appropriate leadership" and different options were being evaluated. (JA-II 197-98, 204). Matthew responded that he did not believe he had done anything wrong and that he has never impugned Deere's integrity or his own credibility. (JA-II 204). Matthew assured Jackson that he was no longer seeing Xu MeiDuo and that he and Pei Feng were in a serious relationship. (JA-II 205). According to Jackson and Simpson, Matthew "was very rational and is holding a firm position that he didn't do anything wrong." *Id.*

In response to a request from Guinn to make a recommendation about Matthew's future, Jackson stated: "repatriate him as soon as possible." (JA-II 224). Laurie Simpson replied, "Yes, this is the plan. Robin [Singh], Bernhard [Haas], Rich C[znarnecki] and I met this morning." *Id.* "Bernhard will be meeting with Matt when he is in China next week. He is fully prepared for the conversation." *Id.*

Simpson indicated that "Bernhard/Rich will have . . . an individual contributor role" position for Matthew in Waterloo. (JA-II 223). This assignment as program manager was two salary grades lower than Matthew's position in Harbin. Def. Resp. ICRC, p. 5 (JA-I 463).

Despite all the concerns expressed earlier in June about whether Matthew and Pei Feng even had the type of workplace relationship that would trigger a reporting requirement, there is no evidence the investigation ever uncovered any evidence that they were ever within each other's span of control. The issue was just dropped.

Further, no one ever brought up the fact that the Code of Business Conduct did not apply or that the Business Conduct Guide—which *was* in effect during 2011 and the first 10 months of 2012—did *not* require Matthew or Pei Feng to report their relationship. *See* JA-I 388, Business Conduct Guide, pp. 11-14 (JA-I 431-34).

Defendants Discipline Matthew

On November 14, 2014, Deere told the Iowa Civil Rights Commission that because Matthew "was in violation of John Deere's Code of Business Conduct," he was removed from his position as factory manager in China, repatriated back to the United States, "and placed in a position of lesser authority." Def. Resp. ICRC, p. 4 (JA-I 462).

No one from China responded to Matthew's ICRC complaint. Rather, Deere gave that responsibility to Alisa Crandell from Ankeny—Matthew's home unit manager during the events alleged to be discriminatory. Deere and Crandell admitted to the ICRC that Richard Czarnecki, Bernhard Haas, and Robin Singh were the ones who

decided to take the adverse action against Matthew. Def. Resp. ICRC, pp. 4-5 (JA-I 462-63). Defendants Czarnecki and Haas are both Iowans. *See* p. 8, supra.

Individuals engaged in the disciplinary decision for Mr. Jahnke were:

Name	**Job Title**	**Gender**	**National Origin**	**Age**
Robin Singh	Global HR Director	Male	India	49
Bernhard Haas	Senior Vice President, Ag & Turf, Global Platform	Male	Germany	60
	Tractor			
Richard Czarnecki	Global Director Large Tractor Product Line	Male	US	52

(JA-I 462-63).

Czarnecki and Haas told Matthew of his upcoming demotion at a meeting in Beijing on June 26, 2014. ICRC Narrative, p. 1 (JA-I 453). It appeared to Matthew that their perceptions about his relationships were based on stereotypes related to gender, age, and national origin. *Id.* When Matthew tried to correct their misconceptions about the facts, Czarnecki and Haas told him to "stop arguing" because the decisions had already been made. *Id.* Czarnecki told Matthew that "as an American citizen working on John Deere's behalf as a guest in China your conduct could have brought embarrassment to the company." *Id.*

Even though Matthew had properly reported his relationship with Xu MeiDuo, Czarnecki and Haas were uncomfortable with the age difference. *Id.* Haas expressed

horror about how old Matthew was in comparison to Xu. ICRC Narrative, p. 2 (JA-I 454). He exclaimed, "You had a relationship with a 20-year old!" *Id.* Matthew got the distinct impression that his age was a factor that loomed large in Haas' decision and that he may not have been punished if he had been younger and closer to the ages of Xu or Pei. *Id.*

As Matthew stated in his civil rights complaint, the "decisionmakers assumed that [he] was more to blame because [he] was the man." *Id.* "It was almost like everyone thought [he] had 'taken advantage'" of Xu and Pei. *Id.* Defendants "relied on sexist stereotypes about the tendency of males to prey on females in the workplace and assumed—without any evidence—that [Matthew] was one of those males. (This view also reflects unwarranted, biased assumptions about females in general and Ms. Pei in particular.)" *Id.*

The stereotypical views expressed by Czarnecki and Haas were consistent with those expressed by Macdonald, Jackson, and Jinghui when they expressed concern about "the obvious perception of an oldish factory manager abusing his influence/position" and the embarrassment and negative perceptions this might create within China. *See* JA-II 241-42.

Deere disciplined Matthew despite the fact that the investigation found no evidence that either Matthew or Pei Feng made any attempts to realize personal gain, exert improper influence, or improperly use company resources during their relationship. (JA-II 91). In July 2014, Laurie Simpson told Matthew that even though

no conflict of interest occurred because of the relationship between him and Pei, there could have been a "perceived violation" of the Code of Business Conduct. Jahnke Affidavit ¶ 35 (JA-I 476). She said this finding had been reported to Matthew's supervisors and Pei's supervisors with the recommendation that any action they took should take into account "the cultural differences between China and the U.S." *Id.*

When it came time for 2014 performance reviews, Czarnecki once again rated Matthew's substantive performance as a 5 out a possible 6 and characterized it as "successful;" yet Czarnecki gave Matthew a "people rating" of 2 (unsatisfactory). 2014 Appraisal (JA-II 378-87). Czarnecki stated: "As the Project Manager and Factory Manager, you made decisions involving relationships with people either directly or indirectly within your span of authority that didn't reflect what is expected of a leader within Deere." (JA-II 387).

Deere Treats Similarly Situated Younger Female Chinese Manager Much Differently than Matthew

Deere trains its employees that its conflict of interest policies should be applied equally to everyone regardless of their level within the organization. Czarnecki Dep. 122:21–123:9 (JA-I 330).

Pei Feng never reported her relationship with Matthew to Deere. Pei Dep. 54:9 (JA-I 341). She never sought advice from anyone about whether to report it because she knew it was not a conflict of interest. Pei Dep. 107:15-19 (JA-I 348).

Deere's investigation found that both Matthew and Pei Feng violated the 2012 Code of Business Conduct by failing to report their private romantic relationship to Deere. Investigation Summary (JA-II 102, 114-15). Yet no one ever told Pei that she had violated the Code of Business Conduct. Pei Affidavit ¶ 5 (JA-I 467). She was never disciplined or even warned. *Id.*; Pei Dep. 126:17-20 (JA-I 351).

Kara Fischer was a member of the China Compliance Team, and by 2014, had replaced Lindstrom as one of Pei Feng's bosses. Pei Dep. 20:24 – 21:1 (JA-I 334-35). Fischer assured Pei that she had not done anything wrong because she and Matthew were never in the same chain of command and he did not authorize expense reimbursements for her. Fischer Email (JA-I 491); Pei Dep. 126:2-20 (JA-I 351). Fischer also told Pei that she did not think there had been a conflict of interest and there would be no action taken against Pei. Pei Dep. 126:2-20 (JA-I 351).

Czarnecki gave Matthew an unsatisfactory "people rating" in his 2014 performance appraisal, saying Matthew "made decisions involving relationships with people either directly or indirectly within your span of authority that didn't reflect what is expected of a leader within Deere." 2014 Appraisal (JA-II 378-87).

Although Pei was also a "leader within Deere," her 2014 performance appraisal contained none of the harsh criticisms about failing to report her relationship with Matthew. *See* Pei's 2014 Appraisal (JA-II 368-77). In fact, Pei's appraisal did not even mention or allude to her supposed violation of the conflict of interest policy. *Id.* Pei received ratings of "successful" and "highly successful." (JA-II 368, 376).

Pei Feng has been a "compliance ambassador" for Deere since at least October 2012. Pei Dep. 44-52; Dep. Ex. 63 (JA-I 338-40, 387). Deere provides compliance ambassadors with special training regarding conflicts of interest. Smith Dep. 81:3-6 (JA-I 386). As a compliance ambassador, Pei was charged with the responsibility to help foster ethical corporate values and a "culture of integrity." Pei Dep. 52:19-22; Dep. Ex. 64; Dep. Ex. 65 (JA-I 340, 388-404, 405-13). She acted as a point of contact for employees with questions on how to follow Deere's compliance policies. *Id.* To this day, Deere continues to tell its employees to go to Pei with questions on how best to follow its compliance policies. *Id.* No one at Deere has ever hinted that she lacks integrity, that she has not always modeled appropriate ethical standards to the rest of the company, or that she does not act in a manner consistent with Deere's standards regarding compliance ambassadors. Pei Affidavit ¶ 7 (JA-I 467).

Pei Feng has held two other controller positions since she worked in Jiamusi. In each job, she has had access to extremely confidential information such as employee salaries, customer credit issues, budgets, compliance investigations, product pricing, tax issues, and profitability. Pei Affidavit ¶ 10 (JA-I 467). No one from Deere has ever expressed any hesitation about entrusting her with such highly sensitive matters. *Id.*

ARGUMENT

INTRODUCTION

The question raised by Defendants is whether Iowa Courts have subject matter jurisdiction over a case in which a long-time Iowa citizen was subjected to discriminatory decisions, made in Iowa, by Iowa Defendants. Contrary to Defendants' contentions, Iowa courts certainly have such authority.[7]

Standard of Review: Plaintiff agrees that the standard of review is correction of errors at law.

I. DEFENDANTS' ARGUMENT ABOUT WHETHER THE IOWA CIVIL RIGHTS ACT SHOULD BE APPLIED EXTRATERRITORIALLY IS A STRAWMAN

Throughout this litigation, Plaintiff has never argued that the ICRA should be applied extraterritorially. The district court never ruled the ICRA had extraterritorial reach. For some reason, Defendants devote 27 pages of their Brief to rebutting a contention that was never made.

"[I]t is fair to ask why [the issue of extraterritoriality has] been given such an elaborate treatment when the case [was] decided on an entirely different ground. It is

[7] Defendants appear to claim that Iowa courts lack the authority to hear this particular case, as opposed to claiming that the courts lack authority over cases of this general nature. *See State v. Emery*, 636 N.W.2d 116, 119 (Iowa 2001); *In re Marriage of Engler*, 532 N.W.2d 747, 748-49 (Iowa 1995) (discussing different meanings of "jurisdiction.").

of no avail to quarrel with a straw man."[8] *Sweezy v. New Hampshire*, 354 U.S. 234, 270 (1957) (Clark, J., dissenting).

II. THE APPLICATION OF LAW PLAINTIFF SEEKS IS NOT EXTRATERRITORIAL

Defendants argue that to apply the ICRA to this controversy would be an exercise of extraterritorial jurisdiction. As Defendants acknowledge, every statute is presumed to apply within the territorial jurisdiction of its borders. Def. Brief 42 (citing *State Surety Co. v. Lensing*, 249 N.W.2d 608, 611 (Iowa 1977)). In other words, statutes apply to "**persons or things** within the territorial jurisdiction of the lawmaking power which enacted it." *Id.* (quoting *Lensing*, 249 N.W.2d at 611) (emphasis added). Statutes apply "to **persons, property, and rights**" which are within the jurisdiction. *Lensing*, 249 N.W.2d at 612 (emphasis added). Similarly, Black's defines "territorial jurisdiction" as "[j]urisdiction over **cases arising in or involving persons residing within** a defined territory." BLACK'S LAW DICTIONARY 931 (9th ed. 2009) (emphasis added).

If the case involves citizens of Iowa **or** a cause of action **or** rights that arose in Iowa, then the ICRA may be applied territorially. It makes no difference if some of the conduct occurred outside the State or even the United States. This principle was firmly established at least by 1941 after a Florida citizen was convicted of harvesting

[8] A straw man is "[a] tenuous and exaggerated counterargument that an advocate makes for the sole purpose of disproving it." BLACK'S LAW DICTIONARY 1557.

sponges in the Gulf of Mexico in violation of a state statute. *See Skiriotes v. Florida*, 313 U.S. 69, 69-70 (1941). The plaintiff argued that the harvesting took place outside the boundaries of Florida, in international waters; while the State argued the conduct occurred within its territory. *Id.* at 70-71. The Supreme Court said it did not matter. *Id.* at 76. Florida had the right to regulate the conduct of its citizens even if the offense occurred outside the territorial waters of Florida. *Id.* As long as there is no conflict with federal law, each state retains the status of a sovereign and may use that power to control the conduct of its citizens. *Id.* at 77, 79.

Although Defendants and some courts refer to extraterritoriality as a jurisdictional concept,[9] it is actually "a judge-made rule of statutory interpretation." Zachary D. Clopton, *Replacing the Presumption Against Extraterritoriality*, 94 B.U. L. Rev. 1 (2014); *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, __, 133 S.Ct. 1659, 1664 (2013). Commentators have advocated elimination of the presumption against extraterritoriality when it comes to state statutes, arguing that it elevates a desire to avoid conflicts of law and subordinates other important and legitimate goals of the legislative branch. *See* William S. Dodge, *Understanding the Presumption against Extraterritoriality*, 16 Berkeley J. Int'l L. 85, 115-17 (1998); Gary B. Born, *A Reappraisal*

[9] In the event the Court does find this is a jurisdictional question, *see* IOWA CODE § 602.6101 (establishing the general jurisdiction of Iowa courts). In addition, there is "a presumption that a court of general jurisdiction has jurisdiction over a particular controversy unless a showing is made to the contrary." *Walles v. Int'l Bhd. of Elec. Workers*, 252 N.W.2d 701, 706 (Iowa 1977).

of the Extraterritorial Reach of U.S. Law, 24 Law & Pol'y Int'l Bus. 1, 76 (1992); Clopton, *supra* at 20-21.

Cases finding extraterritoriality all echo the common theme that a state statute should not be applied to people with no connection to the state—particularly when the facts have no connection to the state. *CRST Van Expedited, Inc. v. EEOC*, 2009 WL 158193 (N.D. Iowa) is a good example. There the claims were brought on behalf of residents of South Carolina and Florida. *Id.* at *14, 16. They alleged they were sexually harassed in Alabama, Arizona, New Mexico, Illinois, Georgia, and Oklahoma. *Id.* at *18. There was no evidence that either plaintiff had ever even driven though Iowa. *Id.* The only connection to the case was that the employer was here.

Persuaded by the importance of interstate comity, the court decided the ICRA was not meant to apply extraterritorially to people and conduct with no connection to the state. *Id.* at *20-21. No such comity concerns are present in the case at bar. No state has a fraction of the contacts with the parties and the issues that Iowa has. Even assuming that China had human rights laws that might apply to foreign nationals, that country has no substantive cultural or societal connection with the parties to this case, such that it would be appropriate to subject them to its laws.

Defendants also rely on *EEOC v. Arabian American Oil Co.*, 499 U.S. 244 (1991). There, the Supreme Court held that application of the Age Discrimination in Employment Act ("ADEA") to an American who had been working in Saudi Arabia for the last four years would be extraterritorial. *Id.* at 247. Significantly, the

corporation for which the plaintiff was working was headquartered in Saudi Arabia, and the acts of harassment and discrimination that would have given rise to liability all occurred in Saudi Arabia. *Id.*

In contrast, the case at bar involves an Iowa-domiciled plaintiff on temporary assignment in China, who was discriminated against by Iowans who made their discriminatory decisions in Iowa. As an entity "employing [thousands of] employees *within this state*" (*see* IOWA CODE § 216.2(7)), Deere is plainly within the definition of "employer" set forth in the ICRA. And as Iowa supervisors who work for such an employer, Defendants Czarnecki and Haas are "persons" subject to liability for their discriminatory acts in violation of the ICRA. *See* IOWA CODE § 216.6(1); *Vivian v. Madison*, 601 N.W.2d 872, 878 (Iowa 1999).

A. IOWA LAW APPLIES TO PARTIES, THINGS, AND CONDUCT IN THE STATE OF IOWA; TO EVENTS WHICH CAUSE EFFECTS IN IOWA; AND TO IOWA-BASED RELATIONSHIPS

1. Iowa Courts Have Power Over People, Things, and Rights in Iowa

Defendants propose a rule to limit arbitrarily the scope and effectiveness of the ICRA: permitting its use only if the plaintiff's primary workplace is in Iowa. Def. Brief 69-74. Defendants assert that an unfair employment practice always occurs "at the impacted employee's regular geographic workplace." *Id.* But that is simply not true—not in many cases and certainly not true in this case.

Defendants admit that under the ICRA, "an 'unfair employment practice' means a discrete act that took place within Iowa's geographic borders." Def. Brief 69.

In this case, the discrete *act* was the decision made *in Iowa* by the two individual *Iowa* Defendants to demote and expatriate the Plaintiff.

The Iowa authorities cited by Defendants actually support Plaintiff. Citing Iowa Code section 216.5(3), Defendants state: "The legislature granted the Iowa Commission authority to investigate acts of discrimination 'in this state.'" Def. Brief 50. Plaintiff seeks coverage for *acts* of discrimination—the decision to repatriate and demote Matthew—*that occurred in this state.* Defendants also quote from *Rent-A-Center, Inc. v. Iowa Civil Rights Commission*, 843 N.W.2d 727, 734 (Iowa 2014): "the ICRC has been authorized by the legislature to interpret, administer, and enforce the Iowa Civil Rights Act to eliminate discriminatory and unfair *practices* in employment *in Iowa*." Although Defendants put different words in italics, it would be nonsensical to interpret the ICRA as having nothing to say about discriminatory practices committed in Iowa just because the Iowa worker's temporary assignment was out of state.

Many other courts have held it appropriate to apply the law of the state where the discrimination took place. In those cases, the law of the state where the discrimination actually took place should be used, not simply the law of the place where the plaintiff just happened to be working. *Matthews v. Automated Business Systems & Services, Inc.*, 558 A.2d 1175 (D.C. Ct. App. 1989) is a great example. The trial court held there were insufficient connections between the plaintiff and the District of Columbia for it to have subject matter jurisdiction over the plaintiff's claim of discrimination. *Id.* at 1177-78. Although the plaintiff spent a significant percentage of

her work time in D.C., the terms of her employment were negotiated in D.C., and some of the acts of discrimination occurred in D.C.; her office was in Maryland. *Id.* at 1178. The appellate court said the most significant fact was that some of the actual acts of discrimination took place in D.C. *Id.* at 1180. After all, the "purpose of the Human Rights Act was 'to secure an end *in the District of Columbia* to discrimination . . ." *Id.* "If the events alleged in Matthews' complaint occurred in the District of Columbia, they are subject to scrutiny under the [Act], regardless of whether her 'actual place of employment' was in Maryland, the District, or both." *Id.* *"[T]he critical factual issue bearing on jurisdiction is whether these events took place in the District*." *Id.* (emphasis added). Because the district "erroneously based its decision on the irrelevant factor of Matthews' 'actual place of employment,'" its decision was reversed. *Id.* The District of Columbia has faithfully followed this rule, looking to the actual place of the discrimination to decide whether its law should be applied:

- In *Miller v. Insulation Contractors, Inc.*, 608 F. Supp. 2d 97, 104 (D.D.C. 2009), the court applied D.C. law. Even though the plaintiff and defendant were from Maryland and the plaintiff was fired in Maryland, the racial harassment occurred at job sites in D.C. *Id.* at 102.

- The court in *Monteilh v. AFSCME*, 982 A.2d 301, 304 (D.C. Ct. App. 2009) confirmed that the most important factor is the location of the discrimination, and when part of the discriminatory decisions were made in D.C., the claims are cognizable under D.C. law.

- When some of the discriminatory acts occurred in D.C. and one of the plaintiffs was denied a promotion in D.C., D.C. law was properly applied—even though none of the plaintiffs or Defendants were

from D.C. *Quarles v. General Inv. & Dev. Co.*, 260 F. Supp. 2d 1, 20 (D.D.C. 2003).

- A Maryland resident working in Virginia who was sexually harassed in Virginia and D.C. then fired in Virginia, was permitted to use the D.C. Human Rights Act in *Blake v. Professional Travel Corp.*, 768 A.2d 568, 569-71, 575 (D.C. Ct. App. 2001).

See also Reyes-Fuentes v. Shannon Produce Farm, Inc., 671 F. Supp. 2d 1365, 1367, 1372. (S.D. Ga. 2009) (dismissing concerns over alleged "extraterritoriality" and applying the law of the place where retaliation occurred even though plaintiffs were from Mexico).

Defendants' proposed rule, with its mechanical focus on the place of the plaintiff's employment, lacks any logic other than it would leave Matthew Jahnke without a remedy. It would also subject employers—and individual supervisors—to liability for violating the civil rights laws of states they have never even entered. The Court should decline Defendants' attempt to carve out special rules for employment cases and to stingily interpret the ICRA. Instead, the Court should follow long-standing precedent that says statutes apply to persons, things, property, and rights existing within the territorial jurisdiction of the Legislature. *See Lensing*, 249 N.W.2d at 611-12. Such an approach is consistent with the ICRA's mandate that it be broadly construed to effectuate its purposes. IOWA CODE § 216.18(1). Using this standard, the district court properly applied the ICRA to Matthew's claims.

2. Illegal Decisions Made by Iowans Violated the Rights of an Iowan

The parties to this case are all citizens and/or residents of Iowa. Matthew was at all times a citizen of Iowa. His supervisors, Defendants Czarnecki and Haas, were citizens and residents of Iowa. Deere had substantial business interests, property, and employees in Iowa. A corporation's residence is wherever it does business or is registered to do business. BLACK'S LAW DICTIONARY 1423.

"Courts have long recognized that 'the jurisdiction of the [c]ourt depends upon the state of things at the time of the action brought.'" *Heartland Express v. Gardner*, 675 N.W.2d 259, 266 (Iowa 2003) (alteration in original) (quoting *Keene Corp. v. United States*, 508 U.S. 200, 207 (1993)). Thus, for jurisdictional purposes, citizenship is determined at the time the lawsuit is filed.[10] *Id.* There is no dispute that when the Petition was filed in April 2015, Matthew Jahnke was a citizen and resident of Iowa.

Even while Defendants had him working in China, Matthew never stopped being a citizen of Iowa. First year law students learn the difference between *residence* and *domicile*. *Residence* is the "act or fact of living in a given place for some time." BLACK'S LAW DICTIONARY 1423. It is someone's "bodily presence as an inhabitant." *Id.* *Domicile* is a much more exacting standard. *Domicile* is the "place at which a person

[10] As long as it is not done to manipulate jurisdiction, a party's post-occurrence move to the forum state is a relevant contact that must be assessed in determining which state law a forum should apply. *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 319 n.28 (1981)). There has never been any suggestion that Matthew's return to Iowa after his demotion was illegitimate. After all, it was Defendants who transferred him to Waterloo.

has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere." BLACK'S LAW DICTIONARY 558; *see also Fitzgerald v. Arel*, 16 N.W. 712, 713, 63 Iowa 104 (1883) (*Domicile* is "a fixed, permanent residence, to which, when absent, one has the intention of returning."). A person "may have more than one residence at a time but only one domicile." BLACK'S LAW DICTIONARY 1423. Residence "does not equate with citizenship." *Janzen v. Goos*, 302 F.2d 426, 421 (8th Cir. 1962). A person is a citizen of the state in which he is domiciled. *Sautter v. Interstate Power Co.*, 563 N.W.2d 609, 611 (Iowa 1997). The *Fitzgerald* court gave the example of a foreign minister: although he actually resides and is personally present at the country where he serves, his domicile remains his home country. *Fitzgerald*, 16 N.W. at 714. By the same token:

> whenever a man buys or hires a house and sets up housekeeping with his family, with the design of remaining there until he has completed a certain job of work, he becomes an actual resident of that county, . . . notwithstanding his domicile may be in another county, to which he intends to return upon the completion of the job.

Id. "Once a domicile is established, it continues until a new one is established." *In re Marriage of Kimura*, 471 N.W.2d 869, 877 (Iowa 1991).

> A new domicile is established if all of the following things happen: (1) the former domicile is abandoned; (2) there is an actual removal to, and physical presence in the new domicile; and (3) there is a bona fide intention to change and to remain in the new domicile permanently or indefinitely. This intention must be a present and fixed intention and not dependent on some future or contingent event.

Id.

Plaintiff remained domiciled in Iowa throughout his work assignment in Harbin. He has been an Iowan since 2000. Throughout the time Matthew worked in Harbin, he never stopped considering Iowa to be his home, where he intended to return. When Matthew left for China, his family continued to live in Urbandale and then Cedar Falls. Both his children were attending school in the state. When Matthew was repatriated, he immediately began living in LaPorte City and bought a home there within two months of his arrival.

Throughout the time Matthew was assigned to work at Harbin, he continued be registered to vote in Iowa and register vehicles in Iowa. Matthew continued to do his banking in Iowa. Matthew never felt or exhibited the intent to leave Iowa forever or to establish a permanent home in China. As a matter of law, he remained a resident of Iowa.

Defendants themselves never stopped considering Matthew an Iowa worker. Throughout the time Matthew was in China, his "home unit" was always John Deere Des Moines Works in Ankeny, Iowa. Defendants knew full well that Matthew had not established a new domicile in China. Deere continued to cover him under its benefit plans for U.S. workers. It continued to make Social Security contributions on his behalf in the U.S.

In *Gonyou v. Tri-Wire Engineering Solutions, Inc.*, 717 F. Supp. 2d 152 (D. Mass. 2010), the Massachusetts employer objected to paying a Massachusetts worker the

overtime pay required by Massachusetts law after he began working in Connecticut. *Id.* at 153. After finding the statute did not directly address the question, the court decided there was nothing "extraterritorial" about applying Massachusetts law to regulate the conduct of its own citizens—even outside the state. *Id.* at 155.

The fact that the parties are from Iowa is all that is required to establish the proper territorial application of Iowa law to this case. *See id.*; *Lensing*, 249 N.W.2d at 611-12. Each state has the right to "define the duties of its citizens without that definition being considered extraterritorial." *BMW Stores, Inc. v. Peugeot Motors of Am., Inc.*, 860 F.2d 212, 214 (6th Cir. 1988).

3. The Illegal Decisions Were Made in Iowa

It is icing on the cake that at least some of the illegal acts took place in Iowa. A reasonable jury can find Czarnecki and Haas were the ones responsible for Matthew's demotion and repatriation. They made those decisions from Iowa and against an Iowa employee whose home unit was in Ankeny. When "the defendants' conduct occurs in-state, application of the law to that conduct is not extraterritorial." *Id.*

Simply because the events also involved China does not make a difference. This case involves no comity concerns, and no other state or nation has near the connections to the parties or the issues as Iowa does. If Matthew Jahnke is to enjoy the rights from any state civil rights statute, Iowa is obviously the state with the most significant contacts with the situation and the events in question. An Iowa citizen

does not forfeit his civil rights simply by accepting a work assignment that takes him outside the borders of our great rivers.

4. The Effects of the Decisions Were Felt in Iowa

The Restatement provides that a statute is "territorial" if either the conduct or the effects of the conduct occur within the state. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402, cmt. d; § 403, cmt. g (1987); *see also Environmental Defense Fund, Inc. v. Massey*, 986 F.2d 528, 530 (D.C. Cir. 1993); Dodge, *supra* at 104-05, 124. In other words, application of a statute is not ordinarily seen as "extraterritorial" when failing to extend its scope to a foreign setting would result in adverse effects[11] within the jurisdiction. *Massey*, 986 F.2d at 531; *see also* Judge Learned Hand's opinion in *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 444 (2d Cir. 1945) ("it is settled law . . . that any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders").

In criminal prosecutions, "territorial jurisdiction" is subject to even stricter constitutional limitations and must be proven beyond a reasonable doubt. *State v.*

[11] The law's evolution toward focusing on the place where the "effects" of conduct were experienced rather than strictly on the soil where the conduct took place is chronicled in Born, *supra* at 10-54. In a nutshell, using the place of the conduct as the sole consideration failed to address the need for more far reaching regulation as society experienced profound changes, including technological advances, development of modern business forms, and the expanding scope of commerce. *Id.* at 21. These same changes in civilization have led to similar evolution in conflicts of law standards. *See* Dodge, *supra*, at 115; *see also Cooney v. Osgood Mach., Inc.*, 612 N.E.2d 277, 279 (N.Y. 1993) (cited in *Veasley v. CRST Int'l, Inc.*, 553 N.W.2d 896, 898 (Iowa 1996)).

Rimmer, 877 N.W.2d 652, 661, 663-67 (Iowa 2016). Yet one of the ways Iowa may show it has territorial jurisdiction in a criminal case is by proving that the act resulted in an effect in Iowa and that effect was one of the elements of the crime. *See id.* at 668 (citing IOWA CODE § 803.1(2)).[12] If demonstration of an "effect" in Iowa is sufficient to establish territorial jurisdiction in a criminal case, it is surely enough in a civil case.

Two cases cited by Defendants also stand for the proposition that using a state's law is proper when the illegal conduct has had an impact within that state. *Hoffman v. Parade Publications*, 933 N.E.2d 744 (N.Y. Ct. App. 2010) involved an ordinance that expressly limited its reach "to those who inhabit or are 'persons in' the City of New York." *Id.* at 746. It came as no surprise that the court found a Georgia man who worked in the South was ineligible for coverage. *Id* at 745-47. However, the court said a nonresident plaintiff may sue under the statute if he can demonstrate that the discriminatory conduct "had an 'impact' within the city." *Id.* at 746.

The same "impact within the city" rule was applied in *Vangas v. Montefiore Medical Center*, 823 F.3d 174, 182 (2d Cir. 2016). The Second Circuit clarified that the "impact" must be one felt by the plaintiff herself. *Id.* Because the plaintiff did not live or work in New York City, the fact that the impact of her termination was felt by her NYC clients to whom she used to speak by phone was insufficient. *Id.*

[12] Territorial jurisdiction is also established if any part of the offense is committed in Iowa. IOWA CODE § 803.1(1).

The discriminatory decisions in this case took effect in Iowa, where Matthew was assigned to a job in Waterloo to save a failing new tractor under circumstances in which success was impossible. Matthew suffered emotional distress in Iowa and developed diagnosed mental health conditions. The discrimination resulted in Matthew needing medical treatment in Iowa and eventually being unable to continue going to work. Under the authorities cited above, the effects Defendants' illegal conduct have had in the State of Iowa justify the application of Iowa law.

5. The Parties' Relationships Arose in Iowa

The Michigan Supreme Court addressed a similar situation in *Sexton v. Ryder Truck Rental, Inc.*, 320 N.W.2d 843 (Mich. 1982). Michigan employees of a Michigan corporation rented a truck from the Defendant, a Florida corporation authorized to do business in Michigan. *Id.* at 414. The truck overturned in Virginia, injuring one of the workers. *Id.* He sued the Defendant under Michigan's owner's liability statute. *Id.* The court decided application of the statute would not be extraterritorial. *Id.* at 436. The conduct being regulated was the relationship between the owner of the vehicle and the drivers, and that relationship arose in Michigan. *Id.* Similarly, the employment relationship between the parties to this case arose in Iowa.

B. THE SCOPE OF THE IOWA CIVIL RIGHTS ACT MUST BE INFORMED BY ITS GOALS

Whenever a court interprets the ICRA, it must be guided by the cardinal principle that the Act must be "construed broadly to effectuate its purposes." IOWA

CODE § 216.18; *Pippen v. State*, 854 N.W.2d 1, 28 (Iowa 2014); *Palmer Coll. of Chiro. v. Davenport Civil Rights Comm'n*, 850 N.W.2d 326, 333 (Iowa 2014); *Goodpaster v. Schwan's Home Serv., Inc.*, 849 N.W.2d 1, 5, 7 (Iowa 2014); *DeBoom v. Raining Rose, Inc.*, 772 N.W.2d 1, 8 (Iowa 2009). Interpretation of the ICRA must always be informed by "its beneficial purpose in exposing unlawful discrimination." *Hulme v. Barrett*, 449 N.W.2d 629, 633 (Iowa 1989); *see also Chauffeurs, Teamsters & Helpers, Local Union No. 238 v. Iowa Civil Rights Comm'n*, 394 N.W.2d 375, 382 (Iowa 1986). Constructing artificial barriers to deny Iowa workers protection from illegal discrimination perpetrated by Iowa employers would do just the opposite.

This appeal forces the Court to choose between two alternative constructions of the ICRA. The Defendants' proposed interpretation would honor the substantive policy choice of judges who decided that to avoid potentially tough conflicts-of-law questions, they should interpret statutes geographically narrowly. *See* Dodge, *supra*, at 120 (arguing that to refuse to apply a statute "on the basis of a court's intuition that conflict with foreign law is undesirable is—to borrow a phrase—judicial activism."). The Plaintiff's proposed interpretation would honor the substantive policy choice of the Iowa Legislature that the ICRA should be construed broadly and to effect "a just and reasonable result." *See* IOWA CODE § 4.4(3).

This Court can take direction from its application of the Iowa Wage Payment Collection Law (also a remedial statute) in *Runyon v. Kubota Tractor Corp.*, 653 N.W.2d 582 (Iowa 2002). The IWPCL limited its scope to persons "employed in this state for

wages by an employer." *Id.* at 585 (quoting IOWA CODE § 91A.2).[13] Runyon was a Missouri resident who made sales calls on dealers in Missouri, Iowa, and Nebraska. *Id.* at 583. After being cheated out of his bonus, he brought suit in Iowa. *Id.* at 584. The defendant argued the IWPCL could not apply "when the employer is not located in Iowa, the employee does not reside in Iowa, and the employee is not paid in Iowa." *Id.* at 585. The Iowa Supreme Court found the plaintiff had "the better argument." *Id.* Because Runyon transacted business and routinely performed work on behalf of his employer in Iowa, the statute was broad enough to provide him a remedy. *Id.* at 586.

In *Pierce v. Bekins Van & Storage Co.*, 185 Iowa 1346, 172 N.W. 191 (1919), the Court relied on the "highly" remedial nature of the worker's compensation statute to give it a broad interpretation and allow coverage for a worker who was injured in Nebraska. *Id.* at 191. The man had been hired in Sioux City to drive a van from Nebraska to Sioux City. *Id.* Although the statute was silent about whether it covered workers who were injured out of state, the Court held "its language is broad enough to cover such injuries, and that to construe it as covering them effects the broad beneficial object of the enactment." *Id.* at 193.

[13] Unfortunately, the ICRA does not define any terms that would help indicate how broadly or narrowly it intended the Act's geographical scope. *See generally* IOWA CODE Ch. 216. We are left with its plain language and the consistently forceful charge of the Iowa Supreme Court that this law must be construed as broadly as possible.

Iowa citizens have a strong interest in ensuring that our civil rights laws reach as broadly as possible—to prevent discrimination by employers and supervisors within our borders, to discourage other Iowa employers from engaging in it, and to provide relief to Iowa citizens whose rights have been infringed. *See, e.g. Iowa Civil Rights Comm'n v. Deere & Co.*, 482 N.W.2d 386, 388 (Iowa 1992) (finding "an important public interest in eliminating employment discrimination"). Whatever the outer limits of that reach may be, this case does not approach them.

C. THE CASELAW CITED BY DEFENDANTS IS INAPPOSITE

The cases on which Defendants rely echo the common theme that a state statute should not be applied to citizens of foreign states—especially when the facts have no substantial connection to the state:

- The *Blackman* plaintiff was an Illinois resident who worked for the defendant in Illinois, but sued under the Pennsylvania Human Relations Act ("PHRA"). *Blackman v. Lincoln Nat'l Corp.*, 2012 WL 6151732 at *1 (E.D. Pa.). The only contacts she had with Pennsylvania were phone calls and quarterly meetings, although the employer and a supervisor were from Pennsylvania. *Id.* at *5. Importantly, by its very terms the PHRA limited its coverage to "inhabitants" of the state. *Id.* at *3.

- The employee in *Albert* was from Florida and had never worked in New Jersey. *Albert v. DRS Techs., Inc.*, 2011 WL 2036965 at *2 (D.N.J.) The defendant corporation was headquartered in Florida, and its only connection to the case was that it was a subsidiary of a New Jersey corporation. *Id.* Although the plaintiff alleged the discriminatory conduct was connected to the parent company, that alone was insufficient to invoke the New Jersey Law Against Discrimination ("NJLAD"). *Id.* at *1.

- The *Judkins* plaintiff brought suit in Maine, notwithstanding her Florida domicile and temporary residence working for the defendant in the Cayman Islands. *Judkins v. St. Joseph's Coll.*, 483 F. Supp. 2d 60, 64-65 (D. Me. 2007). The sole connection with Maine was that decisions about her employment were made there. *Id.* at 65.

- The employee in *Longaker* lived and worked exclusively in California. *Longaker v. Boston Sci. Corp.*, 872 F. Supp. 2d 816, 817 (D. Minn. 2012). The court said he lacked standing to invoke the Minnesota Human Rights Act ("MHRA"), the specific terms of which protected only people who either worked or resided in Minnesota. *Id.* at 819 (citing Minn. Stat. § 363A.03, subd. 15).

- The same statutory language precluded the plaintiff's reliance on the MHRA in *Arnold v. Cargill, Inc.*, 2002 WL 1576141 (D. Minn.). The plaintiffs had never lived or worked in Minnesota. *Id.* at *3. The court also found no indication that the defendant could not be held accountable for its actions in another state court. *Id.* at *4.

- *Campbell v. Arco Marine, Inc.*, 50 Cal. Rptr. 2d 626 (Ca. Ct. App. 1996) decided that California law would not be extended to the suit of a Washington woman who worked at sea on an oil tanker. *Id.* at 628, 631. She obtained her job through the mail and telephone and had only traveled to California once (to get on the ship). *Id.* at 628. The statute did not protect nonresidents employed outside the state from sexual harassment that occurred outside the state.[14] *Id.* at 633.

- In *Union Underwear Co., Inc. v. Barnhart*, 50 S.W.3d 188 (Ky. 2001), the plaintiff was from Alabama and South Carolina, and the discrimination occurred in South Carolina, but the plaintiff brought suit in Kentucky. *Id.* at 190. The dissent argued that the discrimination had actually

[14] The *Campbell* decision was distinguished in *United States v. Medtronic, Inc.*, 189 F. Supp. 3d 259, 282 (D. Mass. 2016). The *Medtronic* court refused to dismiss the claims of an Oregon man who performed most of his duties in Oregon, but sought the application of California law. The plaintiff had frequent phone contact with corporate headquarters in California, personally traveled there twice a year, and alleged that California supervisors participated in the decision to terminate his employment. *Id.* (The court did not rule out the possibility of changing its mind when the facts were more fully developed.) *Id.*

occurred in Kentucky, at the defendant's corporate headquarters. *Id.* at 193 n.1 (Lambert, J., dissenting). If that were the case, Judge Lambert stated, the court's holding that it lacked subject matter jurisdiction would be "truly extraordinary." *Id.* at 193. The dissent also chided the majority for failing to give due regard to a provision of the Kentucky Civil Rights Act requiring its liberal construction. *Id.* at 194; *cf.* IOWA CODE § 216.18(1).

- The case of *Peikin v. Kimmel & Silverman, P.C.*, 576 F. Supp. 2d 654 (D.N.J. 2008) actually supports Plaintiff's contentions more than Defendants'. Peikin lived in Pennsylvania and although she was technically assigned to the Pennsylvania corporation's Pennsylvania offices, she spent the vast majority of her time physically working in New Jersey. *Id.* at 655-56. She tried to invoke the NJLAD. *Id.* at 655. The court undertook a choice-of-law analysis to decide that Pennsylvania law should apply since it had the strongest interest in the outcome. *Id.* at 658. The court found it significant that almost all of the discriminatory acts had been committed in Pennsylvania. *Id.*

- The same two states were involved in *Buccilli v. Timby, Brown & Timby*, 660 A.2d 1261 (N.J. Super. Ct. App. Div. 1995). The "plaintiff's employment began and ended in Pennsylvania, and conduct which she alleged was unlawful occurred . . . only [in] Pennsylvania." *Id.* at 1261. Although the plaintiff was a resident of New Jersey and the defendant had offices in both Pennsylvania and New Jersey, the court held Pennsylvania law should be apply. *Id.* at 1264. The court allowed the plaintiff to amend her lawsuit to add a claim under the PHRA. *Id.* at 1265.

- The court in *Kelman v. Foot Locker*, 2006 WL 3333506 (D.N.J. Nov. 16, 2006) simply conducted a choice-of-law inquiry to decide which civil rights statute should apply. *Id.* at *6. Although the plaintiff was a New Jerseyan, he worked in New York City for a New York corporation. *Id.* The court cited New Jersey courts' firm rule that "Employees working outside New Jersey . . . are not protected even if they are New Jersey residents." *Id.* (citing 18 NJPRAC § 4.2 (West 2006)).

- *Satz v. Taipina*, 2003 WL 22207205 (D.N.J. Apr. 15, 2003) is also a conflicts of law case. *Id.* at *15. The Pennsylvania plaintiff worked in Pennsylvania and Delaware for an employer who had locations in

Pennsylvania, Delaware, and New Jersey. *Id.* at *15-16. The plaintiff had never traveled to New Jersey for work. *Id.* at *17. The court refused to use the NJLAD. *Id.* at *17.

- The cruise ship worker in *Guillory v. Princess Cruise Lines, Ltd.*, 2007 WL 102851 (Ca. Ct. App. Jan. 17, 2007), was from California; however, she never performed any services there. *Id.* at *1. For five years, she worked for the Bermuda corporation at sea, from Florida and islands in the Caribbean. *Id.* The discriminatory decision was made at sea, although a California employee had agreed with it. *Id.* at *4. Under these circumstances, the court said application of California's civil rights statute would be extraterritorial. *Id.* at *5.

Any relevancy these cases have to the question presented is undermined by their factual dissimilarities with the case at bar.

Defendants' citations to ADEA cases are misleading and particularly unhelpful. *See* Def. Brief 71-72. Prior to 1984, the terms of the ADEA expressly forbid its application "to any employee whose services during the workweek [we]re performed in a workplace within a foreign country." *See* 29 U.S.C. § 216(d), incorporated into the ADEA via 29 U.S.C. § 213(f). This was why courts did not apply the statute to expatriates. *See Ralis v. RFE/RI, Inc.*, 770 F.2d 1121, 1122 (D.C. Cir. 1985); *Pfeiffer v. Wm. Wrigley Jr. Co.*, 573 F. Supp. 458, 459 (N.D. Ill. 1983); *Pfeiffer v. Wm. Wrigley Jr. Co.*, 755 F.2d 554, 555 (7th Cir. 1985);[15] *Zahourek v. Arthur Young & Co.*, 750 F.2d 827, 829 (10th Cir. 1984); *Cleary v. United States Lines, Inc.*, 728 F.2d 607, 608 (3d Cir. 1984) (all

[15] The Seventh Circuit in *Pfeiffer* noted that in cases involving age discrimination, unlike wage and hour cases, the location of the unlawful act is often disconnected from the place where the worker is employed. *Pfeiffer*, 755 F.2d at 556. This is certainly true in the case at bar.

recognizing that the statute itself prohibited its applicability to employees working abroad).

Defendants hint that to apply the ICRA in this case might violate the Constitution. Def. Brief 59. That argument was put to rest in *Henriksen v. Younglove Construction*, 540 N.W.2d 254 (Iowa 1995). There, the Court noted that to award worker's compensation to a man domiciled in Iowa would not violate the Constitution "as long as Iowa has a significant interest in apply its statute." *Id.* at 260 n.7 (citing *Hague*, 449 U.S. at 313).

Defendants' tout their proposed rule that the ICRA should apply only when the plaintiff's workplace is in Iowa as simple to apply. Def. Brief 75. But what about the long-haul truck driver who never spends more than 2.5% of his time in any one state? *See Gardner*, 675 N.W.2d at 267. What about the Arizona blogger who works "in Iowa" remotely through the internet without ever leaving home? What about the Minnesota woman who is sexually harassed in Iowa by Iowa coworkers via email and on her weekly trips to the Iowa company headquarters? In our increasingly mobile and technology-driven society, employment relationships exist across territorial lines in ways that were never before possible. *See Dow v. Casale*, 29 Mass. L. Rptr. 132, *4 n.11 (2011).

Throughout their briefing, Defendants urge examination of each contact with the State of Iowa in a vacuum. No matter what standard the Court adopts, it is clear

that no single criterion will make sense in every situation and that the contacts must be considered in combination.

New Jersey appears to be the only state that has an inflexible rule based solely on the plaintiff's workplace. But sometimes New Jersey courts ignore their own rule. In *D'Agostino v. Johnson & Johnson*, 628 A.2d 305 (N.J. 1993), the court allowed an American and "long-time resident of Switzerland" to sue his employer, the Swiss subsidy of a New Jersey corporation, for whistleblower violations. *Id.* at 520-21. The court undertook a conflicts-of-law analysis and decided that the case was not so much about regulating the employment relationship as it was "regulating the conduct of parent companies in New Jersey that engage in corrupt practices through a subsidiary's employees." *Id.* at 523, 526. Because the corrupt practices arguably originated in New Jersey, the court found the state's interests in regulating that conduct to be primary. *Id.* at 539-40.

Similarly, in *Bowers v. National Collegiate Athletic Association*, 151 F. Supp. 2d 526 (D.N.J. 2001), the court found a variety of defendants' actions had sufficient connections to New Jersey so as to allow the plaintiff to sue for disability discrimination under the public accommodations sections of the NJLAD. Because the NCAA could have foreseen that its academic eligibility rules might prevent the New Jersey teen from being accepted at the University of Iowa, the court found it was appropriate to apply New Jersey law. *Id.* at 532-34

In summary, it does not appear that most states have hard and fast rules, but instead consider a variety of factors. As can be the case when rules give judges the power to make value judgments, sometimes those factors seem to vary based on the outcome the judges desire.

III. IOWA HAS THE MOST SIGNIFICANT RELATIONSHIP TO THE PARTIES, THEIR CONDUCT, THE EFFECTS OF THE CONDUCT, AND THE RIGHTS INVOLVED

Perhaps it is time to abandon the judge-made concepts of "territoriality" and "extraterritoriality" and instead simply follow conflicts of law rules. Those rules already take into account all the relevant factors, including principles of comity. Plaintiff proposes that the Court simply consider which state (or nation) has the most significant interest in the litigation and the outcome of the litigation and apply the law of that state. *See Veasley*, 553 N.W.2d at 897. The inquiry should take into account:

(a) The place where the injury occurred,

(b) The place where the conduct causing the injury occurred,

(c) The domicile, residence, nationality, place of incorporation, and place of business of the parties, and

(d) The place where the relationship, if any, between the parties is centered.

Id. at 898 (quoting RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145 (1971)). Even Defendants do not contend that Chinese law should apply to an American

corporation's treatment of an American worker. There is simply no contest that it would be most appropriate to apply the laws of the State of Iowa:[16]

(a) While Matthew was told about the demotion in Beijing, it did not take effect until he was back in Iowa. Def. Brief, 21. The vast majority of Matthew's injuries occurred in Iowa.

(b) The recommendation to demote and repatriate Matthew came from China, Australia (where Danny MacDonald worked), and Moline, Illinois (Deere headquarters). The actual decision came from Czarnecki and Haas in Iowa.

(c) The domicile of the three human parties is Iowa. While Deere "resided" in Iowa (*see* BLACK'S LAW DICTIONARY 1423), it was incorporated in Delaware and had its principal place of business in Illinois.

(d) The place where the parties' relationship is centered is unquestionably Iowa. *See* pp. 5-10 *supra*.

After evaluating these contacts, particularly in light of their relative importance with respect to the alleged discrimination against Matthew Jahnke, it is clear that China has absolutely no interest in the outcome of this dispute, and the interests of other states are negligible. The facts have a significant relationship with the State of Iowa.

[16] There is no constitutional problem with this approach. For a state's substantive law to be constitutionally applied in a particular case, the state must have a significant contact or a significant aggregation of contacts with the parties or the underlying facts giving rise to the litigation, creating a state interest, such that the application of its law is neither arbitrary nor fundamentally unfair. *See Hague*, 449 U.S. at 307-14. "[W]here a state's contacts with the parties or the transaction satisfy the "significant contacts" test for personal jurisdiction, no party may reasonably expect that the state's law cannot control the case, and the state's power to apply its law is unquestionable. *Olson v. Push, Inc.*, 640 Fed. Appx. 567, 571 (8th Cir. 2016).

With facts suggesting even less of a connection to the state the law of which was being applied, courts have found application of that state's laws perfectly appropriate. Most of these cases phrase the issue in terms of territoriality; some in terms of choice of law. How the issue is framed is really beside the point, however, because they all analyze the same factors in order to decide the same question—which state's law should be applied. "Whether the issue is viewed as one of choice of law or extraterritorial effect of statutes, the test in determining whether state law governs . . . remains the same, a measure of the significance of contacts in the state." *See Western Nat'l Mut. Ins. Co. v. State Farm Ins.*, 353 N.W.2d 169, 173 (Minn. Ct. App. 1984). To illustrate:

- An Oregon court used choice of law principles to address the defendants' contention that an Oregon employment law statute should not apply to Oregonians who worked for Oregon corporations in Idaho. *Perez v. Coast to Coast Reforestation Corp.*, 785 P.2d 365, 365-66 (Or. Ct. App. 1990). The court rejected the argument that the place of work was the most significant factor. *Id.* at 366. Instead, it took into account the parties' ties to the state, the place where the contract was entered, and the states' important public interests, noting that Idaho had no corresponding statute to weigh. *Id.*

- In a case with facts strikingly similar to this one, a Washington plaintiff worked in Washington for a corporation headquartered in California. *Burnside v. Simpson Paper Co.*, 832 P.2d 537, 541 (Wash. Ct. App. 1992). Burnside was transferred to California, but continued to maintain a home in Seattle, where his wife lived. *Id.* After he was accused of misconduct in Japan, where he often traveled for work, the defendant fired him. *Id.* at 541-42.

Burnside sued for age discrimination, but the defendant pointed out the statute referred to protecting "inhabitants" and argued that Burnside was no longer an inhabitant of Washington, having moved to California. *Id.* Calling the proposed interpretation "absurd," the court recognized this limitation "would effectively allow Washington employers to discriminate freely against non-Washington inhabitants." *Id.* at 543. It would undermine the fundamental purpose of the Act to eliminate discrimination and it "would itself raise serious constitutional questions." *Id.* The court also evaluated the contacts from a choice-of-law perspective, weighing their importance as they related to the central issue of the case: age discrimination. *Id.* at 543-44. "It is not particularly meaningful to attempt to focus on the specific location where [the] discrimination occurred, particularly when the job . . . involved a great deal of travel." *Id.* at 544. It held the domicile of the parties had the most significance, but also took into account the strong interest of the state in making sure that Washington employers do not engage in illegal discrimination. *Id.*

- The Washington Supreme Court affirmed, echoing the lower court's reasoning. *Burnside v. Simpson Paper Co.*, 864 P.2d 937 (Wash. 1994). In further support, the court noted that that Washington's law against discrimination was "to be liberally construed." *Id.* at 940.

- *Dow v. Casale*, 29 Mass. L. Rptr. 132 (2011) involved a salesman who lived in Florida and had a makeshift office in Massachusetts. *Id.* at *1. His business was mostly conducted through the internet, but he "also traveled throughout the United States, as salesmen are wont to do." *Id.* at *4. The court held "Dow had more than sufficient contacts with Massachusetts to afford him the protection of the Wage Act." *Id.* The Court of Appeals affirmed, finding Massachusetts had the most significant ties to the parties' employment relationship. *Dow v. Casale*, 989 N.E.2d 909, 914 (Mass. 2013). Notably, the court recognized that application of a statute is never "extraterritorial," when conflicts of law principles point toward its application. *Id.* at 913.

- *Olson v. Push, Inc.*, 640 Fed. Appx. 567 (8th Cir. 2016) involved a Minnesota resident who began a job in West Virginia, working for a Wisconsin corporation. *Id.* at 568. He was fired a week into his

employment, after the Minnesota lab came back with the results of his pre-employment drug test. *Id.* The Eighth Circuit held Minnesota law should apply and dismissed concerns about extraterritoriality.

- A Minnesota man worked in Minnesota for a Kansas corporation. *Counters v. Farmland Indus., Inc.*, 1998 WL 134800 at *1 (Minn. Ct. App. Dec. 20, 1988). When his job was eliminated, he was offered a position in North Dakota and agreed to move there as a condition of employment. *Id.* Three weeks later, when the employer found out the plaintiff's wife planned to stay in Minnesota, the man was fired. *Id.* Given the extensive contacts the parties and their dispute had with the state, application of Minnesota law was appropriate. *Id.* at *2.

- In *Martin v. Holiday Universal, Inc.*, 1990 WL 209266 (D. Md. Oct. 3, 1990), the mere fact that the plaintiffs were denied promotions to a District of Columbia facility was enough to justify application of District law. *Id.* at *4. The plaintiffs were not hired in D.C. and never worked in D.C. *Id.* Their applications and the defendants' decisions took place outside D.C. *Id.*

- Even though only a small part of the petitioner's music piracy operation occurred in Wisconsin, that was enough so that Wisconsin courts had subject matter jurisdiction and could imprison him for contempt of a court order. *Heilman v. Wolke*, 427 F. Supp. 730, 732 (E.D. Wis. 1977).

- In *Taylor v. Easter Connection Operating, Inc.*, 988 N.E.2d 408, 409 (Mass. 2013), the employer was headquartered in Massachusetts. The court agreed to enforce a forum selection clause and apply Massachusetts wage and hour laws to employees living and working outside the state. *Id.* at 409, 413. Although a forum selection clause cannot give a statute extraterritorial effect, the court held the state had a substantial relationship to the transaction simply because the defendant was headquartered there. *Id.* at 412-13.

Because of the strong connection between the State of Iowa, the parties' relationships to each other, the parties themselves, the actions alleged to be

discriminatory, and the impact of those actions; the most appropriate statute to apply in this case is the ICRA.

CONCLUSION

Plaintiff-Appellee respectfully respects that the Court affirm the district court and remand this case for trial. Alternatively, if the Court finds the ICRA does not apply to this case, Plaintiff requests the case be remanded for leave to allow him to amend his Petition to add a Title VII claim before his ICRA claim is dismissed.

REQUEST FOR ORAL ARGUMENT

Counsel for Plaintiff-Appellee request to be heard in oral argument.

/s/ Paige Fiedler
FIEDLER & TIMMER, P.L.L.C.
Paige Fiedler AT0002496
paige@employmentlawiowa.com
Nathan Borland AT0011802
nate@employmentlawiowa.com
8831 Windsor Parkway
Johnston, IA 50131
Phone: (515) 254-199; Fax: (515) 254-9923

Roxanne Barton Conlin
ROXANNE CONLIN & ASSOCIATES, P.C.
roxlaw@aol.com
3721 SW 61st Street, Suite C
Des Moines, IA 50321
Phone: (515) 283-1111; Fax: (515) 282-0477
ATTORNEYS FOR PLAINTIFF-APPELLEE

ATTORNEY'S COST CERTIFICATE

I, Paige Fiedler, certify that there was no cost to reproduce copies of the preceding Plaintiff-Appellee's Amended Final Brief because the appeal is being filed exclusively in the Appellate Courts' EDMS system.

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