In The Iowa Supreme Court
Supreme Court No. 17-0638

MATTHEW JAHNKE,

Plaintiff-Appellee,

vs.

DEERE & COMPANY, RICHARD CZARNECKI, and BERNHARD HAAS,

Defendants-Appellants.

Interlocutory Appeal from the District Court for Polk County

The Honorable David M. Porter

Appellants' Final Reply Brief

(Oral Argument Requested)

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Table of Contents

Table of authorities 4

I. The Iowa Act does not apply extraterritorially to Jahnke's employment abroad..... 8

A. This Court recognizes the presumption against extraterritoriality. 8

B. Jahnke lived in China, worked in China, and violated Deere's corporate policies in China. 13

C. The decision-makers, who were located in China, consulted with U.S. Compliance personnel in Moline. 18

D. Jahnke had employment rights in China and Moline 27

II. The legislature could not have intended to extend the Iowa Act to employment abroad. 31

A. The Iowa Act's statutory text doesn't recognize a domicile or residence standard for employment claims. 31

1. Jahnke's Iowa divorce does not support applying the Act extraterritorially. 37

2. Jahnke's Iowa voter registration doesn't support applying the Act extraterritorially..... 40

3. By June 2014, Jahnke had perfected a new domicile. 42

B. Tort-based conflict rules are inapplicable to Jahnke's employment-contract dispute. 47

Conclusion 47

Certificate of compliance with type-volume limitation, typeface requirements, and type-style requirements..... 50

Attorney's cost certificate..... 51

Certificate of filing and service 52

Table of authorities

Cases

Arbaugh v. Y&H Corp., 546 U.S. 500 (2006) 8

Beach v. Youngblood, 247 N.W. 545 (Iowa 1933) 9

Brakke v. Iowa Dep't of Natural Res., 897 N.W.2d 522 (Iowa 2017) 9

Dindinger v. Allsteel, Inc., 860 N.W.2d 557 (Iowa 2015) 36

EEOC v. Arabian Am. Oil Co., 499 U.S. 244 (1991) 8, 10, 34

Estate of Gray v. Baldi, 880 N.W.2d 451 (Iowa 2016) 38

Foley Bros. v. Filardo, 336 U.S. 281 (1949) 34

Griffen v. State, 767 N.W.2d 633 (Iowa 2009) 8

In re Jones' Estate, 182 N.W. 227 (Iowa 1921) 32, 33

In re Marriage of Jahnke, No. 13-1382, 2014 WL 2432154 (Iowa Ct. App. May 29, 2014) 40

In re Marriage of Vogel, 271 N.W.2d 709 (Iowa 1978) 38

Julson v. Julson, 122 N.W.2d 329 (Iowa 1963) 32, 33

Matthews v. Automated Bus. Sys. & Servs., 558 A.2d 1175 (D.C. Ct. App. 1989) 27

Morrison v. Nat'l Aus. Bank, Ltd., 561 U.S. 247 (2010) 8, 9, 11

Ralis v. RFE/RL, Inc., 770 F.2d 1121 (D.C. Cir. 1985) 10

Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759 (Iowa 2016) .. 35

Richards v. Anderson Erickson Dairy Co., 699 N.W.2d 676 (Iowa 2005) 27

Runyon v. Kubota Transp. Corp., 653 N.W.2d 582 (Iowa 2002) 35, 36

Simon Seeding & Sod, Inc. v. Dubuque Human Rights Comm'n, 895 N.W.2d 446 (Iowa 2017) 9

Skiriotes v. Florida, 313 U.S. 69 (1941) 11

State Sur. Co. v. Lensing, 249 N.W.2d 608 (Iowa 1977) 8, 9, 13

State v. Jones, 298 N.W.2d 296 (Iowa 1980) 10

State v. Rimmer, 877 N.W.2d 652 (Iowa 2016)..... 8, 11, 12, 13

Statutes

26 U.S.C. § 3121(b)..... 23

26 U.S.C. § 6012(c)..... 22

28 U.S.C. § 2000e-5(f)(3) 30

29 U.S.C. § 623(f)(1)..... 31

29 U.S.C. § 630(f) 30

42 U.S.C. § 2000e(f) 30

42 U.S.C. § 2000e-1 31

52 U.S.C. § 20302 41

52 U.S.C. § 20310(5)(C) 41

Employment Promotion Law of the People's Republic of China (promulgated by Standing Comm. Nat'l People's Cong., Aug. 30, 2007, rev. April 24, 2015, effective April 25, 2015)..... 28, 29

Individual Income Tax Law of the People's Republic of China (promulgated by Standing Comm. Nat'l People's Cong., Oct. 7, 2005, rev. June 10, 2011, effective Sept. 1, 2011)..... 30

Iowa Code § 216.15(1) (2015)..... 19

Iowa Code § 216.15(3)(a) (2015) 20

Iowa Code § 216.2(9)(a) (2015) 34

Iowa Code § 216.5 (2015)..... 20

Iowa Code § 216.6 (2015)..... 35

Iowa Code § 216.6(1) (2015)..... 34

Iowa Code § 216.6(2)(e) (2015) 35

Iowa Code § 4.4 (2015)..... 35

Iowa Code § 422.13 (2013)..... 22

Iowa Code § 48A.11(2013) 41
Iowa Code § 48A.5 (2013) 41, 42
Iowa Code § 48A.5A (2013) 41, 42
Iowa Code § 53.37 (2013)..... 40, 41
Iowa Code § 53.38 (2013)..... 41
Iowa Code § 598.2 (2015)..... 38
Iowa Code § 598.5(1)(k) (2015) 38, 39
Iowa Code § 803.1 (2011)..... 12, 13
Iowa Code § 85.71 (2015)..... 10, 34
Iowa Code § 96.19(18)(b)(3) (2015) 10, 34
Labor Contract Law of the People's Republic of China (promulgated by Standing Comm. Nat'l People's Cong., June 29, 2007, rev. Dec. 28, 2012, eff. July 1, 2013) 29
Labor Law of the People's Republic of China (promulgated by Standing Comm. Nat'l People's Cong., July 5, 1994, rev. Aug. 27, 2009, effective Aug. 27, 2009)..... 28, 29
Social Insurance Law of the People's Republic of China (promulgated by Standing Comm. Nat'l People's Cong., Oct. 28, 2010, effective July 1, 2011) 30

Other Authorities

Black's Law Dictionary 593 (10th ed. 2014)..... 36, 47
Black's Law Dictionary 706 (10th ed. 2014)..... 8
Restatement (Second) of Conflict of Laws § 11 (1971)..... 33
Restatement (Second) of Conflict of Laws § 145 (1971)..... 47

Rules

Provisions on the Admin. of Employment of Foreign Workers in China (promulgated by Ministry of Labor, Ministry of Public Sec.,

Ministry of Foreign Affairs and Ministry of Foreign Trade and Econ. Cooperation, Jan. 22, 1996, rev. Nov. 12, 2010, effective, Nov. 12, 2010) 29, 30

I. The Iowa Act does not apply extraterritorially to Jahnke's employment abroad.

A. This Court recognizes the presumption against extraterritoriality.

Extraterritoriality is a merits issue, not a subject-matter jurisdiction issue. *Morrison v. Nat'l Aus. Bank, Ltd.*, 561 U.S. 247, 253-54 (2010); *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 511-12 (2006) (*Aramco* decision turned on merits, not subject-matter jurisdiction). Jahnke nevertheless avoids the merits issue, plucking definitions from Black's Law Dictionary, while ducking the most pertinent:

> extraterritoriality canon. The doctrine that a statute presumptively has no extraterritorial application (*statua suo clauduntur territorio, nec ultra territorium disponunt*). Also termed *presumption against extraterritoriality*.

Black's Law Dictionary 706 (10th ed. 2014) (emphasis in original).

This Court has adopted the extraterritoriality canon. *State Sur. Co. v. Lensing*, 249 N.W.2d 608, 612 (Iowa 1977). *See also State v. Rimmer*, 877 N.W.2d 652, 661 (Iowa 2016); *Griffen v. State*, 767 N.W.2d 633, 636 (Iowa 2009); *Beach v. Youngblood*, 247 N.W. 545, 549-50 (Iowa

1933). To overcome the presumption against extraterritoriality, legislative intent must be "clearly expressed." *Lensing*, 249 N.W.2d at 611. Otherwise, the statute doesn't apply extraterritorially. *Id.*; *Morrison*, 561 U.S. at 255.

Unable to identify clear and affirmative statutory language establishing the Iowa Act[1] applies extraterritorially, Jahnke condemns the presumption as "judge-made."[2] That's beside the point. Statutory interpretation necessarily requires judicial analysis. *Brakke v. Iowa Dep't of Natural Res.*, 897 N.W.2d 522, 538 (Iowa 2017). Applying the presumption against extraterritoriality doesn't enlarge, change, or ignore the Act's statutory text. *See Simon Seeding & Sod, Inc. v. Dubuque Human Rights Comm'n*, 895 N.W.2d 446, 464 (Iowa 2017) ("We will not add a requirement to a statute that the legislature chose to omit.").

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[1] We refer to the Iowa Civil Rights Act as the "Iowa Act" and the "Act."

[2] Appellee Brief 27.

Accepting Jahnke's view, however, would upend expectations. The General Assembly must know what to expect. "The legislature is presumed to know the usual meaning ascribed by the courts to language and to intend that meaning unless the context shows otherwise." *State v. Jones*, 298 N.W.2d 296, 298 (Iowa 1980) (citation omitted). The legislature understood the presumption when it clearly and affirmatively expressed intent to apply other statutes extraterritorially. *See* Iowa Code[3] § 96.19(18)(b)(3) (unemployment); *Id*. § 85.71 (workers' compensation).

When federal legislators twice addressed extraterritoriality in employment, Iowa legislators remained silent. Iowa's own Senator Grassley was the "architect" for the 1984 ADEA amendments that clearly and affirmatively established extraterritorial application. *Ralis v. RFE/RL, Inc*., 770 F.2d 1121, 1129 (D.C. Cir. 1985). In 1991, the *Aramco* decision issued; in response, Congress amended Title VII to clearly and affirmatively apply extraterritorially. Despite these

[3] Unless otherwise indicated, we cite the 2015 Iowa Code.

developments, the General Assembly—aware this Court recognizes the presumption against extraterritoriality—did not amend the Act.

Extraterritoriality concerns legislative intent, so the legislature's silence should be dispositive. *Morrison*, 561 U.S. at 255. Citing *Skiriotes v. State*, Jahnke conflates legislative intent with legislative authority. 313 U.S. 69 (1941). *Skiriotes* spotlights statutory language that clearly and affirmatively regulates extraterritorially. An individual challenged his conviction, under a Florida statute, for using diving equipment to take sponges from the Gulf of Mexico, off Florida's coast. *Id*. at 69-70. The U.S. Supreme Court rejected his argument that Florida did not have authority to regulate its citizens' conduct on the high seas. *Id*. at 74-78. The presumption against extraterritoriality was not at issue, because the relevant Florida statute contained clear and affirmative language regulating conduct beyond Florida's borders, in "the Gulf of Mexico." *Id*. at 69-70.

Characterizing this Court's decision in *State v. Rimmer* as establishing an "effects" standard for extraterritoriality, Jahnke again

disregards what the legislature said. In *Rimmer*, criminal defendants challenged their prosecution for conduct performed while physically outside Iowa's geographic borders. 877 N.W.2d at 656. The statutory text—essential to this Court's holding—clearly and affirmatively applied extraterritorially. *Id*. at 675-76 ("Our holding is consistent with the legislature's intent to enlarge Iowa's territorial jurisdiction."). The statute stated:

> 1. A person is subject to prosecution in this state for an offense which the person commits within *or outside* this state . . . if:
>
> a. The offense is committed either wholly or partly within this state.
>
> * * *
>
> 2. An offense may be committed partly within this state if conduct which is an element of the offense, *or a result which constitutes an element of the offense, occurs within this state*.

Id. (citing Iowa Code § 803.1 (2011) (emphasis added)).

The Court concluded that the defendants' alleged false statements during telephone calls to Illinois residents who worked in Iowa—made while the defendants were outside Iowa's borders—

"had a detrimental effect in Iowa constituting a 'result'" under 803.1. *Id*. at 669. *Rimmer* confirms that when the legislature intends to regulate conduct outside Iowa's borders, it will express intent clearly and affirmatively.

Jahnke points to *Lensing* as dispositive, claiming it establishes a rule that Iowa statutes apply to "persons" within the state of Iowa. That's an overstatement. *Lensing* confirms the Iowa Act does not apply to employment abroad, because the Act's statutory scheme contains no clear and affirmative expression that the legislature contemplated regulating employment aboard. 249 N.W.2d at 612.

B. Jahnke lived in China, worked in China, and violated Deere's corporate policies in China.

Even if the Court considers Jahnke's spin on *Lensing*, the Iowa Act doesn't apply here. In June 2014, Jahnke worked and lived in China, owned a house in Florida, and owned condominiums in Australia. He neither worked nor lived in Iowa.

Jahnke was Project Manager, then Factory Manager, for Harbin Works in China. (JA-I 470). He didn't hold those jobs for Des Moines

Works, Waterloo Works, or another factory in Iowa. *Id*. The Harbin Works Factory Manager represented "the face of John Deere in the community:" Harbin. (JA-II 358).

During the expatriate assignment, Jahnke worked in China every day. (JA-II 56 [116:12-14]). His office was in Harbin. (JA-I 199). He oversaw Harbin Works from greenfield to operation. (JA-I 470).

In China, Jahnke held a leadership role, supervising people who worked at Harbin Works. His responsibilities included China-based hiring, recruiting, and performance management (including Calvin Li, a China-based employee) (JA-II 328, 341-343, 359). Jahnke supervised direct reports in Harbin, had lunch with them weekly, and scheduled "quarterly events off site . . . to celebrate successes" to "develop comeraderie [sic] as a functioning unit." (JA-II 328). Jahnke set a goal to "[w]ork with my staff to encourage all employees (salary & wage) to complete" an employee survey. (JA-II 354).

In the Harbin Works roles, Jahnke worked with people around the world, including Beijing, East Moline, Mannheim, Moline,

Montenegro, Monterrey, Jiamusi, Tianjin, and Waterloo. (JA-II 324-325, 330, 340, 350-351, 359-360). He credited the "progress to date is a testament to the team of individuals in China and literally around the world that have pulled together." (JA-II 330). On another occasion, he reiterated the Harbin project received "excellent support . . . from literally hundreds of individuals from around the world." (JA-II 344).

As the "face of Deere" in the Harbin community, Jahnke confronted myriad issues concerning Harbin Works. Those issues included executing a plan for inclusion on the China subsidy list; dealing with consequences changes in China law that excluded land use rights rebates from ordinary income tax; revising construction goals due to protests by former landowners; seeking relief from unanticipated utility fees; interacting with local and Chinese government; and implementing a localization plan for sourcing in China direct materials for Harbin Works tractors. (JA-II 324-326, 331-333, 343-344, 348, 350-352, 356-361).

Jahnke left China due to his conduct in China, involving China-born individuals. (JA-II 263-265). Based on Jahnke's failure to report his sexual relationships with two women (Pei Feng and Meiduo Xu) who were born in the People's Republic of China, Jahnke was removed from the Factory Manager position and repatriated. (JA-II 263-265). Jahnke's employer, John Deere (China) Investment Co., Ltd., employed Pei as a controller, while Xu was an interpreter employed by a Harbin Works supplier. (JA-II 102, 108).

Jahnke now claims that, regarding Xu, he didn't do anything wrong. Jahnke's own statements from June 2014 belie his representation to this Court that Defendants' assertion regarding Xu is "false."[4] (JA-II 231). After Danny Macdonald's June 17, 2014 interview with Jahnke about Pei and Xu, China HR Manager Andrew Jackson called Jahnke; during that conversation, Jahnke vowed the "thing with Meiduo is now over." (JA-II 201, 204-205).

[4] Appellee Brief 15.

On June 29, 2014, Jahnke understood that his failure to timely report[5] the Xu relationship was an issue of concern to Deere. (JA-II 231). He contacted Laurie Simpson about it. *Id*. In an email, with the subject "Conflict of Interest Investigation," Jahnke wrote:

> Last week Dr. Haas and Rich Czarnecki informed me that the investigation revealed that I had violated the Code of Business conduct by engaging in a romantic relationship with Diana Pei *and subsequently Xu Meiduo* who were within my span of control. I would appreciate an opportunity to speak with you about the investigation in an attempt to understand this finding.

Id. (emphasis added).

The nucleus of Jahnke's disparate-treatment discrimination claim is Jahnke's belief that Pei and Xu engaged in conduct comparable to his own conduct, but they were treated more favorably. (JA-I 223-224). Jahnke pleaded facts regarding his

[5] After the investigation was underway, Jahnke belatedly reported the Xu conflict. Jahnke's sexual relationship with Xu commenced fall 2013; he reported the conflict May 18, 2014. (JA-II 46 [30:19-32:19], 93-94, 111-112, 205, 279).

relationship with Xu, describing Pei and Xu as younger, female comparators, born in the People's Republic of China. (JA-I 223).

In China, Jahnke learned about the decision to remove him as Factory Manager and repatriate. Haas and Czarnecki traveled to China, and with Philip Hao (from China Human Resources), met with Jahnke in Beijing to communicate the China Compliance Committee's decision. (JA-I 159-160). Jahnke alleges discriminatory comments were made during the meeting in China, although Defendants deny the comments were made. (JA-I 222-223).

C. The decision-makers, who were located in China, consulted with U.S. Compliance personnel in Moline.

Implicitly, Jahnke recognizes his claim involves decision-makers in China and Moline, not Iowa. His factual allegations focus on China and Moline. He describes statements by China Compliance Committee members Macdonald, Jackson, and Jinghui Liu. (Appellee Brief 15-16, 18). He cites emails involving Simpson, Marc Howze, and Max Guinn, individuals who worked at Deere's Moline corporate

headquarters, and a telephone conversation between Jahnke (still in China) and Simpson. (Appellee Brief 16, 18, 22).

Lacking evidence to connect his claim to Iowa, Jahnke attempts to blame Deere for a situation of his own making: "[n]o one from China responded to Matthew's ICRC complaint."[6] No one from China responded by Jahnke's own design. He filed a charge under the Iowa Act, which requires that a complaint "state the name and address of the person [or] employer . . . alleged to have committed the discriminatory or unfair practice." Iowa Code § 216.15(1). He told the Iowa Civil Rights Commission ("ICRC") that "Deere & Company" discriminated against him. (JA-I 451-455). He reported "the location where the discrimination occurred": "825 SW Irvinedale Drive, Ankeny, Iowa 50023 and China." *Id*. Jahnke signed the complaint on August 6, 2014, the fourth business day of his new work assignment at Waterloo Works. *Id*.

[6] Appellee Brief 20.

Due to Jahnke's strategic decision to identify Deere as his employer, with an Ankeny address, the complaint was served on Des Moines Works. (JA-I 459). Iowa Code § 216.15(3)(a) (requiring service of complaint). Naturally, a Des Moines Works representative responded. (JA-I 459).

Jahnke did not inform ICRC that his employer was John Deere (China) Investment Co., Ltd. (JA-I 451-455). He did not provide a China address. *Id*. As discussed, ICRC only has authority to investigate "in this state." Iowa Code § 216.5.

When Jahnke signed his complaint on August 6, 2014, he understood the distinction between his expatriate assignment and his assignment in Waterloo. (JA-I 451-455). He didn't list "Waterloo Works" as his employer. *Id*. Even though he had not worked at Des Moines Works since January 2011, he identified Des Moines Works based on a "home unit" administrative designation. *Id*. Later, when Jahnke filed suit in Polk County, he didn't plead a single fact establishing a connection to the venue. (JA-I 219-225). This record

contains no evidence linking the repatriation decision with "home unit" designation.

And Jahnke concedes that his "business unit" and "operating unit" was Harbin Works, not Des Moines Works. (JA-I 221, 475; Appellee Brief 8). Jahnke's admissions confirm that the purely administrative "home unit" designation had no bearing on Jahnke's employment in China.

For expatriate assignments, Deere designates an employee "home unit" and a "host unit" for assignment management responsibilities. (JA-I 453, 567). Jahnke's home unit was the location where he worked when he accepted his expatriate assignment. (JA-I 567-568). After initiating Jahnke's international assignment paperwork, Jahnke departed for China, and Des Moines Works' obligation to Jahnke ended. (JA-I 568). The "host unit" human resources department (in China) and Global Mobility Services handled Jahnke's compensation, benefits, housing, and home leave. (JA-I 453, 568).

Upon repatriation, Jahnke communicated with his "Host HR" representative, Shiny Zhang. (JA-I 453; JA-II 421-423). After repatriating, Jahnke did not work at Des Moines Works. Instead, Jahnke was assigned to a Waterloo unit. (JA-I 222).

Jahnke references Deere's compliance with federal law, but that doesn't establish an *Iowa* connection. U.S. citizens living abroad must file federal income tax returns if they meet the gross income test. 26 U.S.C. § 6012(c). (JA-I 578). Jahnke's taxes demonstrate that he severed ties to Iowa. He did not file Iowa income tax returns in 2012 and 2013, the two full calendar years he worked and resided in China. (JA-I 621-622; JA-II 424-425). *See* Iowa Code § 422.13 (2013) (individual taxpayer obligations).

Generally, Social Security and Medicare taxes apply to wages paid to a U.S. citizen regardless of where the employee performs services, so payments made in compliance with these laws, by Deere & Company International Payroll (not Des Moines Works) in

Moline, fail to establish an Iowa connection. 26 U.S.C. § 3121(b). (JA-I 180, 568).

Jahnke insists that his post-divorce bank account with Deere Employees Credit Union had "multiple Iowa locations." (JA-I 471). He doesn't say that he actually patronized those "Iowa locations." Presumably, he did not. China is thirteen hours ahead of Iowa. Air travel between Harbin and Iowa takes even longer. Jahnke ignores that the Moline-headquartered credit union had locations in other states. (JA-I 471, 616-617). He omits that even before his divorce, he maintained a China bank account. (JA-I 579, 583).

In a last-ditch effort to show an Iowa connection, Jahnke observes that Haas and Czarnecki are homeowners who live in Iowa. He seemingly suggests the Iowa connection is sufficient if either one answered a work-related email or phone call when at home with family. He adds that Deere employs a lot of people who work in Iowa—even though in June 2014, Jahnke wasn't one of them.

Aside from their Iowa residency, Jahnke is hard-pressed to identify facts supporting his Iowa Act claim against Haas and Czarnecki. Documents and sworn testimony reflect that Haas and Czarnecki didn't participate in the compliance investigation; weren't involved in the compliance decision; hadn't read Macdonald's compliance investigation summary; and weren't involved in decisions regarding Pei or Xu. (JA-I 217; JA-II 14 [44:19-23], 15-16 [47:6-51:1], 16-17 [52:18-53:9], 26 [137:23-138:8], 28 [150:4-11], 34 [73:2-10], 34 [75:20-76:3], 35 [96:2-10], 37-38 [104:22-105:8], 102, 110-115, 258-262, 406).

Jahnke wasn't blind to these facts. He knew Macdonald investigated and interviewed him, and another China-based investigator simultaneously interviewed Pei. (JA-I 221; JA-II 110-114). He spoke with China HR Manager Jackson, expressing his personal view that he didn't do anything wrong. (JA-II 197-198, 204-205). Jahnke reached out to Simpson, not Haas or Czarnecki, to discuss the investigation "in an attempt to understand this finding." (JA-II 298).

Additionally, Jahnke presents no facts connecting Haas and Czarnecki's *residence in Iowa* to the repatriation decision.

The fatal flaw in Jahnke's argument is that his notion that Haas and Czarnecki were the decision-makers emasculates his claim. As Iowans, Haas and Czarnecki would not have been involved in decisions regarding Pei or Xu, both China-born workers in China. By his own hand, Jahnke transformed his disparate-treatment discrimination claim into a general unfairness claim, which the Iowa Act doesn't regulate.

The record confirms this view. Neither Haas nor Czarnecki made any decision regarding Pei and Xu. (JA-II 25 [134:20-135:8]). Pei contacted Macdonald (not Haas and Czarnecki) to inquire: "What is the result of the investigation for me?" (JA-II 607). As alleged disparate treatment, Jahnke compares his 2014 performance appraisal (completed by Czarnecki) to Pei's. (JA-II 368-387). Shican Zhang, Pei's manager, completed her appraisal; the record contains no evidence showing Haas or Czarnecki influenced that decision. *Id*.

Instead, after the China Compliance Committee decided to repatriate Jahnke, Haas and Czarnecki made a substantive decision: Was a vacant position in the United States available? (JA-II 190, 241). The *China* Committee could not have made a decision about staffing in the United States. Haas and Czarnecki, consulting with human resources in Moline, were engaged in a decision to find a position for Jahnke to perform upon repatriation. (JA-II 190, 241). They assigned Jahnke to lead a high-profile project, developing a product line that Deere featured on the cover of its 2015 annual report. (JA-I 194-196).

As for Deere, the legislature could not have intended to authorize an Iowa Act claim against an employer merely because it employs *people other than the complaining party* in Iowa. Interpreting the common-carrier venue statute, this Court rejected that approach, citing considerations against forum shopping, inconvenience, and "foster[ing] injustice, because it would encourage plaintiffs to sue defendants in inconvenient venues as leverage in the settlement process." *Richards v. Anderson Erickson Dairy Co*., 699 N.W.2d 676, 683

(Iowa 2005) (common carrier venue statute did not authorize suit in county merely because carrier drove trucks through county).

Jahnke fails to cite a comparable case that holds a state employment-discrimination statute, lacking extraterritoriality language, applies to employment abroad. The primary case he relies on, *Matthews v. Automated Bus. Sys. & Services*, is inapposite. 558 A.2d 1175 (D.C. Ct. App. 1989). The court merely denied a motion to dismiss for lack of subject-matter jurisdiction, based on the plaintiff's assertion that she performed forty to sixty percent of her work within the District of Columbia. *Id*. at 1178. The court acknowledged that extraterritoriality was *not* raised on appeal. *Id*. at 1180 n.8.

The attenuated connections with Iowa fall short of establishing conduct that the Iowa Act regulates.

D. Jahnke had employment rights in China and Moline

While Jahnke avoids China law, his role as Harbin Works Factory Manager required an "[u]nderstanding of employee policies, practices, procedures and work rules appropriate for unit." (JA-II 74).

He presumably knew, based on his leadership role and written employment agreement, that the People's Republic of China has laws regulating employment rights.

China law mandates equal opportunity in employment and prohibits discrimination based on nationality and gender. Labor Law of the People's Republic of China, art. 12 (promulgated by Standing Comm. Nat'l People's Cong., July 5, 1994, rev. Aug. 27, 2009, effective Aug. 27, 2009) [Labor Law, P.R.C.]; Employment Promotion Law of the People's Republic of China, art. 3, 25-31, 62 (promulgated by Standing Comm. Nat'l People's Cong., Aug. 30, 2007, rev. April 24, 2015, effective April 25, 2015) [Employment Promotion Law, P.R.C.]. As a foreign worker in China, Jahnke was subject to its laws and regulations. (JA-I 177-193, 197-208). Provisions on the Admin. of Employment of Foreign Workers in China (promulgated by Ministry of Labor, Ministry of Public Sec., Ministry of Foreign Affairs and Ministry of Foreign Trade and Econ. Cooperation, Jan. 22, 1996, rev.

Nov. 12, 2010, effective, Nov. 12, 2010) [Foreign Worker Provisions, P.R.C.].

China law required a written employment contract between Jahnke and his employer, John Deere (China) Investment Co., Ltd. Labor Contract Law of the People's Republic of China, art. 10 (promulgated by Standing Comm. Nat'l People's Cong., June 29, 2007, rev. Dec. 28, 2012, eff. July 1, 2013); Labor Law, P.R.C., art. 16-32. When he worked for Deere in the United States, Jahnke never had a written employment contract. (JA-II 56 [115:15-116:11]).

Under his employment contract, Jahnke had the right to "apply for arbitration with the labour arbitration institution at the locality of the Company,"[7] as China law required.[8] Labor Law, P.R.C., art. 19. Alternately, he could initiate legal proceedings as a civil dispute. Employment Promotion Law, P.R.C., art. 62. China law obligated Jahnke's employer to pay his social insurance. (JA-II 202). Social

[7] JA-I 208 Article 11.1.
[8] As noted, "the Company" was Jahnke's employer, John Deere (China) Investment Co., Ltd. (JA-I 197).

Insurance Law of the People's Republic of China (promulgated by Standing Comm. Nat'l People's Cong., Oct. 28, 2010, effective July 1, 2011). Jahnke owed income taxes in China, which his employer paid on his behalf. (JA-I 183-185). Individual Income Tax Law of the People's Republic of China, art. 1-2 (promulgated by Standing Comm. Nat'l People's Cong., Oct. 7, 2005, rev. June 10, 2011, effective Sept. 1, 2011).

Title VII and the ADEA afforded an alternative to China law. 29 U.S.C. § 630(f); 42 U.S.C. § 2000e(f).[9] Both statutes focus on the workplace—the foreign location where the employee worked—because employment abroad implicates foreign law, including government authorization to enter, reside in, and perform work in the foreign country. (JA-I 177-178). *See* Foreign Worker Provisions, P.R.C. These federal statutes recognize the foreign-law defense. 42

[9] If Jahnke had filed suit under Title VII's provisions governing employment practices abroad, the one and only proper venue would have been the judicial district in which Deere's Moline corporate headquarters is located. 28 U.S.C. § 2000e-5(f)(3).

U.S.C. § 2000e-1; 29 U.S.C. § 623(f)(1). The Iowa Act contains no comparable provisions.

Jahnke could have pursued legal rights under China or federal law, but he forfeited those rights and chose to pursue an Iowa claim. His decision to hire an Iowa attorney does not justify expanding the Iowa Act's reach to regulate employment beyond Iowa's geographic borders.

II. The legislature could not have intended to extend the Iowa Act to employment abroad.

In Jahnke's view, as long as *something* is even *indirectly* related to Iowa *at some time*, the Iowa Act applies. It's not based on the Iowa Act's statutory text or legislative intent. It diverges from the presumption against extraterritoriality. Effectively, it sets no standard at all.

A. The Iowa Act's statutory text doesn't recognize a domicile or residence standard for employment claims.

Perhaps because domicile is nebulous, Jahnke relies on it. Generally, domicile encompasses three classes: (1) domicile of origin;

(2) domicile of choice; and (3) domicile by operation of law. *In re Jones' Estate*, 182 N.W. 227, 228 (Iowa 1921).

Iowa is not Jahnke's domicile of origin. The record contains no evidence that Jahnke was born in Iowa. Jahnke was married and obtained a master's degree in Chicago; was "often" assigned overseas in Europe and Asia; and resided and worked in Mexico before he accepted a job offer from Deere. (JA-I 416-417, 577-578). Jahnke had assignments at Deere units outside Iowa. (JA- I 469-470).

The Iowa Act doesn't establish domicile by operation of law. Jahnke cites no specific provision in the Iowa Act that would establish an Iowa domicile in June 2014.

Jahnke advocates the Act should regulate an employer's practices based on the employee's domicile of choice. In other contexts, domicile by choice is "largely a matter of intention." *Julson v. Julson*, 122 N.W.2d 329, 331 (Iowa 1963). Once acquired, a domicile "continues until a new one is perfected by: (1) a definite abandonment of the former domicile; (2) actual removal to, and

physical presence in the new domicile; (3) a bona fide intention to change and to remain in the new domicile permanently or indefinitely." *Id*. at 331 (citations omitted). It is based on "a present and fixed intention," not "some future or contingent event." *Id*.

A person may have more than one domicile. *In re Jones' Estate*, 182 N.W. at 229. Domicile establishes a default rule in different contexts, such as attachment, domestic relations, or taxation. *Id*. at 228. *See also* Restatement (Second) of Conflict of Laws § 11(1), cmt. c (1971). For this reason, "[d]efinitions given in regard to the method of ascertaining the domicile for one purpose are not always applicable in ascertaining domicile for another purpose." *In re Jones' Estate*, 182 N.W. at 229. A person "can have but one domicile at a time *for the same purpose*." *Id*. (emphasis added). *See also* Restatement (Second) of Conflict of Laws § 11(2); *Julson*, 122 N.W.2d at 306-07.

For several reasons, the legislature could not have intended a nebulous domicile-of-choice standard to define the persons authorized to pursue an Iowa Act employment claim.

First, the Iowa Act's plain language does not establish a residence or domicile standard. In one instance, the Iowa Act expressly references domicile: "familial status" means "one or more individuals under the age of eighteen domiciled with one of the following . . . ." Iowa Code § 216.2(9)(a). That reference is inapplicable to employment. *Id*. § 216.6(1). The legislature made a conscious choice to use "domicile" in one instance, but not others.

Second, as already discussed, the Iowa Act contains no clear and affirmative expression demonstrating legislative intent to apply extraterritorially to employment abroad. This makes good sense, since employment and labor laws are typically regulated domestically, not internationally. *See EEOC v. Arabian Am. Oil Co*., 499 U.S. 244, 255 (1991); *Foley Bros. v. Filardo*, 336 U.S. 281, 286 (1949).

Third, when the General Assembly intends a statute to apply extraterritorially in the employment context, it has done so expressly. *See, e.g*., Iowa Code § 96.19(18)(b)(3); *Id*. § 85.71.

Fourth, the Court avoids interpreting statutes to create strained or absurd results. *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016); Iowa Code § 4.4(3)-(4). Jahnke's view advocates an absurd interpretation. Section 216.6(1)(a) defines an unfair employment practice. *Id*. § 216.6(1)(a). The legislature could not have intended that these provisions govern *any* employment practice occurring *anywhere*, so long as the employer employs *some* employees in Iowa. Accepting this view would require a similar interpretation for the remaining portions of Section 216.6, including Iowa's mandatory eight-week pregnancy leave law. Iowa Code § 216.6(2)(e). An interpretation that comports with common sense is that the legislature intended the Iowa Act to apply to employment occurring within Iowa, at an Iowa workplace.

In a concurring opinion, this Court alluded to the more sensible interpretation, relating to Iowa's Wage Payment Collection Act. *Runyon v. Kubota Transp. Corp*., 653 N.W.2d 582, 588-89 (Iowa 2002). Three justices agreed that Iowa has no interest in protecting

nonresidents performing work outside Iowa. *Runyon*, 653 N.W.2d at 588-89 (Cady, C.J., concurring). "Although our legislature may have a strong interest to enact a wage dispute law to protect nonresidents when they cross our border to perform work in Iowa, it would have no interest in protecting nonresidents in those instances where they perform work outside of Iowa." *Id*.

That rationale squarely applies here. Because the legislature did not specify it, neither domicile nor residence is the governing standard.

Fifth, Jahnke's piecemeal discussion disregards that "[a]n after-acquired domicile cannot be used to establish jurisdiction or choice of law." Black's Law Dictionary 593 (10th ed. 2014). The undisputed evidence shows that if Iowa was Jahnke's domicile after June 2014, it was an after-acquired domicile. That's consistent with this Court's decisions concluding alleged "discriminatory effects" are not actionable under the Iowa Act. *Dindinger v. Allsteel, Inc.*, 860 N.W.2d 557, 571-72 (Iowa 2015). Anything occurring after June 26, 2014, the

date Jahnke was informed of the adverse decision, constitutes an alleged lingering effect.

Sixth, the Iowa Act should not regulate employment practices that occurred in China simply because Jahnke self-ordains himself an "Iowan." If domicile is the governing standard, the jury trial would surely devolve into a dispute over Jahnke's intent.

Finally, as discussed next, an individual's domiciles for other purposes are unrelated to the Iowa Act's subject matter: employment.

1. Jahnke's Iowa divorce does not support applying the Act extraterritorially.

In April 2012, Jahnke petitioned for divorce in Black Hawk County. (JA-I 417-419). While Cynthia resided in Cedar Falls, Jahnke pleaded his "address is 2884 Devils Glen Road, #135, Bettendorf, Iowa 52722." (JA-I 417). Jahnke's Bettendorf "address" was a post office box. (JA-I 470). These verified statements demonstrate that Jahnke did not share a home with Cynthia.

Jahnke's decision to file the divorce petition in Black Hawk County provides no insight regarding his domicile. An Iowa district

court has jurisdiction over a divorce proceeding if the respondent resides in Iowa; venue may be based on the respondent's county of residence. Iowa Code § 598.2; *Id*. § 598.5(1)(k). The respondent, Cynthia, resided in Black Hawk County and was personally served,[10] so the district court had jurisdiction and venue was proper. Iowa Code § 598.2; *Id*. § 598.5(1)(k); *In re Marriage of Vogel*, 271 N.W.2d 709, 711 (Iowa 1978). Jahnke's place of residence was inconsequential. Iowa Code § 598.2; *Id*. § 598.5(1)(k).

In an affidavit, Jahnke contends that in 2011, he moved to Cedar Falls and "shared the home in Cedar Falls with my wife until our divorce." (JA-I 470). Applying this Court's contradictory affidavit rule, Jahnke's affidavit—inconsistent with his verified divorce pleading—fails to generate a material factual dispute. *Estate of Gray v. Baldi*, 880 N.W.2d 451, 463-64 (Iowa 2016).

[10] JA-I 417, 578.

Moreover, Jahnke's divorce pleading contains a verified statement confirming that in April 2012, he had been absent from Iowa for the past year. Jahnke averred:

> Petitioner has been a resident of the State of Iowa for the last year, *having temporarily resided in China for the past year*, and the maintenance of the residence has been in good faith and not for the purpose of obtaining a marriage dissolution only.

(JA-I 418) (emphasis added). That statement (albeit internally inconsistent) appears to have been derived from Iowa Code § 598.5(1)(k).

Although Jahnke was not obligated to plead any statement under Section 598.5(1)(k), Jahnke declared that he "had been a resident of the State of Iowa for the last year." He did not explain, as the statute required, "the length of such residence in the state after deducting all absences from the state." Iowa Code § 598.5(1)(k). Jahnke could not have maintained a residence inside a Bettendorf post office box. (JA-I 470). And Jahnke admitted that as of April 16, 2012, he had "resided in China for the past year." (JA-I 418).

Iowa courts determined that Jahnke resided and worked in China. The district court made a finding that Jahnke had "resided in China since January, 2011." (JA-I 578). The Court of Appeals recognized that Jahnke was "assigned to the China project in 2010," and "was working in a remote part of China." *In re Marriage of Jahnke*, No. 13-1382, 2014 WL 2432154, at *1 (Iowa Ct. App. May 29, 2014).

2. Jahnke's Iowa voter registration doesn't support applying the Act extraterritorially.

Jahnke's vague statement that he "continued to be registered to vote in Iowa" omits material facts regarding the elections he voted in (if any); the "residence" he reported; and registration dates. Assuming Jahnke maintained Iowa voter registration in a lawful manner, in June 2014, he could not have been registered to vote in Iowa. (JA-I 471).

To carry out the federal mandate, Iowa's voter registration statute allowed Jahnke to register after he no longer resided in Iowa. Iowa Code § 53.37(1) (2013) ("intended to implement the federal Uniformed and Overseas Citizens Voting Act"). If a U.S. citizen

resides overseas and is not domiciled in the United States, the state in which the "overseas voter" was last domiciled must allow that person to vote in the state. 52 U.S.C. § 20302 (state obligations); 52 U.S.C. § 20310(5)(C) (defining "overseas voter").

To qualify for voter registration in Iowa, a person must be an Iowa resident. Iowa Code § 48A.5(2)(b) (2013). The "residence of a person is in the precinct where the person's home or dwelling is located." Iowa Code § 48A.5A(1) (2013). A registrant must provide (under penalty of perjury) the county where the registrant resides, and the "address at which the registrant resides and claims as the registrant's residence for voting purposes." Iowa Code § 48A.11 (2013).

As an overseas voter, Jahnke's "residence," for Iowa voter registration, could have been either his former residence in Polk County, or his residence in Harbin. Iowa Code § 48A.5(4); *Id*. § 48A.5A(6) ("residence" for overseas voter); *Id*. § 53.38 (2013). Jahnke's Bettendorf post office box was insufficient, because

residence "cannot be established in a commercial or industrial building that is not normally used for residential purposes unless the building is used as a primary nighttime residence." Iowa Code § 48A.5A(2).

As an overseas citizen, Jahnke could register in Iowa if he did "not maintain a residence, [was] not [] registered to vote, and [did] not vote in any other state." Iowa Code § 48A.5(4)(b). In mid-2013, upon purchasing his condominium in Florida,[11] Jahnke maintained a residence in another state. *Id*. By operation of Iowa law, Jahnke no longer qualified to register in Iowa. *Id*.

3. By June 2014, Jahnke had perfected a new domicile.

Based on facts already discussed, all three factors generally governing a domicile analysis show that by June 2014, Jahnke had perfected a new domicile.

[11] JA-I 588-594; JA-II 422.

First, Jahnke's actions demonstrate a definite abandonment of the former domicile in Polk County, Iowa. From January 2011 until repatriation in late July 2014, Jahnke lived in Harbin—and was obligated to do so by the terms of his employment contract. (JA-I 197-199).

And Jahnke abandoned Iowa. In July 2011, Jahnke sold his Urbandale house to Deere. (JA-II 420-422, 426-434). Jahnke's then-wife, Cynthia, moved to Cedar Falls. (JA-I 578). Rather than purchase a home, Cynthia rented. (JA-I 578). She planned to live with Jahnke in China, but by late 2011, Jahnke told Cynthia that he didn't want her in China with him. (JA-I 575 [135:25-136:23]).

Owning no real property in Iowa, Jahnke maintained a "post office box" in Bettendorf. (JA-I 417, 470). In 2012 and 2013, the two full calendar years Jahnke worked in China, he did not file Iowa tax returns. (JA-I 621-622; JA-II 424-425).

Second, Jahnke demonstrated actual removal to, and physical presence in, the new domicile. As already discussed, Jahnke

physically removed himself from Iowa, and maintained a physical presence in China. (JA-I 197-198, 458). In 2013, when he purchased his Florida home, he also maintained a physical presence in Florida. (JA-I 588-594). He purchased a condominium in Australia, acknowledging his Beijing address on the sales advice document that he executed. (JA-I 595-615).

Third, Jahnke demonstrated a bona fide intention to change and to remain in the new domicile permanently or indefinitely. On July 1, 2014, he asked Deere's Global Mobility Services representative to send "goods in China go to my home in Florida." (JA-II 421-422). He intended to retire, and had even asked about retirement during the meeting with Haas, Czarnecki, and Hao in China. (JA-I 160; JA-II 608). In mid-July 2014, while still in China, before completing repatriation, Jahnke expressed that he did not want to return to Iowa. *Id*. He informed Czarnecki "[r]etirement is my preferred option." *Id*.

As an alternative, Jahnke asked Czarnecki for a different assignment, one that was not in Waterloo: "My preference would be

in an individual contributor role that requires extensive travel. In a previous life I was an International Sales Manager." (JA-II 608). He requested one other assignment over the Waterloo job. (JA-II 186).

Even Jahnke's colleagues in China thought that Jahnke intended to stay in China. Before the compliance decision was communicated to Jahnke, they speculated that Jahnke might remain in China rather than repatriate. (JA-II 190, 197, 205, 272).

Ultimately, Jahnke purchased a condominium in Iowa because his work assignment upon repatriation was in Iowa. (JA-II 421-422). Effective August 1, 2014, Jahnke started his new assignment in Waterloo. (JA-I 189). Jahnke's expatriate employment benefits allowed him to take a house-hunting trip to Waterloo upon repatriation. (JA-II 421-422). Since Jahnke did not own or rent real property in Iowa, Global Mobility Services reimbursed him for temporary living expenses in Waterloo, until he made arrangements to purchase a house in Iowa. (JA-II 421-422). Jahnke lived in temporary housing in Iowa for two months. (JA-I 471; JA-II 421-422).

Jahnke characterizes the Harbin assignment as temporary, scheduled to end in December 2014. (JA-II 48 [44:16-25]). That's nearly four years, sufficient to establish that Harbin was his domicile. Jahnke anticipated staying in China beyond that period. (JA-II 56 [115:9-14]). Jahnke bases his compensation-based damages calculation on his belief that he would have continued working in China indefinitely. (JA-I 465).

By June 2014, Jahnke's children were no longer in Iowa. Jahnke contends "[a]s I continued to work in Harbin, my son went on to attend" college in Cedar Falls and Waterloo. (JA-I 470). In August 2013—around the time Jahnke purchased the Florida home—Jahnke's son attended Valencia College in Orlando. (JA-I 574 [131:10-132:25]). By December 2011, his daughter had stopped attending college in Dubuque. (JA-I 470, 575 [135:12-18]).

In June 2014, Jahnke's domicile was China, Florida, or both. He had no Iowa connection until he was assigned to Waterloo, effective

August 1, 2014. Iowa was an after-acquired domicile. Black's Law Dictionary 593.

B. Tort-based conflict rules are inapplicable to Jahnke's employment-contract dispute.

Jahnke asks this Court to apply a tort-based conflict-of-law rule. Appellee Brief 48-49, citing Restatement (Second) of Conflict of Laws § 145 (1971). That approach is inapplicable to his statutory claim. Furthermore, a conflict-of-law analysis is unnecessary. The choice of law for Jahnke's China employment was specified by contract, which established the governing law, procedure for arbitration "at the locality of the Company," and remedies, all under China law. (JA-I 199 Article 6.1, 11.1).

Conclusion

Deere & Company, Richard Czarnecki, and Bernhard Haas respectfully request that the Court reverse the judgment of the district court, enter summary judgment in their favor, and dismiss this case with prejudice.

If this Court finds the record insufficient to grant summary judgment, Defendants request the opportunity, on remand, to file a renewed motion for summary judgment on extraterritoriality. After the summary-judgment record closed, in the discovery process, Defendants learned additional information that may be material to extraterritoriality, including Jahnke's Florida driver's license; travel to his home in Florida; use of his Florida address for federal income taxes and mail; registration of vehicles in Florida; and retirement plans.

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