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In Case Involving Hunting Rights of Nonresident Landowners, Iowa Supreme Court Says That Landownership Does Not Give Owners Right To Hunt Property

2321 N. Loop Drive, Ste 200 • Ames, Iowa 50010 www.calt.iastate.edu

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- by Kristine Tidgren
***Democko v. Iowa Dep't of Natural Res.*, No. 12-1944, 2013 Iowa Sup. LEXIS 125 (Iowa Sup. Ct. Dec. 6, 2013)**

Overview

In a recent decision, the Iowa Supreme Court unequivocally held that "landownership in Iowa is not accompanied by the right to hunt on one's own land." The Court reasoned that the legislature had extinguished any such right that may have existed at common law.

The question arose because three Iowa landowners challenged the Department of Natural Resources' revocation of their resident hunting licenses on the ground that they did not qualify as Iowa residents under Iowa Code Chapter 483A. The landowners argued there was not substantial evidence to support the DNR's finding that they were not "residents." The landowners also asserted that Iowa Code § 483A.24, which grants certain hunting privileges to resident landowners but not to nonresident landowners, was an unconstitutional impairment of privileges protected by the Privileges and Immunities Clause of Article IV, Section 2, of the United States Constitution. The Court rejected each argument in turn.

Background Facts

This case stemmed from DNR rulings involving three separate landowners with three different sets of facts. Because of the commonality of the legal issues involved, the three landowners filed a consolidated petition for judicial review.

Landowner one was a chiropractor licensed to practice in North Carolina and Iowa. He was an adjunct professor and consultant in Iowa and maintained a practice in North Carolina. His wife and young children lived in North Carolina in a large home owned by his wife. He owned a farm in Monroe County on which sat a "cabin-like structure" where he resided. He was president of a corporation that owned additional Iowa farm real estate. Landowner one paid resident income taxes in Iowa, voted in Iowa, and paid all bills from his Iowa address. The administrative law judge (ALJ) determined that he spent 20 percent of his recent time in Iowa. The ALJ found that North Carolina was the place to which landowner one always "returned" from travel.

Landowner two owned several Iowa properties through limited liability companies with his wife. His wife lived in New Jersey in a home she solely owned. Landowner two's primary business was located in New Jersey. His Iowa companies were actively engaged in farming, and he assumed the financial risk of their operation. Landowner two voted in Iowa, paid resident income taxes in Iowa, and sat for jury duty in Iowa. He established Iowa residency in 2007. The ALJ found that landowner two spent more than 50 percent of his time outside of Iowa and returned "home" to New Jersey, where his wife lived.

Landowner three had claimed Iowa residency since 2006. He held an Iowa driver's license, voted in Iowa, and filed Iowa resident income taxes. Landowner three lived in the lower level of his Iowa home and rented out the upper

portion year round. He and his wife owned 80 acres in Monroe County, which he actively farmed himself. He earned just over 50 percent of his income in Iowa, even though he spent the majority of his time outside of Iowa. Landowner three's wife worked at the University of Maryland and remained a Maryland resident, and they jointly owned a home and business in Maryland. The ALJ found that Maryland was the state to which landowner three returned "home"

Evidence Concerning Resident/Nonresident Status

In finding substantial evidence to support the agency's determinations that the landowners were not Iowa "residents," the Court first noted that to be a "resident" entitled to certain hunting privileges, an applicant must have a "principal and primary residence or domicile" in Iowa. Iowa Code §483A.1A(10)(a). Furthermore, the "principal and primary residence or domicile" is "the one and only place where a person has a true, fixed, and permanent home, and to where, whenever the person is briefly and temporarily absent, the person intends to return." Iowa Code §483.1A(9).

In ruling in favor of the agency, the Court relied on the facts that the families of each of the landowners resided in locations outside of Iowa and that the landowners regularly returned to those locations after traveling to Iowa. The Court noted that there was no evidence that any of the landowners were estranged from their families. It was not error for the agency to consider as a "powerful factor" that each of the landowners spent the majority of their time outside of Iowa.

Privileges and Immunities Clause

More notably, the Court rejected the landowners' constitutional challenge to Iowa Code § 483A.24, which grants *resident* landowners a right to hunt, fish, trap, and shoot small animals without securing a license. It also grants *resident* landowners the yearly right to two free deer licenses and one free turkey license. Nonresident landowners are not entitled to these privileges and must pay to obtain one of a limited number of nonresident licenses.[1] The landowners noted that Iowa differed from nearby states such as Nebraska, Illinois, Kansas, Minnesota, and North Dakota in making these distinctions.

The Court began by clarifying that the sole constitutional issue presented for review was whether Iowa's distinction between resident and nonresident landowners for the purposes of granting special hunting privileges under § 483A.24 violates the Privileges and Immunities Clause of the United States Constitution.

The Court stated that such an inquiry had to begin with the rule that the Privileges and Immunities Clause protected nonresidents from discrimination only with respect to "fundamental" privileges. Thus, the proper question was whether a nonresident's right to hunt on his property was a "fundamental" privilege. The Court noted that the United States Supreme Court had already held that recreational hunting was not a fundamental privilege in *Baldwin v. Fish & Game Comm'n of Mont.*, 436 U.S. 371 (1978). *Baldwin*, however, involved nonresident hunters who were not landowners. Therefore, no property rights were at issue.

The Court continued that "the nub of the issue" was whether, under Iowa law, an Iowa landowner has a property right to hunt on his or her property. "Regardless of what might have been at common law," the Court stated, "we conclude the legislature has extinguished any such right."

In making this broad proclamation, the Court relied upon Iowa Code § 481A.2, which grants ownership of all wild game, animals, and birds, to the State for the purpose of "conservation of resources of the State." Iowa Code § 483A.1.

The Court also relied on two cases from other jurisdictions. In *Minnesota v. Hoeven*, 456 F.3d 826 (8th Cir. 2006), the State of Minnesota challenged North Dakota's privileged treatment of resident hunters, arguing that the Privileges

and Immunities Clause prevented the state from treating resident landowners more favorably than nonresident landowners. The Eighth Circuit disagreed, ruling that the purchase of land in North Dakota did not convey upon that purchaser a right to hunt. Hunting and fishing, said the court, was placed by the legislature in the "arms of the State."

In *Taulman v. Hayden, 2006 U.S. Dist. LEXIS 65493 (D. Kan. Sept. 12, 2006)*, an unreported opinion of the Federal District Court for the District of Kansas, the court likewise held that although at common law a landowner had the right to hunt wild animals on his land, the right to hunt in Kansas was now a public right granted by statute. Because a landowners' right to hunt was "very limited," it was not a "fundamental" right under the Privileges and Immunities Clause.

The Court concluded its analysis with this statement, "landownership in Iowa is not accompanied by the right to hunt on one's own land. Therefore, the limited statutory right of resident landowners to hunt certain wildlife on their land granted by Iowa Code §483A.24 does not discriminate against nonresident landowners in a manner that violates the Privileges and Immunities Clause."

Analysis

Modern jurisprudence has established that hunting is not a fundamental right; rather, it is for the states to determine the existence and scope of the right of a person—resident or nonresident—to hunt. *Democko* determined that hunting rights are also not a stick in the bundle of Iowa property rights. Under the holding of *Democko*, a landowner apparently has no greater fundamental right to hunt than a non-landowner. All hunting rights are established by the state legislature. And it does not appear that constitutional parameters restrain states from restricting hunting rights or discriminating between residents and nonresidents in granting these rights.

In *Conservation Force v. Manning*,[2] the Ninth Circuit determined that an Arizona administrative rule imposing a 10 percent cap on nonresident hunting tags for bull elk and certain antlered deer substantially discriminated against interstate commerce. As such, the court determined that the rule was subject to strict scrutiny under the dormant commerce clause. On remand, the district court determined that the rule was unconstitutional because it was not narrowly tailored to further the legitimate state interest of conserving the population of game on its lands while maintaining recreational hunting opportunities for its citizens. In direct response to *Conservation Force*, Congress passed the Reaffirmation of State Regulation of Resident and Nonresident Hunting and Fishing Act of 2005.[3] In this Act, the Congress declared that it was in the public interest:

> "…for each State to continue to regulate the taking for any purpose of fish and wildlife within its boundaries, including by means of laws or regulations that differentiate between residents and nonresidents of such State with respect to the availability of licenses or permits for taking of particular species of fish or wildlife, the kind and numbers of fish and wildlife that may be taken, or the fees charged in connection with issuance of licenses or permits for hunting or fishing."[4]

In passing this Act, the Congress foreclosed challenges to hunting regulations and laws based upon dormant commerce clause grounds.

Given that courts have found that hunting is not a fundamental right, it is also unlikely that hunting laws discriminating against nonresidents could be successfully challenged on Equal Protection grounds. Courts would most certainly apply a rational basis test, forcing challengers to prove that the discriminatory law is "wholly irrational," a near insurmountable challenge.[5]

Even so, it is difficult to understand the state of Iowa's legitimate interest in preventing the landowners at issue in *Democko* from hunting their own property in the same manner as other landowners. These landowners shared in the *burden*s of landownership—paying property

taxes and even income taxes to the State of Iowa—but were deprived of the *benefit* of hunting their land without severe restriction.

In response to concerns regarding threatened hunting rights, a number of states have in recent years passed constitutional amendments preserving citizens' rights to hunt and fish.[6] Given the ever-changing climate surrounding the issue of hunting rights, this trend will likely continue.

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[1] Iowa Code §483A.8(5)(under which nonresident landowners are granted preference for a nonresident antlerless-only deer license, valid on their own property only).
[2] 301 F.3d 985 (9th Cir. 2002), *cert. den.* Golightly v. Montoya, 537 U.S. 1112 (2003).
[3] 109 P.L. 13 (2005), Sec. 6036.
[4] Id., Sec. 6036(b)(1).
[5] *See, e.g.* Dairy v. Bonham, 2013 U.S. Dist. LEXIS 103033 (N.D. Cal., July 23, 2013).
[6] *See, e.g.*, http://www.ncsl.org/research/environment-and-natural-resources/state-constitutional-right-to-hunt-and-fish.aspx.