

1
2
3
4
5
6
7
8
9
10
11
12

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RONALD R. REITZ)	2:08-CV-1426-ECR-LRL
)	
Plaintiff,)	
)	
vs.)	<u>Order</u>
)	
SCOTT J. KIPPER, in his official)	
capacity as Nevada Commissioner of)	
Insurance,)	
)	
Defendant.)	
)	
)	

This case concerns the constitutionality of a Nevada law governing the licensing of insurance adjusters. Now pending before the Court is Plaintiff's motion (#27) for summary judgment. For the reasons stated below, the motion (#27) will be granted.

I. Introduction

Plaintiff Ronald R. Reitz ("Reitz") is a resident of California who seeks to obtain an insurance adjuster's license in Nevada. Reitz is a public insurance adjuster licensed in nearly every state that has licensing regulations. He is also the president of Quality Claims Management Corporation ("Quality Claims"). Quality Claims provides hazard claim recovery services to investors, mortgage servicers, home-owners and businesses. Reitz complains that because he is not a resident of Nevada he is unable to obtain an insurance adjusters license in the state of Nevada without moving to Nevada, moving within 50 miles of Nevada's border or working for a

28

1 competitor. He challenges the constitutionality of Nevada's
2 insurance adjuster licensing scheme. On June 3, 2009, Reitz filed a
3 motion (#27) for summary judgment. Defendant Scott J. Kipper,
4 Nevada Commissioner of Insurance ("the Commissioner"), responded
5 (#32), and Reitz replied (#33).

6
7 **II. Motion for Summary Judgment Standard**

8 Summary judgment allows courts to avoid unnecessary trials
9 where no material factual dispute exists. N.W. Motorcycle Ass'n v.
10 U.S. Dep't of Agric., 18 F.3d 1468, 1471 (9th Cir. 1994). The court
11 must view the evidence and the inferences arising therefrom in the
12 light most favorable to the nonmoving party, Bagdadi v. Nazar, 84
13 F.3d 1194, 1197 (9th Cir. 1996), and should award summary judgment
14 where no genuine issues of material fact remain in dispute and the
15 moving party is entitled to judgment as a matter of law. Fed. R.
16 Civ. P. 56(c). Judgment as a matter of law is appropriate where
17 there is no legally sufficient evidentiary basis for a reasonable
18 jury to find for the nonmoving party. FED. R. CIV. P. 50(a). Where
19 reasonable minds could differ on the material facts at issue,
20 however, summary judgment should not be granted. Warren v. City of
21 Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, 116 S.Ct.
22 1261 (1996).

23 The moving party bears the burden of informing the court of the
24 basis for its motion, together with evidence demonstrating the
25 absence of any genuine issue of material fact. Celotex Corp. v.
26 Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met
27 its burden, the party opposing the motion may not rest upon mere
28

1 allegations or denials in the pleadings, but must set forth specific
2 facts showing that there exists a genuine issue for trial. Anderson
3 v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Although the
4 parties may submit evidence in an inadmissible form - namely,
5 depositions, admissions, interrogatory answers, and affidavits -
6 only evidence which might be admissible at trial may be considered
7 by a trial court in ruling on a motion for summary judgment. FED.
8 R. Civ. P. 56(c); Beyene v. Coleman Sec. Servs., Inc., 854 F.2d 1179,
9 1181 (9th Cir. 1988).

10 In deciding whether to grant summary judgment, a court must
11 take three necessary steps: (1) it must determine whether a fact is
12 material; (2) it must determine whether there exists a genuine issue
13 for the trier of fact, as determined by the documents submitted to
14 the court; and (3) it must consider that evidence in light of the
15 appropriate standard of proof. Anderson, 477 U.S. at 248. Summary
16 judgment is not proper if material factual issues exist for trial.
17 B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260, 1264 (9th Cir.
18 1999). "As to materiality, only disputes over facts that might
19 affect the outcome of the suit under the governing law will properly
20 preclude the entry of summary judgment." Anderson, 477 U.S. at 248.
21 Disputes over irrelevant or unnecessary facts should not be
22 considered. Id. Where there is a complete failure of proof on an
23 essential element of the nonmoving party's case, all other facts
24 become immaterial, and the moving party is entitled to judgment as a
25 matter of law. Celotex, 477 U.S. at 323. Summary judgment is not a
26 disfavored procedural shortcut, but rather an integral part of the
27 federal rules as a whole. Id.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. Discussion

A. Nevada Law Governing Licensing of Insurance Adjusters

In this case, Reitz challenges the constitutionality of the Nevada statute governing the licensing of insurance adjusters, Nev. Rev. Stat. § 684A.070. Reitz argues that the statute violates the Privileges and Immunities Clause, Equal Protection Clause and Commerce Clause of the United States Constitution.

Nev. Rev. Stat. § 684A.070 provides in relevant part:

1. For the protection of the people of this State, the Commissioner may not issue or continue any license as an adjuster except in compliance with the provisions of this chapter. Any person for whom a license is issued or continued must:

[. . .]

(b) Except as otherwise provided in subsection 2, be a resident of this State, and have resided therein for at least 90 days before his application for the license;

[. . .]

2. The Commissioner may waive the residency requirement set forth in paragraph (b) of subsection 1 if the applicant is:

(a) An adjuster licensed under the laws of another state who has been brought to this State by a firm or corporation with whom he is employed that is licensed as an adjuster in this State to fill a vacancy in the firm or corporation in this State;

(b) An adjuster licensed in an adjoining state whose principal place of business is located within 50 miles from the boundary of this State; or

(c) An adjuster who is applying for a limited license pursuant to NRS 684A.155.

NEV. REV. STAT. §§ 684A.070(1)(b), 684A.070(2)(a)-(c).

Section 684A.155 provides in relevant part:

1 The Commissioner may issue a limited license to an
2 adjuster licensed in an adjoining state who has
3 contracted with a domestic insurer that has its
4 principal place of business in this state to adjust
5 and pay claims on business written in this state. A
6 limited license issued pursuant to this section is
7 valid for 3 years or the term of the contract between
8 the adjuster and domestic insurer, whichever is
9 shorter.

10 NEV. REV. STAT. § 684A.155(1).

11 In essence, section 684A.070(1)(b) makes Nevada residency a
12 requirement for obtaining a Nevada insurance adjuster's license.
13 This residency requirement, however, is subject to three exceptions
14 contained in section 684A.070(2): (1) where an insurance adjuster
15 licensed in a another state is brought to Nevada by his employer to
16 fill a vacancy; (2) where an adjuster licensed in an adjoining state
17 has her principle place of business located within 50 miles of the
18 Nevada border; and (3) where an adjuster seeks only a limited
19 license. NEV. REV. STAT. § 684A.070.

20 **B. Standing**

21 "Federal courts are not courts of general jurisdiction; they
22 have only the power that is authorized by Article III of the
23 Constitution and the statutes enacted by Congress pursuant thereto."
24 Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541
25 (1986) (citing Marbury v. Madison, 5 U.S. (1 Cranch) 137, 173-180
26 (1803)). "Article III of the Constitution limits the 'judicial
27 power' of the United States to the resolution of 'cases' and
28 'controversies.'" Valley Forge Christian Coll. v. Ams. United for
29 Separation of Church and State, Inc., 454 U.S. 464, 471
30 (1982) (quoting Liverpool S.S. Co. v. Comm'rs of Emigration, 113 U.S.
31 33, 39 (1885)). "[S]tanding is an essential and unchanging part of

1 the case-or-controversy requirement of Article III.” Lujan v.
2 Defenders of Wildlife, 504 U.S. 555, 560 (1992). A plaintiff must
3 meet three requirements in order to establish Article III standing.
4 Vt. Agency of Natural Res. v. United States ex rel. Stevens, 529
5 U.S. 765, 771 (2000). “First, he must demonstrate ‘injury in fact’
6 – a harm that is both ‘concrete’ and ‘actual or imminent, not
7 conjectural or hypothetical.’” Id. (quoting Whitmore v. Arkansas,
8 495 U.S. 149, 155 (1990)). The second requirement is causation – a
9 “fairly traceable connection between the alleged injury in fact and
10 the alleged conduct of the defendant.” Id. (internal quotation
11 marks and citation omitted). Third, “he must demonstrate
12 redressability – a substantial likelihood that the requested relief
13 will remedy the alleged injury in fact.” Id. (internal quotation
14 marks and citation omitted). Together, these three requirements
15 constitute the “irreducible constitutional minimum” of standing.
16 Id. (quoting Lujan, 504 U.S. at 560).

17 Though Reitz has submitted no evidence of a tangible economic
18 injury, “economic injury is not the only kind of injury that can
19 support a plaintiff's standing.” Vill. of Arlington Heights v.
20 Metro. Hous. Dev. Corp., 429 U.S. 252, 262-63 (1977). “Impairments
21 to constitutional rights are generally deemed adequate to support a
22 finding of injury for purposes of standing.” Council of Ins. Agents
23 & Brokers v. Molasky-Arman, 522 F.3d 925, 931 (9th Cir.
24 2008) (internal quotation marks and citation omitted). The
25 Privileges and Immunities Clause provides that the “Citizens of each
26 State shall be entitled to all Privileges and Immunities of Citizens
27 in the several States.” U.S. Const. art. IV, § 2, cl. 1. “[O]ne of
28

1 the privileges which the clause guarantees to citizens of State A is
2 that of doing business in State B on terms of substantial equality
3 with the citizens of that State." Toomer v. Witsell, 334 U.S. 385,
4 396 (1948). Accordingly, here, Reitz's ability to work as an
5 insurance adjuster in another state must be considered a fundamental
6 right or privilege protected by the Privileges and Immunities
7 Clause. See Molasky-Arman, 522 F.3d at 931 (holding that the
8 ability of a citizen in one state to act as an insurance agent or
9 broker in another state is a fundamental right or privilege
10 protected by the Privileges and Immunities Clause); Silver v.
11 Garcia, 760 F.2d 33, 36 (1st Cir. 1985) (same, regarding insurance
12 consultants) Council of Ins. Agents + Brokers v. Viken, 408 F.
13 Supp. 2d 836, 842 (D.S.D. 2005) (same, regarding insurance agents and
14 producers).

15 We find also that Reitz has satisfied the requirements of
16 causation and redressability. Reitz's injury is caused by the
17 residency requirement of Nev. Rev. Stat. § 684A.070 and its waiver
18 provisions. Under the statute, in order to obtain an adjusters
19 license in Nevada, Reitz, as a non-resident of Nevada, must either
20 be brought to Nevada by an employer to fill a vacancy in that
21 employer's Nevada firm or corporation, Nev. Rev. Stat. §
22 684A.070(2)(a) or move his principal place of business within fifty
23 miles of the Nevada border, id. at § 684A.070(2)(b). As a non-
24 resident, Reitz could instead obtain a limited license, but that
25 would require him to contract with a domestic insurer that has its
26 principal place of business in Nevada to adjust and pay claims on
27 business written in Nevada. NEV. REV. STAT. §§ 684A.070(2)(c),

1 684A.155(1). Moreover, a limited license is valid only for 3 years
2 or the term of the contract between the adjuster and domestic
3 insurer, whichever is shorter. NEV. REV. STAT. § 684A.155(1).
4 Nevada's licensing statute thus prevents Reitz from working as an
5 insurance adjuster on terms of substantial equality to that of
6 Nevada residents. See Toomer, 334 U.S. at 396. Because the source
7 of Reitz's injury is the statute's residency requirement and
8 exceptions, Reitz injury would be redressed by a favorable decision
9 invalidating the statute.

10 The Commissioner contends that, because there has been no
11 discovery, he has "no independent knowledge of any facts pertaining
12 to the Plaintiff[,] his standing to bring this action, or any
13 alleged injury that the Plaintiff claims to have suffered as a
14 result of the challenged legislation." (D.'s Opp. at 2 (#32).) This
15 is not a basis for denying Plaintiff's motion. The Commissioner has
16 not met his burden under Fed. R. Civ. P. 56(f), which states: "If a
17 party opposing the motion shows by affidavit that, for specified
18 reasons, it cannot present facts essential to justify its
19 opposition, the court may: (1) deny the motion; (2) order a
20 continuance to enable affidavits to be obtained, depositions to be
21 taken, or other discovery to be undertaken; or (3) issue any other
22 just order." FED. R. CIV. P. 56(f). The Commissioner's bald
23 assertion that he has "no independent knowledge of any facts"
24 pertaining to plaintiff's standing does not provide any type of
25 meaningful rationale for denying the motion or granting a
26 continuance. Failure to comply with the requirements of Rule 56(f)
27 is a proper ground for proceeding to summary judgment. Brae

1 Transp., Inc. v. Coopers & Lybrand, 790 F.2d 1439, 1443 (9th Cir.
2 1986). Applying the law to the facts in the record, we have
3 concluded that Reitz has standing. See D'Lil v. Best W. Encina
4 Lodge & Suites, 538 F.3d 1031, 1035 (9th Cir. 2008).

5 **B. Privileges and Immunities Clause of Article IV**

6 The Privileges and Immunities Clause provides that "[t]he
7 Citizens of each State shall be entitled to all Privileges and
8 Immunities of Citizens in the several States." U.S. Const. art. IV,
9 § 2, cl. 1. While the Privileges and Immunities Clause "cites the
10 term 'Citizens,' for analytic purposes citizenship and residency are
11 essentially interchangeable." Supreme Court of Va. v. Friedman, 487
12 U.S. 59, 64 (1988). The "primary purpose of this clause . . . was
13 to help fuse into one Nation a collection of independent, sovereign
14 States." Toomer, 334 U.S. at 395. "It was designed to insure to a
15 citizen of State A who ventures into State B the same privileges
16 which the citizens of State B enjoy." Id. Thus, we examine claims
17 that a residency classification offends the Privileges and
18 Immunities Clause using a two-step inquiry. "First, we decide
19 whether the activity in question is 'sufficiently basic to the
20 livelihood of the nation . . . as to fall within the purview of the
21 Privileges and Immunities Clause.'" Molasky-Arman, 522 F.3d at 934
22 (quoting Friedman, 487 U.S. at 64). "Second, if the challenged
23 restriction deprives nonresidents of a protected privilege, we will
24 invalidate it only if we conclude that the restriction is not
25 closely related to the advancement of a substantial state interest."
26 Id. (quoting Friedman, 487 U.S. at 65).

27

28

1 Regarding the first step of our inquiry, work as an insurance
2 adjuster falls within the purview of the Privileges and Immunities
3 Clause. "There can be no doubt that insurance and occupations in
4 the insurance industry are important to the national economy."
5 Molasky-Arman, 522 F.3d at 934 (quoting Silver, 760 F.2d at 36).
6 Consequently, the ability of a citizen of one state to work in the
7 capacity of an insurance adjuster in another state must be
8 considered a fundamental right or privilege protected by the
9 Privileges and Immunities Clause.

10 We must next ask whether the challenged restriction is closely
11 related to the advancement of a substantial state interest.
12 Friedman, 487 U.S. at 65. If it is, then the statute passes
13 constitutional muster. A substantial state interest does not exist
14 "unless there is something to indicate that non-citizens constitute
15 a peculiar source of the evil at which the statute is aimed."
16 Toomer, 334 U.S. at 398.

17 The Commissioner argues that the local and urgent nature of the
18 work done by insurance adjusters makes it essential for insurance
19 adjusters to be physically available to those who depend on them.
20 He points out that adjusters' duties include investigating and
21 inspecting the scene of an accident or fire as soon as a loss is
22 reported, interviewing witnesses and reviewing police reports before
23 determining the amount that should be paid to the policyholder. The
24 Commissioner contends that the residency requirement and waiver
25 provisions of Nev. Rev. Stat. 684A.070 assure, among other things,
26 the accessibility of insurance adjusters to the insured. He also
27 points out that in the case of public adjusters, who have a

28

1 fiduciary relationship with the insured, the requirement of close
2 proximity is of even greater import. Finally, the Commissioner
3 asserts that only resident adjusters or those close to the border
4 are readily available to inspect the accident scene or to be
5 available to insurance claimants who need ready access to the claim
6 file, which otherwise could be on the other side of the country.

7 The legislative history confirms that an insurance adjusters'
8 geographical proximity to Nevada consumers was the impetus behind
9 the residency requirement:

10 The division believed it would be appropriate however
11 for a non-resident adjuster, in an adjacent state, on
12 a limited basis to do business only in adjusting
13 claims for a domestic insurer. In most cases, Ms.
14 Molasky-Arman thought it was more appropriate to have
15 a resident adjuster because the majority of Nevada's
16 companies were not domestic companies. That meant
17 the records of those companies were not maintained in
18 the state. She thought it was very important for
19 consumers to have immediate access to the adjuster.
20 However, when the insurer was a domestic one the
21 insurer itself was immediately available to those
22 claims, to those consumers and to the Commissioner of
23 Insurance[.]

24 Hearing on A.B. 578 Before the Assemb. Comm. on Commerce, 1997 Leg.,
25 69th Sess (Nev. 1997).

26 The record does not, however, support the proposition that non-
27 residents are a "peculiar source of evil" as the phrase is used in
28 Toomer. "Peculiar" is defined as "characteristic of only one
person, group, or thing: distinctive." Merriam-Webster's Collegiate
Dictionary 853 (10th ed. 2001). Consumers' lack of immediate access
to insurance adjusters and claim files because of geographical
proximity is the evil that Nevada wishes to combat by means of
section 684A.070, but non-residents are by no means a peculiar

1 source of that evil. The statute at issue permits an insurance
2 adjuster who resides in Las Vegas, Nevada to obtain an adjuster's
3 license and thus perform adjustment services for a consumer more
4 than 400 miles away in Stateline, Nevada. See Molasky-Arman, 522
5 F.3d at 935 (making the same geographical observation regarding a
6 different Nevada statute). Non-residents, however, may not obtain
7 insurance adjuster's licenses unless they meet certain onerous
8 waiver criteria. Moreover, as discussed in more detail below, in
9 light of modern business practices, the correlation between the
10 residency of the insurance adjuster and the ease with which a
11 consumer has access to his or her claim file is suspect at best.
12 Accessibility of claim files is a poor justification for the
13 proposition that non-residents constitute a "peculiar source of
14 evil." Toomer, 334 U.S. at 398. This is particularly true in light
15 of the fact that the legislative history cited above indicates that
16 it is generally the insurer, not the adjuster, who maintains
17 possession of claim files.

18 Even assuming that non-residents were a "peculiar source of
19 evil," however, section 684A.070 is not closely related to ensuring
20 accessibility of insurance adjusters to the insured or providing
21 insurance claimants ready access to claim files. As noted above,
22 the statute allows a resident adjuster in Las Vegas, Nevada, to
23 obtain a license to perform adjustment services for a consumer more
24 than 400 miles away in Stateline, Nevada. The statute, however,
25 does not permit the insurance commissioner to waive the Nevada state
26 residency requirement for a nonresident agent living 51 miles from
27 the Nevada border unless, of course, she meets either of the other

28

1 two waiver criteria. This situation indicates that Nevada state
2 residency is a poor proxy for geographical proximity. As stated in
3 Molasky-Arman in a similar context, "[e]recting a fence at the
4 Nevada border does nothing to promote geographic proximity."
5 Molasky-Arman, 522 F.3d at 935 (internal quotation marks and
6 citation omitted); see also Barnard v. Thorstenn, 489 U.S. 546, 553-
7 54 (1989) (geographic isolation insufficient to justify
8 discrimination against nonresidents); Council of Ins. Agents +
9 Brokers v. Gallagher, 287 F. Supp. 2d 1302, 1312-13 (N.D. Fla. 2003)
10 (same).

11 The other exception to the statute's residency requirement
12 applies where a non-resident adjuster is employed by a firm or
13 corporation licensed in Nevada and is brought to Nevada by that firm
14 or corporation to fill a vacancy. NEV. REV. STAT. § 684A.070(2)(a).
15 There appears to be no authority interpreting this provision. The
16 meaning and import of the statute's requirements that a non-resident
17 adjuster not only be employed by a firm or corporation licensed in
18 Nevada, but also be filling a vacancy in his employer's firm or
19 corporation is unclear. In a sense, every employee who is hired or
20 who changes positions within her company is filling a vacancy; there
21 must have been a job opening for her to fill, be it newly created or
22 recently vacated by another. Regardless, this provision appears to
23 be unrelated to the statute's dual goals of ensuring accessibility
24 of insurance adjusters to the insured and providing insurance
25 claimants ready access to claim files. Neither the Commissioner's
26 opposition to the present motion nor the statute's legislative

27

28

1 history shed light on the connection between the goals of section
2 684A.070 and this exception to the residency requirement.

3 Finally, the criteria for non-resident adjusters to obtain
4 limited licenses likewise is not closely related to ensuring
5 accessibility of insurance adjusters to the insured or providing
6 insurance claimants ready access to claim files. The legislative
7 history cited above indicates that the reasoning behind the limited
8 license provision is as follows. When the insurer itself is
9 domestic, that insurer is immediately available to deal with claims,
10 consumers and the Commissioner of Insurance. Thus, the insurance
11 adjuster need not also be domestic. This justification, however, is
12 inconsistent with the overall logic of the residency requirement,
13 which centers around the proposition that adjusters' unique role in
14 the insurance business requires them to be geographically proximate
15 and thus physically available to the consumers they serve. The
16 location of the insurer is irrelevant, if the adjusters' role is
17 seen to be unique in this sense.

18 The Commissioner's argument regarding the connection between
19 residency and availability of claim files likewise fails. "Whatever
20 may have been said when people traveled by horseback and
21 communicated by regular mail, today people communicate by telephone
22 and facsimile and e-mail and overnight courier." Molasky-Arman, 522
23 F.3d at 935 (internal quotation marks and citation omitted).
24 Requiring insurance adjusters be residents of Nevada in order to
25 further the goal of providing consumers ready access to their claim
26 files ignores the reality of modern business practices.

27

28

1 The Ninth Circuit has considered and rejected arguments almost
2 identical to the ones put forth by the Commissioner in this case.
3 In Molasky-Arman, the issue was whether Nevada's "countersignature"
4 statute, which precluded insurers from finalizing policies in Nevada
5 without the countersignature of a resident agent and payment of a
6 commission, violated the Privileges and Immunities Clause.
7 Molasky-Arman, 522 F.3d at 935. The Ninth Circuit noted that, in
8 light of modern technology, "state boundaries pose no obstacle", and
9 thus the countersignature requirement was over-inclusive. Id.; see
10 also Gallagher, 287 F. Supp. 2d at 1312 (noting that even if
11 geographical proximity were important, discrimination against non-
12 residents would still be both over- and under-inclusive). Here,
13 section 684A.070 is both over- and under-inclusive. Even assuming
14 that, as the Commissioner asserts, the geographical proximity
15 between adjusters and consumers is more important than geographical
16 proximity between consumers and other actors in the insurance
17 industry, modern transportation is such that an adjuster in New York
18 City can be available on-site to a consumer in Nevada as quickly -
19 or perhaps even more quickly - than an adjuster in a remote area of
20 the state without easy access to an airport. Moreover, modern
21 communications technology allows consumers easy access to claim
22 files regardless of their location or the residency of the insurance
23 adjuster working on the claim.

24 We note, finally, that though Nev. Rev. Stat. § 684A.070 does
25 not impose an absolute bar to participation in the insurance
26 adjuster business by nonresidents, an absolute bar is not required
27 in order to implicate the Privileges and Immunities Clause. See,

28

1 e.g., United Bldg. and Const. Trades Council of Camden County and
2 Vicinity v. Mayor of Camden, 465 U.S. 208, 220 (1984) (finding that
3 the Privileges and Immunities Clause applies to a city ordinance
4 requiring that at least forty percent of contractors' and
5 subcontractors' employees on city construction projects be residents
6 of the city). Non-residents may be able to obtain insurance
7 adjusters licenses - limited or otherwise - by fulfilling certain
8 requirements. But that does not necessitate the conclusion that
9 those able to satisfy the requirements are doing business on equal
10 footing to Nevada residents; they are not.

11 We also reject the Commissioner's argument that because the
12 statute does not offend the Commerce Clause, we should analyze the
13 statute's constitutionality with a higher degree of deference. The
14 Commissioner argues, in essence, that because the statute at issue
15 does not offend the Commerce Clause, and the Privileges and
16 Immunities Clause has a mutually reinforcing relationship with the
17 Commerce Clause, in addition to the general presumption of
18 constitutionality, we should accord the statute greater deference.
19 In support of his position, the Commissioner points to Hicklin v.
20 Orbeck, 437 U.S. 518, 531-32 (1978). In that case, the Supreme
21 Court noted a "mutually reinforcing relationship" between the
22 Commerce Clause and the Privileges and Immunities clause stemming
23 from their common origin and "their shared vision of federalism."
24 Id. at 531-32. The Commissioner also cites the McCarran-Ferguson
25 Act, 15 U.S.C. §§ 1011-1015 (1982), which permitted the states to
26 enact discriminatory insurance taxes and regulations which would
27 otherwise have violated the dormant aspect of the commerce clause.

28

1 The McCarran-Ferguson Act was found to be a valid exercise of
2 Congress's power under the commerce clause. Prudential Ins. Co. v.
3 Benjamin, 328 U.S. 408, 439-40 (1946).

4 We agree with the Commissioner that, with the enactment of the
5 McCarran-Ferguson Act, "Congress removed all Commerce Clause
6 limitations on the authority of the States to regulate and tax the
7 business of insurance." W. & S. Life Ins. Co. v. State Bd. of
8 Equalization, 451 U.S. 648, 653 (1981). Nevertheless, though a
9 particular statute may not offend the Commerce Clause, "that same
10 exercise of power . . . may be called to account under the
11 Privileges and Immunities Clause." United Bldg., 465 U.S. at 221.
12 The Commerce Clause and the Privileges and Immunities both
13 "centrally define the relationship of the states to one another and
14 delineate the treatment that one state must accord the citizens of
15 another." A.L. Blades & Sons, Inc. v. Yerusalim, 121 F.3d 865, 870
16 n.7 (3rd Cir. 1997) (internal citation and quotation marks omitted).
17 Despite this, the two clauses "have different aims and set different
18 standards for state conduct." United Bldg., 465 U.S. at 220. "The
19 Commerce Clause acts as an implied restraint upon state regulatory
20 powers. Such powers must give way before the superior authority of
21 Congress to legislate on (or leave unregulated) matters involving
22 interstate commerce." Id. The Privileges and Immunities Clause, in
23 contrast, "imposes a direct restraint on state action in the
24 interests of interstate harmony." Id. As stated in Silver: "while
25 the McCarran-Ferguson Act may protect discriminatory state
26 legislation from attack under the commerce clause, it cannot shield
27 such legislation from attack under the privileges and immunities

28

1 clause." Silver, 760 F.2d at 38; see also Metro. Life Ins. Co. v.
2 Ward, 470 U.S. 869, 880 (1985) ("Although the McCarran-Ferguson Act
3 exempts the insurance industry from Commerce Clause restrictions, it
4 does not purport to limit in any way the applicability of the Equal
5 Protection Clause.").

6 In sum, section 684A.070 is unconstitutional under the
7 Privileges and Immunities Clause because it discriminates "against
8 citizens of other States where there is no substantial reason for
9 the discrimination beyond the mere fact that they are citizens of
10 other States...." Molasky-Arman, 522 F.3d at 936 (quoting Toomer,
11 334 U.S. at 396). Having concluded that section 684A.070 violates
12 the Privileges and Immunities Clause, we do not consider the
13 Plaintiff's alternative arguments under the Commerce Clause and
14 Equal Protection Clause of the Fourteenth Amendment.

15

16

IV. Conclusion

17 Reitz has standing to challenge the constitutionality of
18 section 684A.070 because he has suffered an injury caused by that
19 provision which a favorable decision would redress. Section
20 684A.070 violates the Privileges and Immunities Clause because
21 Nevada's discrimination against nonresidents with respect to
22 insurance adjusters licenses is not closely related to a substantial
23 reason for that discrimination beyond the mere fact that they are
24 citizens of other states.

25

26

27

28

Because Reitz has not filed a motion for a preliminary or
permanent injunction, no injunction will be issued in this case.

1 IT IS, THEREFORE, HEREBY ORDERED that Plaintiff's Motion for Summary
2 Judgment (#27) is GRANTED.

3
4 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECLARED that the
5 residency requirement delineated in Nev. Rev. Stat. § 684A.070(1)(b)
6 and its waiver provisions delineated in Nev. Rev. Stat. §
7 684A.070(2)(a)-(c) violate the Privileges and Immunities Clause of
8 the United States Constitution. The opportunity to obtain a license
9 to work as an insurance adjuster in the state of Nevada is a
10 fundamental privilege protected by the Privileges and Immunities
11 Clause, and section 684A.070's residency requirements are not
12 closely related to the advancement of a substantial state interest.

13
14 The Clerk shall enter judgment accordingly.

15
16 DATED: December 9, 2009.

17
18 

19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28