IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF IOWA,

Petitioner,

v.

IOWA SECRETARY OF STATE PAUL PATE, in his official capacity; IOWA VOTER REGISTRATION COMMISSION; BUENA VISTA COUNTY AUDITOR SUE LLOYD, in her official capacity; CALHOUN COUNTY AUDITOR ROBIN BATZ, in her official capacity; JEFFERSON COUNTY AUDITOR SCOTT RENEKER, in his official capacity; MONTGOMERY COUNTY AUDITOR JILL OZUNA, in her official capacity,

Respondents.

Case No. CVCV062715

PETITIONER'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT[1]

[1] On November 7, 2022 Petitioner League of United Latin American Citizens of Iowa filed a Motion and Brief in Opposition to Respondents' Motion for Summary Judgment and in Support of Petitioner's Proposed Cross-Motion for Summary Judgment. Prior to the filing of that motion and brief, Petitioner had requested that this Court either continue the trial in this matter (then scheduled for January 17, 2023) and establish a schedule for cross-motions for summary judgment after the conclusion of all discovery, or alternatively permit Petitioner to cross move for summary judgment. Mot. to Continue Trial and Permit Mot. for Summ. J at 4–5. The Court held a hearing on Petitioner's motion on November 4, 2022 and took the matter under advisement. On November 8, 2022, the Court granted Petitioner's Motion, ordering that "[t]he parties shall have until February 1, 2023 in which to submit their cross-motions for summary judgment in final form, along with any supplemental supporting documentation or memoranda." Order (Nov. 8, 2022). Petitioner accordingly files its motion for summary judgment, this brief in support, and accompanying supporting documentation as its final motion for summary judgment, replacing the portion of it motion filed on November 7, 2022 which cross-moved for summary judgment. Petitioner intends to file a separate final resistance to Respondents' final motion for summary judgment by March 1, 2023 as contemplated by this Court's November 8, 2022 Order. See Order (Nov. 8, 2022). That motion will similarly replace the portion of Petitioner's November 7, 2022 motion in opposition to Respondents' previously filed Motion for Summary Judgment.

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INTRODUCTION

This lawsuit challenges the continued misapplication of the Iowa English Language Reaffirmation Act of 2001, now codified at Iowa Code §§ 1.18, 4.14 (the "English-Only Law"), to bar the provision of voting materials in languages other than English. Petitioner League of United Latin American Citizens of Iowa ("LULAC") seeks an order from this Court declaring that voting materials are exempt from the English-Only Law. LULAC also seeks dissolution of the related permanent injunction issued by this Court in *King v. Mauro*, No. CV6739, slip op. at 31 (Iowa Dist. Ct. Mar. 31, 2008, corrected Apr. 8, 2008), which applied the English-Only Law to prohibit Respondents Iowa Secretary of State Paul Pate (the "Secretary") and the Iowa Voter Registration Commission from distributing voter registration materials in languages other than English.

Importantly, the *Mauro* court did not address a critical exception in the English-Only Law itself. While the Law broadly requires government actors to conduct their official activities in English, it *expressly exempts* "[a]ny language usage required by or necessary to secure the rights guaranteed by the Constitution and laws of the United States of America or the Constitution of the State of Iowa." Iowa Code § 1.18(5)(h) (the "Rights Exception"). Because the right to vote is protected by the Iowa Constitution, the U.S. Constitution, and federal law, the Rights Exemption applies. Simply put, *all* uses of language in the voting process—whether on ballots, voter registration, precinct change notices, or other voting materials—are "necessary to secure" that fundamental right. This is especially true for Iowans with limited English-language proficiency, where language barriers may operate to foreclose any opportunity to participate in the political process.

The governing laws and the unrebutted factual record demonstrate that the continued application of the English-Only Law to voter registration materials is inequitable and that LULAC is entitled to summary judgment, declaring that the English-Only Law does not apply to voting materials and dissolving the permanent injunction in *King*.

FACTUAL AND PROCEDURAL BACKGROUND

I. The English-Only Law

In 2002, then-governor Tom Vilsack signed into law the Iowa English Language Reaffirmation Act of 2001, now codified at Iowa Code §§ 1.18, 4.14. The Act declares English to be the official language of Iowa and requires that all official documents be printed, and governmental actions be conducted, in the English language. *However*, the Act also explicitly states that it should be construed "not to deny or disparage rights retained by the people," Iowa Code § 4.14, and includes the following express statutory exemptions for its English-Only requirement for official documents and governmental actions:

a. The teaching of languages.

b. Requirements under the federal Individuals with Disabilities Education Act.

c. Actions, documents, or policies necessary for trade, tourism, or commerce.

d. Actions or documents that protect the public health and safety.

e. Actions or documents that facilitate activities pertaining to compiling any census of populations.

f. Actions or documents that protect the rights of victims of crimes or criminal defendants.

g. Use of proper names, terms of art, or phrases from languages other than English.

h. *Any language usage required by or necessary to secure the rights guaranteed by the Constitution and laws of the United States of America or the Constitution of the State of Iowa.*

i. Any oral or written communications, examinations, or publications produced or utilized by a driver's license station, provided public safety is not jeopardized.

Id. §1.18(5) (emphasis added).

The Act further clarifies that the English language mandate does not prohibit state government officials "from communicating … in a language other than English, if that member or officer deems it necessary or desirable to do so," *id.* § 1.18(6)(a), nor does it "[l]imit the preservation or use of Native American languages," *id.* § 1.18(6)(b), or "discourage any person from learning or using a language other than English," *id.* § 1.18(6)(c).

The state of Iowa has applied these exceptions to translate official government materials in various contexts. For example, the Iowa Department of Human Rights Office of Latino Affairs—whose mission is to provide assistance to other state agencies to ensure people from different cultures, races, ethnicities, and backgrounds can better access government—currently provides ongoing assistance to the Governor's office in translating official information and materials related to COVID-19, as well as to the Department of Transportation in ensuring access to translated driver's instructions and other related information at local service centers across the state. Pet'r's Statement of Undisputed Material Facts ("Pet. SOF") ¶¶ 30, 32–33.

II. *King v. Mauro*

Even after the passage of the English-Only Law in 2002, the Secretary's Office continued to provide voter registration forms in Spanish and other non-English languages on its website. *King*, slip op. at 3–4. Respondent Iowa Voter Registration Commission (the "Commission") also continued to implement a longstanding administrative rule that authorized county auditors to provide voter registration forms in other languages if it "would be of value." *Id.* at 3. Consistent

with that rule, Buena Vista County continued to distribute Spanish voter registration forms. Pet. SOF ¶ 41.

These policies remained in force until 2008, when four county auditors filed suit in the Iowa District Court for Polk County in the matter of *King v. Mauro*, alleging that the Secretary's distribution of non-English voter registration forms violated the Act's requirement that official documents be printed only in English. *King*, slip op. at 1–2.[2] The petitioners also sought a declaratory judgment that the Commission's administrative rule violated the Act. *Id.*[3] The petitioners prevailed and the *King* court issued an order enjoining the Secretary and the Commission from "using languages other than English in the official voter registration forms of this state," and declaring the Commission's administrative rule "null and void." *Id.* at 29–31. In doing so, however, the court *expressly declined to address* whether the Rights Exception applied to voter registration forms "because the issue [was] not [] raised" by the parties. *Id.* at 29. LULAC was not a party to *King* and did not participate in the litigation.

As a result of the *King* injunction, Iowa election officials ceased all use of non-English languages on all voting materials unless required by federal law; the Commission rescinded its longstanding administrative rule that authorized county auditors to provide voter registration forms in other languages; and the Secretary's Office stopped providing voter registration forms in Spanish and other non-English languages on its website. Pet. SOF ¶¶ 21–22, 41, 43.

While the *King* injunction addressed only "official voter registration forms of this state," *King*, slip. op. at 31, the Secretary has interpreted the injunction to ban the use of non-English

[2] The county auditor petitioners were joined by five individuals and an organization, whose claims were ultimately dismissed for lack of standing. *Id.* at 16.

[3] To LULAC's knowledge, *King* was the first and only case in which a court has had the opportunity to interpret or apply Iowa's English-Only Law.

languages on other voting materials, including ballots and absentee ballot applications. Pet. SOF ¶ 24. County auditors similarly interpret the *King* injunction to prohibit them from using or providing *any* non-English voting materials unless required by federal law. *Id.* ¶¶ 39, 52, 55.

III. The impact of native-language voting materials on the right to vote.

Congress has long recognized that ensuring language minorities' access to the electoral process is necessary—indeed critical—to protecting their constitutional right to vote. In 1965, Congress enacted the Voting Rights Act ("VRA"), which banned literacy tests and included special protections for "persons educated in American-flag schools in which the predominant classroom language was other than English." Pub. L. No. 89-110, § 4(e)(1), 79 Stat. 437, 439. A decade later, in 1975, Congress added further protections for language minorities through Section 203 of the VRA, which requires state and local jurisdictions to provide multilingual access to registration or voting notices, as well as forms, instructions, assistance, or other materials or information relating to the electoral process if more than 5% of (or more than 10,000) voting age citizens in a political subdivision belong to a single language minority group. 52 U.S.C. § 10503(b)(2)(A).

In 2016, Buena Vista County became a covered jurisdiction under Section 203 because it had a large Spanish-dominant population and its English-language proficiency levels were below the national average. *See* VRA Amends. of 2006, Determinations Under Section 203, 2016, 81 Fed. Reg. 87532. While covered by Section 203, Buena Vista County distributed and accepted voting materials in Spanish, including Spanish-language informational posters, palm cards, and mailings provided by the Secretary's Office. Pet. SOF ¶¶ 44–47. During this time Buena Vista County also stationed individuals who could speak Spanish at precincts to assist voters and considered language qualifications in hiring precinct officials. *Id.* ¶¶ 48–49. However, after the most recent Section 203 determinations released on December 8, 2021, the U.S. Census Bureau

determined that Buena Vista County is no longer subject to the requirements of Section 203.[4] *See* VRA Amends. of 2006, Determinations Under Section 203, 2021, 86 Fed. Reg. 69611. Buena Vista County's Spanish-dominant citizen voting-age population still has an English-language proficiency level below the national average, but the size of the Spanish-dominant citizen voting age population has fallen to 3.9 percent of the County's total citizen voting age population—below the 5 percent necessary for Section 203 coverage.[5]

At the same time, there remain a significant number of Iowa citizens of voting age with limited English proficiency—25,428 as of 2020 per the U.S. Census Bureau's American Community Survey. Pet. SOF ¶ 12. Among that number, Spanish speakers make up 58.7% of voting-age citizens with limited English proficiency, and 19% of eligible Latino voters in Iowa have limited proficiency in English. *Id.* ¶¶ 12–13. As a result of the *King* injunction, and with the removal of Buena Vista County from Section 203's coverage, *none* of these citizens will be afforded official voting materials printed in any language other than English.

Quantitative research demonstrates that providing non-English voting materials significantly increases rates of voter registration and voting among Latino citizens. When Section 203's protections apply, Latino citizens and citizens with limited English proficiency are significantly more likely to register and vote, as documented in multiple quantitative studies analyzing elections over the last quarter century:

[4] The November 8, 2022 election was the first general election since 2014 in which Buena Vista County was not required to provide Spanish-language voting materials under Section 203.
[5] *See* Section 203 Determinations Public Use Dataset, U.S. Census Bureau (Dec. 8, 2021), https://www.census.gov/data/datasets/2021/dec/rdo/section-203-determinations.html.

- A study of the 1996 and 2000 election cycles found that Latinos residing in Section 203 covered jurisdictions were 4.4% more likely to have voted as compared to Latinos in non-covered jurisdictions, *id.* ¶ 16;
- A study of voter turnout during the 2000 election found that citizens who were not at all fluent in English had only a 13% probability of voting if materials were available only in English but a 60% probability of voting if materials were available in their dominant language, *id*. ¶ 17;
- A study of the 2004 presidential election compared voting patterns between Spanish-speaking Latino citizens who live in areas above and below the 5% threshold for Section 203 coverage and concluded that crossing the threshold for coverage increased the odds that a Spanish-speaking Latino citizen voted in the 2004 presidential election by 11 percentage points, *id*. ¶ 18; and
- A study of voter registration and turnout from the 2012 election examined political participation among Latinos and Asian-Americans in 42 jurisdictions near the Section 203 coverage threshold and concluded that rates of overall Latino registration increased by 16 percentage points in covered areas, *id*. ¶ 19.

Based on a review of this literature, among other research, LULAC's expert Dr. Rene Rocha concluded that lack of access to multilingual election materials results in reduced rates of voter registration and turnout among individuals with limited English proficiency. *Id.* ¶ 20.

IV. LULAC's injuries from the continued misinterpretation of the English-Only Law

LULAC is the Iowa branch of the oldest and largest Latino civil rights organization in the United States. Pet. SOF ¶ 1. Its mission is to promote education and civic engagement within Iowa's Latino community and to fight for the civil rights of Latinos. *Id.* This includes helping

Latino citizens to register to vote and encouraging them to get involved in politics on a local, state, and national level to amplify their voice and further the consideration of issues important to the Latino community. *Id.* In Iowa, LULAC is divided into 20 councils and has approximately 600 dues-paying members. *Id.* ¶ 2. This includes many members with limited English proficiency. *Id.* ¶ 3.

The continued misapplication of the English-Only Law and the *King* injunction impair LULAC's voter registration and mobilization efforts. *Id.* ¶ 5. LULAC often must scramble to translate election information and voting forms it receives into Spanish, taking up members' time and costing LULAC money to distribute translated documents. *Id.* ¶¶ 8–11. Even when LULAC translates particular forms into Spanish for its members with limited English proficiency, county officials do not accept them; nor can LULAC obtain such forms in Spanish from county officials due to the *King* injunction and the continued misapplication of the English-Only Law. *Id.* ¶¶ 6–7.

Some county auditors would provide or accept non-English voting materials if not for the continued misapplication of the English-Only Law. Respondent Sue Lloyd testified that Buena Vista County would have continued distributing Spanish voter registration forms and would share them with other counties were it not for the *King* injunction. *Id.* ¶¶ 43, 50. Joel Miller, County Auditor and Commissioner of Elections for Linn County, has declined requests from the public to provide or accept voting materials in languages other than English due to his concerns about complying with the English-Only Law. *Id.* ¶ 55. But Mr. Miller affirms that his office would provide and accept voting materials in languages other than English (including providing some materials in Spanish) if a court ruled that the English-Only Law did not apply to some or all voting materials. *Id.* ¶ 56.

V. LULAC's request for an administrative ruling and this litigation

On July 28, 2021, LULAC filed a Petition for Declaratory Order with the Secretary under Iowa Code § 17A.9 and Iowa Administrative Code r. 721-9.1(17A) seeking clarification on: (1) whether county auditors outside Buena Vista County may accept certain Spanish-language forms used by Buena Vista County; and, (2) whether county auditors must accept the Spanish-language version of the National Mail Voter Registration Form. Pet. SOF ¶¶ 57–58; *see also* National Mail Voter Registration Form, U.S. Election Assistance Comm'n, https://www.eac.gov/voters/national-mail-voter-registration-form (last visited Feb. 1, 2023).

On September 27 the Secretary provided LULAC with a one-sentence response to the Administrative Petition, stating that his office is "still under an injunction stemming from *King* . . . which prevents the dissemination of official voter registration forms for this state in languages other than English." Pet. SOF ¶ 59. This response remains the Secretary's official position. *Id.* ¶ 60.

On October 27, LULAC filed its Petition in Law and Equity in this matter.[6] In Count I, LULAC seeks a declaratory judgment that the English-Only Law does not prohibit officials from providing voting materials in languages other than English to any voter, or, alternatively, to voters with limited English proficiency, because such materials are exempt from the English-Only Law under the Rights Exception. Am. Pet. ¶¶ 43–46 (citing Iowa Code § 1.18(5)(h)). In Count II, LULAC asks the Court to dissolve the permanent injunction issued in *King* under Iowa R. Civ. P. 1.1510. *See id.* ¶¶ 47–50.

Respondents moved to dismiss the Original Petition, arguing that LULAC could not seek dissolution of the *King* injunction in a separate proceeding, and that LULAC lacked standing to

[6] On January 18, 2022 LULAC filed an Amended Petition. All references to "Petition" hereinafter are to LULAC's Amended Petition.

pursue the requested declaratory relief because it could not demonstrate that a court ruling would likely redress its injuries. *See generally* Mot. to Dismiss (Dec. 22, 2021).[7] The Court rejected these arguments, finding that Iowa R. Civ. P. 1.1510 was the appropriate vehicle to seek dissolution of the *King* injunction and that LULAC had demonstrated a sufficient likelihood that a favorable court ruling would redress its injury. Ruling on Resp'ts' Mot. to Dismiss (March 7, 2022) at 4–7, 10–13. Initially, the Court partially granted the motion to dismiss as to Count II, holding that res judicata barred LULAC from raising the Rights Exception to seek dissolution of the *King* injunction. *Id.* at 7–9, 13.

After careful consideration of briefing and argument following LULAC's motion for reconsideration, Pet'rs' Mot. to Reconsider at 3–5 (Mar. 22, 2022), the Court reversed its dismissal of Count II, holding that res judicata could not bar LULAC from challenging the *King* injunction because LULAC was not a party to *King*. Ruling on Mot. to Reconsider at 1–2 (April 23, 2022). The Court also concluded that the related doctrine of issue preclusion was inapplicable because the application of the Rights Exception was never raised and litigated in *King*. *Id.* at 2–3. The Court further held that LULAC was entitled to pursue a dissolution of the injunction in *King* because the Rights Exception was not addressed, and a prior injunction should not be "impervious to a challenge on an issue not taken up at the entry of that judgment." *Id.* at 3–4. The Court determined that LULAC should be entitled to demonstrate that the continuation of the injunction "is no longer equitable." *Id.* at 3–4.

[7] On January 28, 2022, Respondents filed a motion to dismiss LULAC's Amended Petition, which renewed the request for dismissal and "request[ed] that the exhibits and briefing already submitted in support and resistance to [Respondents'] original motion to dismiss be incorporated and deemed to apply to this motion to dismiss the amended petition." Resp'ts' Motion to Dismiss Am. Pet. ¶ 4 (Jan. 28, 2022).

LEGAL STANDARD

Summary judgment should be granted if the record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3). The court shall determine whether summary judgment is appropriate by examining, among other things, "the pleadings, depositions" and any "affidavits. . . ." *Id.*; *see also Wilson v. Darr*, 553 N.W.2d 579, 582 (Iowa 1996). "[W]hen the facts are undisputed and the only issue is what legal consequences flow from those facts, entry of summary judgment is proper." *Emmet Cnty. State Bank v. Reutter*, 439 N.W.2d 651, 653 (Iowa 1989).

ARGUMENT

LULAC is entitled to summary judgment because the plain language of the English-Only mandate exempts voting materials, which are required and necessary to secure the constitutional right to vote. Allowing election officials to interact with and provide voting materials to voters in other non-English languages ensures fidelity with the law's text and purpose, which sought to avoid interference with the exercise of constitutional rights, including the right to vote. Although the Court previously enjoined county officials from using foreign language materials in the voter registration process, *King*, slip op. at 31, the Court can vacate that injunction in this proceeding because unrefuted evidence demonstrates that it is no longer equitable: translated voting materials are necessary to secure the right to vote, and the denial of such materials imposes heightened burdens on voters with limited English proficiency, including LULAC members. For the reasons discussed in this brief, the Court should dissolve the *King* injunction and declare that the English-Only law does not apply to voting materials, including ballots, registration and voting notices, forms, instructions, and other materials and information relating to the electoral process, because they are exempt under the Rights Exception.

I. LULAC has standing to pursue the requested declaratory and injunctive relief.

An organization can assert the interests of its members for standing purposes. *See Puntenney v. Iowa Utils. Bd.*, 928 N.W.2d 829, 837 (Iowa 2019). Similarly, an organization suffers injury sufficient for standing when it diverts resources from other projects because of a law that harms its organizational mission. *Animal Legal Def. Fund v. Reynolds*, 297 F. Supp. 3d 901, 917 (S.D. Iowa 2018) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982) (describing diversion of resources as "precisely the sort of injuries that suffice to confer organizational standing")).[8] Respondents' continued misapplication of the English-Only Law burdens LULAC members, some of whom have limited English proficiency; impairs the organization's ability to achieve its mission; and forces LULAC to divert resources as a result. These injuries easily satisfy Iowa's standing requirements and warrant declaratory relief.

A. LULAC suffers injury from the continuing misapplication of the English-Only Law.

Respondents' misapplication of the English-Only Law and continued enforcement of the *King* injunction injure LULAC in multiple significant and independent ways.

The English-Only Law's application in the context of elections directly impairs the voter mobilization and registration efforts at the heart of LULAC's mission. LULAC cannot provide members with useable voter registration or absentee ballot application forms in Spanish because county officials believe they cannot create or make such forms available, and even if LULAC translates voting forms itself, county officials will not accept them. Pet. SOF ¶ 6. Also, as a direct result of the application of the English-Only Law to voting materials, LULAC must divert volunteer and staff time from other mission-critical programs to attempt to overcome the significant burdens imposed upon its members with limited English proficiency to participate in

[8] Iowa courts have "frequently supplemented and elaborated on" their standing jurisprudence "by drawing on the federal law," *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008).

Iowa's elections. LULAC also must divert critical monetary resources to address these harms, including by preparing and mailing materials to guide its members with limited English proficiency through the voting process. *Id.* ¶¶ 8, 11. These are all resources that could go to other mission-critical efforts if election officials were not prohibited from providing these types of materials directly to voters in Spanish (as many would, but for the application of the English-Only Law).

For example, before the 2022 general election, LULAC members in Muscatine received a postcard with new precinct information *only* in English. *Id.* ¶ 9. LULAC's Muscatine Council scrambled to translate the postcards and distribute them so that members with limited English proficiency did not appear at the wrong polling place, *id.*; but the compressed timeframe and related difficulties to ensure properly translated materials meant that LULAC may not have reached all members in time and some may have been confused and unable to vote. This is but one example of how, even when LULAC spends time and money on assisting its members with limited English proficiency, its efforts may not reach all members who require assistance. And such frantic efforts—during a time when LULAC would otherwise devote staff and volunteer time to voter mobilization—drains LULAC's resources and significantly hampers its mission. *Id.* ¶¶ 8, 11.

B. LULAC's injuries are redressable by this Court.

A declaratory judgment that voting materials may be provided in languages other than English and a corresponding vacatur of the *King* injunction would redress LULAC's injuries. As this Court previously recognized, "LULAC is not simply seeking broad, abstract declarations in this litigation but rather a procedural vehicle to right what it purports to be a wrong." Ruling on Resp'ts' Mot. to Dismiss 13 (internal citation omitted). The requested relief would redress LULAC's injuries for at least four reasons.

First, the removal of a wrongful prohibition on county officials' discretion to provide non-English voting materials is sufficient for redressability. The Supreme Court's decision in *Federal Election Commission v. Akins*, 524 U.S. 25 (1998) (which this Court relied on in previously rejecting arguments concerning redressability) is directly on point. *See* Ruling on Resp'ts' Mot. to Dismiss at 12 (citing *Akins*, 524 U.S. at 25). *Akins* involved a group of voters seeking to challenge the Federal Election Commission's (FEC) refusal to require an organization to disclose campaign finance information—a decision committed to the FEC's discretion. 524 U.S. at 16–18. The *Akins* plaintiffs argued that the FEC's decision was based on a wrongful determination that the organization in question was not a political committee and hence fell outside of the reporting requirements. *Id.* at 18. While the FEC argued that a favorable ruling could not redress the voters' injuries because the agency could reach the same decision again on a different, lawful basis, the Supreme Court disagreed, stating that although "[a]gencies often have discretion about whether or not to take a particular action," "those adversely affected by a discretionary agency decision generally have standing to complain that the agency based its decision upon an improper legal ground." *Id.* at 25. This is true "even though the agency (like a new jury after a mistrial) might later, in the exercise of its lawful discretion, reach the same result for a different reason." *Id.*

This case is no different: LULAC has standing to challenge the continued misapplication of the English-Only Law and the *King* injunction, which (combined) currently function as a prohibition on county officials' discretion to provide non-English voting materials. Pet. SOF ¶¶ 24, 39, 52, 55.

Second, declaratory relief would clarify that Respondents are required to accept some voter registration and other election-related forms in non-English languages, which also redresses some of LULAC's injuries. *See Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) ("[A] plaintiff satisfies

the redressability requirement when he shows that a favorable decision will relieve *a* discrete injury . . . . He need not show that a favorable decision will relieve his *every* injury") (emphasis added); *Massachusetts v. E.P.A.*, 549 U.S. 497, 525 (2007) (same). A declaratory judgment would accomplish this because officials would no longer have a basis to reject otherwise legitimate forms. *See, e.g.*, Iowa Code § 53.2(2)(a) (providing voters can create their own absentee ballot application form and use it instead of the official form if it is "on a sheet of paper no smaller than three by five inches in size that includes all of the information required in this section").

This is not currently the case: while the Secretary's Rule 1.707(5) representative stated that officials would currently have to accept certain translated forms that were otherwise lawful—such as absentee applications that complied with Iowa Code § 53.2(2)(a), Pet. SOF ¶ 29—this is in direct contradiction to the Secretary's response to LULAC's Administrative Petition. *Id.* ¶¶ 57–59. In that Administrative Petition, LULAC expressly asked if county auditors could accept and use the official Spanish-language version of the State of Iowa Official Absentee Ballot Request Form outside of Buena Vista County under Iowa Code § 53.2(2), and in response the Secretary pointed to the *King* injunction as a continuing prohibition on the acceptance of these forms. *Id.* ¶¶ 59–60. The counties share the Secretary Office's apparent confusion. Respondent Lloyd, for example, was unsure whether her office was required to accept otherwise legitimate Spanish language forms (including the Spanish version of the National Mail Voter Registration Form) due to the English-Only Law and the *King* injunction. *Id.* ¶ 53. The declaratory and injunctive relief LULAC seeks would remove this confusion, redressing some of LULAC's injuries.

Third, the factual record confirms LULAC's injuries would be redressed by an order of this Court. The County Auditor and Commissioner of Elections for Linn County has provided a declaration stating that if a court ruled that the English-Only Law did not apply to some or all

voting materials, his office would provide and accept voting materials in Spanish and other non-English languages. *Id.* ¶ 56. Mr. Miller has received requests from the public to provide or accept voting materials in other languages, but his office has declined those requests due to concerns about complying with the English-Only Law. *Id.* ¶ 55. The County Auditor for Buena Vista County provided similar testimony. She confirmed that Buena Vista County distributed Spanish voter registration forms until the *King* lawsuit was filed and that, if not for the *King* injunction, would continue to provide these materials. *Id.* ¶¶ 41, 43. Ms. Lloyd further confirmed that other counties had contacted her asking for copies of Buena Vista's translated voting materials, but she did not provide them "because of the injunction" in *King*. *Id.* ¶ 50.

Fourth, testimony from the Secretary, the Commission, and the Buena Vista County Auditor confirms that they interpret the *King* injunction to prohibit them from accepting or distributing voting materials in non-English languages. *Id.* ¶¶ 21–24, 41–43, 50, 52. All four county Respondents have admitted the same in discovery. *Id.* ¶ 39. Indeed, the *King* lawsuit sought to enjoin the actions of state officials who, at the time, were providing non-English voting materials. *See King*, slip op. at 1–2. This testimony and history establish that a proper interpretation of the English-Only Law is likely to redress LULAC's injuries.

LULAC's burden on redressability is "relatively modest" and LULAC "need not demonstrate that there is a guarantee of redress through a favorable decision," Ruling on Resp'ts' Mot. to Dismiss 12–13 (quoting *M.S. v. Brown*, 902 F.3d 1076, 1083 (9th Cir. 2018)). Instead, LULAC need only show that its injuries are likely to be redressed in order to have standing. *See, e.g.*, *Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780, 791–92 (Iowa 2021). LULAC easily clears that low bar here.

II. LULAC is entitled to seek dissolution of the injunction in *King*.

As this Court previously held, LULAC's declaratory judgment action is the proper vehicle to challenge the *King* injunction. In reaching its conclusion, the Court correctly applied Iowa R. Civ. P. 1.1510, which provides that "[a]n action seeking to enjoin proceedings in a civil action, or on a judgment or final order, must be brought in the county and court where such proceedings are pending or such judgment or order was obtained." Ruling on Resp'ts' Mot. to Dismiss at 5 (quoting Iowa R. Civ. P. 1.1510). Rule 1.1510 expressly contemplates claims to dissolve injunctions and "has not been construed to require that" such action "be brought in the same proceeding" as the challenged injunction. *Id*. at 5–6. Because LULAC filed suit in Polk County district court—the same court that issued the judgment in *King*—Rule 1.1510 empowers this Court to vacate the *King* injunction. *Id.* at 6.

The *King* decision, moreover, has no preclusive effect on LULAC's claims. Because LULAC was not a party to *King*, res judicata does not apply. Ruling on Mot. to Reconsider at 1–2. And defensive issue preclusion is not available against non-parties to the original lawsuit unless they share a community of interest with, and are adequately represented by, the losing party. Even then, preclusion cannot apply unless the issues sought to be raised (1) are "identical," (2) were "raised and litigated in the prior action," (3) were "material and relevant to the disposition of the prior action," and (4) resulted in a ruling "o[n] the issue" that was "necessary and essential" to the judgment. *Opheim v. Am. Interinsurance Exch.*, 430 N.W.2d 118, 120–21 (Iowa 1988) (quotations omitted). None of the requisite elements are present.

LULAC was not a party to *King*, nor were its interests adequately represented. The Secretary's representation of the state in *King* does not make his interests identical to LULAC's interest in securing the rights of its members. *See, e.g.*, *Larsen v. McDonald*, 212 N.W.2d 505, 507 (Iowa 1973) (private plaintiffs suing for private nuisance not precluded by prior government suit

holding that defendants did not violate zoning ordinance); *see also Crossroads Grassroots Pol'y Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 321 (D.C. Cir. 2015) ("[W]e look skeptically on government entities serving as adequate advocates for private parties"); *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (noting that a "[government] agency's views" can be "colored by its view of the public welfare rather than the more parochial views" of a private party). And the Secretary's failure "[f]or whatever reason" to raise the Rights Exception plainly demonstrates that his representation of LULAC's interests was inadequate. *See* Ruling on Mot. to Reconsider 4. "[T]hat decision should not be a bar" to LULAC's claims. *See id.*

Finally, the *King* court expressly declined to address whether the Rights Exception applied to voting materials because it was not raised by the parties. *Id.* at 3. LULAC, however, now squarely raises that exact question. As a result, there can be no serious argument that the question now presented to this Court was in fact "raised and litigated in the prior action" as is required to apply issue preclusion. *See id.* at 2 (citing *Clark v. State*, 955 N.W.2d 459, 465–66 (Iowa 2021)); *Opheim*, 430 N.W.2d at 120 (quoting *Hunter v. City of Des Moines*, 300 N.W.2d 121, 123 (Iowa 1981)). And because the Rights Exception was not "raised and litigated" or "concluded" and was neither "material . . . to the disposition," nor "necessary and essential to the" judgment in *King*," this case meets none of the requirements for issue preclusion. Ruling on Mot. to Reconsider 2–3 (citing *Clark*, 955 N.W.2d at 465–66).

III. LULAC is entitled to summary judgment on its claims for declaratory and injunctive relief.

Under the plain terms of the English-Only Law and basic rules of statutory interpretation, LULAC is entitled to the primary relief it seeks—a declaration that *any* language usage effectuating the right to vote is exempt from the English-Only mandate. But even were the Court to read the Rights Exception more narrowly, LULAC would still be entitled to summary judgment

on its narrower alternative claim: that non-English voting materials must be provided to voters with limited English proficiency because these materials are necessary for such individuals to vote.

A. The Rights Exception excludes all voting materials from the English-Only Law.

The plain language of the English-Only Law expressly exempts from its mandate *any* language usage "required by or necessary to secure" constitutional or federal rights. Iowa Code § 1.18(5)(h). It is beyond dispute that the right to vote is protected by the Iowa Constitution, the U.S. Constitution, and a host of federal laws. Therefore, voting materials—a form of language usage necessary to secure the right to vote—are exempt from the English-Only mandate.

Constitutional protections for the right to vote in Iowa date back to the founding of the State. *See* Iowa Const. art. III, § 1 (1844). As Iowa courts have long recognized, the right to vote is a fundamental right that is at the "heart of representative government and is 'preservative of other basic civil and political rights.'" *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 848 (Iowa 2014) (quoting *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)); *see also Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978). The Iowa Constitution not only protects citizens from being denied the right to vote, but also requires meticulous scrutiny of "regulatory measures abridging the right to vote." *Chiodo*, 846 N.W.2d at 856 (quoting *Devine*, 268 N.W.2d at 623).

The U.S. Constitution also protects Iowans' right to vote. *See, e.g.*, *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 667 (1966) (finding the "political franchise of voting" has long been held to be a "fundamental political right, because [it is] preservative of all rights") (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). Indeed, the "right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds*, 377 U.S. at 555. To this end, several federal statutes have been enacted to further protect every aspect of the voting process. *See, e.g.*, 52 U.S.C.

§§ 10303 (prohibition on literacy tests), 10301 (prohibition on standards, practices, or procedures that create unequal opportunity), 10503 (bilingual election requirements).

One of the major areas where federal law works to protect the right to vote is in language access. In 1965, Congress took its first step to protect the voting rights of language minorities by restricting the use of literacy tests. Though literacy tests are commonly associated with discrimination against Black voters in the South, the VRA made clear that Congress was also particularly concerned with discrimination against Spanish-speaking citizens from Puerto Rico. *See* Pub. L. No. 89-110, § 4(e), 79 Stat. 437, 439 (1965) ("[T]o secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.").

In 1975, Congress expanded federal statutory protections for language minorities with the creation of Section 203 of the VRA. Section 203 is designed to rectify the exclusion of language-minority citizens from participation in the electoral process. *See* 52 U.S.C. § 10503(a). Once a jurisdiction's voting-age population reaches certain numerical or proportional thresholds, and if that jurisdiction's language-minority group has a lower literacy rate than the national average, it becomes a covered jurisdiction. *See id.* § 10503(b)(2). A covered jurisdiction is required to provide "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" in the language of the applicable minority group as well as in English. *Id.* § 10503(c).

Because the right to vote is guaranteed by the Iowa and U.S. Constitutions and federal law, *any* language usage necessary to secure that right is exempt from the English-Only Law. The

phrase "any language usage" is deliberately broad and, in the voting context, should be understood to include ballots and registration or voting notices, forms, instructions, assistance, or other information relating to the electoral process. *See, e.g.*, *State v. Prybil*, 211 N.W.2d 308, 312 (Iowa 1973) ("The word 'any' … is employed to enlarge rather than limit the terms modified. It means 'every' and 'all', not 'one.'"). Indeed, to exclude any of these communications or documents related to the electoral process would suggest that Iowa's election officials are conducting *unnecessary* voter education and engagement.

This approach is also consistent with the scope of language materials required by Section 203 of the VRA. *See* 52 U.S.C. § 10503(b)(3)(A) ("the term 'voting materials' means registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots"). Even in interpreting an Iowa statute, it is appropriate to "look to an analogous federal statute." *Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 761–62 (Iowa 1998); *see also State v. Dahl*, 874 N.W.2d 348, 352–53 (Iowa 2016) (aligning Iowa's indigent defense rule with analogous federal standards). Using Section 203 for guidance is particularly relevant because it existed at the time the Iowa Legislature enacted the English-Only Law and uses language very similar to the Rights Exception: "Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to" prescribe the remedial devices in Section 203. 52 U.S.C. § 10503(a).

The plain language of the Rights Exception compels the conclusions that all voting materials must be exempt from the English-Only Law. For all of these reasons, this Court should grant summary judgment to LULAC and hold that the English-Only Law permits the provision of all voting materials in non-English languages.

B. Alternatively, the undisputed factual record establishes that the Rights Exception exempts non-English materials provided to voters with limited English proficiency.

Even if this Court stops short of exempting all voting materials from the English-Only mandate, the Rights Exception at least permits providing non-English voting materials to voters with limited English proficiency, who necessarily rely on translated voting materials to exercise their right to vote. Unrefuted expert testimony analyzing decades of rigorous studies confirms that the provision of non-English voting materials is critical to allow voters with limited English proficiency to fully exercise the franchise. These studies examined voter behavior in jurisdictions that met the threshold for language minority protections under Section 203 and confirmed that the availability of non-English language voting materials (as required by Section 203) has a significant impact on the political participation of language minorities. Pet. SOF ¶¶ 15–19. For example, one study showed that citizens with limited English proficiency only had a 13% probability of voting without multilingual materials, but that probability rose to 60% in jurisdictions where native-language election materials were available because of Section 203. *Id.* ¶ 17. Another study focused on Spanish-speaking Latinos found that citizens whose predominant language was Spanish were 11% more likely to participate in the electoral process in jurisdictions with Section 203 coverage. *Id.* ¶ 18. Upon review of these studies among other data, LULAC's expert Dr. Rene Rocha concluded that lack of access to multilingual election materials likely results in reduced rates of voter registration and turnout among individuals with limited English proficiency. *Id.* ¶ 20.

The turnout patterns in Buena Vista County, a jurisdiction previously covered under Section 203 of the VRA, are consistent with these findings. In the 2018 general election, the County was required by federal law to provide Spanish-language voting materials, but by 2022, those protections were lifted as Buena Vista County no longer met Section 203's coverage

requirements.[9] During that span, the County saw a nearly 20 percent decrease in turnout, from 53 percent in the 2018 general election to only 43 percent in the 2022 general election.[10]

Testimony from multiple deponents—including Respondents themselves—also confirms the necessity of translated voting materials for individuals with limited English proficiency to be able to freely and fairly access the franchise. Respondent Sue Lloyd, for instance, explained that counties should be allowed to provide translated materials "in order to help their voting population that might need assistance if they can't read English yet" and agreed that such materials would help voters with limited English proficiency exercise the franchise. Pet. SOF ¶ 51. The Office of Latino Affairs' Rule 1.707(5) representative described repeated meetings with the Secretary's office about "increasing voter access" where representatives from her office explained to the Secretary's team that information on voting, such as "what the requirements are to be a voter and what you might see when you get to the polls to familiarize people with polling," "would be better provided in people's native languages." *Id.* ¶ 36; *see also id.* ¶ 37. The Office of Latino Affairs' representative further acknowledged that her office has particular interest in native language voting materials because "if you're unable to read or understand the information about voting, it would, in any circumstance, preclude you from participation unless you had access to someone who could help you," which is "not true for everyone." *Id.* ¶ 35; *see also id.* ¶¶ 30, 34. This would "remove[] some of the independence of your own decision-making in those circumstances," *Id.* ¶ 35. Her office has heard from people wanting voting information in "many languages, but in particular Spanish and American Sign Language," *id.* ¶ 34, and her office's position is that "as much

[9] 2018 Election Results, "Statistical Reports by County" at 22, Iowa Sec'y of State, available at: https://sos.iowa.gov/elections/pdf/2018/general/countystats.pdf (accessed Jan. 31, 2023).
[10] 2022 Election Results, "Statistical Reports by County" at 30, Iowa Sec'y of State, available at: https://sos.iowa.gov/elections/pdf/2022/general/countystats.pdf (accessed Jan. 31, 2023).

information as possible about how to participate in the voting process should be made available in ways people will understand, including in different languages . . . to whatever extent that needs to be taken to allow people to [] exercise their right to vote." *Id.* ¶ 38; *see also id.* ¶¶ 30, 34.

Finally, while Iowa Code 49.90 permits individuals "who cannot read the English language" to receive assistance at the polls—a legislative acknowledgment that such language usage is necessary to secure the right to vote—the Secretary admitted there is no such accommodation for other parts of the voting process, such as registering to vote or casting an absentee ballot. *Id.* ¶ 26.[11] The Secretary also conceded that the assistance available to voters at the polling place under Iowa Code 49.90 has a significant flaw: all of the sources of information about the assistance available under Iowa Code 49.90 (including signs at polling places and the Secretary's website) appear in English only. *Id.* ¶ 27.

Taken together, the unrefuted evidence demonstrates that non-English voting materials are necessary to secure the right to vote, particularly for individuals with limited English proficiency, and that the English-Only Law expressly exempts the use of such materials from its mandate.

C. Under either theory, this Court must dissolve the injunction in *King*.

To enforce the Rights Exception, this Court should exercise its authority to dissolve the injunction in *King*. Injunctions are enforceable "so long as the conditions which produce the injunction remain permanent," but can be vacated" if their "continuation is no longer equitable." Ruling on Mot. to Reconsider at 3–4 (quoting *Bear v. Iowa Dist. Ct. for Tama Cnty.*, 540 N.W.2d 439, 441 (Iowa 1995)). Consistent with this principle, the Iowa Supreme Court has recognized that a change in the interpretation of the governing law provides ample grounds to vacate a pre-existing

[11] Section 208 of the VRA creates similar protections for voters who require assistance in the poll booth because of "blindness, disability, or inability to read or write." 52 U.S.C. § 10508.

injunction. In *Spiker v. Spiker*, 708 N.W.2d 347 (Iowa 2006), for instance, the district court issued a stipulated injunction granting visitation rights to grandparents who had brought a petition for visitation based on an existing statute that afforded such rights to grandparents when the parents of a child were divorced. *See id.* at 350; *see also* Iowa Code § 598.35(1) (repealed 2007). But years later, after the Iowa Supreme Court found the statute unconstitutional, *Spiker*, 708 N.W.2d at 350, 357–59; *see also generally In re Marriage of Howard*, 661 N.W.2d 183 (Iowa 2003), the court vacated the injunction, explaining that the change in the law's interpretation was a change in circumstances that rendered the injunction inequitable. *Spiker*, 708 N.W.2d at 357–59, 361.

LULAC's claims similarly establish that the *King* injunction is no longer equitable. The governing law (in this case, the Rights Exception) which the *King* court did not consider *permits* the use of non-English language voting materials—the very materials the *King* injunction *prohibits*. These positions are irreconcilable. Thus, if the Court grants any of LULAC's alternative requests for declaratory relief, it should also vacate the *King* injunction.

CONCLUSION

The Court should grant summary judgment to LULAC, declaring that all voting materials are exempt from the English-Only Law under the Rights Exception. Alternatively, the Court should at a minimum declare that voting materials provided to voters with limited English proficiency are exempt from the English-Only Law under the Rights Exception. Under either theory, the Court must dissolve the injunction in *King*.

Dated this 1st day of February, 2023.

Respectfully submitted,

/s/ Shayla McCormally

Shayla L. McCormally AT0009611
McCORMALLY & COSGROVE, PLLC
4508 Fleur Drive
Des Moines, Iowa 50321
Telephone: (515) 218-9878
Facsimile: (515) 218-9879
shayla@mciowalaw.com

Uzoma N. Nkwonta*
John M. Geise*
William K. Hancock*
Melinda K. Johnson*
Alexander F. Atkins*
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW, Suite 400
Washington, D.C. 20001
Telephone: (202) 968-4490
unkwonta@elias.law
jgeise@elias.law
whancock@elias.law
mjohnson@elias.law
aatkins@elias.law

Counsel for Petitioner

**Admitted Pro Hac Vice*