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 STEPHANIE BURKE, in her official capacity, Respondents.	Case No. CVCV062715 **Brief in Support of Respondents' Motion to Dismiss**

TABLE OF CONTENTS

INTRODUCTION

Thirteen years ago, in *King v. Mauro*, Polk Cty. No. CV006739 (Iowa Dist. Ct. Mar. 31, 2008) (attached as Ex. A),[1] the district court permanently enjoined the Secretary of State and the Voter Registration Commission from using languages other than English on Iowa's official voter registration forms. The court relied on the Iowa English Language Reaffirmation Act of 2001, which generally requires "[a]ll official documents" to "be in the English language." Iowa Code § 1.18(3) (2022). The League of United Latin American Citizens of Iowa ("LULAC") was not a party that proceeding.

Now, more than a decade later, LULAC brings this new lawsuit seeking an "Injunction on a Judgment or Final Order" under Rule 1.1510 to "dissolve" the permanent injunction issued in *King v. Mauro*. *See* Pet. ¶¶ 44–47, B. And it seeks a declaratory judgment that the Act doesn't actually prohibit providing voter registration forms—or other voting materials like ballots or voting notices—in languages other than English. *See* Pet. ¶¶ 40–43, A.

Whatever the merit of LULAC's interpretation of the Act, it cannot be considered here. This petition suffers from two fatal defects. First, Rule 1.1510 doesn't authorize the Court to dissolve or enjoin a permanent injunction in a prior proceeding. Second, LULAC lacks standing because its requested declaratory judgment is a mere advisory opinion that won't redress any alleged injury to LULAC or its members. This Petition must be dismissed.

---

[1] LULAC attached a superseded order from the *King v. Mauro* proceeding that contains errors in the caption as Exhibit 1 to its Petition. But on April 8, 2008, the court issued a "re-filed ruling with a corrected caption" that it ordered to be "deemed to have been filed on March 31, 2008." The corrected order is Exhibit A to this motion.

FACTUAL BACKGROUND

In early 2002, Governor Vilsack signed into law the Iowa English Language Reaffirmation Act of 2001. *See* Iowa English Reaffirmation Act of 2001, ch. 1007, 2002 Iowa Acts 16 (codified at Iowa Code §§ 1.18, 4.14). The Act declares English "to be the official language of the state of Iowa" and "the language of government in Iowa." Iowa Code § 1.18(2)–(3). And with only certain exceptions, the Act requires "[a]ll official documents, regulations, orders, transactions, proceedings, programs, meetings, publication, or actions taken or issued, which are conducted or regulated by, or on behalf of, or representing the state and all of its political subdivisions" to "be in the English language." Iowa Code § 1.18(3). Those exceptions include, among others, the "[u]se of proper names" and "[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." *Id.* § 1.18(5)(g)–(h).

Despite the Act, a few years after its enactment, the Secretary of State began providing voter registration forms in Spanish and other non-English languages on his website. *King v. Mauro*, Polk Cty. No. CV006739, at 3–4 (Iowa Dist. Ct. Mar. 31, 2008). And a long-time Voter Registration Commission rule continued to authorize county auditors to provide voter registration forms in other languages if they decided it "would be of value." Iowa Admin Code r. 821-2.11 (July 2, 2008); *see also King*, No. CV006739, at 3.

Four county auditors—and other petitioners that were ultimately dismissed for lack of standing—thus sued the Secretary of State and the Voter Registration Commission in 2007. They brought a judicial review action under chapter 17A, seeking to enjoin the Secretary of State from providing non-English voter registration forms because it violates the Act's requirement that

official documents be only in English. They also sought a declaratory judgment that the administrative rule authorizing non-English forms violates the Act.

The district court agreed with the county auditors. It reasoned that voter registration forms are "official documents" and that the text, structure, and purpose of the Act thus prohibits use of non-English languages on the forms. *See King*, No. CV006739, at 18–20. The court rejected contrary arguments that the Act merely requires one English-language version of official documents, that it gives complete discretion to elected officials to use other languages, and that the Act is unconstitutional. *See id.* at 17–30. And the court noted that there was nothing in the record to support—and no party argued— that voter registration forms were "necessary or required to secure the right to vote," which would exempt them from the Act under section 1.18(5)(h). *Id.* at 30.

So the court granted the county auditors an injunction against the Secretary of State and the Voter Registration Commission, prohibiting both from "using languages other than English in the official voter registration forms of this state." *Id.* at 31. And the court declared that the Voter Registration Commission's administrative rule "is null and void" because it conflicts with the Act. *Id.*

No party appealed the district court's order. And the injunction remains in effect. *See King v. Mauro*, Polk Cty. No. CV006739 (Iowa Dist. Ct.).[2]

LULAC was not a party to the suit by the county auditors. It did not seek to intervene in it. And it did not seek to vacate or modify the judgment under Iowa Rule of Civil Procedure 1.1012 within one year of its entry when no party appealed the district court's order.

---

[2] After the order, the Voter Registration Commission eventually rescinded the administrative rule. *See* Iowa Admin. Bulletin Vol. XXXII, No. 1 (July 1, 2009), 68, 72, ARC 7883B (Item 10), *available at* https://perma.cc/4BMX-NPMU.

Instead, more than 13 years after the court issued the injunction, LULAC filed this new lawsuit. It sued the respondents in the former case—the Secretary of State and the Voter Registration Commission—and the four successful petitioners—the county auditors of Buena Vista, Calhoun, Jefferson, and Montgomery counties.[3] And LULAC brings two claims—both involving only the interpretation of the Act.

First, it seeks an "Injunction on a Judgment or Final Order" under Rule 1.1510 to "dissolve" the permanent injunction issued in *King v. Mauro*. *See* Pet. ¶¶ 44–47, B. LULAC contends that the injunction is "founded on an erroneous interpretation of" the Act. Pet. ¶ 39. And it reasons that voter registration forms are exempt from the Act's requirements as "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" under section 1.18(5)(h) because languages other than English are necessary to secure the right to vote. *See* Pet. ¶ 46.

Second, LULAC seeks a declaratory judgment that the Act doesn't prohibit providing voter registration forms—or other voting materials like ballots or voting notices—in languages other than English. *See* Pet. ¶¶ 40–43, A. As with its attack on the prior injunction, LULAC relies on the exception in section 1.18(5)(h) for language usage required by or necessary to secure federal or constitutional rights. *See* Pet. ¶¶ 42–43. And it seeks a declaration of a blanket exception, *see* Pet. ¶ 42, or a narrower one for materials "provided to eligible electors with limited English-language proficiency." Pet. ¶ 43.

[3] The same officials are sued. But different people now hold all the state and county offices—except for Scott Reneker, who continues to serve as Jefferson County Auditor. *Compare King*, No. CV006739, at 4, *with* Pet. at ¶¶ 14, 16–19.

LULAC doesn't seek to *require* the Secretary of State, the Voter Registration Commission, or the county auditors to provide non-English voting materials or to do anything else. And except for its purported injunction of the prior permanent injunction, LULAC seeks no injunction against any party.

LEGAL STANDARD FOR MOTION TO DISMISS

Rule 1.421 of the Iowa Rules of Civil Procedure authorizes a pre-answer motion to dismiss for "[f]ailure to state a claim upon which any relief may be granted." Iowa R. Civ. P. 1.421(1)(f). Motions to dismiss test "the legal sufficiency of the challenged pleading." *Southard v. Visa U.S.A., Inc.*, 734 N.W.2d 192, 194 (Iowa 2007). A motion to dismiss "accept[s] as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014).

A motion to dismiss must be granted "when the petition's allegations, taken as true, fail to state a claim upon which relief may be granted." *Id.* And a petition that fails to properly allege all the requirements of standing—including redressability—must be dismissed. *See Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780, 790–94 (Iowa 2021) (reversing denial of motion to dismiss declaratory judgment action because petitioners failed to satisfy redressability requirement of standing).

ARGUMENT

Both of LULAC's claims are procedurally flawed and fail as a matter of law. LULAC's attempt to collaterally attack a permanent injunction issued in another proceeding fails because Rule 1.1510 doesn't authorize the court to dissolve or enjoin the permanent injunction. And LULAC lacks standing for its requested declaratory judgment because it won't redress any alleged injury to LULAC or its members.

I. LULAC cannot collaterally attack a permanent injunction issued in another proceeding more than 13 years ago.

A permanent injunction, as the name says, "is unlimited in respect of time." *Bear v. Iowa Dist. Ct. for Tama Cty.*, 540 N.W.2d 439, 441 (Iowa 1995). Yet "[t]he court which rendered the injunction may modify or vacate the injunction if, over time, there has been a substantial change in the facts or law." *Id.*; *see also Den Hartog v. City of Waterloo*, 926 N.W.2d 764, 769–70 (Iowa 2019) (affirming dissolution of permanent injunction on enjoined party's motion based on changed factual circumstances). "The law is clear that a court may so modify or vacate an injunction, otherwise the party restrained might be held in bondage of court order no longer having a factual basis." *Helmkamp v. Clark Ready Mix Co.*, 249 N.W.2d 655, 656 (Iowa 1977).

But a new lawsuit—by a stranger to the original injunction—asserting a purported "Injunction on a Judgment or Final Order" claim under Rule 1.1510 is not the way to do so. That's precisely what LULAC attempts here in Count II. *See* Pet. ¶¶ 44–47, B. And its improper collateral attack on the permanent injunction issued more than thirteen years ago in *King v. Mauro*, Polk Cty. No. CV006739, must be dismissed.

For starters, Rule 1.1510 doesn't authorize *any* action—let alone this one. It merely imposes venue and bond requirements for actions "seeking to enjoin proceedings in a civil action, or on a judgment or final order." Iowa R. Civ. P. 1.1510.[4] The authority for LULAC's requested injunction thus must

[4] Iowa Rule of Civil Procedure 1.1510 provides in full:

> An 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, unless that be the supreme court, in which case the action must be brought in the court from which appeal was taken. Any bond in such action must be further conditioned to pay or comply with such judgment or order, or to pay any judgment that may be recovered against the petitioner on the claim enjoined.

come from somewhere else. And for an "action . . . on a judgment," Iowa R. Civ. P. 1.1510— as LULAC apparently pleads this claim—any authority is limited in time. A proceeding to vacate or modify the judgment "must be commenced within one year after the judgment or order was made, unless the party entitled thereto is a minor or person of unsound mind." Iowa Code § 624A.1; *see also* Iowa Code § 624A.3; Iowa R. Civ. P. 1.1012–13.

Besides, most—if not all—Iowa cases seeking to enjoin a judgment and referencing Rule 1.1510 or its predecessor rule or statutes involve halting the execution of a money judgment rather than enjoining another injunction. *See, e.g.*, *Gunn v. Wagner*, 48 N.W.2d 292 (Iowa 1951); *Lockwood v. Kitteringham*, 42 Iowa 257, 258—59 (1875); *see also Hawkeye Ins. Co. v. Huston*, 89 N.W.29, 30–33 (Iowa 1902) (discussing more than a dozen similar early Iowa cases).

While the Iowa Supreme Court hasn't specifically addressed the precise procedure for modifying or vacating a permanent injunction, it has suggested that collaterally attacking a prior injunction is improper. *See Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 8–9 (Iowa 2020) (reversing order that was "in effect a collateral attack" on injunctions issued in three other counties). And even Rule 1.1510 relied on by LULAC—although not directly applicable here—reflects that interest of "comity and noninterference among district courts." *Id.* at 8.

The federal courts agree. In a similar situation, the Eleventh Circuit reversed a district court and rejected an attempt to collaterally attack an injunction issued decades before, holding that "the party must first succeed in having the issuing court modify or vacate the injunction barring disclosure." *Alley v. U.S. Dep't of Health & Hum. Servs.*, 590 F.3d 1195, 1204 (11th Cir. 2009). The Eleventh Circuit favorably described the procedure previously used by the enjoined federal department—moving in the prior proceeding for a

modification of the injunction. *Id.* And the unsuccessful collateral attackers later followed that same procedure—moving to intervene in the original proceeding and seeking to modify the injunction there. *See Florida Medical Ass'n, Inc. v. Dept' of Health, Ed. & Welfare*, No. 3:78-CV-178, 2011 WL 4459387, at *8–15 (M.D. Fla Sept. 26, 2011) (granting motion to intervene, while discussing limited nature of the parties' rights more than thirty years after the permanent injunction was entered).

Therefore, the proper way to seek to modify or dissolve a permanent injunction in an Iowa court is by moving to do so in the proceeding in which the injunction was issued. *Cf. Alley*, 590 F.3d at 1204 ("A direct attack, instead of a collateral one, is the proper procedure."). This procedure has been used in Iowa courts. *See, e.g.*, *Den Hartog v. City of Waterloo*, Black Hawk Cty. No. EQCV1117886 (Iowa Dist. Ct. Jun. 14, 2018) (attached as Ex. B), *aff'd*, 926 N.W.2d 764 (Iowa 2019).

To be sure, LULAC may have serious problems obtaining its relief by direct attack in the original proceeding as well. It doesn't allege any "substantial change in the facts or law" since the permanent injunction was issued. *Bear v. Iowa Dist. Ct. for Tama Cty.*, 540 N.W.2d 439, 441 (Iowa 1995). It only seems to contend that the district court got it wrong in the first instance. And LULAC must show that it is sufficiently interested to intervene or, perhaps, to try to assert rights under Iowa Rule of Civil Procedure 1.1016. But these are issues to be considered only if LULAC presents a proper challenge in the original *King v. Mauro*, Polk Cty. No. CV006739 (Iowa Dist. Ct.), proceeding. LULAC's claim trying to collaterally attack that injunction here must be dismissed.

II. LULAC lacks standing because its requested declaratory judgment would not redress any injury to LULAC or its members.

Standing is a jurisdictional requirement in Iowa. *Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780, 794 (Iowa 2021). Iowa courts don't give advisory opinions. *Id.* at 791 (citing *Schmidt v. State*, 909 N.W.2d 778, 800 (Iowa 2018). And "[i]f the court can't fix your problem, if the judicial action you seek won't redress it, then you are only asking for an advisory opinion." *Id.* at 791. The redressability requirement of standing applies to declaratory judgment actions the same as any other case. *Id.* at 794 (citing *Bechtel v. City of Des Moines*, 225 N.W.2d 326, 330 (Iowa 1975)). And that requirement is not met here.

LULAC seeks only a declaratory judgment that the Iowa English Language Reaffirmation Act's prohibition on using non-English language in official documents "doesn't apply to voting materials, including ballots, registration and voting notices, forms, instructions, and other materials and information related to the electoral process." Pet. ¶¶ 42–43, A.[5] This declaration would not redress any alleged injury of LULAC or its members. It wouldn't provide them voting materials in Spanish or another language. It wouldn't give them guidance about their right to engage in any future conduct. It would merely give an advisory opinion about what the Secretary of State or county auditors *could* do in they desired to do so. And LULAC hasn't even alleged that the Secretary of State or other Respondents *would* alter any of their practices if the Court granted its request.

[5] LULAC seeks the declaration in two alternate forms—a blanket exception, *see* Pet. ¶ 42, and a narrower one only for materials "provided to eligible electors with limited English-language proficiency." Pet. ¶ 43. This distinction is irrelevant to the question of standing at issue in this motion to dismiss.

At bottom, LULAC would be in no different a position after receiving its requested declaratory judgment as it is now. The Court would fix no problem for LULAC. LULAC thus lacks standing. And its claim for a declaratory judgment must be dismissed.

CONCLUSION

For these reasons, LULAC's petition should be dismissed for failure to state a claim under Rule 1.421 of the Iowa Rules of Civil Procedure.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

/s/ Matthew L. Gannon
MATTHEW L. GANNON
First Assistant Attorney General

/s/ Samuel P. Langholz
SAMUEL P. LANGHOLZ
Assistant Attorney General
Iowa Department of Justice
1305 E. Walnut Street, 2nd Floor
Des Moines, Iowa 50319
Phone: (515) 281-5164
Fax: (515) 281-4209
sam.langholz@ag.iowa.gov
matt.gannon@ag.iowa.gov

ATTORNEYS FOR RESPONDENTS
IOWA SECRETARY OF STATE
PAUL PATE AND IOWA VOTER
REGISTRATION COMMISSION

/s/ Kristopher K. Madsen
Kristopher K. Madsen #AT0004969
Robert M. Livingston, #AT0004728
STUART TINLEY LAW FIRM LLP
300 West Broadway, Suite 175
Council Bluffs, Iowa 51503

Telephone: 712.322.4033
Facsimile: 712.322.6243
Direct #712-828-7838
Direct #712-828-7840
Email: kmadsen@stuarttinley.com
Email: rlivingston@stuarttinley.com

ATTORNEYS FOR RESPONDENTS
BUENA VISTA COUNTY AUDITOR
SUE LLOYD, CALHOUN COUNTY
AUDITOR ROBIN BATZ,
JEFFERSON COUNTY AUDITOR
SCOTT RENEKER, AND
MONTGOMERY COUNTY AUDITOR
STEPHANIE BURKE

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties of record by delivery in the following manner on December 22, 2021:

☐ U.S. Mail	☐ FAX
☐ Hand Delivery	☐ Overnight Courier
☐ Federal Express	☐ Other
☒ EDMS	

Signature: */s/ Samuel P. Langholz*

Exhibit A

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STEVE KING, U.S. ENGLISH, INC., SCOTT RENEKER, JONI ERNST, JUDY HOWREY, KAREN STRAWN, PAUL McKINLEY, JERRY BEHN, RALPH WATTS, and NGU ALONS, **Petitioners,** **v.** **MICHAEL MAURO, as Secretary of State of the State of Iowa, and as Chairperson of the Voter Registration Commission, and the VOTER REGISTRATION COMMISSION,** **Respondents.**	**Case No. CV 6739** **ORDER**

The ruling entered herein on March 31, 2008 contained errors in the caption. Contemporaneously with this order the ruling is re-filed with the correct caption. The re-filed ruling with a corrected caption shall be deemed to have been filed on March 31, 2008.

IT IS SO ORDERED April 8, 2008.

DOUGLAS F. STASKAL
Judge of the Fifth Judicial District of Iowa

Original Filed.

Copies mailed to: 4-8-08 AAB

Rand S. Wonio
Attorney at Law
220 N. Main St., Ste 600
Davenport, Iowa 52801
Attorney for Petitioners

Julie F. Pottorff
Christine J. Scase
Assistant Attorneys General
Hoover Building, 2nd Floor
Des Moines, Iowa 50319
Attorneys for Respondent

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

STEVE KING, U.S. ENGLISH, INC., SCOTT RENEKER, JONI ERNST, JUDY HOWREY, KAREN STRAWN, PAUL McKINLEY, JERRY BEHN, RALPH WATTS, and NGU ALONS, **Petitioners,** v. **MICHAEL MAURO, as Secretary of State of the State of Iowa, and as Chairperson of the Voter Registration Commission, and the VOTER REGISTRATION COMMISSION,** **Respondents.**	**Case No. CV6739** **RULING ON PETITION FOR JUDICIAL REVIEW (Corrected Caption)**

INTRODUCTION

This case was before the Court for oral argument and final submission on December 21, 2007. The petitioners were represented by their attorney, Rand S. Wonio. The respondents were represented by the Iowa Attorney General's Office. Having given the matter due consideration the court now makes the following ruling.

STATEMENT OF THE CASE

In this action the Petitioners assert that the Respondents are violating Iowa Code §1.18, the Iowa English Language Reaffirmation Act (the "Act"), by posting voter registration forms on the Iowa Secretary of State's website in non-English languages that can be used by citizens to register to vote, a practice instituted by former Secretary of State Chester Culver and continued by current Secretary of State Michael Mauro. The Petitioners seek a permanent injunction restraining the Respondents from any further use of voter registration forms that are printed in languages other than English. The Petitioners further

seek a judgment declaring Iowa Administrative Code section 821–2.11, the administrative regulation authorizing the production of non-English voter registration forms, unlawful. The pertinent facts for purposes of this ruling are as follows.

The Iowa Language Reaffirmation Act. The Act was signed into law by Governor Tom Vilsack on March 1, 2002, and became effective on July 1, 2002. The purpose of the Act is clearly stated in its introduction wherein the legislature made the following findings and declarations:

> a. The state of Iowa is comprised of individuals from different ethnic, cultural, and linguistic backgrounds. The state of Iowa encourages the assimilation of Iowans into Iowa's rich culture.
>
> b. Throughout the history of Iowa and of the United States, the common thread binding individuals of differing backgrounds together has been the English language.
>
> c. Among the powers reserved to each state is the power to establish the English language as the official language of the state, and otherwise to promote the English language within the state, subject to the prohibitions enumerated in the Constitution of the United States and in laws of the state.
>
> 2. In order to encourage every citizen of this state to become more proficient in the English language, thereby facilitating participation in the economic, political, and cultural activities of this state and of the United States, the English language is hereby declared to be the official language of the state of Iowa.

In furtherance of its stated goal of promoting the English language within the state, the Act provides as follows:

> Except as otherwise provided for in subsections 4 and 5, the English language shall be the language of government in Iowa. All official documents, regulations, orders, transactions, proceedings, programs, meetings, publications, or actions taken or issued, which are conducted or regulated by, or on behalf of, or representing the state and all of its political subdivisions shall be in the English language.

IOWA CODE § 1.18(3) (2007).

Voter Registration. The Secretary of State is a constitutional officer within the executive branch of state government. Among his numerous duties, the Secretary serves as the State Commissioner of Elections, the State Registrar of Voters, and Chairperson of the Voter Registration Commission. The Voter Registration Commission is responsible for prescribing the forms required for the registration of voters in Iowa by rules promulgated pursuant to Chapter 17A of the Iowa Code.

In his capacity as state commissioner of elections, the Secretary of State is responsible for supervising the activities of the county commissioners of elections. Under Iowa law, county auditors are designated as the county commissioners of elections and are responsible for conducting voter registration and conducting all elections within their respective counties. County commissioners of elections must utilize the registration forms prescribed by the Voter Registration Commission for purposes of registering qualified voters within their counties.

Since 1983, a rule promulgated by the Voter Registration Commission has authorized county commissioners of elections to provide voter registration forms to prospective voters in languages other than English. This rule currently provides as follows:

> Notwithstanding any other provision of these rules, any county commissioner may cause production of any approved voter registration form in a language other than English if the commissioner determines that such a form would be of value in the commissioner's county. The registrar shall assist any county commissioner with the translation of voter registration forms upon the request of the county commissioner.

IOWA ADMIN. CODE § 821–2.11. The Secretary of State, in his capacity as the State Registrar of Voters, is the "registrar" responsible for assisting county commissioners with the translation of voter registration forms as required by this rule.

In 2003, former Secretary of State Chester Culver began to provide voter registration forms online to voters in languages other than English. As of 2006, voter registration forms

have been available to the public in non-English languages of Spanish, Vietnamese, Laotion and Bosnian. Current Secretary of State Michael Mauro has continued to make these forms available through the Iowa Secretary of State's website. The Petitioners contend that the provision of these forms for use in registering citizens to vote violates the Act.

Parties. The Petitioners in this matter are Steve King, Scott Reneker, Joni Ernst, Judy Howrey, Karen Strawn, Paul McKinley, Jerry Behn, Ralph Watts, Ngu Alons and U.S. English Only, Inc. Each of the Petitioners' asserted interest in the outcome of this litigation may be summarized as follows:

a. Steve King – Steve King is a taxpayer in the State of Iowa and is a United States Congressman who represents the Fifth Congressional District of Iowa. Mr. King was formerly a member of the Iowa Senate. Mr. King claims that he introduced the Iowa English Language Reaffirmation Act in the senate and moved for its passage.[1] Mr. King claims that he has a vital interest in the enforcement of the Act as a member of congress, a citizen of the state of Iowa, and as a taxpayer interested in the efficient and proper provision of official business and use of government funds, including voter registration that complies with the law.

b. Scott Reneker, Joni Ernst, Judy Howrey and Karen Strawn – Scott Reneker is the Auditor of Jefferson County, Iowa. Joni Ernst is the Auditor of Montgomery County, Iowa. Judy Howrey is the Auditor of Calhoun County, Iowa. Karen Strawn is the Auditor of Buena Vista County, Iowa. As auditors of their respective counties, these officials are designated as the county commissioners of elections within their counties and are responsible for conducting voter registration and elections. The auditors claim to be

[1] The Petitioners submitted an affidavit from Mr. King explaining his view of the intent of the legislation at issue. The Respondents objected and moved to strike the affidavit. At oral argument the Petitioners conceded the point on which the motion to strike is based. The court therefore sustained the motion to strike and the court has not considered Mr. King's affidavit in resolving the issues presented.

adversely affected by the actions of the Respondents because they are placed at risk of violating the Act by being required to supply and/or accept voter registration forms printed in languages other than English. The auditors further assert that they are subject to suit in their roles as county commissioners of elections if they decline to accept the forms. These individuals are also taxpayers in the state of Iowa and claim to have an interest in ensuring that government funds are not used for non-budgeted expenses, such as those which may be incurred through the provision, acceptance, and translation of non-English voter registration forms.

c. Paul McKinley, Jerry Behn, and Ralph Watts – Paul McKinley and Jerry Behn are members of the Iowa Senate. Ralph Watts is a member of the Iowa House of Representatives. These legislators claim to have a vital interest in the enforcement of the Act. They also claim to be interested, as taxpayers in the state of Iowa, in the efficient and proper provision of official business within the state and use of government funds, including voter registration that complies with the law.

d. Ngu Alons – Ngu Alons is a citizen and taxpayer of the state of Iowa. Alons claims to be interested in the efficient and proper provision of official business and use of government funds, including voter registration that complies with the law.

e. U.S. English Only, Inc. – U.S. English Only, Inc. is a citizens action group dedicated to preserving the unifying role of the English Language in the United States. This entity asserts "that learning and speaking English is the single greatest empowering tool that immigrants must have to succeed," and therefore challenges the Respondents' use of non-English voter registration forms because it believes "that the actions of [the Respondents] are hindering such opportunities for immigrants."

ANALYSIS

The Respondents assert that the Petitioners lack standing to challenge the decision of Secretary of State Mauro to make voter registration forms available to voters in languages other than English and lack standing to challenge the administrative rule authorizing that practice. Because standing is a necessary pre-requisite to the invocation of the court's jurisdiction, the court must first address this issue.

I. DO THE PETITIONERS HAVE STANDING TO MAINTAIN THIS ACTION?

"Standing has been defined to mean that a party must have 'sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of the controversy.'" *Berent v. City of Iowa City,* 738 N.W.2d 193, 202 (Iowa 2007) (quoting *Birkhofer ex rel. Johannsen v. Brammeier,* 610 N.W.2d 844, 847 (Iowa 2000)). To establish standing, a complaining party "must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Id.*[2] These two requirements are separate and both must be met by the Petitioners in order to have standing. *Citizens for Responsible Choices v. City of Shenandoah,* 686 N.W.2d 470, 475 (Iowa 2004).

The Petitioners assert that they have standing to make these challenges either by virtue of their pecuniary interest as taxpayers within the state, or as citizens who have a right to require the government to enforce its laws. The Petitioners also assert that Scott Reneker, Joni Ernst, Judy Howrey and Karen Strawn have standing to challenge the actions at issue by virtue of their status as county auditors responsible for conducting voter registration within their respective counties. The court will address each of these claims for standing in turn.

A. <u>Taxpayer Standing</u>. The Iowa Supreme Court has recognized that a taxpayer has standing to challenge the actions of governmental bodies or public officers where the

[2] The same standards apply to a party's challenge of administrative agency action by way of a petition for judicial review. *Richards v. Iowa Dept. of Revenue & Finance,* 454 N.W.2d 573, 575 (Iowa 1990).

actions complained of could have a direct impact on the amount of taxes the taxpayer would have to pay, even if the alleged injury is no different than that of any other similarly situated taxpayer. *Richards v. Iowa Department of Revenue and Finance,* 454 N.W.2d 573, 575-76 (Iowa 1990). *See also Elview Construction Co., Inc. v. North Scott Community School District,* 373 N.W.2d 138, 142 (Iowa 1985) (school district taxpayers have standing to challenge allegedly illegal expenditures by school board); *Riso v. Pottawattamie Board of Review,* 362 N.W.2d 513, 515 (Iowa 1985) (tenant had standing to challenge tax assessment against leased property where tenant was obligated under lease to pay property taxes); *In re Chicago, Milwaukee, St. Paul and Pacific Railroad Co.,* 334 N.W.2d 290, 293 (Iowa 1983) (resident and property taxpayer of county through which railroad ran could challenge Iowa Railway Finance Authority Act because it could affect county's available resources and future property taxes). These cases seem to follow the "well-established rule" that a person may pursue an action as an aggrieved taxpayer if the challenged action would increase the person's taxes or diminish a fund to which the person has contributed. *Alons v. Iowa Dist. Court for Woodbury County,* 698 N.W.2d 858, 864 (Iowa 2005). The bounds of taxpayer standing under this rule are not, however, limitless. Where a challenged action may only incidentally and indirectly affect a fund to which a taxpayer has contributed and as a result of the day to day operations of a governmental body, without an express order or appropriation providing for the use of such funds, standing will not lie. *See id.* at 871; *Polk County v. Dist. Court,* 110 N.W. 1054, 1054-55 (Iowa 1907); *see also Hein v. Freedom From Religion Foundation, Inc.,* 127 S. Ct. 2553, 2566 (2007). If a taxpayer's claimed injury is not directly connected to the pecuniary impact of the challenged act, there is no standing. *See Citizens for Responsible Choices v. City of Shenandoah,* 686 N.W.2d 470, 475 (Iowa 2004) (alleged issuance of revenue bonds by municipalities could not be challenged by

plaintiffs who were not taxpayers in those municipalities and could not be financially impacted by the bonds).

In this case, the Petitioners assert that there are costs associated with the provision of non-English voter registration forms that will increase their tax burden and/or diminish a fund to which they have contributed, and that they have sustained a pecuniary injury as a result which is sufficient to confer taxpayer standing under the authorities just cited. Specifically, the Petitioners assert that there are costs associated with maintaining the non-English forms on the Secretary of State's website, that time and effort was expended by state personnel in creating the forms, that state personnel must expend time and effort in interpreting and investigating the forms, and that county auditors must be trained in the use of the forms. While the court acknowledges that the Secretary of State has incurred specific costs at one point in time in providing for non-English voter registration forms, the pecuniary impact resulting from the use of the forms has only incidentally and indirectly affected the Petitioners' interest as taxpayers, and therefore cannot qualify as the type of direct pecuniary injury sufficient to support a finding of taxpayer standing.

First, with regard to the costs associated with creating and maintaining voter registration forms, it is undisputed that the former Secretary of State incurred only $630 in expenses for the purpose of translating updated voter registration forms into non-English languages. (*See* Joint Stipulation, p. 2, ¶ 4). No additional amounts have been expended for these purposes since the current Secretary of State assumed office. Furthermore, it is undisputed that the State does not incur a fee for maintaining these forms on the Secretary of State's website. (*See* Joint Stipulation, p. 2, ¶ 5). It is further conceded that the Secretary does not print and maintain non-English voter registration forms at his office in bulk. Anyone wishing to obtain such a form must print a copy from the Secretary of State's website. (*See*

Joint Stipulation, p. 2, ¶ 6). Consequently, any costs incurred in creating and/or maintaining non-English voter registration forms are minimal at best, and were incurred prior to Secretary Mauro's succession to office.

Secondly, there is no evidence in the record demonstrating that as a result of providing these forms in an alternative language, the State has incurred, or will incur in the future, any additional administration expenses beyond that which is incident to the proper registration of voters and the training of county auditors in general. The non-English voter registration forms at issue are an exact replica of the standard forms provided in English save for the use of a different language. The design and arrangement of the forms makes it impossible to mistake the questions and information sought on the form even though the headings are stated in a different language. For example, the section of the form that requests the registrant's telephone number is in the same location and looks exactly the same on both the English and Spanish versions of the form except that the words "telephone number" are stated in English and Spanish, respectively. Thus, there is no need to have someone translate one of the foreign language forms for anyone reviewing the form as long as the reviewing person had an English version of the form for comparison. The court therefore rejects the Petitioners' argument that a translator will be necessary for purposes of receiving and verifying information provided on the non-English voter forms. The Petitioners illustrated this point themselves when in argument they submitted a copy of an actual Spanish language version of the form that had been submitted in one of the counties. The registrant had check-marked "Si" in response to the question "are you a citizen of the United States?", which question was printed in Spanish on the form. The Petitioners argued that this makes it difficult for them to determine if the registrant is a citizen. This is a preposterous argument. The truth of the answer to the question has nothing to do with the language in which it was asked. What the

Petitioners were seemingly really arguing is that it is difficult to determine the citizenship of persons who do not speak English. Whether this is true or not has nothing to do with the language in which the form is printed. Thus whatever costs are incurred in reviewing and investigating answers given on non-English voter registration forms will be the same as they would be if the forms were printed only in English.[3]

Additionally, there is no evidence in the record indicating that county auditors are required to undergo training at taxpayers' expense in addition to the training that is normally provided to county auditors in the course of their continuing education. County auditors receive information regarding non-Englsih voter forms during continuing education seminars that deal with variety of topics bearing upon the duties of county commissioners of elections generally. (*See* Reneker Affidavit, ¶ 6). There has been no specific allotment or appropriation of funds for purposes of separately training county auditors in the use of non-English voter registration forms. The court rejects any argument that the mere provision of information regarding non-English registration forms during a continuing education seminar covering a variety of topics somehow diminishes a fund to which Petitioners have contributed.

The issue of taxpayer standing in this case therefore boils down to the expenditure of $630 in 2006 for purposes of creating voter registration forms in languages other than English. There is no evidence indicating that a specific appropriation or order was made for that expenditure. Rather, apparently, the funds were taken from appropriations made for general administrative expenses within the Office of the Secretary of State. The pecuniary impact this expenditure has had on an individual taxpayer is infinitesimal.

---

[3] In fact, one can easily imagine that administering the voter registration process would be made even more difficult and costly if voter registration forms were not provided in alternative languages for those who do not speak English. It is simply logical that, first, persons who do not speak English would require more assistance in filling out the forms and, second, there would be less confidence in the accuracy, and therefore further investigation and verification required, of forms completed by registrants who can't understand them.

The Petitioners assert that the amount in controversy has no bearing on the issue of standing. The court disagrees. The Petitioners' argument is essentially that, having paid taxes into the treasury of the State of Iowa at some point, they have a continuing interest in ensuring that those funds are not used for purposes other than those authorized by law regardless of the amount of funds expended. The court finds persuasive the conclusion among federal authorities that such an interest is "too generalized and attenuated" to support taxpayer standing. *See Hein,* 127 S. Ct. at 2563; *see also Alons,* 698 N.W.2d at 869 ("the federal test for standing is not dissimilar from our own test . . . . We therefore consider the federal authority persuasive on the standing issue."). Under Iowa law, to support a finding of taxpayer standing, a litigant must demonstrate a pecuniary injury that is directly connected to the impact of a challenged act such that the litigant can be said to have a direct interest in the outcome of the case. *See Alons,* 698 N.W.2d at 871; *Richards,* 454 N.W.2d at 575-76. The Petitioners have not demonstrated that the provision of non-English voter registration forms will increase the amount of taxes that they will be required to pay, nor have they demonstrated that a fund to which they have contributed will somehow be diminished beyond that which is normally to be expected as a consequence of registering qualified voters. The incidental impact that a 2006 expenditure of $630 (taken from general administrative funds) may have had on the amount of funds Petitioners have contributed at some point to the treasury of this state is too indeterminable, indirect, and attenuated to support a finding of taxpayer standing. The court concludes therefore that the Petitioners' status as taxpayers alone is insufficient to afford them standing to seek the relief requested.

B. Citizen standing. The Petitioners assert that even if they cannot demonstrate a direct pecuniary injury to their interests as taxpayers sufficient to establish standing, they nevertheless have standing to bring this action as citizens of the State of Iowa who have a right

to require the government to enforce its own laws. In support of their argument the Petitioners point to a line of cases standing for the proposition that a citizen need not demonstrate a specific injury or damages for standing purposes when seeking to enforce rights in which the public has a vital interest. *See Hurd v. Odgaard,* 297 N.W.2d 355, 357 (Iowa 1980); *Iowa Mut. Tornado Ins. Ass'n v. Timmons,* 105 N.W.2d 209, 216 (Iowa 1960); *Claussen v. Perry,* 79 N.W.2d 778 (Iowa 1956); *Abbot v. Iowa City,* 277 N.W. 437 (Iowa 1938). The Petitioners assert that the public has a vital interest in ensuring that the government use only voter registration forms printed in English for purposes of registering qualified voters.

Iowa courts have refused to confer standing upon individuals who assert only a generalized grievance about the actions of their government without demonstrating an injury different from that of the public generally. *See Alons,* 698 N.W.2d at 870; *Vietnam Veterans Against the War v. Veterans Memorial Auditorium Commission,* 211 N.W.2d 333, 335 (Iowa 1973); *Polk County,* 110 N.W. at 1054. Indeed, the Iowa Supreme Court has cited favorably to the following principles developed from federal case law:

> [W]hen the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. Thus, a plaintiff raising only a generally available grievance about government-claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large-does not [provide a basis for standing].
>
> The claimed nonobservance of the law, "standing alone," affects only the generalized interest of all citizens, and such an injury is abstract in nature, which is not sufficient for standing.

Alons, 698 N.W.2d at 868-69 (internal citations omitted). While supporting the proposition that citizens need not always demonstrate a specific identifiable injury distinct from the population generally for standing to challenge governmental actions, the cases cited by the Petitioners cannot be read to completely eliminate the duty to demonstrate some specific

personal or legal interest in the outcome of a controversy that will in some way be affected by a challenged governmental action as a prerequisite to standing. Indeed, all of the litigants in the cited cases were able, at a minimum, to identify a direct interest in the outcome of litigation beyond the general desire to compel governmental compliance with the law. *See Hurd,* 297 N.W.2d at 358 (group of lawyers, as citizens and taxpayers of county, had standing to bring action to compel county board of supervisors to comply with its statutory duty to provide a suitable courthouse for the practical, day to day business of the county's citizens); *Iowa Mut. Tornado Ins.,* 105 N.W.2d at 216 (plaintiff, as a citizen, property owner, and taxpayer, had standing to bring action to compel insurance commissioner to require insurance company conducting business within the state to pay a two per cent premium tax on business conducted in state where failure to do so deprived the state of substantial revenue that would otherwise be collected from plaintiff and other similarly situated property owners, and would result in unfair discrimination in favor of insurance company over plaintiff); *Claussen v. Perry,* 79 N.W.2d 778, 782-83 (Iowa 1956) (plaintiffs, as residents and voters within county, had standing to bring action to compel county superintendent to call election for vote on consolidation of five rural independent school districts into one township independent school district where statute explicitly granted plaintiffs, along with majority of other residents, the right to demand submission of the question to the decision of the electors of the county, where plaintiffs' children were not receiving the modern education to which they were entitled, and where the consolidation would reduce plaintiffs' tax burden); *Abbot v. Iowa City,* 277 N.W. 437, 438-39 (Iowa 1938) (plaintiff, as a resident, citizen, elector, taxpayer, and consumer of electricity in city, had standing to commence action to restrain city from proceeding to construct a municipal power plant to supply electricity to city residents where majority of vote of legal electors in favor of the project was

required before the city could engage in such a large and costly undertaking). In this case, the Petitioners have identified no interest in the issue beyond the mere desire to ensure governmental compliance with the law. That is not the type of direct personal or legal interest in the outcome of a controversy sufficient to confer standing. *See Alons,* 698 N.W.2d at 870; *Vietnam Veterans Against the War,* 211 N.W.2d at 335.

C. Standing of County Auditors. The county auditors who are parties argue that they have standing to bring this action in their capacity as county commissioners of elections responsible for conducting voter registration within their respective counties. These officials argue that the Act forces them to question their authority to provide and/or accept voter registration forms printed in languages other than English, giving them a specific, personal, and legal interest in the issues raised in this lawsuit.

The Respondents answer this argument by citation to *Iowa Department of Revenue v. Iowa State Board. of Tax Review* wherein the Court recognized that subordinate officials do not have standing to challenge the decisions of a superior official or coordinate board or tribunal in the vertical chain of agency decision-making. 267 N.W.2d 675, 678 (Iowa 1978). The Respondents assert that because the county auditors are subject to the supervision of the Secretary of State, and are required to utilize forms prescribed by the Voter Registration Commission, they cannot be "aggrieved or adversely affected" persons who have standing to bring this action. *See id.* The court is not convinced, however, that this principle has application to the case at hand.

The Court's decision in *Southwest Warren Community School District v. Depart of Public Instruction* is instructive on this issue. 285 N.W.2d 173 (Iowa 1979). In that case, a school district expelled a special education student. On the student's appeal, the Department of Public Instruction, an entity superior to the school district, ruled that a special education

student could not be expelled from school by the district under any circumstance. The school district sought review in district court. In response to the Department of Public Instruction's argument that the school district lacked standing to bring its action based upon the holding in *Iowa Department of Revenue*, the Court clarified its prior ruling and held that the school district had standing to seek a judicial determination of its authority to expel a special education student under Iowa law. *Southwest Warren Cmty. Sch. Dist.,* 285 N.W.2d at 177. The Court distinguished between the type of situation presented in *Iowa Department of Revenue*, where a subordinate official sought to challenge the decision of a superior authority in the vertical chain of agency decision-making, and that presented in *Southwest Warren*, where a subordinate merely seeks a judicial determination as to the nature and extent of the subordinate's statutory powers. *Id.* at 177. The Court explained that cases like *Iowa Department of Revenue* involved "a superior authority [sitting] in review of a subordinate's exercise of powers which were entrusted by the legislature to the administrative discretion of the agency." *Id.* That circumstance is fundamentally different from a circumstance in which the subordinate does not challenge a "superior agency's reversal of an adjudication of a matter entrusted by statute to agency discretion," but rather seeks a judicial determination as to the nature and extent of the subordinate's statutory authority to engage in a given act. *Id; accord Polk County v. Iowa State Appeal Board,* 330 N.W.2d 267, 272 (Iowa 1983). Where, upon receiving a directive from a superior agency, the subordinate or superior's authority under relevant or enabling legislation is placed into question, and where the superior agency cannot authoritatively resolve the question presented, the subordinate possesses a specific, personal, and legal interest which is specially and injuriously affected for standing purposes. *See Southwest Warren Cmty. Sch. Dist.,* 285 N.W.2d at 177; *accord Polk County,* 330 N.W.2d at 272.

In this case the county auditors' petition is not based upon their dissatisfaction with the Respondents' reversal of an adjudication of a matter entrusted by law to the Respondents' discretion. Rather, they are seeking a judicial determination as to whether they may, consistent with the Act, provide and accept voter registration forms printed in languages other than English without violating the law. County auditors have been informed by the Secretary of State's Office that they must provide and accept voter registration forms printed in languages other than English for purposes of registering voters within the state. (*See* Howrey Affidavit, ¶¶ 6-7); (Ernst Affidavit, ¶¶ 6-7). This places the county auditors in the precarious position of choosing either to follow the Secretary of State's directive while questioning its legality or to refuse to follow that directive because they question its legality. This properly places the nature and extent of the county auditors' statutory powers into question, and is sufficient to give them a "'specific, personal, and legal interest' which has been 'specially and injuriously affected'" to confer upon them standing to challenge the Secretary of State's directive. *See Southwest Warren Cmty. Sch. Dist.*, 285 N.W.2d at 177-78.

Because they have failed to demonstrate that they have standing to challenge the actions at issue, the claims of the Petitioners Steve King, U.S. English Only, Inc., Paul McKinley, Jerry Behn, Ralph Watts, and Ngu Alons are dismissed. The Petitioners Scott Reneker, Joni Ernst, Judy Howrey and Karen Strawn, in their capacity as county commissioners of elections, do have standing to petition this court for review of the agency action at issue and the court now, therefore addresses their claims. To the extent the court hereinafter refers to the "Petitioners" in discussing the parties' positions and arguments, reference is to those Petitioners who the court has determined have standing.

I. DOES THE PROVISION OF VOTER REGISTRATION FORMS IN LANGUAGES OTHER THAN ENGLISH VIOLATE THE IOWA ENGLISH LANGUAGE REAFFIRMATION ACT?

Subject to several enumerated exceptions, the Act provides that "the English language shall be the language of government in Iowa." IOWA CODE § 1.18(3). The Act further provides that "[a]ll official documents, regulations, orders, transactions, proceedings, programs, meetings, publications, or actions taken or issued, which are conducted or regulated by, or on behalf of, or representing the state and all of its political subdivisions shall be in the English language." *Id.* The term "official action," is defined as "action taken by the government in Iowa or by an authorized officer or agent of the government in Iowa that" either: (a) binds the government; (b) is required by law; or (3) is subject to scrutiny by either the press or the public. *Id.*

The Petitioners argue that the provision of voter registration forms in languages other than English for use by citizens in registering to vote is "official action" and that the voter registration forms at issue are "official documents", both within the meaning of the Act. The Petitioners argue that the use of the forms is therefore prohibited. They further argue that the provision and use of the forms does not fall within the scope of one of the enumerated exceptions defined in subsections 4 and 5 of the Act.[4]

[4] Subsection 4 of section 1.18 of the Iowa Code provides that English only requirements shall not apply to:

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.

While the Respondents do not dispute that voter registration forms are "official documents" within the meaning of Iowa Code section 1.18(3), they suggest a construction of the Act that is far more permissive than that urged by the Petitioners.[5] The Respondents argue that because the Act provides that government documents "shall be in the English language," and not that such documents "shall be in English *and no other language*," it allows for the use of multilingual documents in the course of official government business as long as an English version of the document is also used. The Respondents also argue that even if the Act cannot be given the construction they suggest, providing non-English voter registration forms to voters is permitted under the Act's exception which allows for communication in non-English languages in the performance of official government business when deemed necessary or desirable. *See* IOWA CODE § 1.18(5)(a). Finally, the Respondents argue that the Act would be unconstitutional if construed as proposed by the Petitioners. The court will address each of these arguments separately.

---

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

In addition, subsection 5 of section 1.18 provides:

> Nothing in this section shall be construed to do any of the following:
>
> a. Prohibit an individual member of the general assembly or officer of state government, while performing official business, from communicating through any medium with another person in a language other than English, if that member or officer deems it necessary or desirable to do so.
>
> b. Limit the preservation or use of Native American languages, as defined in the federal Native American Languages Act of 1992.
>
> c. Disparage any language other than English or discourage any person from learning or using a language other than English

[5] Because there exists no provision of law which vests Respondents with the authority to interpret the Act, the Court gives no deference to the Respondents' interpretation of its provisions. *See Birchansky Real Estate, L.C. v. Iowa Dept of Public Health,* 737 N.W.2d 134, 138 (Iowa 2007)

A. Interpretation of the Act. In determining the effect of a given statute, the ultimate goal is to ascertain the true intention of the legislature. *State v. Tarbox*, 739 N.W.2d 850, 853 (Iowa 2007). "Legislative intent is determined from the words chosen by the legislature, not what it should or might have said." *Id.* When the text of a statute is plain and its meaning clear, the court will "not search for a meaning beyond the statute's express terms or resort to rules of statutory construction." *Iowa Dept. of Transp. v. Soward*, 650 N.W.2d 569, 571 (Iowa 2002). It is only when a statute is ambiguous that the court resorts to such rules. *Id.*

The legislature's mandate that "all official documents . . . shall be in the English language" is clear and unambiguous, and is not amendable to the interpretation urged by the Respondents. The word "all" as used in this section connotes exclusivity in application, and the word "shall" imposes a duty as opposed to a permissive exercise of discretion. *See* IOWA CODE § 4.1(30). By providing that "all" official documents "shall" be in English, and by listing a number of exceptions to this general rule, it is clear that the legislature intended English to be the exclusive language used in official documents unless one of the exceptions is implicated. *See* IOWA CODE § 1.18(3). The court does not believe that the legislature was required, as suggested by Respondents, to expressly state that "English and *no other language*" should be used in official documents in order to preclude the use of other languages in those documents. The wording of section 1.18(3) as it stands is sufficient to convey that meaning.

Moreover, even if the court were to conclude that the language in question is reasonably susceptible to more than one interpretation, application of recognized rules of statutory construction would lead to the rejection of the interpretation urged by the Respondents. In determining the intention of the legislature, the court may consider "the underlying purpose and policy of the statute, and the consequences of different

interpretations." *Bankers Standard Ins. Co. v. Stanley*, 661 N.W.2d 178, 180 (Iowa 2003). The purposes and policies behind the Act are clearly stated. The Act recognizes that proficiency in English is crucial to the full participation by Iowa citizens in "the economic, political, and cultural activities of this state and of the United States." IOWA CODE § 1.18(2). The Act was therefore designed to "encourage every citizen of this state to become more proficient in the English language." *Id.* The purposes and policies behind the Act would be substantially undermined if the court were to accept the Respondents proposed construction of section 1.18(3). Logically, allowing multilingual official documents to be distributed to citizens as long as one English version of the document is also made available would not promote but would frustrate the purpose of encouraging English proficiency amongst Iowa residents.[6] The court therefore rejects the construction of section 1.18(3) offered by the Respondents, and concludes that the legislature has expressly precluded the use of non-English languages in official government documents unless one of the enumerated exceptions is implicated.

B. Applicability of Iowa Code section 1.18(5)(a). The Respondents contend that providing voter registration forms to voters in languages other than English is authorized by the exception set forth in section 1.18(5)(a) which, in relevant part, provides as follows:

> 5. Nothing in this section shall be construed to . . .
>
> a. Prohibit an individual member of the general assembly or officer of state government, while performing official business, from communicating through any medium with another person in a language other than English, if that member or officer deems it necessary or desirable to do so.

The Respondents assert that this exception is applicable to the use of alternate languages in official government documents, and authorizes the Secretary of State and the Voter

---

[6] If non-English official documents were always made available to citizens of the state who are not proficient in English, there would be no incentive to learn English to understand the documents. While there may indeed be many other reasons one would want to become more proficient in English, the ability to read and understand official documents disseminated by the government could likely, as recognized by the legislature, have some bearing on this decision.

Registration Commission to provide translated voter registration forms in non-English languages to prospective voters. The Petitioners argue that this exception was not meant to apply to the use of non-English languages in official government documents, but was rather created as an exception that authorizes unofficial or informal communication with other persons on an ad hoc basis when deemed necessary or desirable.[7] They argue that the Respondents' interpretation of this provision is contrary to the express intent of the legislature and would undermine the purpose of the Act by effectively rendering the mandate of section 1.18(3) meaningless. The court agrees with the Petitioners.

The Respondents' interpretation of section 1.18(5)(a) suffers from the same infirmity as does their interpretation of section 1.18(3). Again, section 1.18(3) is clear in mandating that all official government documents "shall be in the English language." If the Respondents' proposed interpretation of this exception is accepted, a government official could disregard this mandate anytime for any reason. This would allow this exception to swallow the rule. "When interpreting the meaning of a statute," courts must avoid a construction "which renders a part of the statute superfluous . . . and instead presume that each part of the statute has a purpose." *State v. Huan,* 361 N.W.2d 336, 338 (Iowa App. 1984). The Respondents' interpretation of section 1.18(5)(a) would deprive the Act of its essential purposes, and would render the requirement that official documents be printed only in English a suggestion instead of a mandate. The court cannot reasonably give this exception that meaning because it would conflict and interfere with the clearly stated purpose of the statute. The more reasonable interpretation of the meaning of this exception,

[7] Under the Petitioners' construction of this exception, a representative of the Secretary of State's Office would be able to communicate informally with a citizen through a letter printed in Spanish explaining how to use a voter registration form, but would be precluded from providing and accepting a voter registration form printed in Spanish for the purpose of registering the citizen as a qualified voter.

because it keeps the meaning of the statute consistent with its purpose as expressed by the legislature, is the interpretation proposed by the Petitioners.

C. Constitutionality of the Act.

Having determined that the Act requires all official government documents to be printed in English, the court must now address the Respondents' contention that the Act, as sought to be applied in this case, is unconstitutional. The Respondents assert that if the Act is interpreted to preclude the use of alternative languages in official government documents, it impermissibly infringes upon the free speech and equal protection rights of government actors and of citizens of the state who desire access to information in languages other than English. The Respondents urge the court to avoid the conclusion that the Act is unconstitutional by adopting a narrow construction of its terms that would permit the use of multilingual official documents in the course of official government business.

When determining the effect of a given statute, courts generally presume that the legislature intended the statute to comply with "the Constitution of the state and of the United States." IOWA CODE § 4.4(1). Consequently, "[i]f [a statute] is reasonably open to two constructions, one that renders it unconstitutional and one that does not," courts are obliged to construe the statute in a way that avoids unconstitutionality by adopting the construction that would pass constitutional muster. *State v. Carter,* 733 N.W.2d 333, 340 (Iowa 2007). However, in construing a statute so as to avoid unconstitutionality, courts may not assume the role of lawmaker by creating a new law that is contrary to the manifest intent of the legislature. *See State v. Iowa Dist. Court for Johnson County,* 730 N.W.2d 677, 679 (Iowa 2007) ("When a proposed interpretation of a statute would require the court to 'read something into the law that is not apparent from the words chosen by the legislature,' the court will reject it."); *State v. Schmidt,* 588 N.W.2d 416, 421-22 (Iowa 1998). When a

narrowing construction cannot be given to a statute to preserve the statute's constitutionality consistent with the intent of the legislature, courts must void the unconstitutional portion of the statute in its entirety.

For reasons already discussed in this ruling, the court cannot apply a narrowing construction to the Act that would permit the use of multilingual official documents in the course of government business and still leave the meaning and effect of the statute consistent with the intent of the legislature. The Act is simply not susceptible to the construction urged by the Respondents. Adopting such a construction would essentially create a new law that is inconsistent with the express policies and purpose of the Act. The court would then be improperly acting as a legislator as opposed to an impartial decider of cases and controversies. The court refrains therefore from adopting a strained construction of the Act that is contrary to legislative intent and instead confines its ruling to a determination of whether the government may constitutionally require that official government documents be printed only in English.

The constitutional concerns raised by so-called "English-only" laws reach beyond the mere issue of whether the government may place limitations on the type of language that may be used in official government documents. Courts addressing the constitutionality of "English-only" laws in other jurisdictions have held that such laws (or portions thereof) impermissibly infringe upon the First Amendment right to freedom of speech by depriving non-English speaking persons access to vital information imparted by their government,[8] by

[8] The United State Supreme Court recognizes that First Amendment protection is afforded not only to the source of communication, but also its recipient. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756-57 (1976). "Recipient speech rights are predicated on the idea that the First Amendment ensures 'public access to discussion, debate, and the dissemination of information and ideas.'" *Alaskans for a Common Language, Inc.*, 170 P.3d at 200 (quoting *First Nat'l Bank of Boston v. Belloti*, 435 U.S. 765, 783 (1978)). The Constitution therefore protects the right to receive information and ideas "because this is 'a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press and political freedom.'" *Id.* (quoting *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982).

preventing such persons from effectively communicating with their government and petitioning their government for redress, and by depriving government officials, agents, and employees the ability to communicate with the public. *See Alaskans for a Common Language, Inc. v. Kritz,* 170 P.3d 183 (Alaska 2007); *In re Initiative Petition No. 366,* 46 P.3d 123 (Okla. 2002); *Ruiz v. Hull,* 957 P.2d 984 (Ariz. 1998). The laws involved in these cases were construed to prohibit all governmental communications, both written and oral, by all members of the government, in any language other than English when conducting both official and unofficial state business, thereby imposing substantial if not complete communication barriers between the government and language minorities. *See Alaskans for a Common Language, Inc.,* 170 P.3d at 194-95; *In re Initiative Petition No. 366,* 46 P.3d at 127; *Ruiz,* 957 P.2d at 993-94. While the Act contains exceptions to the English-only requirement not contained in the laws at issue in these cases, and while it seemingly applies only to official as opposed to unofficial government action, the limited scope of individuals to whom the Act's main exception[9] applies coupled with the Act's sweeping definition of what constitutes "official action" raises many of the same constitutional concerns discussed in the cited cases.

The term "official action" embraces all action taken by the government or an authorized officer or agent of the government. The Act's proscriptions therefore apply not only to members of the general assembly and government officials, but also to government employees[10] at every level while engaged in "official action." *See id.* The informal communication exception of section 1.18(5)(a) authorizes members of the general assembly and government officials to communicate with members of the general public in non-

[9] The court considers the exception defined in §1.18(5)(a) to be the broadest exception because it has no limit on its applicability other than the subjective determination of a state official that a communication in a language other than English is "necessary or desirable."

[10] For most purposes, government employees acting on behalf of the state within the scope of their employment would constitute agents of the government for purposes of section 1.18(3). *See* RESTATEMENT (SECOND) OF AGENCY § 1.

English languages in the course of official business on an ad hoc basis, but there is no such exception provided for state and local government employees who provide services to the public and conduct daily governmental business on behalf of the state. Thus these employees, who may wish or find it necessary to communicate with members of the public in languages other than English in the course of their duties, can only do so lawfully if the communication does not constitute "official" action. While one could argue that the potentially deleterious effect this has on the first amendment rights of those wishing to convey or those wishing to receive information is ameliorated by the fact that the Act covers only "official" action, the Act's definition of what constitutes official action is not precise and in fact, is very broad. By its express terms, the Act forbids the use of languages other than English in "*[a]ll* official documents, regulations, orders, transactions, proceedings, programs, meetings, publications, or *actions taken or issued*, which are conducted or regulated by, or on behalf of, or representing the state and all of its political subdivisions." (*emphasis added*). "Official action" encompasses not only actions taken by government officers and agents that bind the government or are required by law[11], but also any action that is subjected to scrutiny by either the press or the public. This is a sweepingly broad definition of "official action" that could apply to many situations in which government employees and officers would find it desirable or even necessary to communicate with members of the public in a language other than English. Indeed, in this day and age, many operations of the government are subject to public scrutiny, from substantial transactions to the provision of minor government services that we take for granted on a daily basis. One must therefore ask what government action truly is not subject to public scrutiny in one form or another. The

[11] As noted earlier most acts carried out by State employees within the scope of their employment would presumably bind the government and probably every act a State employee carries out in furtherance of his or her duties could be argued to be required by law.

Act provides no further guidance in this regard, and leaves public employees largely to guess as to when their actions, taken in the course of government business, may be subject to the limitations imposed by the Act. This could have a chilling effect on speech by causing government employees to refrain from non-English communication altogether, both written and oral, formal and informal, while dealing with members of the general public. This uncertainty creates a law that could be construed as effectively imposing a prohibition on the use of non-English languages in the course of a substantial amount of government business, resulting in significant infringement upon the constitutionally protected right of citizens of this state to receive important information from their government. *See Alaskans for a Common Language, Inc.*, 170 P.3d at 204-09; *In re Initiative Petition No. 366*, 46 P.3d at 126-29; *Ruiz*, 957 P.2d at 996-1002. However, the precise issue now before the court does not implicate these broader concerns. Here the issue is only whether the government may require that all official government documents (in this case, voter registration forms) be printed in English and no other languages. The court therefore confines its determination to that precise issue.

In response to the Respondents' argument that the Act would be unconstitutional as applied in this case, the Petitioners assert that a ban on the use of non-English languages in official government documents would not violate the federal and state constitutions because the government has a right to control it message and to make decisions as to what message it will fund. The Petitioners point to U.S. Supreme Court cases which have recognized that the government may, under the appropriate circumstances, make choices about the messages it will or will not convey when it is the speaker. *See, e.g. Rust v. Sullivan*, 500 U.S. 123, 193 (1991). The Petitioners assert that the government, in requiring that official documents be printed only in English, would merely be controlling the manner in which it conveys its message and/or making a determination as to the message it will convey. The court agrees.

"The First Amendment to the United States Constitution prohibits Congress from making any law 'abridging the freedom of speech.' " *State v. McKnight,* 511 N.W.2d 389, 391 (Iowa 1994) (quoting U.S. Const. amend. 1). This amendment is made applicable to the states through the Fourteenth Amendment. *Cantwell v. Connecticut,* 310 U.S. 296, 303 (1940). "[T]he Iowa Constitution generally imposes the same restrictions on the regulation of speech as does the federal constitution." *State v. Milner,* 571 N.W.2d 7, 12 (Iowa 1997); *see* Iowa Const. art. I, § 7. Federal authorities discussing the parameters of free speech protection afforded by the First Amendment are therefore instructive in analyzing a law regulating speech under Iowa's constitution as well.

"The First Amendment's guarantee of freedom of speech prevents states from punishing the use of words or language not within narrowly limited classes of speech." *Milner,* 571 N.W.2d at 12 (internal citations and quotations omitted). Restrictions based upon the content of speech are generally suspect, and are subjected to the most exacting scrutiny by reviewing courts. *State v. Musser,* 721 N.W.2d 734, 744 (Iowa 2006).[12] However, not all regulations of speech based upon content must meet the demands of strict judicial scrutiny to survive constitutional review. *See Rust,* 500 U.S. at 193. The U.S. Supreme Court has recognized that when the state acts as speaker, it may make content-based choices as to the message it will convey without offending constitutional principles of free speech. *See Legal Servs. Corp. v. Velazquez,* 531 U.S. 533, 541 (2001); *Board of Regents of Univ. of Wis. System v. Southworth,* 529 U.S. 217, 229 (2000); *Rosenberger v. Rector & Visitors of the Univ. of Va.,* 515 U.S. 819, 833 (1995). Consequently, governments have been permitted "to regulate the

[12] Laws prohibiting communication in languages other than English are clearly restrictions on speech subject to constitutional scrutiny because "[s]peech in any language is still speech, and the decision to speak in another language is a decision involving speech alone." *Alaskans for a Common Language, Inc.,* 170 P.3d at 198 (quoting *Yniguez v. Arizonans for Official English,* 69 F.3d 920, 936 (9th Cir. 1995). Furthermore, courts have characterized such laws as content based restrictions because they select one form of speech over available alternatives and forbid the use of such alternatives in the course of communication. *Id.*

content of what is or is not expressed when it is the speaker or when it enlists private entities to convey its own message" under what has been termed the "government-as-speaker" doctrine. *Id*; *see Alaskans for a Common Language, Inc.*, 170 P.3d at 198.

The government-as-speaker doctrine, although recognizing that the government has discretion to control its own speech and the messages it conveys, it not without limitation. Courts addressing the government-as-speaker doctrine in the context of challenges to English-only laws in other jurisdictions have recognized that the doctrine has no application where states have sought to prohibit the use of non-English languages in almost every facet of government, from official to unofficial communications on almost every level. *See id.* As the court recognized in *Alaskans for a Common Language, Inc.*, the government-as-speaker doctrine generally applies where the government speakers acting on behalf of the state are narrowly defined, and where the governmental message sought to be conveyed is specific. *Id.* The doctrine therefore has no application to situations where the government's message "that communication must be in the English language – is to be conveyed by every state and local government official and employee in every single interaction such persons have with the public." *Id.*

The situation where the government seeks to broadly prohibit the use of non-English languages in the course of nearly all government business and transactions is fundamentally different from that in which the government simply wishes to publish official government documents solely in the English language. This, as recognized by the court in *Alaskans for a Common Language, Inc.*, would present a "highly specific situation … in which the state could invoke the state-as-speaker doctrine to justify a requirement that government speech be in English." *Id.* Where the government seeks to require only that official government documents be printed in English, it has substantially narrowed the class of

activities and actors that that are affected by the ban on non-English languages, and the government's message – that English shall be the language of communication in official government documents – is specific. Such a limitation does not impose the same type of languages barriers between the government and its citizens as were condemned in the cases just discussed where English-only laws were held to be unconstitutional.

A ban on the use of non-English languages in official government documents would not prevent a state official from assisting a citizen to understand a voter registration form, or preclude the Secretary of State's Office from providing translation assistance online to prospective voters, thereby leaving alternative channels of communication open to citizens who require assistance in understanding official government documents. At least, as discussed, the Act could probably never be interpreted to preclude communication through such channels because such a blanket prohibition on communication would almost certainly be deemed unconstitutional as an impermissible infringement on the free speech rights of Iowa citizens. The court therefore finds that the State of Iowa may control its message by requiring that its official documents be printed only in the English language. Consequently, the Act's prohibition on the use of non-English languages in official government documents is not unconstitutional.

Without engaging in an extensive discussion of the matter because the issue has not been raised, the court takes note that one of the exceptions to the requirements of the Act, section 1.18(4)(h), authorizes "[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." This exception might justify the use of non-English voter registration forms. Recognizing that language barriers can serve as an impediment to voting, the federal Voting Rights Act prohibits any state or political subdivision from

imposing or applying any "voting qualification or prerequisite to voting, or standard, practice, or procedure" on the right to vote which results in an abridgement of voting rights for language minorities. 42 U.S.C. § 1973(a); *Hernandez v. Woodward*, 714 F. Supp. 963, 967 (N.D. Ill. 1989). However, the Respondents have not argued and there is nothing in this record that would support the contention that the Respondents' challenged activities were undertaken as a result of the determination that they were necessary or required to secure the right to vote to all citizens.

Because the court concludes that the government's ban on the use of non-English languages in official government documents is constitutional, it finds that the Act may be enforced to prohibit the dissemination of voter registration forms in a language other than English to be used by the general public to register to vote.

II. DOES IOWA ADMINISTRATIVE RULE 821–2.11 VIOLATE THE IOWA ENGLISH LANGUAGE REAFFIRMATION ACT?

As a final matter, the Petitioners seek a declaration that Iowa Administrative Rule 821–2.11, authorizing the production of voter registration forms in languages other than English violates the Act.

Iowa Administrative Rule 821–2.11 provides:

> Notwithstanding any other provision of these rules, any county commissioner may cause production of any approved voter registration form in a language other than English if the commissioner determines that such a form would be of value in the commissioner's county. The registrar shall assist any county commissioner with the translation of voter registration forms upon the request of the county commissioner.

IOWA ADMIN CODE § 821–2.11. For the reasons already discussed, this rule plainly conflicts with the requirements of the Act that voter registration forms, as official government documents, be printed only in English.

"Relief from the department's action may be granted if the department's action was 'unreasonable, arbitrary, or capricious' or characterized by an abuse of discretion." *Auen v. Alcoholic Beverages Div., Iowa Dept. of Commerce,* 679 N.W.2d 586, 590 (Iowa 2003) (citations omitted); *see also* IOWA CODE § 17A.19(10)(n). Action is arbitrary when it is 'taken without regard to the law or facts of the case.'" *Id.* (citations omitted). Where an administrative rule or regulation is "clearly illegal, or plainly and palpably inconsistent with law, or clearly in conflict with a statute relative to the same subject matter," the court may declare it void. *Kelly v. Iowa Dept. of Social Serv.,* 197 N.W.2d 192, 201 (Iowa 1972).

In the present case, Iowa Administrative Rule 821–2.11 plainly conflicts with the Act. Its promulgation was therefore an arbitrary act in violation of law. The court must therefore declare Iowa Administrative Rule 821–2.11 void in its current form as an improper exercise of agency power.

ORDER

For all of the reasons just stated, the Respondents are enjoined from using languages other than English in the official voter registration forms of this state. It is the declaration of the court that Iowa Administrative Rule 821 – 2.11 is null and void.

IT IS SO ORDERED March 31, 2008.

DOUGLAS F. STASKAL, Judge
Fifth Judicial District of Iowa

Original Filed.

Copies mailed to:

Rand S. Wonio
Attorney at Law
220 N. Main St., Ste 600
Davenport, Iowa 52801
Attorney for Petitioners

Julie F. Pottorff
Christine J. Scase

Assistant Attorneys General
Hoover Building, 2nd Floor
Des Moines, Iowa 50319
Attorneys for Respondent

Exhibit B

IN THE IOWA DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

E. TUNIS DEN HARTOG, SHIRLEY ANN SCHWEERTMAN, LEONARD D. LYBBERT, WILLIAM JAMES ROBERT, MARK D. FISHER AND MARY ROBIN MOLINARO-BLONIGAN, ET AL. Plaintiffs, VS. CITY OF WATERLOO, IOWA Defedants.	CASE NO. EQCV117886 RULING
SUNNYSIDE SOUTH ADDITION, LLC. Intervenor Plaintiff, VS. CITY OF WATERLOO Intervenor Defendant.	

This matter came before the court on the motion of the City of Waterloo (The City) and Sunnyside South Addition, LLC (Sunnyside) for removal of the injunction previously entered. The City was represented by Kristine Stone and David Zellhofer. Sunnyside was represented by David Riley. David Nagle appeared on behalf of the plaintiffs. Evidence was presented and parties requested additional time to submit briefs. The court has now had an opportunity to review all pleadings and evaluate the testimony presented.

The background of these proceedings can be summarized from an earlier opinion of the Iowa Supreme Court (Den Hartog v. City of Waterloo, 847 N.W.2d 459 (2017):

> "The State of Iowa acquired property in Black Hawk County for purposes of constructing a state highway in 1959. The highway had originally been planned as, and enough land had been acquired for, a four-lane project, but the highway was eventually constructed with just two lanes.

> In 1983, the state transferred control of the highway and attendant property to the City of Waterloo (the City), in accordance with the terms of Iowa Code chapter 306, entitled "Establishment, Alteration, and Vacation of Highways." After the transfer, the highway property became known as San Marnan Drive in Waterloo. The City has retained jurisdiction and control over the property in the years since and has maintained it with grading, mowing, and weed control. The City has now indicated its intention to transfer the property to Sunnyside South Addition, LLC (Sunnyside), as part of a development agreement. Under the terms of the agreement, Sunnyside proposes to relocate San Marnan Drive by reconstructing it approximately eighty feet south of its current position and intends to retain the property on which the current San Marnan Drive sits for purposes of residential construction. The City proposes to transfer the highway property to Sunnyside according to the agreement for the sum of $1.00.
>
> Taxpaying residents of Waterloo . . . became aware of and objected to the proposed transfer in 2011. They filed in the district court a petition for writ of mandamus and temporary injunction requesting postponement of the sale on the ground the City's proposed transaction failed to comply with certain appraisal, notice, right-of-first refusal, and public bid requirements set forth in chapter 306."

The district court found chapter 306 did not apply and dismissed the action. The Iowa Supreme Court reversed that decision on May 30, 2014 and ordered the district court to enter an injunction enjoining the City "from selling or transferring the property in this proceeding without first following the procedures prescribed in Iowa Code section 306.23." That order was entered on July 7, 2014.

While the appeal was pending, the City entered into a development agreement with Sunnyside and transferred the land by warranty deed. Sunnyside platted the subdivision and improved the property by adding curbs, gutters, storm sewers and utilities.

The City attempted to comply with the provisions of Section 306.23 in 2015 by sending notices to interested parties of the proposed sale of the property. Plaintiff's challenged the City's compliance and the district court found the City had still not met the requirement of the statutes. The court did not find the City in contempt as requested by plaintiffs. The Supreme Court upheld that decision.

Under Iowa law, the City may sell land that is an unused right-of-way for cash. Iowa Code § 306.22. The statute applies both to land acquired for highway purposes, but never used, and to land acquired and used for highway purposes that are discontinued. *Den Hartog v. City of Waterloo*, 847 N.W.2d 459, 465–66 (Iowa 2014). The law gives a sales preference to two classes of persons – the present owners of adjacent land "from which the tract, parcel, piece of land, or part thereof, was originally

purchased or condemned for highway purposes." Iowa Code § 306.23(1). It also gives a preference to the person who owned the land at the time it was acquired. *Id.* The City must therefore give notice to those persons of its intent to sell. *Id.* § 306.23(2).

The notice gives the two classes of persons an opportunity "to be heard and to make offers within sixty days" of the time the notice is given for the tract, parcel, or piece of land to be sold. *Id.* § 306.23(2). An offer that equals or exceeds the amount of any other offer received and equals or exceeds the fair market value is given preference by the agency. *Id.* If the City receives no offers within the sixty-day period or if the offers do not equal or exceed the fair market value of the land, the agency is permitted to proceed with its intended sale for cash.

The statute provides:

1. The agency in control of a tract, parcel, or piece of land, or part thereof, which is unused right-of-way shall send by certified mail to the last known address of the present owner of adjacent land from which the tract, parcel, piece of land, or part thereof, was originally purchased or condemned for highway purposes, and to the person who owned the land at the time it was purchased or condemned for highway purposes, notice of the agency's intent to sell the land, the name and address of any other person to whom a notice was sent, and the fair market value of the real property based upon an appraisal by an independent appraiser.

2. The notice shall give an opportunity to the present owner of adjacent property and to the person who owned the land at the time it was purchased or condemned for highway purposes to be heard and make offers within sixty days of the date the notice is mailed for the tract, parcel, or piece of land to be sold. An offer which equals or exceeds in amount any other offer received and which equals or exceeds the fair market value of the property shall be given preference by the agency in control of the land. If no offers are received within sixty days or if no offer equals or exceeds the fair market value of the land, the agency shall transfer the land for a public purpose or proceed with the sale of the property.

The City has again sent out notices of its intent to sell the right of way. It received no offers equal to or exceeding the fair market value of the land. On May 8, 2017 the Waterloo City Council directed staff to send out notices of the proposed sale. It provided that any interested parties must submit offers by July 13, 2017 at 1:00 p.m. and the council would consider any offers on July 17, 2017.

The notices were sent by certified mail and included the fair market value of each of the parcels as determined by an appraisal performed by James Herink of Rally

Appraisal. He was retained by the City to appraise the 24 lots as platted. In determining fair market value, he assumed there was clear title to the lots. He found the land had a fair market value of $2,700,000.00 in the aggregate. Using a cash flow approach, he valued the land at $1,820,000.00. He used the cash flow approach to arrive at the fair market

When the city acquired the property, it was acquired in four individual tracts. The appraiser valued each of the individual tracts as follows:

Tract 1	$318,248.00
Tract 2	$783,886.00
Tract 3	$500,561.00
Tract 4	$222,305.00

The City of Waterloo was included as an adjacent land owner on all four notices. The notice also required any bidders to deposit the full amount of the bid in an amount at least equal to the fair market values set forth above. Earlier notices sent pursuant to this same transaction only required a $1000.00 deposit. Plaintiff's now complain the requirement of a full deposit is an intentional road block by the city to prohibit prospective buyers for bidding on the property.

On September 11, 2017, an agreement was reached with Sunnyside that the land would be conveyed from Waterloo to Sunnyside by special warranty deed for the price of $1.00. The hearing on July 10, 2017 before the city council was not attended by any of the plaintiff's to this action. No one objected to the approval of the sale at the hearing.

Robert Molinaro testified on behalf of the plaintiff's and on behalf of his family. They own adjacent property and claim that would have bid on their parcel if it were properly valued.

Plaintiff's claim the City has not complied with the notice requirements and that its failure to comply constitutes a willful and wanton violation of the injunction. They claim the city failed to comply in the following particulars:

1. The property was improperly appraised. The individual parcels should be appraised standing alone and not as a part of a housing development.
2. The city was improperly listed as a potential buyer.
3. The new notice requires a deposit of the entire purchase price at time of bidding.

4. The notice includes a statement that the "City has the right to reject any offer".

Is the appraisal used by the city sufficient to meet the requirements of the statute?

Plaintiffs allege the notices sent by the city were defective because the appraisal was defective. The values of each of the individual tracts listed above were arrived at by determining the value of the four properties together as if sold as a subdivision with the individual tracts valued by dividing the number of acres of each tract from the total number of all four. The city and its appraiser concluded the tracts are most valuable if sold together versus being sold as individual tracts. The tracts were remnant parcels at one time but now they are part of a subdivision. The adjacent land owners are claiming the land tract values are worth far less individually than their value as part of the bigger picture of a subdivision and must be valued as such for purposes of the statutory notice.

The Iowa Supreme Court has earlier held in this case that the fair market value of the four parcels implies the value at or near the time the notice of the impending sale was given. The court held "the fair market value in this case would include the value of the improvements made to the land by Sunnyside prior to the notices." See *Den Hartog* 847 N.W.2d at 465.

The statute requires the notice include the "fair market value of the real property based upon an appraisal by an independent appraiser." The City hired an independent appraiser who arrived at the fair market value using appropriate standards. While plaintiffs may not agree with the values, this court finds the appraisal method appropriate under the circumstances and consistent with the law of this case.

Mike Jackson is the supervisor of property management for the Iowa Department of Transportation. His department's primary job is to dispose of dot owned property and appraise property that is going to be acquired. He testified that if the Department was selling four separate tracts as in this case, each tract would be separately appraised. He agree however that the appraiser in those situations may combine multiple lots into one parcel for valuation and then divide out the tracts individually. The Department is unaware of any other City or County appraising the property. However, just because the State might have appraised the properties differently, does not render the appraisal incorrect under the unique facts of this case.

Were the notices defective because the City listed itself as an adjacent land owner?

Plaintiff's next claim the notices were defective because the City listed itself as an adjacent land owner in the list of prospective bidders. The City is an adjacent land owner. The fact they are listed as such has no bearing on the appropriateness of the notice. Considering the tone of this litigation, the court has no doubt if the City had not listed itself, plaintiffs would be claiming the notices were defective because of the omission.

The new notice requires a deposit of the entire purchase price at time of bidding

Plaintiffs next complain that the notices and the bidding process was defective because all bidders were required to deposit the full amount of their bid. In prior notices, bidders only had to submit $1,000.00. The statute does not address how bids are be received or what deposit requirements the city can impose. Plaintiffs have provided no authority that would indicate the city cannot impose this requirement.

Can the City include a statement in the notice that it can reject any offer?

The notices included a statement that the city could reject any offer. Once again, plaintiffs have provided no authority to indicate why this language makes the notices defective or any authority that the City doesn't have that right.

Sunnyside's motion to dismiss

Sunnyside moved to dismiss plaintiff's resistance to the lifting of the injuction on two grounds – standing and waiver. It claims Bob Molinaro does not have standing and that plaintiffs have waived any right to challenge these proceedings now because they voiced no objection that the hearing before the City Counsel. Based on the findings set forth above, the court need not address those arguments.

The City's motion for sanctions.

The City requests sanctions be imposed against plaintiffs under Iowa Rule of Civil Procedure 1.413(2). The court finds that sanctions are not merited.

RULING

The court finds that the notice sent by the City to all prior land owners and adjacent property owners complied with the requirements of Iowa Code Section 306.23. The court further finds the City has complied with the sale provisions of Chapter 306. As such they have complied with the prior order of this court meriting the dissolution of the injunction.

IT IS ORDERED that the injunction is hereby lifted and dissolved. The City is free to proceed with the approved transaction.

Plaintiff's application for a finding of contempt is dismissed at plaintiff's cost. Costs of this action are taxed to the plaintiff's.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQCV117886	T DEN HARTOG ETAL VS CITY OF WATERLOO (++)

So Ordered

Richard D. Stochl, District Court Judge,
First Judicial District of Iowa