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

PETITIONER'S RESISTANCE TO RESPONDENTS' MOTION TO DISMISS

TABLE OF CONTENTS

INTRODUCTION

Iowa's English Language Reaffirmation Act (the "English-Only Law"), requires that "[a]ll official documents . . . or actions taken or issued . . . shall be in the English language." Iowa Code § 1.18(3). The English-Only Law went unenforced for years, until a collection of plaintiffs sought to strike down an administrative rule permitting non-English voting materials in *King v. Mauro*, No. CV6739, slip op. (Iowa Dist. Ct. Mar. 31, 2008). In *King*, the District Court for Polk County held that, absent an applicable exemption, the English-Only Law prohibits non-English voter registration forms. *Id.* at 30. The *King* decision expressly declined to reach the question of whether an express exemption in the English-Only Law itself, for "language usage required by or necessary to secure the rights guaranteed by the Constitution and the Laws of the United States of America or the Constitution of the State of Iowa," Iowa Code § 1.18(5)(h) (the "Rights Exception"), applies to voting materials, finding that the question was not before the court because it was not raised by the parties. *See King,* slip op. at 29–30. As a result, the permanent injunction issued in the *King* case remains in force today, prohibiting the use of non-English voter registration forms in Iowa, despite the clear applicability of the Rights Exception. Petitioner League of United Latin American Citizens ("LULAC") of Iowa was not a party in the *King* litigation and now raises in this litigation the question that the *King* court found was not properly before it in that case: whether the Rights Exception makes the English-Only Law inapplicable to voter registration forms. The text of the Rights Exception permits only one possible answer: the English-Only mandate does not apply to voting materials.

To effectuate its and its rights and the rights of its members, LULAC brings two causes of action before this Court: (1) a claim for a declaratory judgment holding that the English-Only Law does not apply to voting materials because they are exempt under the Rights Exception, and (2) a claim seeking dissolution of the *King* injunction. *See* Am. Pet. in Law & Equity ("Am. Pet.") (Jan.

18, 2022).[1] Rather than engage with the merits of these claims, Respondents (at best) misapply clearly established law and (at worst) create insurmountable procedural hurdles out of whole cloth. *See* Br. in Supp. of Respondents' Mot. to Dismiss ("Mot.") (Dec. 22, 2021). They challenge LULAC's standing, but do *not* dispute that LULAC has alleged a concrete and particularized injury stemming from the lack of Spanish-language voting materials for the community it serves. Instead, Respondents (incorrectly) contend that a favorable judicial outcome exempting voting materials from the English-Only Law would not remedy the harm to LULAC or its members—a remarkable claim that ignores both the logical consequences of removing a prohibition on non-English voting materials and the clear allegations in the amended petition. And while Respondents suggest that LULAC was required to intervene in the long-dormant *King* action in order to obtain the relief they now seek, they do not cite a single rule or case that requires this. Indeed, Respondents' position disregards the clear guidance of Iowa Rule of Civil Procedure 1.1510, which requires only that attacks on a final order "be brought in the county and court where such . . . order was obtained."

Ultimately, Respondents' arguments constitute a "heads I win, tails you lose" approach to civil litigation. When the Secretary of State (the "Secretary") was asked to use his discretion to interpret the English-Only Law in the voting rights context, he hid behind the *King* injunction and claimed his hands were tied. But now, when the *King* injunction is challenged, the Secretary invokes the discretion of government officials to argue that LULAC does not have standing to attack the *King* injunction, as officials may continue to injure LULAC and its members even if the

[1] On October 27, 2021, LULAC filed its original Petition in this action. No responsive pleading has been served, and LULAC has filed an amended petition "as a matter of course" concurrent with this Resistance brief. Iowa Rule 1.402(4).

King injunction is dissolved. The Secretary cannot be allowed to obstruct judicial review on this vital issue, and this Court should address the question left open by *King* and now squarely presented by LULAC in this case—whether the plain language of the English-Only Law exempts voting materials from its mandate.

LEGAL STANDARD

Respondents argue that LULAC has failed to state a claim upon which relief may be granted. *See* Iowa R. Civ. P. 1.421(f). The purpose of such a motion is merely to "test the legal sufficiency of the petition." *Geisler v. City Council*, 769 N.W.2d 162, 165 (Iowa 2009). Dismissal is appropriate "only if the petition shows no right of recovery under any state of facts." *Benskin, Inc. v. W. Bank*, 952 N.W.2d 292, 298–99 (Iowa 2020) (quotations omitted). Accordingly, in evaluating LULAC's claims, the Court must "construe the petition in its most favorable light, resolving all doubts and ambiguities in the [petitioner's] favor." *Id.* (quotations omitted).

In Iowa, standing follows a two-pronged approach: "a complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780, 790 (Iowa 2021), *as amended* (Aug. 26, 2021). The Iowa Supreme Court has interpreted the "injuriously affected" inquiry as incorporating the three-part standing test from federal courts, where "a plaintiff must show not only (1) injury in fact, but also that the injury in fact (2) is fairly traceable to the defendants' conduct and (3) is likely to be redressed by a favorable decision." *Id.* (citing *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560–61 (1992)). Though standing is a constitutional restriction on federal courts, it is only a self-imposed rule of restraint on Iowa courts. *Hawkeye Bancorporation v. Iowa Coll. Aid Comm'n*, 360 N.W.2d 798, 802 (Iowa 1985). As a result, the standing doctrine in Iowa is more flexible than its federal counterpart. *Godfrey v. State*, 752 N.W.2d 413, 424–25 (Iowa 2008) (recognizing that

standing requirements in Iowa courts could be excepted to permit reaching "questions of great public importance").

ARGUMENT

I. LULAC has standing to pursue a declaratory judgment interpreting the Rights Exception.

Respondents do not dispute that LULAC can satisfy the first prong of standing—a specific personal or legal interest in the litigation. Nor do Respondents dispute that LULAC has alleged an injury-in-fact under *Lujan.* Instead, Respondents only question whether a favorable decision would redress the harm to LULAC and its members caused by the unavailability of Spanish-language voting materials. However, it is not "speculative" to allege that removing a prohibition on non-English voting materials would result in the availability of those materials. Ultimately, Respondents' argument asks this Court to ignore the logical consequence of its judgment, disregard the many standing cases rejecting Respondents' reasoning, and discount LULAC's well-pled allegations to the contrary. A petition cannot be dismissed on such grounds.

First, Respondents are incorrect to suggest that a declaratory judgement exempting voting materials from the English-Only Law is not, by itself, sufficient for redressability. At minimum, a favorable decision would remove a critical barrier that currently prevents LULAC from effectively advocating for the acceptance or provision of non-English voting materials. Respondents are also wrong to suggest that a favorable judgment must itself remedy LULAC's injury; it is enough that relief from the alleged injury is a likely consequence of the judgment. *See Iowa Citizens for Cmty. Improvement*, 962 N.W.2d at 791–92 (plaintiffs must show injury is "likely, as opposed to merely speculative, to be redressed by a favorable decision.") (quotations omitted). Respondents' argument that the availability of non-English voting materials is unlikely to change after the *King* injunction is dissolved defies logic—it requires believing that the English-Only Law is an

ineffectual statute and it ignores the existence of a *permanent injunction* enforcing that statute for voting materials. Surely, there would be no need for a statutory mandate and a permanent injunction enforcing that mandate if government officials would otherwise implement elections only in English.

Second, Respondents confuse and conflate the relationship between government discretion and the redressability element of standing. Currently, government officials in Iowa have no discretion—the English-Only Law, as interpreted in *King*, prohibits the use of non-English voting materials. If LULAC obtains judgment in its favor, government officials would have discretion to provide non-English voting materials. Respondents argue that because government officials *could*, in their discretion, decline to provide Spanish language voting materials, LULAC has not shown its injury would be redressed. But Respondents provide no basis to support their surmise that continued government discretion defeats LULAC's standing, and federal cases instruct otherwise.

The U.S. Supreme Court has consistently held that, even where the government has discretion or other sources of authority that could injure a plaintiff, that does not deprive plaintiff of standing to challenge the current basis for the government's conduct. *See e.g.*, *Larson v. Valente*, 456 U.S. 228, 243 (1982) (upholding standing where "[a]t the very least, then, a declaration [in petitioner's favor] would put the State to the task" of articulating another rationale). For example, in *FEC v. Akins*, the alleged injury was a lack of campaign finance information about an organization. *See* 524 U.S. 11, 20 (1998). However, the remedy requested was not an order requiring the missing information; the plaintiff only sought a reclassification of the subject organization under campaign finance rules. The FEC challenged whether the redressability element of standing was satisfied because, even after an order requiring the reclassification of the organization, the FEC could exercise its discretion to exempt it from disclosure requirements. The

U.S. Supreme Court rejected that argument, holding that redressability is satisfied "even though the FEC might reach the same result exercising its discretionary powers lawfully." *Id.* at 25. Central to that holding was the idea that "those adversely affected by a discretionary agency decision generally have standing" to challenge that decision. *Id.*

While Respondents are correct that, in this action, LULAC "doesn't seek to *require* the [Respondents] to provide non-English voting materials," Mot. 6, the administrative petition filed by LULAC did seek, among other things, a determination by the Secretary as to whether county auditors were *required* to accept certain Spanish-language voter registration forms. Am. Pet., Ex. 2. at 8. In response to that administrative petition, the Secretary simply relied upon the *King* injunction and did not respond directly to the issues raised. Am. Pet., Ex. 3. Since the Secretary cannot ignore or overrule a court order interpreting a statute, further administrative appeals would be "a fruitless pursuit," and so LULAC has brought this action. *Salsbury Labratories v. Iowa Dep't of Env't Quality*, 276 N.W.2d 830, 836 (Iowa 1979); *see also Tindal v. Norman*, 427 N.W.2d 871, 873 (Iowa 1988) ("[B]ecause agencies cannot decide issues of statutory validity, administrative remedies are inadequate"). The Secretary cannot have it both ways—declining to explain discretionary decisions by relying on *King*, and then insulating *King* by relying on the possibility of discretionary decisions. The fact remains that LULAC has challenged discretionary decisions to deny non-English voting materials that are unsupported by the law. Am. Pet. ¶¶ 39–40. There can be no doubt that LULAC has standing to challenge those decisions, as well as any erroneous legal interpretations that undergird them.

Finally, LULAC 's standing is simply established by the well-pled allegations in its petition and amended petition. There is no need to make inferences or speculate about how government officials will behave in the event of a favorable decision because LULAC has alleged that election

officials are currently "deterred from providing or accepting any non-English voting materials due to an erroneous interpretation and implementation of the English-Only Law." Am. Pet. ¶ 6. While LULAC is prepared to prove that some election officials would provide non-English voting materials if the English-Only Law were narrowed, there is no need for "actual proof" at this stage because the court is simply assessing whether a cause of action is properly stated. *Wesselink v. State Dep't of Health*, 248 Iowa 639, 643 (1957).

In short, based on both LULAC's allegations and the clear holdings of Iowa and federal cases, LULAC has standing to bring this lawsuit.

II. This action is the proper mechanism for dissolving the *King* injunction.

LULAC's second cause of action—seeking the dissolution of the *King* injunction—is procedurally proper, and the precedents cited by Respondents only affirm LULAC's approach. At its core, LULAC's second count is simply an injunction action "under Iowa Rule of Civil Procedure 1.1501." Am. Pet. ¶ 50. But Respondent's brief does not mention Rule 1.1501,[2] nor does it argue that LULAC has not properly pled an action for injunction. Instead, Respondents take issue with the object of LULAC'S requested injunction—the final order in *King v. Mauro*. In doing so, Respondents ignore the Iowa Rules of Civil Procedure and, with no support, insist that LULAC must find some other procedural path to relief. Even if Respondents are correct in this regard, dismissal is not the appropriate result, since "[a]n error of the plaintiff as to the kind of proceedings adopted shall not cause the abatement or dismissal of the action." Iowa Code § 611.7.

[2] Respondents' motion implicitly confuses Rule 1.510 and Rule 1.1501. Respondents argue that Rule *1.510* "doesn't authorize *any* action—let alone this one. It merely imposes venue and bond requirements." Mot. 7. LULAC does not dispute this reading of the Iowa Rules of Civil Procedure, which is why it invokes Rule 1.510 only as a basis for jurisdiction and venue. *See* Am. Pet. ¶ 11. Instead, LULAC relies on Rule *1.1501* as authority for their equitable right to seek injunctive relief. *Id.* ¶ 50.

Instead, the Court should simply order a "change into the proper proceedings" or "transfer to the proper docket." *Id.*

Respondents' motion recognizes that LULAC challenges the *King* injunction as "a stranger to the original injunction," but Respondents open their discussion of the proper procedure by citing rules and cases involving how an *original party* may challenge an injunction. Mot. 7. Confusingly, Respondents' motion acknowledges that permanent injunctions—which are unlimited in time—can be modified or vacated long after they are entered. And yet they then proceed to argue that such remedies are time limited to "within one year" under Rule 1.1012. *Id.* at 8. However, the text of Rule 1.1012 makes clear that it applies to *parties* to the judgment, and it is generally only used for disputing money judgments—as a Rule 1.1012 claim is considered an action at law, not equity. *See Hyde v. Anania*, 578 N.W.2d 647, 648 (Iowa 1998) (holding that the predecessor to Rule 1.1012 is "an action at law"). Indeed, Respondents do not identify a single case in support of their contradictory suggestion that permanent injunctions are immune from challenge after one year.

Moreover, Respondents mistakenly cite cases where original parties seek to modify or vacate judgments—which have no bearing on this case. *Bear v. Iowa District Court*, for example, involved the enjoined party seeking a dissolution of an injunction in reaction to a contempt proceeding enforcing that injunction. *See* 540 N.W.2d 439, 440 (Iowa 1995). Likewise, *Den Hartog v. City of Waterloo* involved a plea by the City of Waterloo to dissolve a permanent injunction to which it was subject. *See* 926 N.W.2d 764, 769 (Iowa 2019). None of these cases speaks to the facts at hand—where a permanent injunction against the State continually injures persons and entities who were not parties to the original action, including LULAC and its members.

Respondents' distortion and misapplication of these rules and precedents derive from their aim to prevent "collateral attacks," but Respondents fundamentally misunderstand that term—suggesting that if a judgment is attacked in a different *proceeding*, then it constitutes a collateral attack. In contrast, the cases cited by Respondents use the term "collateral attack" to refer to situations where judgments are attacked in different *courts*. *See, e.g.*, *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 8 (Iowa 2020) ("[T]he Polk County District Court's order is in effect a collateral attack on orders previously entered in Johnson, Linn, and Woodbury Counties."); *Alley v. U.S. Dep't of Health & Human Servs.*, 590 F.3d 1195, 1204 (11th Cir. 2009) (distinguishing between "direct attack" brought in same court and "collateral[] attack" brought in another). Respondents' idiosyncratic interpretation of "collateral attack" has no basis and is contrary to Rule 1.1510, which makes clear that final orders may be enjoined so long as the case is "brought in the county and court where such . . . order was obtained." Indeed, the Iowa Supreme Court recently condemned *actual* collateral attacks by reaffirming that Rule 1.1510 provides the answer: seek dissolution in the same county and court, as LULAC does here. *Dem. Senatorial Campaign Comm.*, 950 N.W.2d at 8.

Respondents' erroneous understanding of "collateral attack" leads them to conclude that LULAC must intervene in the *King* proceeding to challenge the injunction issued in that case. But the Iowa Rules of Civil Procedure provide no basis for this theory, and the cases Respondents cite do not support it either. Any examples from federal procedure do not overcome the text of Rule 1.1510, which makes clear that Polk County courts can dissolve other Polk County court orders. Respondents also mistakenly rely on *Hartog*, where litigation over the injunction arose out of a contempt proceeding, and a stranger to the litigation was permitted to intervene in that determination. *See* 926 N.W.2d at 767. Nothing in that opinion suggested that it would be proper

or necessary for a stranger to the litigation to intervene in a long-defunct docket solely for the purpose of challenging an injunction.

The federal cases cited by Respondents also do not support their contention that LULAC must intervene in *King* to challenge the injunction. To the contrary, the Eleventh Circuit expressly endorsed the approach LULAC has taken here. In *Alley*, the Eleventh Circuit reprimanded litigants not because they challenged an injunction from a different *proceeding*, but rather because they challenged the injunction from another *court*. *See* 590 F.3d at 1210 (rejecting challenge to Middle District of Florida judgment brought in Northern District of Alabama). Though the Eleventh Circuit positively cited an instance were parties intervened in an old docket, nowhere does the court suggest that this procedure is mandatory. Indeed, when the Eleventh Circuit concluded its opinion with guidance on the proper procedure, they were only concerned with being in the proper court:

> If Alley believes the [] injunction is invalid, overly broad, or outdated, she can challenge it in the Middle District of Florida after joining all necessary parties. . . . We will not speculate about the outcome of such a proceeding or appeal, but we do reject Alley's attempt to collaterally attack the Middle District of Florida's [] injunction in this Northern District of Alabama [] lawsuit.

Alley, 590 F.3d at 1210. Consistent with both federal practice and Iowa Rule 1.1510, LULAC has done exactly that—brought a challenge to the *King* injunction before the issuing court and joined all the necessary parties.

CONCLUSION

For the foregoing reasons, Respondents' motion to dismiss should be denied.

Dated this 18th day of January, 2022.

Respectfully submitted,

/s/ *Shayla L. McCormally*

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

Uzoma N. Nkwonta*
John M. Geise*
William K. Hancock*
Melinda K. Johnson*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
Telephone: (202) 968-4490
unkwonta@elias.law
jgeise@elias.law
whancock@elias.law
mjohnson@elias.law

Jonathan P. Hawley*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
jhawley@elias.law

Counsel for Plaintiff

**Admitted Pro Hac Vice*