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 **Reply in Support of Respondents' Motion to Dismiss**

INTRODUCTION

LULAC's petition is procedurally flawed. It tries to distinguish the best available authorities governing its claims by asserting that they're not quite on point. Indeed, it appears that no party has ever attempted to obtain precisely the odd relief that LULAC seeks here. But Respondents have provided the most accurate map through the legal thicket presented by LULAC's petition. And even accepting all LULAC's attempted roadblocks, LULAC has pointed to no case where an Iowa court approved of granting an advisory opinion like it seeks here. Nor any case where a third party was permitted to enjoin an injunction in a new proceeding. This unprecedented case should be dismissed.

ARGUMENT

I. LULAC offers no authority that it can collaterally attack a permanent injunction issued in another proceeding more than 13 years ago.

LULAC failed to offer a single case—from Iowa or anywhere—where a stranger to an injunction has successfully brought a new injunction action to dissolve that injunction. That's because it is the wrong procedure. And LULAC's attempt at this collateral attack should be rejected.

The Eleventh Circuit rejected a similar attempt and redirected the collateral attacker back to the original proceeding. *See Alley v. U.S. Dep't of Health & Hum. Servs.*, 590 F.3d 1195, 1204 (11th Cir. 2009). True, as LULAC points out, the court talked of the "issuing court," but it also favorably discussed the proper procedure as modifying the injunction in the original case. And LULAC ignores that the unsuccessful collateral attacker then unsurprisingly followed the Eleventh Circuit's guidance and sought to intervene in the original proceeding. *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). This is the best precedent of how an injunction could be modified by a third party.

The Iowa Supreme Court's dicta in *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 8–9 (Iowa 2020), is not to the contrary. The Court reversed an order that was "in effect a collateral attack" on injunctions issued in three other counties while mentioning that Rule 1.1510 reflects that interest of "comity and noninterference among district courts." *Id.* at 8. The Court did not say that the collateral attack would have been permissible if it *had* been brought in a new proceeding in the same county as the original proceeding. And there's no basis in the opinion to reason that the Court *would* permit such an action.

This is particularly so because it appears that all prior cases of injunction modifications in Iowa were made in the original proceedings. *See* Motion to Dismiss Br. at 7–9. That these prior injunction modifications were sought by parties to that original case doesn't help LULAC's cause. On the contrary, it shows that in most—if not all—cases, only the parties could have any basis to modify an injunction. And it shows the high bar that even parties must clear to succeed. *See Bear v. Iowa Dist. Ct. for Tama Cty.*, 540 N.W.2d 439, 441 (Iowa 1995); *Den Hartog v. City of Waterloo*, 926 N.W.2d 764, 769–70 (Iowa 2019). Surely a stranger to the original action wouldn't have a different, lower standard for vacating or modifying a permanent injunction.

Section 611.7 of the Iowa Code provides no refuge from dismissal of this improper claim. That provision permits a plaintiff who brings an action as the wrong "kind of proceedings" to correct the error by causing "a change into the proper proceedings, and a transfer to the proper docket" rather than dismissal. Iowa Code § 661.7. But this statute has no applicability here. The kinds of proceedings referenced are "civil, special, or criminal," with civil proceedings further divided into "ordinary" and equitable." Iowa Code §§ 611.1, 611.3. LULAC didn't select the wrong "kind of proceedings," such that this case can be reclassified and moved to a different docket. LULAC picked the entirely wrong legal procedure. It shouldn't have brought a new case. This claim should be dismissed.

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

Attempting to shore up its lack of standing to seek a declaratory judgment, LULAC turns to its attack on the *King v. Mauro* injunction. LULAC claims that dissolving the injunction will give it redress. *See* Resistance at 4 (contending that it "defies logic" that "the availability of non-English voting materials is unlikely to change after the *King* injunction is dissolved").[1] But Respondents do not challenge LULAC's standing to attack the injunction in this motion. Respondents challenge LULAC's standing for the separate declaratory judgment claim. And "a plaintiff must demonstrate standing separately for each form of relief sought." *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs (TOC), Inc.*, 528 U.S. 167, 185 (2000). So any redress provided by the possible dissolution of the injunction doesn't provide standing for their separate declaratory judgment claim.

LULAC also looks for support from *Larson v. Valente*, 456 U.S. 228 (1982), and *Fed. Election Comm'n v. Akins*, 524 U.S. 11 (1998). But both of those cases involved live disputes between parties that would be redressed. In *Larson*, the State notified the plaintiff that it was required to register under a challenged statute. *See Larson*, 456 U.S. at 232. In *Akins*, the FEC dismissed a complaint by the plaintiffs. *See Akins*, 524 U.S. at 15–16. In both cases, the Court rejected arguments that plaintiffs lacked standing just because alternative legal bases existed for the Defendants to take similar actions again even after a favorable decision. It reasoned that those new actions—on

[1] To the extent that LULAC suggests that the need for "a permanent injunction enforcing [the statutory] mandate" is merely proof of some dispute that can be redressed, that argument is also off the mark. The injunction was issued more than thirteen years ago when a different person, from a different political party held the office of Secretary of State. *See* Motion to Dismiss Br. at 5 n.3.

different legal grounds—may be harder to justify or at least could be challenged again. Thus, the plaintiffs would obtain some redress in their current lawsuits. *See Larson*, 456 U.S. at 242–43; *Akins*, 524 U.S. at 19–26.

But here, there is no live dispute at all. LULAC isn't challenging any action of Respondents. It's not contending that the Secretary of State or one of the county auditors has denied a request to provide voting materials in language other than English. It's not claiming that they're required to. It merely seeks an advisory opinion about whether Respondents *could* do so. Thus, LULAC has no standing to seek its requested declaratory judgment because it will not redress any injury.

And LULAC tries to rely on the response provided by the Secretary of State to its earlier request for a declaratory order. But LULAC did not seek judicial review of the Secretary of State's response under chapter 17A. That response is thus not before the Court. And it has no relevance in showing whether the parties have a live dispute that a declaratory judgment will redress because the Secretary's response simply informs LULAC of the permanent injunction. Nor have Respondents argued that the declaratory judgment is improper because LULAC failed to exhaust administrative remedies. *Contra* Resistance at 6. The only defect raised—albeit a fatal one—is LULAC's lack of standing. For that reason, LULAC's claim seeking a declaratory judgment should 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,

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties of record by delivery in the following manner on January 28, 2022:

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

Signature: */s/ Samuel P. Langholz*