IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF IOWA, **Petitioner,** **vs.** **IOWA SECRETARY OF STATE PAUL PATE, in his official capacity, et al.,** **Respondents.**	**CASE NO. CVCV062715** **RULING ON RESPONDENTS' MOTION TO DISMISS**

A contested hearing on the respondents' motion to dismiss was held before the undersigned on February 4, 2022 as previously scheduled. Upon consideration of the arguments made at the hearing, and having reviewed the file and being otherwise duly advised in the premises, the court rules as follows:

This is an action[1] in which the petitioner (LULAC) seeks the following relief: 1) the dissolution of a permanent injunction previously issued in King v. Mauro, et al., Polk County Case No. CVCV006739, which prohibits the use of languages other than English in the official voter registration forms in Iowa; and 2) a declaratory judgment that Iowa Code §1.18 (titled "Iowa English language affirmation") does not apply to voting materials, including ballots, registration and voting notices, forms, instructions, and other materials and information relating to the electoral process, as those items are exempt

[1] The initial petition was filed on October 27, 2021. In response to the respondent's first motion to dismiss, the petitioner filed an amended petition on January 18, 2022 pursuant to Iowa Rule of Civil Procedure 1.402(4). The respondents renewed their motion to dismiss on January 28, 2022.

pursuant to Iowa Code §1.18(5)(h).[2] The respondents seek the dismissal of this action for the following reasons: 1) LULAC may not seek the dissolution of the King v. Mauro injunction in a separate subsequent proceeding; and 2) LULAC does not have standing to pursue the requested declaratory relief.

The parties agree on the general standards to be applied to a pre-answer motion to dismiss such as the one at hand. The sufficiency of a claim in the face of such a motion is measured by the allegations pled therein, all of which are deemed to be true for purposes of the motion. O'Hara v. State, 642 N.W.2d 303, 305 (Iowa 2002). In considering the sufficiency of the petition, the court may consider not only documents attached thereto, but those documents referenced in the petition, even though not attached. Daniels v. Holtz, 2021 WL 1148886 *2 (Iowa S.Ct., Case No. 19-1674, filed March 26, 2021) (unpublished). A motion to dismiss waives any ambiguity or uncertainty in the petition, and those allegations are construed in the light most favorable to the claimants, with any doubts resolved in their favor. Young v. HealthPort Technologies, Inc., 877 N.W.2d 124, 127 (Iowa 2016); Tate v. Derifield, 510 N.W.2d 885, 887 (Iowa 1994). A motion to dismiss should only be granted if there is no state of facts conceivable under which a claimant might show a right of recovery. Kingsway Cathedral v. Iowa Dep't of Transp., 711 N.W.2d 6, 7 (Iowa 2006).

Dissolution of injunction in CVCV006739. In April of 2008, Judge Douglas Staskal entered a final order in the case of Steve King, et al., v. Michael Mauro, et al., Polk County Case No. CVCV006739 (Exhibit A to Amended Petition in CVCV062715).

[2] As an alternative to the second requested relief, LULAC seeks a declaratory judgment relative to the exemption of the aforementioned items that are provided to eligible electors with limited English-language proficiency.

That case addressed whether the respondents (Mauro, the then-Iowa Secretary of State, and the Voter Registration Commission) were in violation of Iowa Code §1.18 by posting non-English voter registration forms on the website for the Secretary of State's office. Preliminarily, Judge Staskal determined that among the original petitioners, only those who were involved as county auditors (and therefore county commissioners of elections) had standing to challenge the respondent's actions. Those petitioners were the then-auditors for Jefferson, Montgomery, Calhoun and Buena Vista Counties.

Judge Staskal went on to ultimately rule that the respondent's actions were violative of Iowa Code §1.18. In so ruling, he noted that the parties had not raised the applicability of an exception to the English-only requirement in that statute for "[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." Exhibit A, p. 29 (quoting Iowa Code §1.18(4)(h) (2007)).[3] Judge Staskal went on to comment as follows:

> 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. (Citations omitted). However, the Respondents have not argued and there is nothing in this record that would support the contention that the Respondent's 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.

[3] This language has remained unchanged from Judge Staskal's ruling to the present time, although it is now found at §1.18(5)(h) as a result of a 2008 renumbering that did not make any substantive changes. 2008 Iowa Acts ch. 1032 §109.

Id. at pp. 29-30. As part of the relief flowing from the determination that the respondents were in violation of §1.18, Judge Staskal enjoined the respondents "from using languages other than English in the official voter registration forms of [Iowa]." Id. at p. 31. The order was not appealed.

The present action is being brought by LULAC, admittedly a stranger to the prior litigation, in part to dissolve the injunction imposed by Judge Staskal and allow for the use of non-English languages in voter registration forms; in so doing, it now urges the exception not addressed in the King ruling; namely, §1.18(5)(h).[4] The respondents seek the dismissal of this part of the action on the basis that they claim it represents an improper collateral attack on the King ruling that must be brought, if at all, in that case.

To begin with, it has long been the law in Iowa that a permanent injunction previously entered may be revisited in a proceeding aimed at modifying or vacating it:

> The law is clear that a court may so modify or vacate an injunction, otherwise the party restrained might be held in bondage of a court order no longer having a factual basis.

Helmkamp v. Clark Ready Mix Co., 249 N.W.2d 655, 656 (Iowa 1977). A permanent injunction is otherwise unlimited in respect of time absent a substantial change in the facts or law, and its vitality is not affected by the mere passage of time. Bear v. Iowa Dist. Court for Tama County, 540 N.W.2d 439, 441 (Iowa 1995). A ruling entered in one county that has the effect of countermanding orders entered by other district courts in other counties is an improper collateral attack and will be vacated. Democratic Senatorial Campaign Committee v. Pate, 950 N.W.2d 1, 8 (Iowa 2020).

[4] The remainder of the action seeks a declaration that other forms of voting-related materials are not barred by §1.18 for similar reasons. The respondents seek the dismissal of this claim on standing grounds, which will be addressed in the second portion of this ruling.

The court in Pate referenced Iowa Rule of Civil Procedure 1.1510 in its discussion of the authority of a district court to dissolve another court's injunctions; that rule provides as follows:

> 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.

IowaR.Civ.P. 1.1510 (quoted in Pate, 950 N.W.2d at 8). This rule is the basis upon which LULAC seeks to maintain the present action. The respondent takes the position that the rule is simply not applicable to this pursuit, and that LULAC is relegated to intervening in CVCV006739 if it wishes to challenge the King injunction.

This court does agree with the respondent's position that rule 1.1510 is akin to a venue provision, at least as it pertains to the county in which an applicable proceeding must be filed. In re Schrock, 2008 WL 239193 *3 (Iowa Ct.App., Case No. 07-0614, filed January 30, 2008). Beyond that, the court does not accept the respondent's argument that the rule's reference to "[a]n action…on a judgment or final order" does not include within its scope the current dispute. The King injunction is a final order, and LULAC's claim to challenge the viability of that injunction is clearly an "action." Iowa Code §611.1 (2021) ("Every proceeding in court is an action…"); see also Action, Black's Law Dictionary (11th ed. 2019) ("A civil or criminal judicial proceeding"). The real issue within rule 1.1510 is whether its reference to "court" means the same proceeding in which the injunction was previously entered.

This language has been contained within rule 1.1510 and its predecessors in essential form since its inclusion in the Code of 1873. Hawkeye Ins. Co. v. Huston, 115

Iowa 621, ____, 89 N.W. 29, 30 (1902). Although the language requires such an action to be brought "in the…court…where such judgment or order was obtained," it has not been construed to require that it be brought in the same proceeding. To the contrary, where venue has not been an issue, the reference to "court" appears to have been applied to only courts of differing levels of jurisdiction within the same county. See Lockwood v. Kitteringham, 42 Iowa 257, 259 (1875) (dissolution of injunction obtained in Harrison County circuit court to restrain enforcement of execution on judgment entered in Harrison County district court affirmed).

The language in the rule is admittedly outdated, in terms of how the court system is currently structured, yet it has remained to the present time. If the original intent of the drafters of rule 1.1510 and its predecessors had been to require an action to modify or vacate an injunction to be pursued in the same proceeding in which it had been entered, there would be no reason to reference the "court" in which it was entered; the rule would simply refer to the "action" or "case" from which the injunction commenced. As long as the action has been filed in Polk County district court, it complies with the language of rule 1.1510.[5] Finally, while the respondent's argument that LULAC must seek intervention in CVCV006739 has some support in other jurisdictions, see Florida Medical Ass'n, Inc. v. Dep't of Health, Education & Welfare, 2011 WL 4459387 (M.D. Fla., Case No. 3:78-CV-178, filed September 26, 2011), it flies in the face of the well-established rule in Iowa "that, while a person may become a party to an action by

[5] This is especially true where almost fourteen years has passed since the entry of the original injunction, and there has been a realignment of the parties reflecting the changes in political fortunes in the interim. The county auditors who had prevailed in the King action are now appropriately joined as respondents (at least in terms of their offices; three of the four are no longer currently holding that position) along with the current secretary of state and the commission. Of the prior parties, no one would be in a position to take on the role of a petitioner on the issue of the challenge to the King injunction pursuant to Iowa Code §1.18(5)(h).

intervening, he can intervene only during the pendency of the action." First Trust Joint Stock Land Bank of Chicago v. Cuthbert, 215 Iowa 718, ____, 246 N.W. 810, 815 (1933); see also U.S. Bank Nat'l Ass'n v. Vahle, 2012 WL 5539865 *6 (Iowa Ct.App., Case No. 12-0439, filed November 15, 2012) (petition for intervention during pendency of case is consistent with Iowa Rule of Civil Procedure 1.407's requirements that a "timely" application for intervention be filed in an existing "action"). That part of the present action that seeks the dissolution of the King injunction is not subject to dismissal for not being brought within the earlier action.

Of course, whether the King injunction is subject to dissolution is dependent on whether LULAC can meet the threshold requirement that "there has been a substantial change in the facts or law." Bear, 540 N.W.2d at 441. To the degree there are grounds for looking at the validity of an already-enacted injunction, it is no longer entitled to deference under the doctrine of res judicata:

> The original injunction decree is res judicata as to conditions then existing; it is not res judicata as to events thereafter occurring and conditions thereafter coming into being.

Helmkamp, 249 N.W.2d at 656. In the present case, it is undisputed that there has been no change in the factual conditions that resulted in the King injunction, nor has there been a change in the law. The only basis as stated within the four corners of the petition for the dissolution of the King injunction is that "it is inconsistent with the terms of the Rights Exception enumerated in Iowa Code §1.18(5)(h)." Amended Petition, p. 16, ¶50. As noted earlier, the potential applicability of this exception to the claim made in CVCV006739 was noted by Judge Staskal in his ruling; any invitation to have the court address that issue within that action was not accepted by the respondents therein.

This is the fatal flaw to LULAC's position on its claim that the King injunction is now subject to dissolution. It is well settled that the resolution of disputed issues by way of a final order is not subject to relitigation on the issues that had been available to litigate in the earlier proceeding:

> The doctrine of res judicata provides that a final judgment on the merits of an action precludes the parties from relitigating issues which were **or could have been raised** in that action. The res judicata consequences of a final, unappealed judgment on the merits are not altered by the fact the judgment may have been wrong or rested on a legal principle subsequently overruled in another case. A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review. A judgment may be attacked collaterally only if it was entered without jurisdiction. The fundamental purpose of the res judicata doctrine is to make judgments clear and certain. Without the doctrine the conclusive character of judgments would be undermined.

Gail v. Western Convenience Stores, 434 N.W.2d 862, 863 (Iowa 1989) (internal citations omitted) (emphasis added). This rule has been applied in other jurisdictions to bar an attempt to dissolve or vacate a previously-entered injunction:

> To be sure, "the finality of a judgment containing a permanent injunction does not mean that the trial court, in a later separate proceeding, is precluded from entering another judgment modifying or dissolving the injunction **when circumstances have changed**. But Mr. McDonald's claims that he did not intend to consent to the injunction and that the injunction is overly broad, even if true, do not establish that there has been a change of circumstances since the injunction has been entered. Rather, both of those issues could have been raised in either his answer to appellee's complaint or in a timely appeal from the March 20 order….Consequently, we are not persuaded that the court abused its discretion in denying Mr. McDonald's petition to vacate the permanent injunction.

McDonald v. Hillcrest Towne Homeowner's Ass'n, Inc., 2020 WL 619604 *3 (Md.Ct.Spec.App., Case No. CAE18-00584, filed February 10, 2020) (internal citations omitted) (emphasis in original); see also Arkwright Advanced Coating, Inc. v. MJ Solutions GmbH, 2015 WL 4663366 *2 (D.Minn., Case No. 14-5030(DSD/TNL), filed August 6, 2015) ("Arkwright relies on no new evidence or recently developed law, but instead seeks only to rehash arguments already made and lost, or to raise new arguments that could have been raised before. The court will not grant relief based on such efforts"); Bredfeldt v. Greene, 2017 WL 64522341 *4 (Ariz.Ct.App., Case No. 2-CA-CV2016-0198, filed December 18, 2017) (no authority exists for proposition that a court has the authority to modify or vacate a permanent injunction "simply because of underlying legal error").

LULAC is in no better position than the unsuccessful parties in the above-cited cases. Whether the exception found within what is now Iowa Code §1.18(5)(h) was available to impede the enactment of the King injunction was plainly available to the parties in that litigation. No effort was made to address that issue in CVCV006739. As a result, LULAC is precluded from addressing that precise issue in the current litigation, as it pertains to the King injunction, regardless of the policy implications at hand. Id. (rejection of argument that the court's "duty to correct legal error trumps any consideration of stability inherent in final judgments"). As a result, this court concludes that the efforts of LULAC to seek the dissolution of the King injunction under the present circumstances would constitute an improper collateral attack and does not state a claim upon which relief may be granted. That part of the action will, therefore, be dismissed.

Standing on remaining claims. Iowa follows a two-prong approach on the issue of the standing of a litigant to bring an action; the complaining party must 1) have a specific personal or legal interest in the litigation; and 2) must be injuriously affected. Iowa Citizens for Community Improvement v. State, 962 N.W.2d 780, 790 (Iowa 2021). To meet the first prong, the litigant is required to allege "some type of injury different from the population in general." DuTrac Community Credit Union v. Hefel, 893 N.W.2d 282, 289 (Iowa 2017). The second prong—that the plaintiff must be injuriously affected—means that it must be "injured in fact." Godfrey v. State, 752 N.W.2d 413, 419 (Iowa 2008). In analyzing the injury-in-fact requirement for standing, Iowa courts have incorporated the federal requirements that the injury is fairly traceable to the defendants' conduct and is likely to be redressed by a favorable decision. Iowa Citizens, 962 N.W.2d at 790, 791 ("Think about it this way: If 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"). As a result, federal authority on standing is persuasive. Alons v. Iowa Dist. Court for Woodbury County, 698 N.W.2d 858, 869 (Iowa 2005) (cited with approval in Iowa Citizens, 962 N.W.2d at 790-91). The respondents focus on the redressability element of the injury-in-fact prong in seeking a dismissal of LULAC's request for declaratory relief.

Those portions of LULAC's petition that addresses its claim of standing, which are taken as true for purposes of the present motion are as follows:

> 13. Petitioner League of United Latin American Citizens of Iowa is part of LULAC, an organization that has approximately 150,000 members throughout the United States and Puerto Rico and more than 600 members in Iowa. LULAC is the largest and oldest Latino civil rights organization in the United States. It advances the economic condition, educational attainment, political influence, health, housing, and civil rights of all Hispanic nationality

groups through community-based programs operating at more than 1,000 LULAC councils nationwide. LULAC of Iowa is comprised of 22 councils located throughout the state. Its members, constituents and each of its councils include voting-age Latino citizens of Iowa who are disproportionately burdened by the prohibition on the use of Spanish-language voting materials. LULAC of Iowa must also divert substantial resources and attention from other critical missions to address the adverse impact on its members and constituents caused by the failure to accept Spanish-language voting materials and assist them in attempting to surmount these barriers to voting. Because of the lack of Spanish-language voting materials, LULAC of Iowa has suffered and will continue to suffer irreparable harm. Unless set aside, the mistaken enforcement of the English-Only Law and the injunction prohibiting the use of non-English voter registration materials will continue to inflict injuries for which LULAC of Iowa has no adequate remedy at law.

….

39. On July 28, 2021, Petitioner sought to clarify certain issues related to the EnglishOnly Law by filing a Petition for Declaratory Order with the Secretary under Iowa Code § 17A.9 and Iowa Administrative Code r. 721-9.1(17A) (the "Administrative Petition"). See Pet. by League of United Latin Am. Citizens of Iowa for Declaratory Order on Title II, Chapter 48A (Voter Registration) & Section 53.2 (Absentee Ballot Request) of the Iowa Code (July 28, 2021) (attached as Exhibit 2). The Administrative Petition sought clarification on two main points: first, whether county auditors outside Buena Vista County **may** accept certain Spanish-language forms used by Buena Vista County; and second, whether county auditors **must** accept the Spanish-language version of the National Mail Voter Registration Form.

40. On September 27, 2021, the Secretary provided Petitioner with a one-sentence response to the Administrative Petition. Rather than provide guidance on "the applicability to specified circumstances of a statute, rule or order," Iowa Code § 17A.9, the Secretary simply stated that his office is "still under an injunction stemming from King v. Mauro . . . , which prevents the dissemination of official voter registration forms for this state in languages other than English." Ex. 3. Even though the

> Administrative Petition related exclusively to county auditors—who are **not** directly subject to the King injunction—the Secretary appears to be of the view that the King holding and injunction settle Petitioner's questions.

Amended Petition, ¶¶13, 39-40. The respondents argue that the declaratory judgment sought by LULAC will not redress the harm purportedly caused, as it would not require the materials in question to be provided.[6]

In so arguing, the respondents misconstrue the authority on redressability. Even where an agency is afforded discretion in coming to a result, those who are adversely affected by that decision have standing to complain that the decision was based upon an improper legal ground. Federal Election Comm'n v. Akins, 524 U.S. 11, 25, 118 S.Ct. 1777, 1786 (1998). Even if the agency might reach the same result for a different reason, those who are seeking that re-examination have met the redressability requirement for purposes of standing. Id. at 25, 118 S.Ct. at 1787. Where a change in legal status is ordered, and the practical consequence of that change would amount to a significant likelihood that a petitioner would obtain relief that directly redresses the claimed injury, redressability has been established. Utah v. Evans, 536 U.S. 452, 464, 122 S.Ct. 2191, 2199 (2002); see also Iowa Citizens, 962 N.W.2d at 791-92 (plaintiff must establish that injury is likely to be redressed, as opposed to merely speculative, in order to have standing).[7] LULAC's burden in this regard is "relatively modest;" it "need not

[6] Again, there appears to be no dispute that either LULAC or its members have been injured by the failure to have access to non-English voting materials or that this injury can be traced to the respondents' conduct.
[7] This case is the most recent among several Iowa decisions that have adopted the analysis set forth in Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S.Ct. 2130, 2136 (1982) in this regard. See, e.g., Horsfield Materials, Inc. v. City of Dyersville, 834 N.W.2d 444, 457 (Iowa 2013); Godfrey v. State, 752 N.W.2d 413, 421 (Iowa 2008); Alons, 698 N.W.2d at 867; Sanchez v. State, 692 N.W.2d 812, 821 (Iowa 2005).

demonstrate that there is a guarantee" of redress through a favorable decision. M.S. v. Brown, 902 F.3d 1076, 1083 (9th Cir. 2018).

LULAC has established within its petition that the respondents have refused its request for clarification on the issue of access to non-English voting materials, in part if not entirely upon the existence of the King injunction, and that such clarification is necessary to avoid the diversion of limited resources in its efforts to register voters and enhance voter turnout. To the degree that the respondent's refusal is based upon an incorrect (or heretofore unexamined) legal position, LULAC has adequately connected the dots between that decision and the resulting injury to it and its members. See Puntenney v. Iowa Utilities Board, 928 N.W.2d 829, 837 (Iowa 2019) (organization can assert the interests of its members for standing purposes). Unlike the petitioners in Iowa Citizens, LULAC is not "simply seeking broad, abstract declarations in this litigation," 962 N.W.2d at 792, but rather a procedural vehicle to right what it purports to be a wrong. Whether the merits of this claim favor LULAC is not before the court at the present time. Horsfield, 834 N.W.2d at 452 (inquiry into standing "is separate from, and precedes the merits of a case"). For now, however, this court concludes that LULAC does enjoy standing to pursue its claim for declaratory relief.

IT IS THEREFORE ORDERED that the respondents' motion to dismiss is granted in part and denied in part.

IT IS FURTHER ORDERED that Count I of the amended petition shall be allowed to continue, while Count II of the amended petition is dismissed with prejudice. The respondents shall have ten (10) days from the date of this ruling in which to answer Count I of the amended petition, pursuant to Iowa Rule of Civil Procedure 1.441(3).

State of Iowa Courts

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CVCV062715	LULAC OF IOWA VS PAUL PATE ET AL
Type:	OTHER ORDER

So Ordered

Michael D. Huppert, District Court Judge,
Fifth Judicial District of Iowa

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