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 **Resistance to Petitioner's Motion to Reconsider**

INTRODUCTION

This Court properly dismissed LULAC's collateral challenge to the *King v. Mauro* permanent injunction. LULAC's concern about issue preclusion is misplaced because the Court didn't actually dismiss Count II based on issue preclusion or res judicata. It merely discussed res judicata principles as support for its core holding that Iowa law doesn't permit any challenge to permanent injunctions except based on changed facts or law. And because LULAC's petition doesn't allege any such challenge, it fails to state a claim. But even if the Court relied on issue preclusion, Iowa law recognizes that the doctrine *can* be invoked defensively against a nonparty to the original action where, as here, the nonparty shared an interest that was properly represented in the original proceeding. LULAC's motion to reconsider should be denied.

ARGUMENT

LULAC's motion to reconsider rests entirely on a misplaced concern about issue preclusion. *See* Mtn. to Reconsider at 1–5. LULAC appears to misread the Court's order as holding that issue preclusion bars its challenge to the *King v. Mauro* permanent injunction. *See id.* at 5. But this Court never said that issue preclusion applies directly to LULAC. Rather, the Court properly held that Iowa law only permits the dissolution of a permanent injunction when "'there has been a substantial change in the facts or law.'" Ruling on Respondents' Mtn. to Dismiss at 7 (quoting *Bear v. Iowa Dist. Ct. for Tama Cty.*, 540 N.W.2d 439, 441 (Iowa 1995)); *see also Den Hartog v. City of Waterloo*, 926 N.W.2d 764, 769–70 (Iowa 2019). And looking at LULAC's amended petition and the parties' papers, the Court correctly held that "it is undisputed that there has been no change in the law" and that the "only basis" alleged in the amended petition for dissolving the injunction is that "it is inconsistent with" Iowa law. Ruling at 7. The court called this LULAC's "fatal flaw." *Id.* at 8. The Court was right.

This holding didn't rely on issue preclusion. It's a correct application of Iowa law. And LULAC still hasn't pointed to a single Iowa case permitting a party or a nonparty to dissolve a permanent injunction merely because they think the court got it wrong as a matter of first principles. That would fly in the face of finality. And it would be a significant concern in public litigation like this where any number of effected citizens may believe that a prior court decision was erroneous. This Court properly recognized that no one can come to court and challenge such a final, permanent injunction, absent some changed facts or law.

True, the Court went on to discuss principles of res judicata or issue preclusion that provide justification for the finality of judgments. *See id.* at 8–

9. But that wasn't necessary reasoning. So even if LULAC is correct that issue preclusion wouldn't apply directly as a bar to LULAC's, that wouldn't be a reason to reconsider dismissal.

But LULAC is also wrong that that issue preclusion cannot be used defensively against a stranger to the *King v. Mauro* injunction. While the offensive use of issue preclusion requires that the party against whom it is used to have been a party to the proceeding with a full opportunity to litigate, the same isn't true for the defensive use of issue preclusion. *Compare Harris v. Jones*, 471 N.W.2d 818, 820 (Iowa 1991) (holding that offensive issue preclusion couldn't apply against police officers who weren't parties to related criminal proceeding), *with Opheim v. Am. Interins. Exh.*, 430 N.W.2d 118, 121 (Iowa 1989) (applying defensive issue preclusion against injured person who was not a party to first declaratory judgment action because his interests were adequately represented by the insured). When used defensively against a stranger to the first action, the stranger need only have "a community of interest with, and adequate representation by the losing party in the first action." *Opheim*, 430 N.W.2d at 121 (cleaned up).

Here, the Secretary of State in office at the time of the *King v. Mauro* lawsuit was brought vigorously defended his interest in providing voter registration forms in non-English languages. The Secretary made numerous arguments to interpret the statute to permit the forms and even argued the statute is unconstitutional. *King v. Mauro*, Polk Cty. No. CV006739, at 18 (Iowa Dist. Ct. Mar. 31, 2008). These interests were in community with LULAC's interests now. And the Secretary adequately represented them, the same as LULAC could have if it had chosen to intervene. Indeed, as an elected official, the Secretary officially represented LULAC's members, like all Iowans, in exercising his constitutional and statutory duties through his defense of the

litigation. It would thus be appropriate to apply issue preclusion defensively against LULAC here. So under either analysis, the claim fails.

If the Court nevertheless accepts LULAC's invitation to revisit in reasoning of the dismissal of Count II, it could still instead dismiss the claim because the claim should have brought as a challenge in the original proceeding. The court rejected this argument by Respondents originally, reasoning that Iowa law requires a pending proceeding for intervention. But the original *King v. Mauro* case *is* still pending. Because there is a permanent injunction, the court retains jurisdiction over that pending case so long as the injunction remains in effect. Thus, LULAC could attempt to intervene in the case—assuming that it could meet the standard for such intervention. But as the Court held here, even in the proper procedural posture in that case, LULAC hasn't alleged—and couldn't show—any changed facts or law that would justify dissolving that injunction at this time.

CONCLUSION

For all these reasons, LULAC's motion for reconsideration under Rule 1.904 should be denied. Count II of the amended petition collaterally attacking the *King v. Mauro* permanent injunction was properly dismissed.

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
(515) 281-5164
(515) 281-4209 (fax)
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 March 28, 2022:

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

Signature: */s/ Samuel P. Langholz*