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, et al., Respondents.	Case No. CVCV062715 **Brief in Support of Respondents' Motion for Summary Judgment**

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INTRODUCTION

Fourteen years ago, in *King v. Mauro*, Polk Cnty. No. CV006739 (Iowa Dist. Ct. Mar. 31, 2008), 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 1.1501 to "dissolve" the permanent injunction issued in *King v. Mauro*. *See* Am. Pet. ¶¶ 47–50, B. And it 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* Am. Pet. ¶¶ 43–46, A.

LULAC's suit lacks merit. First, both claims are procedurally flawed. LULAC cannot collaterally attack a permanent injunction in this new proceeding. Even looking past that fundamental defect, there has been no change in facts or law as required to dissolve a permanent injunction. And the Court's ruling in *King v. Mauro* is preclusive here as to whether providing voter registration forms in languages others than English is prohibited by the Act. LULAC also lacks standing to seek its declaratory judgment because it is a mere advisory opinion that won't redress any alleged injury to LULAC or its members. And the Court should exercise its discretion to decline to issue a declaratory judgment because it wouldn't resolve any real dispute and because of the concerns about standing and the propriety of this collateral attack.

But even if the Court does reach the merits of either claim, LULAC fares no better. Providing voter registration forms and other voting materials in a language other than English is not "required by or necessary to secure the rights guaranteed by" the United States or Iowa constitutions or federal law. Iowa Code § 1.18(5)(h). So the exception of section 1.18(5)(h) does not apply to the language usage enjoined by the permanent injunction or referenced in the proposed declaratory judgments. *See* Am. Pet. ¶¶ 45–46; *see also id.* at 16 ¶ A. This is a pure legal question of statutory interpretation. There is thus no material factual dispute that requires proceeding to trial. The Court should grant summary judgment for Respondents and dismiss this suit.

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 Cnty. 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 Cnty. No. CV006739 (Iowa Dist. Ct.).[1]

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.

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.[2] 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 1.1501 to "dissolve" the permanent injunction issued in *King v. Mauro*. *See* Am. Pet. ¶¶ 47–50, B. LULAC contends that the injunction is "founded on an erroneous interpretation of" the Act. Am. Pet. ¶ 42. 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* Am. Pet. ¶ 41.

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[1] 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.

[2] 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* Am. Pet. at ¶¶ 14, 16–19; *see also* Order (Oct. 14, 2022) (substituting Jill Ozuna for Stephanie Burke as Respondent Montgomery County Auditor).

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* Am. Pet. ¶¶ 43–46, 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* Am. Pet. ¶¶ 45–46. And it seeks a declaration of a blanket exception, *see* Am. Pet. ¶ 45, or a narrower one for materials "provided to eligible electors with limited English-language proficiency." Am. Pet. ¶ 46.

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 SUMMARY JUDGMENT

Rule 1.981 of the Iowa Rules of Civil Procedure authorizes "[a] party against whom a claim . . . is asserted or a declaratory judgment is sought" to move for "summary judgment in that party's favor." Iowa R. Civ. P. 1.981(2). Summary judgment must be granted when the record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Iowa R. Civ. P. 1.981(3); *see also EMC Ins. Group, Inc. v. Shepard*, 960 N.W.2d 661, 663–64 (Iowa 2021) (affirming grant of summary judgment in a declaratory judgment action). "Summary judgment is appropriate if the record reveals only a conflict concerning the legal consequences of undisputed facts." *EMC Ins. Group*, 960 N.W.2d at 668 (cleaned up). Evidence must be viewed "in the light most favorable to the nonmoving party." *Id.*

ARGUMENT

LULAC's claims are both procedurally and substantively flawed. They thus fail as a matter of law without the need to resolve any material factual dispute. And the Court should grant summary judgment and dismiss this case.

LULAC's attempt to dissolve the permanent injunction in Count II fails because it's improper to collaterally attack that injunction in this new proceeding. Even if LULAC could do so without intervening in *King v. Mauro*, there has been no change in facts or law—which are the only grounds for dissolving a permanent injunction under Iowa law. And the Court's ruling in *King v. Mauro* is preclusive here as to whether the Act prohibits providing voter registration forms in languages other than English. For any of these reasons, the Court cannot revisit the ruling in *King v. Mauro* that the Act prohibits providing voter registration forms in languages other than English.

The Court should also decline to reach the merits of LULAC's requested declaratory judgment in Count I. First, the Court *cannot* issue the declaration because LULAC lacks standing to seek it; the proposed declaration is a mere advisory opinion that won't redress any alleged injury to LULAC or its members. And second, the Court *should not* issue the declaratory judgment and should instead exercise its discretion under Rule 1.1105 to decline to issue the declaratory judgment because it wouldn't resolve any real dispute, especially given the concerns about standing and the propriety of issuing a ruling that conflicts with the court's prior permanent injunction.

On the merits of either claim, LULAC also fails. LULAC is wrong that providing voter registration forms and other voting materials in a language other than English is "required by or necessary to secure the rights guaranteed by" the United States or Iowa constitutions or federal law. Iowa Code § 1.18(5)(h). The exception of section 1.18(5)(h) thus does not apply to the

language usage enjoined by the permanent injunction or referenced in the proposed declaratory judgments for all voting materials or only those materials provided to voters "with limited English-language proficiency." Am. Pet. ¶ 46; *see also id.* at 16 ¶ A. This question of statutory interpretation is merely "a conflict concerning the legal consequences of undisputed facts." *EMC Ins. Group*, 960 N.W.2d at 668 (cleaned up). So the Court should grant summary judgment for Respondents and dismiss this suit.

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 Cnty.*, 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 LULAC cannot dissolve the permanent injunction here for three reasons. First, this new proceeding is the improper way to do so. Second, there's been no change in the facts or law as required to dissolve a permanent injunction. Third, the ruling in *King v. Mauro* is preclusive here.

A. LULAC uses the wrong procedure.

This new lawsuit—by a stranger to the original injunction—asserting a purported "Injunction on a Judgment or Final Order" claim under Rule 1.1501 is not the way to dissolve a permanent injunction. Yet that's precisely what

LULAC attempts here in Count II. *See* Am. Pet. ¶¶ 47–50, B. And it's an improper collateral attack on the permanent injunction issued more than thirteen years ago in *King v. Mauro*, Polk Cnty. No. CV006739, that must fail.

LULAC cannot point to any rule authorizing this action. It relies on Rule 1.1501, which merely authorizes injunctions but doesn't speak to dissolutions or suggest that it may be used to enjoin a prior injunction. *See* Iowa R. Civ. P. 1.1501. Rule 1.1510 does reference actions "seeking to enjoin proceedings in a civil action, or on a judgment or final order." Iowa R. Civ. P. 1.1510.[3] But it doesn't authorize *any* action—let alone this one. It merely imposes venue and bond requirements for such actions. The authority for LULAC's requested injunction thus must 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*,

[3] 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.

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—although not directly applicable as a source of authority 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 Med. 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 Cnty. No. EQCV1117886 (Iowa Dist. Ct. Jun. 14, 2018) (attached as Ex. B), *aff'd*, 926 N.W.2d 764 (Iowa 2019).

B. LULAC cannot show a change in facts or law.

Even setting aside this defect, LULAC has another problem. To dissolve a permanent injunction—even in this improper proceeding—it must show a "substantial change in the facts or law" since the permanent injunction was issued. *Bear v. Iowa Dist. Ct. for Tama Cnty.*, 540 N.W.2d 439, 441 (Iowa 1995). LULAC cannot do so because there has been no such change. Aside from a technical amendment renumbering some provisions, the Act hasn't been amended since the *King v. Mauro* ruling. *Compare* Iowa English Reaffirmation Act of 2001, ch. 1007, 2002 Iowa Acts 16 (codified at Iowa Code §§ 1.18, 4.14), *with* Iowa Code § 1.18 (2021).[4] No relevant amendment to the United States or Iowa Constitution has been ratified. Neither the Iowa Supreme Court nor the United States Supreme Court have held that non-English voting materials are constitutionally required. And no other specific adjudicative facts could be relevant to the purely legal question of the interpretation of Iowa Code section 1.18 (2021).

Instead of the proper grounds for dissolution of an injunction, LULAC contends that the district court got it wrong in the first instance by not considering the possible applicability of one of the exceptions to the Act. And this Court reasoned in its reconsideration order that this might justify

[4] Just a few days after the decision in *King v. Mauro*, the Legislature passed a nonsubstantive Code corrections bill that numbered a previously unnumbered paragraph as "4," and renumbered other paragraphs accordingly. This changed the citation for the key exception at issue here from section 1.18(4)(h) to section 1.18(5)(h). *See* Act of April 2, 2008, ch 1032, § 109, 2008 Iowa Acts 86, 110.

dissolving the injunction because "its continuation is no longer equitable." Ruling on Mtn. to Reconsider at 4. But even if some other change in the equities aside from a change in the law or facts could justify dissolving an injunction, this too isn't a *change*. The court didn't consider LULAC's new argument in its decision in 2008 just the same as now. Nothing has changed. Rather than finding that the equities have changed—this Court would be concluding that the equities had never supported the issuance of a permanent injunction. And dissolving a permanent injunction on that basis would be unprecedented.

C. Issue preclusion bars relitigating *King v. Mauro*.

Finally, the Court's ruling in *King v. Mauro* is preclusive here as to whether providing voter registration forms in languages others than English is prohibited by the Act. 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.W2d 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 many

arguments to interpret the statute to permit the forms and even argued the statute is unconstitutional. *King v. Mauro*, Polk Cnty. 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 on both counts of LULAC's suit. LULAC's attempt to dissolve the permanent injunction through an "Injunction on a Judgment or Final Order" thus fails.

II. LULAC lacks standing to seek its requested declaratory judgment because the declaration 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." Am. Pet. ¶¶ 45–46, 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 cannot show that the Secretary of State or other Respondents *would* alter any of their practices if the Court granted its request.

Federal Election Commission v. Akins, 524 U.S. 11 (1998), is not to the contrary. There, the FEC dismissed a complaint by the plaintiffs. *See id.* at 15–16. And the Court did reject the FEC's argument that plaintiffs lacked standing just because alternative legal bases existed for it to take similar actions again even after a favorable decision. The Court reasoned that those new actions—on 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 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.

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 to pursue its declaratory judgment.

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[5] LULAC seeks the declaration in two alternate forms—a blanket exception, *see* Am. Pet. ¶ 45, and a narrower one only for materials "provided to eligible electors with limited English-language proficiency." Am. Pet. ¶ 46.

III. The Court shouldn't issue a declaratory judgment because it wouldn't resolve any real dispute and because of the concerns about standing and the propriety of this collateral attack on a prior court order.

Under Iowa Rule of Civil Procedure 1.1105, the Court has discretion to decline to issue a declaratory judgment "where it would not, if rendered, terminate the uncertainty or controversy giving rise to the proceeding." Iowa R. Civ. P. 1.1105; *see also Bechtel v. City of Des Moines*, 225 N.W.2d 326, 330–32 (Iowa 1975); *Wright v. Thompson*, 117 N.W.2d 520, 523–24 (Iowa 1962). As discussed above, the declaratory judgment requested by LULAC does not resolve any controversy between the parties. It merely answers a hypothetical question about whether Respondents could provide voting materials in a language other than English if they wanted to. *Cf. Wesselink v. State Dep't of Health*, 80 N.W.2d 484, 646 (Iowa 1957) (agreeing that declaratory judgment about chiropractors' "claim to a right of appointment as commissioner of public health" was undoubtedly "abstract and hypothetical" while permitting a different requested declaratory judgment that did resolve a "real controversy" to proceed). But LULAC has not shown that Respondents *would* provide such voting materials if the Act didn't prohibit them from doing so. And does doesn't here seek to declare Respondents must provide any such materials.

Since LULAC's injury is redressed only if Respondents provide non-English voting materials, this declaratory judgment doesn't terminate the controversy. Granting it would likely only *increase* the controversy—leading to more litigation taking the next logical step that, not only are Respondents permitted to provide non-English voting materials, but that they *must* do so.

As discussed above, this lack of redress from LULAC's chosen declaratory judgment deprives it of standing. But even if this Court again concludes LULAC meets the bare minimum to satisfy standing requirements,

the serious standing concerns counsel towards exercising discretion to refuse to grant the declaratory judgment. So too does the conflict between the requested declaratory judgment and the court's prior ruling granting a permanent injunction. The court should refuse to reach the merit's of LULAC's declaratory judgment claim in Count I based on Rule 1.1105.

IV. Voting materials aren't exempt from the English Language Reaffirmation Act because providing voter registration forms or other voting materials in a language other than English isn't "required by or necessary to secure" state or federal constitutional rights.

LULAC seeks a narrow declaratory judgment that merely interprets the scope of the English Language Reaffirmation Act, which is now codified at Iowa Code section 1.18. It contends that the Act's requirements don't apply to voter registration forms and other voting materials because they fall under the Act's exception for "language usage required by or necessary to secure the rights guaranteed by the Constitution and laws of the United States or America or the Constitution of the State of Iowa." Iowa Code § 1.18(5)(h). And LULAC thus seeks a declaratory judgment of a blanket exception, *see* Am. Pet. ¶ 45, or a narrower one only for materials "provided to eligible electors with limited English-language proficiency." Am. Pet. ¶ 46.

But LULAC is wrong. Section 1.18(5)(h) doesn't apply here because providing voter registration forms and other voting materials in a language other than English is not "required by or necessary to secure the rights guaranteed by" the United States or Iowa constitutions or federal law.

No provision of either constitution expressly requires voting materials be provided to United States or Iowa citizens in a language other than English. Of course, voting is a fundamental right protected by both constitutions. *See* Iowa Const. art. II, § 1; *League of United Latin Am. Citizens of Iowa v. Pate*,

950 N.W.2d 204, 209 (Iowa 2020) (evaluating "challenge to a statute impacting the right to vote" under the Iowa Constitution); *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) ("It is beyond cavil that voting is of the most fundamental significance under our constitutional structure." (cleaned up)). But that doesn't mean that either constitution requires non-English voting materials be provided to all voters or those with limited English-language proficiency.

Neither the United States Supreme Court nor the Iowa Supreme Court have held that such language usage is required by or necessary to secure the right to vote under the United States or Iowa constitutions. Indeed, the United States Supreme Court upheld an English-language literacy test from constitutional challenge. *See Lassiter v. Northampton Cnty. Bd. of Elecs.*, 360 U.S. 45, 53–54 (1959); *see also Camacho v. Doe*, 221 N.Y.S.2d 262, 262–63 (N.Y. Sup. Ct. Bronx Cnty 1958). And while the California Supreme Court came to a contrary conclusion on a similar requirement as applied to voters literate in Spanish, that court still made clear its interpretation that the U.S. Constitution doesn't require non-English voting materials. *See Castro v. State*, 466 P.2d 244, 258 (Cal. 1970). The court explained that while the Equal Protection Clause prevents the State from excluding "Spanish literates from the polls," the State was "not required to adopt a bilingual electoral apparatus." It recognized that "[t]he state interest in maintaining a single language system is substantial and the provision of ballots, notices, ballot pamphlets, etc., in Spanish is not necessary either to the formation of intelligent opinions on election issues or to the implementation of those opinions through the mechanics of balloting." And it reasoned "that newly enfranchised voters who are literate in Spanish can prepare themselves to vote through advance study of the sample ballots with the assistance of others capable of reading and translating them." *Id.*

Because the Iowa Supreme Court has followed the United States Supreme Court's voting jurisprudence, there's no reason to conclude that the result would be any different under the Iowa Constitution. *See League of United Latin Am. Citizens of Iowa*, 950 N.W.2d at 209–16; *Democratic Senatorial Campaign Cmte v. Pate*, 950 N.W.2d 1, 6–8 (Iowa 2020).

LULAC doesn't challenge the constitutionality of section 1.18. So it is unnecessary to consider the Court's typical flexible "balancing approach" for the constitutionality of laws impacting the right to vote. *See League of United Latin Am. Citizens of Iowa*, 950 N.W.2d at 209 (citing *Anderson v.* Celebrezze, 460 U.S. 780, 789 (1983) and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). But even if that analysis were conducted, section 1.18 easily passes since it is a reasonable generally applicable neutral law that doesn't deprive any person of the right to vote. And it is reasonable for the Legislature to be concerned about the potential inefficiencies, confusion, and expense of maintaining a multilingual electoral system. *See Castro*, 466 P.2d at 258.

LULAC's attempts to rely on the language requirements mandated by the Voting Rights Act don't assist its cause. *See* Am. Pet. ¶¶ 28–34; *see* also 52 U.S.C. § 10503. Of course, the Voting Rights Act is a federal law. Compliance with its requirements would thus fall within section 1.18(5)(h) and is permitted by the Act. And regardless, the Voting Rights Act is supreme to and preempts Iowa law in any event. *See* U.S. Const. art. VI ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."). But LULAC doesn't claim that Respondents are violating the Voting Rights Act. And they aren't. No Iowa political subdivision currently falls within the scope of section 203. *See* 52 U.S.C. § 10503(b)(2)(A); *Voting*

Rights Act Amendments of 2006, Determinations Under Section 203, 86 Fed. Reg. 69611, 69614 (Dec. 8, 2021), available at https://perma.cc/CRS7-ZBPY.

Yet LULAC suggests that because Congress enacted this language requirement, similar non-English voting materials must be required or necessary under the United States Constitution. That doesn't make any sense. A statute is not a constitutional amendment. Congress cannot change what is required by or necessary under the Constitution by passing a statute. *Cf. Katzenbach v. Morgan*, 384 U.S. 641, 649 (1966) (explaining that *Lassiter*'s constitutional holding "is inapposite" to its later holding—without overruling *Lassiter* that Congress had constitutional authority to go further in the Voting Rights Act). And even if it could, the scope of such a new requirement logically couldn't extend further than the scope of the text of the statute. Section 203 imposes no requirements on political subdivisions, like those in Iowa, that do not have large enough numbers or percentages of language minority group citizens. *See* 52 U.S.C. § 10503(b)(2). Because section 203 imposes no requirements on Respondents or any subdivision in Iowa, it has no relevance to considering the applicability of Iowa Code section 1.18(5)(h).

In sum, providing voter registration forms and other voting materials in a language other than English is not "required by or necessary to secure the rights guaranteed by" the United States or Iowa constitutions or federal law. Iowa Code § 1.18(5)(h). The exception of section 1.18(5)(h) thus does not apply to the language usage enjoined by the permanent injunction or in the proposed declaratory judgment for all voting materials or only those materials provided to voters "with limited English-language proficiency." Am. Pet. ¶ 46; *see also id.* at 16 ¶ A. The Court should not dissolve the permanent injunction or grant LULAC's requested declaratory judgment.

CONCLUSION

For these reasons, the Court should grant summary judgment in Respondents' favor and dismiss the case.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that this instrument was served on all parties of record by delivery in the following manner on October 19, 2022:

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

Signature: */s/ Samuel P. Langholz*