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 JILL OZUNA, in her official capacity,

Respondents.

Case No. CVCV062715

PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PETITIONER'S PROPOSED CROSS-MOTION FOR SUMMARY JUDGMENT[1]

[1] Petitioner has requested that this Court either continue the currently scheduled trial in this matter and establish a schedule for cross-motions for summary judgment after the conclusion of all discovery, or alternatively permit Petitioner to cross move for summary judgment through the motion filed contemporaneously with this brief. Mot. to Continue Trial and Permit Mot. for Summ. J at 4–5. The Court held a hearing on Petitioner's motion on November 4, 2022, and took the matter under advisement. Petitioner accordingly files this brief both in opposition to Respondents' Motion for Summary Judgment and—should the Court grant its alternative request—in support of Petitioner's Proposed Cross-Motion for Summary Judgment.

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INTRODUCTION

This lawsuit challenges the continued misapplication of the Iowa English Language Reaffirmation Act of 2001, now codified at Iowa Code §§ 1.18, 4.14 (the "English-Only Law"), to bar the provision of voting materials in languages other than English. Petitioner League of United Latin American Citizens of Iowa ("LULAC") also seeks dissolution of the related permanent injunction issued by this Court in *King v. Mauro*, No. CV6739, slip op. at 31 (Iowa Dist. Ct. Mar. 31, 2008, corrected April 8, 2008), which prohibits Respondent Iowa Secretary of State Paul Pate (the "Secretary") and the Iowa Voter Registration Commission from distributing voter registration materials in other languages. While the law declares English to be Iowa's official language and requires government actors to conduct their official activities in English, it is subject to several statutory exceptions, including that it "shall not apply to . . . [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." Iowa Code §1.18(5)(h) (the "Rights Exception").

Respondents' motion recycles several legal arguments this Court has already rejected and offers little additional insight into the proper application of the Rights Exception. Earlier in the case, this Court held that issue preclusion does not bar LULAC from seeking dissolution of the *King* injunction, and that the failure of any party in *King* to raise the Rights Exception permitted LULAC to challenge the injunction in this proceeding. The Court also ruled, in its initial consideration of Respondents' Motion to Dismiss, that this lawsuit is the appropriate procedural vehicle to dissolve the *King* injunction, and that LULAC could demonstrate redressability for the declaratory and injunctive relief it seeks. Yet Respondents rehash these previously rejected defenses while barely even mentioning the Court's prior rulings.

These arguments fare no better at the summary judgment stage. Respondents *agree* that LULAC was not a party to *King*; that the *King* court explicitly acknowledged that the Rights Exception may permit the use of non-English voter registration forms; that the *King* court declined to address the Rights Exception because it was not raised by the parties; and that the District Court for Polk County is the proper venue for any challenges to the *King* injunction. These admissions confirm this Court's previous rulings that LULAC has properly challenged the *King* injunction pursuant to Rule 1.1510, and that the *King* ruling has no preclusive effect here because LULAC was not a party to *King*. And while Respondents continue to "misconstrue the authority on redressability," Ruling on Resp'ts' Mot. to Dismiss 12, statements from county auditors prove that Respondents' objections to standing are not just legally flawed, *id*. at 12–13, but also factually incorrect. At least one county auditor has expressly stated that he will provide and accept voting materials in other languages if the *King* injunction is dissolved; and one Respondent has expressed support for translating voting materials into Spanish. Even the Secretary of State provided non-English voting materials prior to the *King* injunction.

The only new arguments Respondents advance seek to limit the scope of the Rights Exception, but in doing so Respondents misread the law—adding words that appear nowhere in its text and pushing for an interpretation that would raise serious constitutional questions, violating well-established standards of statutory construction. Properly considered, the Rights Exception applies to voting materials. It is beyond dispute that the right to vote is protected by the Iowa and U.S. Constitutions as well as federal law; voter registration forms, precinct change notices, and other uses of language in the voting process are "necessary to secure" that right. Under the plain terms of the Rights Exception, those materials can be translated into any language. Alternatively, the unrebutted record establishes that, for Iowans with limited English-language proficiency,

native language voting materials are "necessary" to ensure they can exercise their constitutional right to vote.

Accordingly, LULAC—not Respondents—is entitled to summary judgment here. This Court should deny Respondents' motion and grant summary judgment to LULAC on its claim that the English-Only Law does not apply to voting materials, and also dissolve the permanent injunction in *King*.

FACTUAL AND PROCEDURAL BACKGROUND

I. The English-Only Law

In 2002, then-governor Tom Vilsack signed into law the Iowa English Language Reaffirmation Act of 2001, now codified at Iowa Code §§ 1.18, 4.14. The Act declares English to be the official language of Iowa and requires that all official documents be printed, and governmental actions be conducted, in the English language. *However*, the Act also explicitly states that it should be construed "not to deny or disparage rights retained by the people," Iowa Code § 4.14, and includes the following express statutory exemptions for its English-only requirement for official documents and governmental actions:

a. The teaching of languages.

b. Requirements under the federal Individuals with Disabilities Education Act.

c. Actions, documents, or policies necessary for trade, tourism, or commerce.

d. Actions or documents that protect the public health and safety.

e. Actions or documents that facilitate activities pertaining to compiling any census of populations.

f. Actions or documents that protect the rights of victims of crimes or criminal defendants.

g. Use of proper names, terms of art, or phrases from languages other than English.

h. *Any 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.*

i. Any oral or written communications, examinations, or publications produced or utilized by a driver's license station, provided public safety is not jeopardized.

Id. §1.18(5) (emphasis added).

The Act further clarifies that the English language mandate does not prohibit state government officials "from communicating … in a language other than English, if that member or officer deems it necessary or desirable to do so," *id.* § 1.18(6)(a), nor does it "[l]imit the preservation or use of Native American languages," *id.* § 1.18(6)(b), or "discourage any person from learning or using a language other than English," *id.* § 1.18(6)(c).

II. *King v. Mauro*

Even after the passage of the English-Only Law in 2002, the Secretary of State's Office continued to provide voter registration forms in Spanish and other non-English languages on its website. *King*, slip op. at 3–4. Respondent Iowa Voter Registration Commission (the "Commission") also continued to implement a longstanding administrative rule that authorized county auditors to provide voter registration forms in other languages if it "would be of value." *Id.* at 3.

These policies remained in force until 2008, when four county auditors filed suit in the Iowa District Court for Polk County in the matter of *King v. Mauro*, alleging that the Secretary's distribution of non-English voter registration forms violated the Act's requirement that official documents be only in English.[2] *Id.* at 1–2. The petitioners also sought a declaratory judgment that

[2] The county auditor petitioners were joined by five individuals and an organization, whose claims were ultimately dismissed for lack of standing. *Id.* at 16.

the Commission's administrative rule violated the Act. *Id.*[3] After carefully considering the arguments presented to it, the *King* court held in favor of the petitioners and issued an Order enjoining the Secretary and the Commission from "using languages other than English in the official voter registration forms of this state" and declaring the Commission's administrative rule "null and void." *Id.* at 29–31. In doing so, however, the court *expressly declined to address* whether the Rights Exception applied to the voter registration forms at issue "because the issue [was] not [] raised" by the parties. *Id.* at 29. LULAC was not a party to *King* and did not participate in the litigation.

III. The impact of native-language voting materials on the right to vote.

Congress has long recognized that ensuring language minorities' access to the electoral process was necessary—indeed critical—to protecting their constitutional right to vote. In 1965, Congress enacted the Voting Rights Act ("VRA"), which banned literacy tests and included special protections for "persons educated in American-flag schools in which the predominant classroom language was other than English." Pub. L. No. 89-110, § 4(e)(1), 79 Stat. 437, 439. A decade later, in 1975, Congress added further protections for language minorities through Section 203 of the VRA, which requires county officials to provide multilingual access to registration or voting notices, as well as forms, instructions, assistance, or other materials or information relating to the electoral process if more than 5% of (or more than 10,000) voting age citizens in a political subdivision belong to a single language minority group. 52 U.S.C. § 10503(b)(2)(A).

In 2016, Buena Vista County became a covered jurisdiction under Section 203 because it had a large Spanish-dominant population and its English-language proficiency levels were below the national average. *See* Voting Rights Act Amendments of 2006, Determinations Under Section

[3] To Petitioner's knowledge, this is the first and only case interpreting or applying Iowa's English-Only Law.

203, 2016, 81 Fed. Reg. 87532. However, after the most recent Section 203 determinations released on December 8, 2021, the U.S. Census Bureau determined that Buena Vista County is no longer subject to the requirements of Section 203.[4] *See* Voting Rights Act Amendments of 2006, Determinations Under Section 203, 2021, 86 Fed. Reg. 69611. Buena Vista County's Spanish-dominant citizen voting-age population still has an English-language proficiency level below the national average, but the size of the Spanish-dominant citizen voting age population has fallen to 3.9 percent of its total citizen voting age population—below the 5 percent necessary for Section 203 coverage.[5] According to the U.S. Census Bureau, there were 25,428 citizens of voting age with limited English proficiency in Iowa in 2020. Petitioner's Statement of Additional Undisputed Material Facts (hereinafter "Pet. SOF") ¶ 19. Spanish speakers make up 58.7% of voting-age citizens with limited English proficiency, and 19% of eligible Latino voters in Iowa have limited proficiency in English. *Id.* ¶¶ 19–20.

Quantitative research demonstrates that providing non-English voting materials significantly increases rates of voter registration and voting among Latino citizens. When Section 203's protections apply, Latino citizens and citizens with limited English proficiency are significantly more likely to register and vote, as documented in multiple quantitative studies analyzing elections over the last quarter century:

- A study of the 1996 and 2000 election cycles found that Latinos residing in Section 203 covered jurisdictions were 4.4% more likely to have voted as compared to Latinos in non-covered jurisdictions, *id.* ¶ 23;

[4] The November 8, 2022 election will be the first general election since the U.S. Census Bureau's determination that Buena Vista County is not required to provide Spanish-language voting materials under Section 203 of the VRA.

[5] *See* Section 203 Determinations Public Use Dataset, U.S. Census Bureau (Dec. 8, 2021), https://www.census.gov/data/datasets/2021/dec/rdo/section-203-determinations.html.

- A study of voter turnout during the 2000 election found that citizens who were not at all fluent in English had only a 13% probability of voting if materials were available only in English but a 60% probability of voting if materials were available in their dominant language, *id*. ¶ 24;
- A study of the 2004 presidential election compared voting patterns between Spanish-speaking Latino citizens who live in areas above and below the 5% threshold for Section 203 coverage and concluded that crossing the threshold for coverage increased the odds that a Spanish-speaking Latino citizen voted in the 2004 presidential election by 11 percentage points, *id*. ¶ 25; and
- A study of voter registration and turnout from the 2012 election examined political participation among Latinos and Asian-Americans in 42 jurisdictions near the Section 203 coverage threshold and concluded that rates of overall Latino registration increased by 16 percentage points in covered areas, *id*. ¶ 26.

Based on his review of this literature, among other research, Petitioner's expert Dr. Rene Rocha concluded that lack of access to multilingual election materials makes it more difficult for individuals with limited English proficiency to meet the increased costs of voting and results in reduced rates of voter registration and turnout among those citizens. *Id.* ¶ 27.

IV. LULAC's injuries from the continued misinterpretation of the English-Only Law

LULAC is the Iowa branch of the oldest and largest Latino civil rights organization in the United States. *Id.* ¶ 1. Its mission is to promote education and civic engagement within Iowa's Latino community and to fight for the civil rights of Latinos. *Id.* This includes helping Latino citizens to register to vote and encouraging Latino citizens to get involved in politics on a local, state, and national level in order to increase their voice and the consideration of issues important

to the Latino community. *Id.* In Iowa, LULAC is divided into 20 councils and has approximately 600 dues-paying members. *Id.* ¶ 2. This includes many members with limited English proficiency. *Id.* ¶ 3.

The continued misapplication of the English-Only Law and the injunction in *King* impairs LULAC's voter registration and mobilization efforts. LULAC often must scramble to translate election information and voting forms it receives into Spanish, taking up members' time and costing LULAC money to distribute translated documents. *Id.* ¶¶ 8–11. Even when it translates particular forms into Spanish for its members with limited English proficiency, county officials will not accept them, nor can it obtain such forms in Spanish from county officials due to *King* and the continued misapplication of the English-Only Law. *Id.* ¶ 6.

Some county auditors would provide and/or accept non-English voting materials if not for the continued misapplication of the English-Only Law. Joel Miller, the County Auditor and Commissioner of Elections for Linn County, has previously received requests from the public to provide or accept voting materials in languages other than English, but has declined those requests due to concerns about complying with the English-Only Law. *Id.* ¶ 13. Mr. Miller's office would provide and accept voting materials in languages other than English (including providing some materials in Spanish) if a court ruled that the English-Only Law did not apply to some or all voting materials. *Id.* ¶¶ 14–15.

V. LULAC's request for an administrative ruling and this litigation

On July 28, 2021, LULAC filed Petition for Declaratory Order with the Secretary under Iowa Code § 17A.9 and Iowa Administrative Code r. 721-9.1(17A) seeking 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. *Id.* ¶¶ 28–29.

On September 27, 2021, the Secretary provided LULAC with a one-sentence response to the Administrative Petition, stating 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." *Id.* ¶ 30.

On October 27, 2021, LULAC filed its Petition in Law and Equity in this matter, and an Amended Petition on January 18, 2022 (hereinafter, "Petition"). In Count I, the Petition seeks a declaratory judgment that the English-Only Law does not prohibit county officials from providing voting materials in languages other than English to any voter, or, alternatively, to voters with limited English proficiency because such materials are exempt from the Act under Iowa Code § 1.18(5)(h). *See* Am. Pet. ¶¶ 43–46. In Count II, the Amended Petition asks the Court to dissolve the permanent injunction issued in *King* under Iowa R. Civ. P. 1.1510. *See id.* ¶¶ 47–50.

Respondents filed a Motion to Dismiss on December 22, 2021, arguing that LULAC (1) could not seek dissolution of the *King* injunction in a separate proceeding, and (2) did not have standing to pursue the requested declaratory relief because it could not demonstrate that a Court ruling would likely redress its injuries. *See generally* Mot. to Dismiss (Dec. 22, 2021). The Court rejected these arguments, finding that Iowa R. Civ. P. 1.1510 was the appropriate vehicle to seek dissolution of the injunction in *King*, Ruling on Resp'ts' Mot. to Dismiss (March 7, 2022) at 4–7, and that LULAC had demonstrated a sufficient likelihood that a favorable Court ruling would redress its injury. *Id.* at 10–13. However, the Court partially granted the Motion as to Count II only, holding that res judicata precluded LULAC from raising the Rights Exception to seek dissolution of the injunction in *King* because that issue was available to the litigants in the previous

proceeding but was not raised. *Id.* at 7–9, 13. LULAC moved for reconsideration, Pets.' Mot. to Reconsider at 3–5 (Mar. 22, 2022), and after full briefing and a hearing, the Court reversed its dismissal of Count II, holding that its application of res judicata to bar LULAC from challenging the injunction in *King* was mistaken because LULAC was not a party to the proceeding in *King*. Ruling on Mot. to Reconsider at 1–2 (April 23, 2022). The Court also concluded that the related doctrine of issue preclusion was inapplicable because the application of the Rights Exception was never raised and litigated in *King*. *Id.* at 2–3. The Court further held that LULAC was entitled to pursue a dissolution of the injunction in *King* because the applicability of the Rights Exception was not addressed, a prior injunction should not be "impervious to a challenge on an issue not taken up at the entry of that judgment," and LULAC should be entitled to an opportunity to demonstrate that continuation of the injunction "is no longer equitable." *Id.* at 3–4. Accordingly, the Court reversed its previous ruling and permitted LULAC's lawsuit to proceed on Count II as well. *Id.* at 5. Respondents never filed a motion to reconsider this ruling or the Court's prior determination regarding Count I.

LEGAL STANDARD

Summary judgment should only be granted if the record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3). "The moving party has the burden to show it is entitled to summary judgment," *Cawthorn v. Cath. Health Initiatives Iowa Corp.*, 806 N.W.2d 282, 286 (Iowa 2011) (citing *Hunter v. City of Des Moines Mun. Hous. Auth.*, 742 N.W.2d 578, 584 (Iowa 2007)), and Iowa courts "afford the nonmoving party every legitimate inference that can be reasonably deduced from the evidence," *C & J Vantage Leasing Co. v. Wolfe*, 795 N.W.2d 65, 73 (Iowa 2011) (citing *Pillsbury Co., Inc. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 434 (Iowa 2008)).

ARGUMENT

Respondents' motion for summary judgment does little more than repeat arguments this Court rejected at the motion to dismiss stage and should do so again for the same reasons. Indeed, the factual record has developed such that now there are even *more* reasons to reject Respondents' contentions.[6] And Respondents' new arguments suggesting that voting materials are not exempt from the English-Only Law suffer from many errors of basic statutory interpretation. In contrast, exempting voting materials from the English language mandate ensures fidelity with the law's text and purpose without creating the same statutory construction errors and constitutional problems that inevitably arise from Respondent's interpretation. Further, even if the Court were to accept Respondents' flawed reading, Respondents would *still* not be entitled to summary judgment given the evidence demonstrating the necessity of native language materials for voters with limited English proficiency, and the fact that discovery is still ongoing.

In all events, Respondents are not entitled to summary judgment. This Court should instead grant summary judgment to Petitioner on the grounds that all voting materials are exempt from the English-Only Law under the Rights Exception.

I. LULAC's lawsuit is the proper vehicle to dissolve the injunction in *King v. Mauro*.

This Court already determined, after thorough briefing and argument, that this action is the proper vehicle to challenge the injunction entered in *King*. Having failed to seek reconsideration of that ruling, Respondents attempt to re-litigate the same issue on a motion for summary judgment. Their arguments lack merit for the same reasons the Court rejected them the first time around: Rule 1.1510 allows LULAC to seek dissolution of the *King* injunction in this Court, where

[6] Respondents also argue that a declaratory judgment is not appropriate under Rule 1.1105. Resp. Br. at 15–16. But all of Petitioner's arguments in support of its standing illustrate that there is a real controversy that would be terminated by the relief it seeks.

the injunction was issued; LULAC's invocation of the Rights Exception, which was not raised in *King*, demonstrates that the injunction is no longer equitable; and LULAC's challenge is not subject to any form of preclusion because it was not a party to *King*, its interests were not adequately represented there, and the applicability of the Rights Exception was not litigated.

A. Respondents' attempt to re-litigate questions this Court already decided amounts to an untimely motion for reconsideration.

This Court already disposed of Respondents' arguments—raised again here—that this suit is an improper vehicle for challenging the injunction in *King* when it ruled on Respondents' Motion to Dismiss and Petitioners' Motion to Reconsider on March 7, and April 23, 2022, respectively. Respondents failed to seek reconsideration of the Court's rulings, nor did they seek interlocutory appeal. Their attempt to re-litigate these issues now—while barely acknowledging that they previously raised the same arguments (almost verbatim) only to have them rejected by this Court—is in sum and substance an untimely motion for reconsideration that should be denied.

Rule 1.904 governs "motion[s] to reconsider" a court's rulings and provides that such motions "will be considered timely if filed within 15 days after the filing of the order . . . to which it is directed." Iowa R. Civ. P. 1.904(3). LULAC used this procedure to timely request reconsideration of part of the Court's Ruling on Respondents' Motion to Dismiss. Respondents could have similarly utilized a Rule 1.904 motion to seek reconsideration of the Court's rulings regarding LULAC's request to dissolve the *King* injunction, but they did not. The Court should reject Respondents' attempt to now seek untimely reconsideration in the guise of a motion for summary judgment. *See In re Marriage of Hardie*, 978 N.W.2d 253, 2022 WL 1233652 (Iowa Ct. App. 2022) (district court dismissed motion to reconsider fees under Rule 1.904 as "untimely" under Rule 1.904(3)).

B. The Court correctly rejected these arguments the first time.

Even if Respondents' arguments were not an untimely request for reconsideration, this Court correctly rejected them in denying Respondents' Motion to Dismiss; nothing has changed since to warrant disturbing the Court's well-reasoned determinations that this lawsuit is the correct procedural vehicle to dissolve the *King* injunction. As this Court recognized, Iowa R. Civ. P. 1.1510 provides that "[a]n 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," Ruling on Resp'ts' Mot. to Dismiss 5 (quoting Iowa R. Civ. P. 1.1510); the *King* injunction was obtained in Polk County (where the Court resides); and Petitioners properly brought an action here.

Respondents claim that "LULAC cannot point to any rule authorizing this action," Resp. Br. 9, *but the Court has already found* that Rule 1.1510 expressly contemplates claims to dissolve injunctions and "has not been construed to require that" such action "be brought in the same proceeding" as the challenged injunction. Ruling on Resp'ts' Mot. to Dismiss 5-6; *see also* Resp. Br. 10 (conceding that "the Iowa Supreme Court hasn't specifically" ruled otherwise). The Court also rejected Respondents' reliance on rulings from federal courts outside Iowa, finding that the authorities of those jurisdictions "fl[y] in the face of the well-established rule in Iowa" that a party "can only intervene during the pendency of the action." Ruling on Resp'ts' Mot. to Dismiss 6–7 (citing *First Tr. Joint-Stock Land Bank of Chi. v. Cuthbert*, 246 N.W. 810, 815 (Iowa 1933)). Finally, Respondents' reliance on *Democratic Senatorial Campaign Committee v. Pate*, 950 N.W.2d 1, 89 (Iowa 2020), is misplaced. Resp. Br. 10. As this Court previously held, that opinion establishes only that "[a] ruling entered in *one county* that has the effect of countermanding orders entered . . . in *other counties* is an improper collateral attack." Ruling on Resp'ts' Mot. to Dismiss 4 (emphasis added). Accordingly, "[a]s long as the action has been filed in Polk County district

court, it complies with the language of rule 1.1510." *Id.* at 6. This proceeding, brought in Polk County district court under Rule 1.1510, is the correct vehicle to dissolve the *King* injunction, which was entered in Polk County.

That the court in *King* never considered the Rights Exception—because no party raised it—is sufficient reason to allow LULAC to challenge the injunction. While Respondents again argue that LULAC cannot dissolve the *King* injunction because there has not been a "'substantial change in the facts or law' since the permanent injunction was issued," Resp. Br. 11, the Court already explained that LULAC's request to dissolve the injunction is appropriate because "the conditions under which the injunction was obtained were not fully addressed." Ruling on Mot. to Reconsider 3. Respondents cite no authority for their assertion that a "change in the equities . . . isn't a change." Resp. Br. 12. To the contrary, as the Court previously explained, injunctions are permanent only "so long as the conditions which produce the injunction remain permanent," and that "the overriding basis for allowing a permanent injunction to be vacated" is if "its continuation is no longer equitable." Ruling on Mot. to Reconsider 3–4 (quoting *Bear v. Iowa Dist. Ct. for Tama Cnty.*, 540 N.W.2d 439, 441 (Iowa 1995)). What has changed is that, unlike the parties in *King*, LULAC is "assert[ing] the Rights Exception as a basis for [vacating] the injunction." *Id.* at 4. This Court "has the power to identify the relevant equities and fashion an appropriate remedy." *Id.* (quoting *Ney v. Ney*, 891 N.W.2d 446, 451 (Iowa 2017)).

Respondents' attempt to invoke issue preclusion based on the *King* ruling also fails at every step. It is undisputed that LULAC was not a party to *King*, and defensive preclusion against a non-party requires both that the non-party have a "community of interest with, and adequate representation by, the losing party," and that the issues sought to be raised (1) are "identical," (2) were "raised and litigated in the prior action," (3) were "material and relevant to the disposition of

the prior action," and (4) resulted in a ruling "made on the issue" that was "necessary and essential" to the judgment. *Opheim v. Am. Interinsurance Exch.*, 430 N.W.2d 118, 120-21 (Iowa 1988) (quotations omitted). None of the requisite elements apply here.

For one, LULAC was not a party to *King*, nor were its interests adequately represented. The Secretary's representation of "all Iowans" in *King*, Resp. Br. 13, does not make his interests "identical" to LULAC's interests in securing the rights of its members. *Opheim*, 430 N.W.2d at 121. Respondents' argument would effectively put government actors in a "community of interest" with every private litigant and preclude private litigation of related claims—a radical proposition for which Respondents offer no support in the law. Indeed, the Iowa Supreme Court has held the opposite. *See, e.g.*, *Larsen v. McDonald*, 212 N.W.2d 505 (Iowa 1973) (private plaintiffs suing for private nuisance not precluded by prior government suit holding that defendants did not violate zoning ordinance); *see also Crossroads Grassroots Pol'y Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 321 (D.C. Cir. 2015) ("[W]e look skeptically on government entities serving as adequate advocates for private parties"); *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (noting that a "[government] agency's views" can be "colored by its view of the public welfare rather than the more parochial views" of a private party). And the Secretary's failure "[f]or whatever reason" to raise the Rights Exception plainly demonstrates that its representation of LULAC's interests was inadequate. *See* Ruling on Mot. to Reconsider 4. "[T]hat decision should not be a bar" to LULAC's claims. *See id.*

Respondents also ignore that the *King* court expressly declined to address whether the Rights Exception applied to voting materials—the issue LULAC seeks to litigate here. That means the question presented before this Court was not "raised and litigated in the prior action" as is required to apply issue preclusion. *See id.* at 2 (citing *Clark v. State*, 955 N.W.2d 459, 465–66

(Iowa 2021)); *Opheim*, 430 N.W.2d at 120 (quoting *Hunter v. City of Des Moines*, 300 N.W.2d 121, 123 (Iowa 1981)). In sum, the Rights Exception was not "raised and litigated" or "concluded" and was neither "material . . . to the disposition," or "necessary and essential to the" judgment in *King*," and thus meets none of the requirements for issue preclusion. Ruling on Mot. to Reconsider 2–3 (citing *Clark*, 955 N.W.2d at 465–66).

II. LULAC has standing to pursue the requested declaratory and injunctive relief.

Respondents' continued misapplication of the English-Only Law burdens LULAC members with limited English proficiency and impairs the organization's ability to achieve its mission, forcing it to divert resources as a result. These injuries easily satisfy Iowa's standing requirements and warrant declaratory relief.

Iowa law provides that an organization can assert the interests of its members for standing purposes. *See Puntenney v. Iowa Utils. Bd.*, 928 N.W.2d 829, 837 (Iowa 2019). And Iowa courts have "frequently supplemented and elaborated on" their standing jurisprudence "by drawing on the federal law," *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008), which establishes that when an organization diverts resources from other projects because of a law that harms its organizational mission, it has standing to challenge the law. *Animal Legal Def. Fund v. Reynolds*, 297 F. Supp. 3d 901, 917 (S.D. Iowa 2018) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982) (describing diversion of resources as "precisely the sort of injuries that suffice to confer organizational standing")). Respondents argue here—as they did in their Motion to Dismiss—that a declaratory judgment would not redress LULAC's injuries, that LULAC therefore lacks standing, and that the Court should decline to issue a declaratory judgment due to these purported redressability issues. Resp. Br. at 13–16. These arguments lack any factual or legal support and thus fail as a matter of law.

A. LULAC suffers injury from the continuing misapplication of the English-Only Law.

Respondents do not dispute that LULAC or its members have been injured by the denial of access to voting materials in languages other than English. Indeed, the misapplication of the English-Only Law and the injunction in *King* injure LULAC in numerous ways. For one, it impairs LULAC's voter mobilization and registration efforts. LULAC cannot provide members with useable voter registration or absentee ballot application forms in Spanish because county officials believe they cannot create or make available such forms, and even if LULAC translates voting forms itself, county officials will not accept them. Pet. SOF ¶ 6.

Additionally, LULAC's efforts to assist members with limited English proficiency to participate in elections diverts volunteer and staff time from other mission-critical programs, not to mention the additional monetary cost of mailing materials to guide its LEP members through the voting process. *Id.* ¶ 11. For example, LULAC members in Muscatine recently received a postcard with new precinct information *only* in English. *Id.* ¶ 9. LULAC's Muscatine Council scrambled to translate the postcards and distribute them so that members with limited English proficiency do not appear at the wrong polling place, *id.*; but the translated materials may not reach all members in time. So even when LULAC spends time and money on assisting its members with limited English proficiency, its efforts may not reach all members who require assistance. This frantic effort—during a time when LULAC would otherwise devote its staff and volunteers time to voter mobilization—drains LULAC's resources and significant hampers its mission. *Id.* ¶¶ 8, 11. The misapplication of the English-Only Law and the injunction in *King* continue to injure LULAC in a manner this Court can redress.

B. LULAC's injuries are redressable by this Court.

A declaratory judgment would redress LULAC's injuries and is appropriate here. As this Court previously recognized, "LULAC is not simply seeking broad, abstract declarations in this

litigation but rather a procedural vehicle to right what it purports to be a wrong." Ruling on Resp'ts' Mot. to Dismiss 13 (internal citation omitted). Respondents argue that because the judgment would "merely" inform "what the Secretary of State or county auditors could do in [sic] they desired to do so," Resp. Br. 14, LULAC's injuries are not redressable by a favorable decision. But that once again "misconstrues the authority on redressability." Ruling on Resp'ts' Mot. to Dismiss 12. The removal of a wrongful prohibition on county officials' discretion to provide non-English voting materials is sufficient for redressability. *See id*. at 12 (citing *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 25 (1998)) ("Even where an agency is afforded discretion in coming to a result, those who are adversely affected by that decision have standing.")). What's more, a declaratory judgment would function to require election officials to accept certain voting forms in other languages even if they were not officially provided because officials would no longer have a basis to reject forms that are otherwise legitimate under Iowa law. *See, e.g.*, Iowa Code § 53.2(2)(a) (providing voters can create their own absentee ballot application forms and use them instead of the official form if it is "on a sheet of paper no smaller than three by five inches in size that includes all of the information required in this section").

Respondents' attempt to distinguish *Akins*—the very case this Court correctly relied when it first rejected their redressability argument—fails because *Akins* is directly on point. *Akins* involved a group of voters seeking to challenge the Federal Election Commission's (FEC) refusal to require an organization to disclose campaign finance information, a discretionary determination. 524 U.S. at 16–18. The FEC made its decision based on its determination that the organization in question was not a political committee and hence fell outside of the reporting requirements. *Id.* at 18. While the FEC argued that a favorable decision could not redress the voters' injuries because the agency could reach the same decision again on a different, lawful basis, the Supreme Court

disagreed, stating that although "[a]gencies often have discretion about whether or not to take a particular action," "those adversely affected by a discretionary agency decision generally have standing to complain that the agency based its decision upon an improper legal ground." *Id.* at 25. This is true "even though the agency (like a new jury after a mistrial) might later, in the exercise of its lawful discretion, reach the same result for a different reason." *Id.* This case is no different.

Furthermore, declaratory relief here would function to require that Respondents must *accept* some voter registration and other election-related forms in non-English languages, which also redresses some of LULAC's injuries. Respondents fail even to acknowledge this additional aspect of relief, which reveals another fatal flaw in their standing argument. *See Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) ("[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve *a* discrete injury . . . . He need not show that a favorable decision will relieve his *every* injury") (emphasis added); *Massachusetts v. E.P.A.*, 549 U.S. 497, 525 (2007) (same).

Respondents are also wrong on the facts. Joel Miller, the County Auditor and Commission of Elections for Linn County since 2007, has provided a sworn statement that if a court ruled that the English-Only Law did not apply to some or all voting materials, his office would provide and accept voting materials in Spanish and other non-English languages. Pet. SOF ¶¶ 14–15. Mr. Miller also stated that he has received requests from the public to provide or accept voting materials in other languages, but due to concerns about complying with the English-Only Law, his office has declined those requests. *Id.* ¶ 13.

Similarly, in 2020, Respondent Sue Lloyd, the county auditor for Buena Vista County, stated in an interview with Iowa Public Radio that there is "interest" from other counties in translating voter forms and that she had "been contacted by some other counties asking about the

forms." *Id.* ¶¶ 16–17. Although Buena Vista County was required then to accept and provide voting materials in Spanish pursuant to the VRA, Ms. Lloyd expressed that "she thinks Iowa is diverse enough that other counties should be allowed to translate, at least into Spanish." *Id.* ¶ 18. Petitioner has outstanding discovery issued to Ms. Lloyd and the other county auditor defendants, but even taking the record as it stands today, Respondents' suggestion that Iowa elections officials would not change their behavior is untrue.

Finally, the entire basis for the litigation in *King* was to prevent county auditors and state officials who were providing non-English voting materials despite the English-Only Law from doing so. *See King*, slip op. at 1–2. Respondents ignore this inconvenient fact, but it too establishes that a proper interpretation of the English-Only Law is likely to redress LULAC's injuries. LULAC's burden on redressability is "relatively modest," and LULAC "need not demonstrate that there is a guarantee of redress through a favorable decision," Ruling on Resp'ts' Mot. to Dismiss 12–13 (quoting *M.S. v. Brown*, 902 F.3d 1076, 1083 (9th Cir. 2018)). On the law and the facts, it has more than met that burden.

III. Respondents are not entitled to summary judgment on Petitioner's claims for declaratory and injunctive relief.

Under the plain terms of the English-Only Law and basic rules of statutory interpretation, Petitioner is entitled to the primary relief it seeks—a declaration that *any* language usage effectuating the right to vote is exempt from the English-only mandate. Respondents' arguments to the contrary depend upon multiple mistakes in statutory interpretation: adding words that are not present in the law and ignoring the words that are there. Respondents' strained interpretation of the English-Only Law only serves to bring the statute into constitutionally dubious territory and constrain election officials' efforts to provide and encourage democratic participation. Courts do not lightly ascribe such intentions to the legislature, and this court should not distort the plain terms

of the Rights Exception to have that effect. But even were the Court to adopt Respondents' flawed interpretation of the Rights Exception, LULAC would *still* prevail on its alternative declaratory claim that non-English voting materials must be provided to individuals with limited English proficiency. And discovery is still ongoing regarding this alternative claim. Respondents are not entitled to summary judgment under any scenario.

A. The Rights Exception categorically excludes voting materials from the English-Only Law.

Under the English-Only Law, *any* language usage "required by or necessary to secure" constitutional or federal rights is exempt from the English-only mandate. Iowa Code § 1.18(5)(h). It is beyond dispute that the right to vote is protected by the Iowa Constitution, the U.S. Constitution, and a host of federal laws. Indeed, Respondents concede that this is true. Resp. Br. 16–17. Therefore, under the plain terms of the statute, any voting materials used in Iowa elections—which are a form of language usage—are exempt from the English-Only mandate.

Constitutional protections for the right to vote in Iowa date back to the founding of the State. *See* Iowa Const. art. III, § 1 (1844). It is well established that voting is a "fundamental political right." *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978). The ability to vote is at the "heart of representative government and is 'preservative of other basic civil and political rights.'" *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 848 (Iowa 2014) (quoting *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)). The Iowa Constitution not only protects citizens from being denied the right to vote, but also requires meticulous scrutiny of "regulatory measures abridging the right to vote." *Id*. at 856 (quoting *Devine*, 268 N.W.2d at 623).

The U.S. Constitution also protects Iowans' right to vote. The "political franchise of voting" has long been held to be a "fundamental political right, because [it is] preservative of all rights." *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 667 (1966) (quoting *Yick Wo v. Hopkins*,

118 U.S. 356, 370 (1886)). Indeed, the "right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds*, 377 U.S. at 555. These constitutional protections have been enhanced by several federal statutes that protect every aspect of the voting process. *See, e.g.*, 52 U.S.C. §§ 10303 (prohibition on literacy tests), 10301 (prohibition on standards, practices, or procedures that create unequal opportunity), 10503 (bilingual election requirements).

One of the major areas where federal law works to protect the right to vote is in language access. In 1965, Congress took its first step to protect the voting rights of language minorities by restricting the use of literacy tests. Though literacy tests are commonly associated with discrimination against Black voters in the South, the VRA made clear that Congress was also particularly concerned with discrimination against Spanish-speaking citizens from Puerto Rico. See Pub. L. No. 89-110, § 4(e), 79 Stat. 437, 439 (1965) ("[T]o secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.").

In 1975, Congress expanded federal statutory protections for language minorities with the creation of Section 203 of the VRA. Section 203 is designed to rectify the exclusion of language-minority citizens from participation in the electoral process. *See* 52 U.S.C. § 10503(a). Once a jurisdiction's voting-age population reaches certain numerical or proportional thresholds, and if that jurisdiction's language-minority group has a lower literacy rate than the national average, it becomes a covered jurisdiction. *See id.* § 10503(b)(2). A covered jurisdiction is required to provide "any registration or voting notices, forms, instructions, assistance, or other materials or

information relating to the electoral process, including ballots" in the language of the applicable minority group as well as in English. *Id.* § 10503(c).

Because the right to vote is guaranteed by the Iowa and U.S. Constitutions and federal law, *any* language usage necessary to secure that right is exempt from the English-Only Law. The phrase "any language usage" is deliberately broad and, in the voting context, should be understood to include ballots and registration or voting notices, forms, instructions, assistance, or other information relating to the electoral process. *See, e.g.*, *State v. Prybil*, 211 N.W.2d 308, 312 (Iowa 1973) ("The word 'any' … is employed to enlarge rather than limit the terms modified. It means 'every' and 'all', not 'one.'"). Indeed, to exclude any of these communications or documents related to the electoral process would suggest that Iowa's election officials are conducting *unnecessary* voter education and engagement.

This approach is also consistent with the scope of language materials required by Section 203 of the Voting Rights Act. *See* 52 U.S.C. § 10503(b)(3)(A) ("the term 'voting materials' means registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots"). Even in interpreting an Iowa statute, it is appropriate to "look to an analogous federal statute." *Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 761–62 (Iowa 1998); *see also State v. Dahl*, 874 N.W.2d 348, 352–53 (Iowa 2016) (aligning Iowa's indigent defense rule with analogous federal standards). Using Section 203 for guidance is particularly relevant because it existed at the time the Iowa Legislature enacted the English-Only Law and uses language very similar to the Rights Exception: "Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to" prescribe the remedial devices in Section 203. 52 U.S.C. § 10503(a).

Indeed, Congress's findings about the importance of these voting materials have been confirmed in the decades since Section 203 was enacted. Multiple rigorous studies have shown that Section 203 coverage has a significant impact on the political participation of language minorities. Pet. SOF ¶¶ 22–26. For example, one study showed that citizens with limited English-language proficiency only had a 13% probability of voting without multilingual materials, but that probability rose to 60% in jurisdictions where native-language election materials were available because of Section 203. *Id.* ¶ 24. Another study focused on Spanish-speaking Latinos found that citizens whose predominant language was Spanish were 11% more likely to participate in the electoral process in jurisdictions with Section 203 coverage. *Id.* ¶ 25. While it is difficult to isolate the importance or effect of any single registration notice or absentee request form, there is robust—and unrebutted—expert testimony in the record that the universe of voting materials encompassed by Section 203 has a direct impact on whether citizens are able to vote. *Id.* ¶¶ 22–27. Respondents do not address any of this evidence in arguing that they are entitled to summary judgment.

B. Respondents' misreading of the Rights Exception defies the text and unnecessarily raises questions of compliance with the Iowa Constitution, the U.S. Constitution, and federal law.

As noted above, Respondents acknowledge that the right to vote is guaranteed by the Iowa Constitution, the U.S. Constitution, and federal law. Resp. Br. 16. Still, they argue that because non-English voting materials are not explicitly required by constitutional or federal law, they do not fall within the Rights Exception. *Id.* at 16–20. However, this reading is divorced from the text of the Rights Exception, which should be the starting point. *See Worth Cty. Friends of Agric. v. Worth Cnty.*, 688 N.W.2d 257, 263 (Iowa 2004) (In determining the meaning of a statute, we first look to the statutory text). By examining "what the legislature said, rather than what it should or might have said," it becomes clear that Respondents have made two notable mistakes in construing

the Rights Provision—adding some words and ignoring others. *In re Name Change of Reindl*, 671 N.W.2d 466, 469 (Iowa 2003). But the Legislature was plain and clear: the English-only mandate "shall not apply to … [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." Iowa Code § 1.18(5)(h).

First, Respondents myopically focus on what is explicitly *required* by constitutional and federal law, but the Rights Exception reaches any language usage "*necessary to secure* the rights guaranteed by" constitutional and federal law—in addition to what is "required" by those laws. Iowa Code § 1.18(5)(h) (emphasis added). Respondents completely ignore this language and give no independent meaning to the terms "or necessary to secure the rights guaranteed by," rendering them superfluous. Such a reading is contrary to prevailing Iowa rules of statutory interpretation, *Am. Legion, Hanford Post 5 v. Cedar Rapids Bd. of Rev.*, 646 N.W.2d 433, 439 (Iowa 2002) ("We will not interpret a statute so as to render a part of it superfluous."), and the use of "or" between the phrases shows that the legislature intended separate meanings. *See, e.g.*, *Mall Real Est., L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 199 (Iowa 2012) (holding a term connected by "or" must "necessarily mean something unique from the rest of the defining terms").

In fact, Respondents' interpretation would render the entire Rights Exception superfluous. Even without the Rights Exception, the English-Only Law would always be subject to constitutional and federal requirements, per the Legislature's express rules of statutory interpretation and the Supremacy Clause of the U.S. Constitution. *See* Iowa Code § 4.4 ("In enacting a statute, it is presumed that … [c]ompliance with the Constitutions of the state and of the United States is intended."); U.S. Const. art. VI. Respondents acknowledge this obvious proposition, Resp. Br. 18, but have no explanation for why the Legislature would add statutory

language that merely reiterates the Supremacy Clause and its own rules of statutory interpretation. Moreover, Respondents' interpretation makes the mistake of overemphasizing the top-line English-only mandate at the expense of the exceptions that were thoughtfully and deliberately included in the act. *See, e.g.*, *Miller v. Westfield Ins. Co.*, 606 N.W.2d 301, 305 (Iowa 2000) (holding the legislature's intentions must be understood to also intend the statutory exclusions).

Second, Respondents improperly frame the inquiry around whether *non-English* voting materials are required (or necessary) to secure the right to vote. Instead, the proper inquiry is whether "any language usage"—English or otherwise—is required by or necessary to secure the right to vote. Ballots are a form of language usage. Voter registration forms, too, are language usage. Notices, forms, and instructions given to voters are also language usage. If these things are "necessary to secure" the right to vote, then they fall within the Rights Exception and are not subject to the English-Only mandate. Put another way, if an instance of government language usage is required or necessary to secure the right to vote, then the government can conduct that instance in languages other than English under the Rights Exception.

Respondents' interpretation functions to rewrite the Rights Exception. As Respondents would have it, the Rights Exception only applies to "any [*non-English*] language usage" that is required or necessary to secure the right to vote. But that is not the text enacted by the Legislature. This Court should not accept Respondents' invitation to add words to the Rights Exception that are not there. Indeed, it "cannot under the guise of statutory interpretation enlarge or otherwise change terms of a statute." *Krull v. Thermogas Co. of Northwood, Iowa, Div. of Mapco Gas Prod.*, 522 N.W.2d 607, 612 (Iowa 1994). Respondents have no explanation for why it would make sense

to adopt such a narrow and discordant reading of the Rights Exception.[7] LULAC's interpretation requires no alteration or distortion of the Rights Exception's plain text because it is completely consistent with the structure of the other exceptions enumerated in subsection five.

Beyond ignoring words that are there and adding words that are not, Respondents' interpretation would also place the English-Only Law upon a constitutional cliff—applying its mandate in every instance that was not expressly proscribed by constitutional or federal law. This directly contravenes the doctrine of constitutional avoidance, which instructs courts "to construe statutes to avoid constitutional issues when possible." *State v. Dahl*, 874 N.W.2d 348, 351 (Iowa 2016). By defying this doctrine, Respondents' interpretation unnecessarily raises a host of difficult constitutional and statutory questions. For example, the constitutional validity of English-only elections is more dubious than Respondents represent. In *Lassiter*, cited by Respondents, the U.S. Supreme Court narrowly upheld a literacy test for the purpose of excluding voters who are wholly illiterate to "promote intelligent use of the ballot." *Lassiter v. Northampton Cnty. Bd. of Elec.*, 360 U.S. 45, 51 (1959). Less than a decade later, the Supreme Court expressly distinguished this from a situation where a voter has full ability "to read or understand Spanish … [and] to whom Spanish-language newspapers and Spanish-language radio and television programs are available to inform them of election issues and governmental affairs," holding that in the latter scenario such

[7] Respondents suggest that the Legislature may have been motivated to require that voting materials be provided only in English because of concerns about "potential inefficiencies, confusion, and expense of maintaining a multilingual electoral system." Resp. Br. 18. However, there is nothing in the text of the statute or the factual record to suggest that the Legislature intended the English-Only Law to require elections to be conducted only in English, let alone to address the concerns Respondents identify. Respondents cannot manufacture these non-existent concerns under the guise of legislative intent to alter the English-Only Law's plain text meaning. *See, e.g.*, *Krull*, 522 N.W.2d at 612 (While "[i]n interpreting statutes, we try to give effect to legislative intent," "[i]n searching for legislative intent, we are bound by what the legislature said, not by what it should or might have said.").

discrimination would be inappropriate. *Katzenbach v. Morgan*, 384 U.S. 641, 654-55 (1966) (upholding federal ban on literacy tests). This mirrors the conclusion reached by the California Supreme Court case cited by Respondents: "we confront a provision which discriminates among literate citizens, disenfranchising all who are literate in languages other than English." *Castro v. State*, 466 P.2d 244, 250 (Cal. 1970) (striking down English literacy requirement for voters literate in other languages). Indeed, these later decisions are consistent with the Supreme Court's unequivocal declaration that the "protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue." *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923).

Respondents are correct that the *Castro* decision did not affirmatively order the state of California to establish a bilingual election system, Resp. Br. 7 (citing *Castro*, 466 P.2d at 258), but that is because the "separate question" of whether non-English materials are "constitutionally compelled" was not before the Court. *Castro*, 446 P.2d at 258–59. The restrained approach of the *Castro* court should also inform this Court's interpretation of the English-Only Law. It is only Respondents' interpretation that would force this court to address when, why, and how non-English voting materials are constitutionally compelled. But as the *Castro* court noted, this question turns on complex issues like the availability of "sample ballots," "translations of ballot provisions," and other assistance in a voter's native language.[8] Not only have Respondents failed to introduce any facts to illuminate those complex issues, but they also cannot point to any

[8] The *Castro* court also telegraphed that the issue of the state's claimed interest in administering English-only elections was not a straightforward question. *Id.* at 241 n.32 ("The difficulties in efficient distribution of both English and Spanish electoral materials may not be as severe as respondents intimate.").

indication that the Iowa Legislature intended to force these tough constitutional questions on courts and government officials trying to implement the English-Only Law.

There can be no doubt that the constitutional avoidance doctrine is appropriately applied to the English-Only Law because the legislature said as much in Section 2 of the Act, which declares: "It is presumed that English language requirements in the public sector are consistent with the laws of Iowa and any ambiguity in the English language text of the laws of Iowa shall be resolved … not to deny or disparage rights retained by the people." Iowa Code. § 4.14. Not only is Respondents' interpretation fundamentally inconsistent with § 4.14, but it would also make the Rights Exception superfluous a second time over. Such an interpretation should be rejected "unless no other construction is reasonably possible." *Civ. Serv. Comm'n v. Iowa C.R. Comm'n*, 522 N.W.2d 82, N.W.2d86 (Iowa 1994).

Finally, even under Respondents' interpretation—where the question turns on whether *non-English* language usage is required or necessary—Petitioner still prevails on its alternative claim: that non-English voting materials are exempt when provided to Iowans with limited English-language proficiency. As discussed above, Congress already determined that native language voting materials are "necessary" to "enforce the guarantees of the fourteenth and fifteenth amendments" for language minorities. 52 U.S.C. § 10503(a). Petitioner's unrebutted expert report—and the robust body of academic literature it relies on—provides further support for this conclusion, demonstrating that a lack of access to multilingual election materials results in reduced rates of voter registration and turnout among citizens with limited English proficiency because of the corresponding increase in the costs and burdens of voting. Pet. SOF ¶¶ 22–27. Any ambiguity around the scope of what is "necessary" should be resolved in favor of serving the express purposes of the statute; namely, to "facilitate participation in the economic, *political*, and cultural activities

of this state." Iowa Code § 1.18(2). Accordingly, there can be little question that non-English voting materials are exempt from the English-Only Law under the Rights Exception when provided to Iowans with limited English-language proficiency.

C. Respondents presented no evidence to support their claims.

In addition to the fact that Respondents are wrong on the law, they also cannot prevail on the current factual record at the summary judgment stage. By offering conclusory assertions that the English-Only Law "easily passes" the applicable constitutional and federal scrutiny that applies to voting laws, Resp. Br. 18, Respondents wholly ignore the substance of that standard, and offer no evidence to demonstrate that non-English voting materials are not necessary to secure the right to vote, particularly for individuals with limited English language proficiency.

LULAC has offered unrebutted expert analysis about the extent of the burden that English-only elections inflict on Iowans with limited English proficiency. *See, e.g.*, *Brakebill v. Jaeger*, 905 F.3d 553, 559 (8th Cir. 2018) (explaining that a court may look at a subset of particularly affected voters in evaluating whether a law imposes an unconstitutional burden). This unrebutted evidence establishes that native language voting materials are a determinative factor in assessing whether citizens are able to participate in the electoral process—which demonstrates that those materials are necessary for individuals with limited English proficiency to exercise their right to vote. *See supra* 5–7, 29.

Respondents do not contest these facts and offer none of their own. Given the factual record before the Court and the current procedural posture of this case, Respondents cannot credibly argue

that the English-Only Law "easily passes" scrutiny under Iowa and federal law. Resp. Br. 18.[9] Respondents' motion for summary judgment should therefore be denied.

CONCLUSION

The Court should deny summary judgment to Respondents and grant summary judgment to LULAC, declaring that all voting materials are exempt from the English-Only Law under the Rights Exception and that the permanent injunction in *King* accordingly must be dissolved.

[9] As detailed in the declaration of John Geise filed contemporaneously with this brief, Petitioner has outstanding discovery requests regarding, for example, data from the 2022 general election and Respondents' current policies and procedures for ensuring that Iowa citizens with limited English proficiency can register and vote. This discovery is particularly relevant to determining the extent to which the lack of Spanish voting materials burdens the right to vote for Latinos in Iowa with limited English proficiency. This outstanding discovery provides an additional reason to deny Respondents' motion for summary judgment. *See* Iowa R. Civ. P. 1.981(6).

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Respectfully submitted,

/s/ *Shayla 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*
Alexander F. Atkins*
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
aatkins@elias.law

Counsel for Plaintiff

**Admitted Pro Hac Vice*