IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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

A contested hearing on the petitioner's motion to reconsider was held before the undersigned on April 21, 2022 as previously scheduled. Upon consideration of the arguments made at the hearing, and having reviewed the file and being otherwise duly advised in the premises, the court rules as follows:

When the court granted the respondents' motion to dismiss as to Count II, it did so as a result of its mistaken application of the doctrine of res judicata to that part of the petitioner's requested relief. Specifically, it concluded that the entry of the permanent injunction in King v. Mauro was dispositive of any claims that could have been made at that time, including the argument that the entry of the injunction was inconsistent with the Rights Exception found at Iowa Code §1.18(5)(h). In doing so, the court relied upon cases that were dependent on the doctrine of claim preclusion. That doctrine is only applicable when the following elements have been established: 1) the parties in the first and second action are the same parties or parties in privity, (2) there was a final judgment on the merits in the first action, and (3) the claim in the second suit could have been fully and fairly adjudicated in the prior case (i.e., both suits involve the same cause of action).

Pavone v. Kirke, 807 N.W.2d 828, 836 (Iowa 2011). In this action, there is no dispute that the current petitioner was not a named party to King v. Mauro. In order to qualify as a privy of a party to that litigation, there must be proof that LULAC "after rendition of the judgment, has acquired an interest in the subject matter affected by the judgment through or under one of the parties, as by inheritance, succession or purchase." Penn v. Iowa State Bd. of Regents, 577 N.W.2d 393, 398 (Iowa 1998).[1] A common interest in a prior judgment alone is not sufficient to establish privity. Id. at 199. The petitioner's interest in dissolving the King injunction, absent any other connection to the parties to that earlier litigation, is insufficient to establish privity for purposes of claim preclusion. In the absence of privity, there is no identity between the petitioner and the parties to the King v. Mauro litigation; as a result, the doctrine of claim preclusion is inapplicable as a bar to the pursuit of the dissolution of the injunction as sought in Count II. See id. at 398 ("Insufficient identity of the parties will defeat [the doctrine of claim preclusion's] application"). The court erred in applying this doctrine as it did.

In addition, the related doctrine of issue preclusion[2] is equally inapplicable as a basis for the dismissal of Count II. In order for that doctrine to apply the following must be shown: (1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment. Clark v. State,

[1] This quotation is from the section of the Penn ruling that discusses issue preclusion; however, in the subsequent section which examines claim preclusion, the court makes clear that the concept of privity for purposes of that doctrine "is identical to that used for issue preclusion." Id.

[2] Iowa law has long recognized that "the doctrine of res judicata embraces the concepts of claim preclusion and issue preclusion." Spiker v. Spiker, 708 N.W.2d 347, 353 (Iowa 2006) (citations omitted).

955 N.W.2d 459, 465–66 (Iowa 2021). The obvious fatal flaw to the application of issue preclusion is that the issue at hand (the applicability of the Rights Exception) was never raised and litigated in the King v. Mauro litigation. "An issue is raised and litigated when submitted for determination through a motion to dismiss for failure to state a claim, a motion for judgment on the pleadings, a motion for summary judgment, a motion for directed verdict, or their equivalents, as well as on a judgment entered on a verdict." Soults Farms, Inc. v. Schafer, 797 N.W.2d 92, 105 (Iowa 2011) (citations and internal quotation marks omitted). Apart from Judge Staskal's comment on the issue in his ruling in King, the issue of the applicability of the Rights Exception was never submitted for determination; accordingly, the second element of issue preclusion cannot be met. That doctrine is not a bar to the pursuit of the relief sought in Count II.

Having disposed of the doctrine of res judicata as a basis for the dismissal of this count, what remains is whether the petitioner can still pursue the dissolution of a permanent injunction. As previously noted, Iowa law allows for such relief when there has been a substantial change in the facts or the law since the entry of the injunction. Bear v. Iowa Dist. Court of Tama County, 540 N.W.2d 439, 441 (Iowa 1995). While the law has not changed per se since the entry of the King injunction (the applicable statutory language remains the same), the conditions under which the injunction was obtained were not fully addressed. See id. ("Permanent injunctions 'are permanent so long as the conditions which produce the injunction remain permanent'") (citation omitted). Just as a party who was not part of a prior litigation should not be precluded from addressing an issue not taken up at that time, so too should a prior judgment be impervious to a challenge on an issue not taken up at the entry of that judgment. For whatever reason the

respondents in the King litigation chose not to assert the Rights Exception as a basis for denying the injunction ultimately put in place, that decision should not be a bar to a party not precluded from asserting such relief under the doctrine of res judicata. This ultimately boils down to the overriding basis for allowing a permanent injunction to be vacated; namely, if it can be shown its continuation is no longer equitable:

> An injunction is merely the process by which the court enforces equity and it has not only the power but the duty to modify or annul its injunction as equity demands. A final or permanent injunction is a continuing process over which the equity court necessarily retains jurisdiction in order to do equity. And if the court of equity later finds that the law has changed or that equity no longer justifies the continuance of the injunction, it may and should free the defendant's hands from the fetters by which until then its activities have been prevented, thus leaving it free to perform its lawful duties.

Jefferson v. Big Horn County, 300 Mont. 284, 293, 4 P.3d 26, 32 (2000). The pronouncement of the Montana Supreme Court is in line with Iowa's positon that "[a] court exercising equitable jurisdiction generally has the power to identify the relevant equities and fashion an appropriate remedy." Ney v. Ney, 891 N.W.2d 446, 451 (Iowa 2017).

This does not mean that the petitioner will necessarily be successful in its claim; the court's ruling pertains to a pre-answer motion which looks only to the sufficiency of the pleadings. The court now concludes that the petitioner should at least be allowed to make its argument in support of the relief sought in Count II. To deny that pursuit at this stage of the proceedings was based on an improper application of law and ultimately inequitable.

IT IS THEREFORE ORDERED that the petitioner's motion to reconsider is granted. The court's prior ruling granting the respondent's pre-answer motion to dismiss as to Count II of the petition is vacated and that part of the motion is now denied. The respondents shall have ten (10) days from the date of this ruling in which to answer Count II of the amended petition, pursuant to Iowa Rule of Civil Procedure 1.441(3).

State of Iowa Courts

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

So Ordered

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

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