IN THE 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 RESISTANCE TO MOTION FOR SUMMARY JUDGMENT

COME NOW Respondents Iowa Secretary of State Paul Pate, et al., and resists Petitioner's Motion for Summary Judgment pursuant to Iowa Rule of Civil Procedure 1.981(3), stating as follows:

ARGUMENT

LULAC argues that it is entitled to summary judgment because the "rights exception" of Iowa Code section 1.18(5)(h) permits "voting materials" to be provided in languages other than English. The Secretary, the state agency, and the county auditors who are respondents in this matter have also moved for summary judgment for several reasons: LULAC cannot collaterally attack the *King v. Mauro* injunction in this matter, it lacks standing to obtain the declaratory relief that it seeks, and because section 1.18(5)(h) does not apply to voting materials in languages other than English. *See* Resp. Br. in Support of Mot. for Summary Judgment 10/19/22.

LULAC argues in the brief supporting its motion that it has followed the proper procedure to request a dissolution of the *King v. Mauro* injunction and that it has standing. The respondents' arguments in resistance on those points are, for the

most part, set forth in the brief supporting their motion for summary judgment and need no duplication here. Rather, this resistance will respond to a few points raised in LULAC's brief and focus on the merits question in this case: Is providing "voting materials" in languages other than English "necessary to secure" the right to vote under section 1.18(5)(h)? The answer is no.

I. LULAC lacks standing to seek its requested declaratory judgment because the declaration would not redress any injury to LULAC or its members.

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. It argues that such declaration would redress its alleged injury because it would remove "confusion" concerning whether county auditors are required to accept otherwise lawful non-English absentee ballot applications under section 53.2(2)(a). But the Secretary has already provided that clarification in this record. *See* Pet. SOF ¶ 29. The response to the administrative petition is not contrary, as LULAC claims, because it refers only to "the dissemination of official voter registration forms." Pet. SOF ¶ 59.

LULAC also argues that a declaratory judgment would redress its injury because the Linn County Auditor would provide and accept voting materials in languages other than English as a result. But redressability in the standing analysis requires that "it must be the *effect of the court's judgment on the defendant*—not an

absent third party—that redresses the plaintiff's injury." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1254 (11th Cir. 2020) (internal quotation marks omitted). Any persuasive effect a declaratory judgment might have on nonparty county auditors cannot suffice to establish redressability. *Id.* The Iowa Supreme Court implicitly acknowledged this principle in *Iowa Citizens for Community Improvement v. State*, when it explained that declaring unconstitutional the statute making the Iowa Nutrient Reduction Strategy the state policy for water pollution control would not "provide any assurance of concrete results" because what they actually sought could be accomplished only through further legislation. 962 N.W.2d 780, 792 (Iowa 2021). Because the undisputed facts do not show that the Secretary or any of the other respondents would provide non-English voting materials if permitted to do so, LULAC has not established that its injuries would be redressed by a declaratory judgment.

II. Voting materials are not exempt from the English Language Reaffirmation Act because providing voter registration forms or other voting materials in a language other than English is not "required by or necessary to secure" state or federal constitutional rights.

The respondents agree that both the state and federal constitutions protect the right to vote, but LULAC has not shown that non-English voting materials are necessary to secure that right under the circumstances of this case. Unlike a literacy test, the English Language Reaffirmation Act has no legal effect on the right to vote. And the only impediment that exists for language minorities under these circumstances—limited English proficiency—is neither immutable nor attributable

to any State action.

LULAC describes its position as "consistent with the scope" of the provision of non-English voting materials required by federal law. Pet. Br. P.26; see also 52 U.S.C. § 10503. But the Voting Rights Act does not require such materials unless its threshold requirements are met. And when they are met, it bears emphasizing that the Voting Rights Act does not merely permit non-English voting materials, it *requires* them. *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. So too would adopting LULAC's argument, although they do not explicitly say so. It makes little sense to describe provision of non-English voting materials as *necessary* to secure the right to vote but leave it to the discretion of state and county election officials whether to provide them. But to require such materials, including for every language minority identified in LULAC's expert declaration, would be unduly burdensome for state and county election officials. *See Castro v. State*, 466 P.2d 244, 258 (Cal. 1970). That explains the threshold requirement in section 203 of the Voting Rights Act. Section 203 does not apply to any political subdivision in Iowa. See 52 U.S.C. § 10503(b)(2). As a result, providing non-English voting materials is not necessary to secure the right to vote in Iowa under federal law. LULAC has not offered any rationale for reaching a different result under Iowa Code section 1.18(5)(h) that would not apply to every language minority in the state.

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." *See* Pet. Br. P.22-24. LULAC has not shown that it is entitled to summary judgment and its motion should be denied.

CONCLUSION

LULAC cannot collaterally attack the *King v. Mauro* injunction in this proceeding. It has not shown that it has standing to obtain a declaratory judgment, and it has not shown that the non-English voting materials it identifies are necessary to secure the right to vote under section 1.18(5)(h). Its motion for summary judgment should be denied.

Respectfully submitted,

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All parties served via EDMS.