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

REPLY IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Respondents raise no dispute with any fact Petitioner League of United Latin American Citizens of Iowa ("LULAC") offers in support of its motion for summary judgment. Their response instead focuses on whether LULAC has sufficiently shown that a favorable ruling would redress its injuries from the continued misinterpretation of the Iowa English Language Reaffirmation Act of 2001, now codified at Iowa Code §§ 1.18, 4.14 (the "English-Only Law"), and on the merits of LULAC's reading of Iowa Code § 1.18(5)(h) (the "Rights Exception") to exempt the use of non-English voting materials from the English-Only Law. Respondents' arguments concerning redressability fail to address all the distinct ways in which LULAC has shown that relief in this case would redress its injuries and, even in their limited scope, Respondents' arguments suffer from significant factual and legal flaws. As to the merits, Respondents' arguments continue to require adding words to the Rights Exception and removing words from it, violating multiple

principles of statutory interpretation. Respondents offer nothing to counter the wealth of evidence in the record demonstrating that non-English voting materials are necessary to secure the right to vote; therefore, LULAC is entitled to summary judgment on all counts.

A. All of the facts LULAC asserted in support of its motion for summary judgment are undisputed.

Iowa Rule of Civil Procedure 1.981(3) states that any resistance to a motion for summary judgment "shall include a statement of disputed facts, if any." Respondents did not include a statement of disputed facts with their Resistance to Petitioner's Motion for Summary Judgment ("Resp't's Resistance"). "When the opposing party makes limited resistance . . . and rests upon the pleadings, the facts in the moving party's affidavits are accepted as true for purposes of the motion," *Hildenbrand v. Cox*, 369 N.W.2d 411, 413 (Iowa 1985), and the moving party's "factual assertions are considered to be unchallenged." *Rohlin Constr. Co. v. Lakes, Inc*., 252 N.W.2d 403, 406 (Iowa 1977). As a result, the Court can and should consider each fact LULAC offered in Petitioner's Statement of Undisputed Material Facts ("Pet. SOF") unchallenged.

B. The relief LULAC requests would redress its injuries.

Respondents do not contest that LULAC is injured by the misinterpretation of the English-Only Law and the continued prohibition on non-English voting materials. Instead, they argue that granting relief would not redress LULAC's injuries. Resp't's Resistance at 2–3. But in doing so, Respondents fail to address at least one form of relief along with undisputed evidence establishing redressability.

As LULAC noted in its summary judgment motion, the relief it requests—a declaration that the Rights Exception exempts voting materials from the English-Only Law, and the dissolution of the *King* injunction—would redress LULAC's injuries for several reasons: (1) it would remove an unlawful prohibition on county officials' discretion to provide non-English

voting materials, *see Fed. Election Comm'n v. Akins*, 524 U.S. 11, 25 (1998); (2) it would clarify that Respondents are required to accept certain voter registration applications and other election-related forms in non-English languages; and (3) the factual record confirms that county auditors, including Respondent Lloyd, would offer non-English voting materials if this Court grants LULAC's requested relief. *See* Pet'r's Br. in Supp. of Mot. for Summ. J. ("LULAC MSJ Br.") at 13–16. While any one of these arguments alone is sufficient to meet LULAC's "relatively modest" burden on redressability, *see* Ruling on Resp'ts' Mot. to Dismiss at 12–13, Respondents challenge only the second and third grounds, effectively conceding LULAC's requested relief meets the standard for redressability by removing an unlawful restriction on county officials' ability to provide non-English voting materials. *Id.* at 12 (citing *Akins*, 524 U.S. at 25).

Respondents' challenges to the second and third grounds are also meritless. As to the third ground, Respondents suggest that LULAC fails to meet its burden on redressability because the factual record shows that only a third-party county auditor—and no respondent—has stated that he would provide and accept voting materials in languages other than English if the Court grants LULAC's requested relief. *See* Resp't's Resistance at 2–3. That is false. Both Linn County Auditor Joel Miller *and Respondent* Lloyd stated under oath that they would provide non-English voting forms but for the continued misinterpretation of the English-Only Law. *See* LULAC MSJ Br. at 15–16. Respondent Lloyd testified that her office would have continued providing voters Spanish language voting forms but for the *King* injunction. Pet. SOF ¶ 43. Again, the Court may consider this fact unchallenged. *Supra* at 2. By Respondents' own definition this establishes redressability.

Undisputed evidence aside, Respondents' argument is also legally incorrect. "[S]tanding is not precluded" when redressability "hinge[s] on the response" of a third party. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992). LULAC has offered an unrebutted declaration from Mr. Miller

that he would offer non-English voting materials if the Court provided relief in this litigation, demonstrating redressability by "adduc[ing] facts showing that [Mr. Miller's] choice[] . . . will be made in such manner as to . . . permit redressability of injury." *Id.* Respondents rely on *Iowa Citizens for Community Improvement v. State*, 962 N.W.2d 780 (2021), but it is irrelevant to this question. *See* Resp't's Resistance at 3. There, two organizations filed suit against the State of Iowa, state agencies, and state officials, seeking to compel defendants to enact legislation requiring Iowa farmers to significantly reduce farm runoff in rivers. *Iowa Citizens for Cmty. Improvement*, 962 N.W.2d at 785. The plaintiffs sought broad and general declarations towards this goal, which the court found did "not provide any assurance of concrete result"; the plaintiffs themselves admitted that their requested relief could "*only* be accomplished through legislation"; and it was "not clear" that such legislation would even redress the plaintiffs' injuries. *Id.* at 793. Here, by contrast, the *King* injunction and the continued misinterpretation of the English-Only Law are all that prevents county officials from providing and accepting non-English voting materials. Mr. Miller has stated he will do so if this prohibition is removed, and Respondent Lloyd testified that her office never would have stopped providing voters Spanish language voting forms but for this prohibition. Pet. SOF. ¶¶ 43, 55, 56. This is sufficient for redressability.

LULAC's requested relief would also redress the organization's injuries by removing confusion about whether county officials must accept translated voting forms that otherwise comply with Iowa law. LULAC MSJ Br. at 14–15. Respondents assert that this issue has been resolved by the Secretary's testimony that county officials must accept such forms, Resp't's Resistance at 2, but that testimony is in direct conflict with the Secretary's response to LULAC's Administrative Petition. Specifically, the Administrative Petition asked whether county auditors could accept and use the official Spanish-language version of the State of Iowa Official Absentee

Ballot Request Form outside of Buena Vista County, suggesting that the answer must be yes due to Iowa Code § 53.2(2). Pet. SOF ¶ 58. The Secretary responded to that question—and all of the questions posed by the Administrative Petition—with one sentence pointing to the *King* injunction as a continuing prohibition on providing non-English materials. *Id.* ¶ 59. The Secretary confirmed in testimony that his office applies the *King* injunction to voting materials beyond voter registration forms, and also affirmed that the response to LULAC's Administrative Petition remains his office's position. *Id.* ¶¶ 24, 60. This puts the Secretary's response to the Administrative Petition in direct conflict with the Secretary's testimony that he interprets Iowa Code § 53.2 to require county auditors to accept Spanish-language requests for absentee ballots so long as they include all the information required by that statute. Pet. SOF ¶ 29. Both cannot be true: the relief requested would provide LULAC redress by resolving this confusion and clarifying that such forms must be accepted. *See also id*. ¶ 53 (Respondent Lloyd testifying that she was unsure if she could accept a federally approved voter registration form in Spanish because of the *King* injunction). This undisputed evidence easily satisfies LULAC's burden on redressability.

C. The Rights Exception exempts voting materials from the English-Only Law.

Respondents' argument on the merits misunderstands the Rights Exception. Their brief only addresses the question of whether "non-English voting materials are necessary to secure" the right to vote. Resp't's Resistance at 3. But that is not the question raised by the Rights Exception: it asks whether *any* language usage—English or otherwise—is "required by or necessary to secure" a constitutional right. Iowa Code § 1.18(5)(h). If printing ballots, promulgating voter registration forms, and mailing absentee ballot requests are "necessary" to effectuate the right to vote, then all of that "language usage" is exempt from the English-Only Law. Put another way, under the plain terms of the Rights Exception, any language usage a state or local government would undertake to implement elections need not comply with the English-Only mandate. The logic of Respondents'

view would improperly insert the word "non-English" in the Rights Exception—where it does not appear and would not make sense in context. As explained in LULAC's November Opposition Brief, such an approach violates fundamental principles of statutory interpretation. *See* Pet.'r's Br. in Opp'n to Resp'ts' Mot. for Summ. J. and in Supp. of Pet'r's Proposed Cross-Mot. for Summ. J. ("LULAC's Opp'n Br.") at 26–27.

Even under Respondents' atextual reading—where the *non-English* language usage must be "required by or necessary to secure" constitutional rights—voting materials are exempt because non-English materials are, in fact, necessary to secure the right to vote. *See* LULAC MSJ Br. at 22–24. Respondents' argument is simply that non-English voting materials are not *required* under the Iowa Constitution, U.S. Constitution, or federal law, and therefore are not "*necessary* to secure the right to vote." Resp't's Resistance at 4. But this logic erases any distinction between the terms "required by" and "necessary to," again violating multiple principles of statutory interpretation. *See* LULAC's Opp'n Br. at 24–26. Though Respondents ignore this distinction, it follows from the simple recognition that constitutional rights are not absolute. Even when governmental action infringes a fundamental right, the constitution does not always *require* the government to yield if its action "is narrowly tailored to serve a compelling government interest." *State v. Hernandez-Lopez*, 639 N.W.2d 226, 238 (Iowa 2002). By also excluding language usage "necessary to secure" constitutional rights, the Rights Exception deliberately leaves some breathing room to permit the use of non-English voting materials even when it is not constitutionally mandated. *See* LULAC's Opp'n Br. at 27–29.

When it comes to assessing whether non-English voting materials are actually necessary to secure the right to vote, Respondents' brief is silent. They have not marshalled any facts to contest the necessity of native language voting materials, and LULAC's summary judgment brief

thoroughly outlines the robust support for their necessity in the undisputed factual record. *See* LULAC MSJ Br. at 22–24. As for LULAC's alternative argument—that non-English language materials are necessary to vote when provided to Iowa citizens with limited English-language proficiency—there is no dispute of material fact. LULAC is entitled to summary judgment on all of its claims.

CONCLUSION

This Court should grant summary judgment on both counts in LULAC's Amended Petition, declaring that non-English voting materials are exempt from the English-Only Law under the Rights Exception and dissolving the *King* injunction.

Dated this 15th day of March, 2023.

Respectfully submitted,

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