IN THE SUPREME COURT OF IOWA

No. 23–1414

Polk County No. CVCV062715

League of United Latin American Citizens of Iowa,

Appellee,

vs.

Iowa Secretary of State Paul Pate, Iowa Voter Registration Commission, Buena Vista County Auditor Sue Lloyd, Calhoun County Auditor Robin Batz, Jefferson County Auditor Scott Reneker, and Montgomery County Auditor Jill Ozuna,

Appellants.

Appeal from the Iowa District Court for Polk County
Michael D. Huppert, District Judge (Motion to Dismiss)
Scott D. Rosenberg, District Judge (Summary Judgment)

REPLY BRIEF FOR APPELLANTS

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ARGUMENT

LULAC and the State agree: Before the district court entered summary judgment in this case there had been no change in law or fact—much less a substantial change—to justify dissolving the *King* injunction. *Cf.* Appellants' Br. at 54. Last year, three justices on this Court recognized that asking for "an injunction to be reopened so the *courts* can change the law *and then* vacate the injunction in the same case would be "unprecedented in Iowa jurisprudence." *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 2023 WL 4635932, at *5 (Iowa June 16, 2023) (Waterman, J.); *see also id.* at 16–17 (McDonald, J.) (concluding vacating a permanent injunction more than one year after final judgment would be appropriate "where there had been a substantial change in facts" or law). The district court should not have dissolved the permanent injunction more than a decade after it had been entered and without an intervening substantial change in law or fact.

The district court erred when it granted summary judgment to LULAC for three reasons. *First*, no substantial change in facts or law justified dissolving the *King* injunction. *Second*, declaratory relief is not appropriate where the rights of the parties to the dispute are not at issue and where the alleged injury to the party requesting the relief will not be redressed. *Third*, section 1.18(5)(h) does not

exempt "voting materials" from the Act because providing such materials in a language other than English is not necessary to secure the right to vote. For the most part, the Secretary is content to stand on the arguments in its principal brief. A reply to specific points raised by LULAC follows.

I. The district court abused its discretion when it dissolved a permanent injunction entered more than a decade prior despite no substantial change in the facts or law.

LULAC maintains that a district court may dissolve a permanent injunction at any time—so long as it is convinced that a different legal argument, had one been presented then, would have prevailed to defeat the injunction. Its position is "unprecedented in Iowa jurisprudence." *Planned Parenthood of the Heartland v. Reynolds*, 2023 WL 4635932, at *5–6 (Op. of Waterman, J.). Indeed, LULAC cites no case, statute, or rule supporting this position. *Cf.*, *e.g.*, Iowa R. Civ. P. 1.1012; Iowa R. Civ. P. 1.1013.

In *Denby v. Fie*, which LULAC cites for the proposition that Iowa common law allows a court of equity to modify a decree at any time, this Court explained that "[t]he action is to modify a decree which was properly granted, because of a change in the law long after the decree was entered." 76 N.W. 702, 703 (Iowa 1898). *Denby* involved a permanent injunction against selling intoxicating liquor in the town of Hull. *Id.* at 702. Some years later, a law known as

the "Mulct Law" was passed. The "Mulct Law" allowed the sale of liquor "under certain conditions not necessary to be further mentioned." *Id.* The defendants sought to modify the original decree to allow them to sell liquor under the "Mulct Law." *Id.*

The district court agreed to modify the decree and this Court reversed. It explained that "if the ["Mulct Law"] itself modifies the decree, no decree of this court is necessary to establish that fact. If it does not modify it, then the court has no power to do so." *Id.* at 703. It also explained that it would not decide "abstract questions in order that parties may be advised as to their rights before an actual controversy has arisen respecting such rights." *Id.* None of those concerns here. And *Denby* preceded the enactment of the modern versions of Rules 1.1012 and 1.1013 in the mid-Twentieth Century updating of the Iowa Rules of Civil Procedure. *See Kern v. Woodbury Cnty.*, 14 N.W.2d 687, 688 (Iowa 1944) (referring to then-Rules 252 and 253).

Spiker v. Spiker serves LULAC no better, as that case explained that a statutory change is a change in law that can "constitute a change in circumstances for purposes of modification." 708 N.W.2d 347, 358 (Iowa 2006). That makes sense. If a permanent injunction is entered under a law that is later amended that should qualify as a substantial change in the law that allows an enjoined party to reopen the injunction. Unlike in *Spiker*, there has been no

statutory change here—nor has there been a jurisprudential change. And, unlike in *Spiker*, LULAC was not a party to the first suit at all.

In *Wilcox v. Miner*, which LULAC cites for the proposition that a court has a duty to modify a previous holding "when an ongoing injunction is found to be unlawful," Appellant's Br. at 56, the injunction prohibiting the treasurer of Adams County from collecting a tax was modified only because the legislature subsequently passed a law validating the tax. 205 N.W. 847, 847–48 (Iowa 1925). The sentence in the opinion to which LULAC cites reads, "It was not only within the power of the court to modify its previous holding *to conform to a valid legalizing act*, but it would have been its duty in any subsequent proceeding to give full effect thereto, notwithstanding its previous decree." *Id.* at 848 (emphasis added). A subsequent statutory change justified the earlier decree's modification.

As LULAC recognizes, this Court said that permanent injunctions are permanent. *Bear v. Iowa Dist. Ct. for Tama County*, 540 N.W.2d 439, 441 (Iowa 1995). Or, as the Wisconsin Supreme Court put it in *Condura Construction Company*, permanent injunctions "are permanent so long as the conditions which produce the injunction remain permanent." *Condura Constr. Co. v. Milwaukee Bldg.*, 99 N.W.2d 751, 755 (Wis. 1959); *see Spiker*, 708 N.W2d at

360 (allowing modification of an injunction where there has been "a substantial change in circumstances").

Neither the conditions nor the law has changed since the *King* injunction in 2008. And LULAC does not contend that there has been a significant change in law or fact since 2008. LULAC cites no case, statute, or rule permitting a district court to modify an injunction where the only difference between the original proceeding and the proceeding to modify is the legal argument employed.

II. LULAC lacked standing in the district court to obtain an advisory declaratory judgment.

This Court has said that it "will not decide an abstract question simply because litigants desire a decision on a point of law or fact." *Bechtel v. City of Des Moines*, 225 N.W.2d 326, 330 (Iowa 1975). Rather, a petitioner seeking declaratory relief must show that "particular legal rights and powers will be or are affected." *Id.* But LULAC's legal rights and powers are not affected by the Secretary's interpretation of the law. And LULAC's interest in the Secretary's legal interpretation of a generally applicable law is a generalized grievance. *See Godfrey v. State*, 752 N.W.2d 413, 421 (Iowa 2008) (noting that the courts have "consistently rejected standing based on the general interest of a litigant in having government act pursuant to the law"). There is no special interest that justifies LULAC's too-late procedurally odd intervention here.

III. Because voting materials in languages other than English are not necessary to secure the right to vote, they are not exempt from the Act.

In its brief, LULAC maintains that the phrase "any language usage" in Iowa Code section 1.18(5)(h) includes use of the English language. By that it means that if using any language, including English, is required by law or necessary to secure a right in any way, the Act permits the government to communicate in any language to do so. That flouts the "English Language Reaffirmation Act" signed into law by Governor Vilsack in 2002.

LULAC's overly expansive interpretation is justified by comparing the exception to other "categorical exceptions" for actions or documents relating to trade and tourism, protection of public health, and driver license stations. Appellee's Br. at 34; *see also* Iowa Code §§ 1.18(5)(c), (d), (i). But that comparison fails. The exemptions for trade and tourism, protection of public health, and for "oral or written communications" produced at driver license stations suggest that the Legislature expected that *non-English* communication might be necessary in certain, limited, and anticipated contexts.

By reading "any language usage" to include English usage, LULAC reads the exemption to include circumstances in which English communication is both necessary and sufficient to secure a

constitutional right. It makes little sense to read the statute to exempt such language use, especially considering that the whole point of the Act is to establish that "the English language shall be the language of government in Iowa." Iowa Code § 1.18(3). LULAC also argues that the Secretary's interpretation of the phrase to mean "any *non-English* language usage" renders the exception superfluous. Appellee's Br. at 37. But it does not. Under the Secretary's interpretation, the exception functions as a limited safety valve to clarify that the Act does not conflict with federal legal requirements or the guaranteed rights of the state and federal constitutions where the usage of non-English language is necessary to secure them. This Court has recognized a "belt-and-suspenders canon that trumped the canon against surplusage" in this and other circumstances. *Anderson v. Iowa Dist. Ct. for Woodbury County*, 989 N.W.2d 179, 183 (Iowa 2023); *see also* Ethan J. Leib & James J. Brudney, *The Belt-and-Suspenders Canon*, 105 Iowa L. Rev. 735 (2020).

Finally, LULAC overstates the record on the "necessity" of non-English voting materials. As an example, the study that LULAC cites on page 43 of its brief concluded that turnout was higher among Latino voters with limited English proficiency when native language ballots were made available, but it also concluded that

providing native language materials does not encourage registration among Latinos with limited English proficiency. *See* D0098 ¶ 17; Michael Parkin, Frances Zlotnick, "English Proficiency in U.S. Elections," *Politics & Policy*, 525–26 (2011) *available at* https://perma.cc/QZV6-VZCE (last accessed on 4/22/2024)). Indeed, the study concluded that its results demonstrated "the importance of English proficiency in determining Latino political participation in U.S. elections." *Id.* at 529. Encouraging such proficiency, and thereby facilitating "participation in the economic, political, and cultural activities of this State," is the Act's whole purpose. Iowa Code § 1.18(2).

CONCLUSION

For these reasons, the district court's grant of summary judgment for LULAC, its decision to dissolve the *King* injunction, and its declaratory judgment interpreting Iowa Code section 1.18(5)(h) should be reversed.

Respectfully submitted,

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CERTIFICATE OF COST

No costs were incurred to print or duplicate paper copies of this brief because the brief is being filed only electronically.

/s/ *Thomas J. Ogden*
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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and contains 1,733 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ *Thomas J. Ogden*
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

I certify that on April 25, 2024, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

/s/ *Thomas J. Ogden*
Assistant Attorney General