

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS OF IOWA,

Case No. CVCV062715

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.

PETITIONER'S RESPONSE TO
RESPONDENTS' STATEMENT OF
UNDISPUTED MATERIAL FACTS AND
STATEMENT OF ADDITIONAL
UNDISPUTED MATERIAL FACTS

COMES NOW Petitioner League of United Latin American Citizens ("LULAC") of Iowa and under Rule 1.981(1), (3) and (8) of the Iowa Rules of Civil Procedure submits its response to Respondents' Statement of Undisputed Material Facts and its own Statement of Additional Undisputed Material Facts:

RESPONDENT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

1. This Court issued a permanent injunction in *King v. Mauro*, Polk County Case No. CV006739 (Iowa Dist. Ct. Mar. 31, 2008), permanently enjoining the Secretary of State and the Voter Registration Commission from using languages other than English on Iowa's official voter registration forms based on the Iowa English Language Reaffirmation Act of 2001. *See* Am. Pet. Ex. 1, at 31.

RESPONSE: Admit.

2. The Iowa English Language Reaffirmation Act of 2001, now codified at Iowa Code section 1.18 provides with certain exceptions that “the English language shall be the language of government in Iowa” and that “[a]ll official documents, regulations, orders, transactions, proceedings, programs, meetings, publications, or actions taken or issued, which are conducted or regulated by, or on behalf of, or representing the state and all of its political subdivisions shall be in the English language.” Iowa Code § 1.18(3) (2021).

RESPONSE: Admit.

3. One of the exceptions in the Act is for “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.” Iowa Code § 1.18(5)(h).

RESPONSE: Admit.

4. In Count II, Petitioner League of United Latin American Citizens of Iowa (“LULAC”) seeks an “Injunction on a Judgment or Final Order” to “dissolve” the permanent injunction issued in *King v. Mauro*, Polk County Case No. CV006739 (Iowa Dist. Ct. Mar. 31, 2008). *See* Am. Pet. ¶¶ 47–50, B.

RESPONSE: Admit.

5. In Count I, LULAC also seeks a declaratory judgment that the Act doesn’t prohibit providing voter registration forms—or other voting materials like ballots or voting notices—in languages other than English to any voters or to voters “with limited English-language proficiency” because they are exempt from the Act under section 1.18(5)(h). *See* Am. Pet. ¶¶ 43–46, A.

RESPONSE: Admit in part. LULAC’s request for declaratory judgment advances two alternative theories: (1) the Act does not prohibit election officials from providing any voting

materials—including ballots, registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process—in languages other than English because voting materials are “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” and are thus exempt under section 1.18(5)(h); alternatively, (2) the Act does not prohibit election officials from providing voter registration forms and other voting materials to individuals with limited English language proficiency because, for those individuals in particular, the use of voting materials in other languages is “necessary to secure the” right to vote under section 1.18(5)(h).

6. Neither Iowa nor any political subdivision in Iowa is a “covered State or political subdivision” under section 203 of the Voting Right Act, 52 U.S.C. § 10503(b)(2)(A). *See 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>.

RESPONSE: Admit. Prior to the most recent Section 203 Determinations, Buena Vista County was required to provide Spanish-language voting materials under Section 203 of the Voting Rights Act. However, on December 8, 2021, the U.S. Census Bureau determined that Buena Vista County was no longer subject to Section 203’s minority language assistance provisions.

PETITIONER’S STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS

A. LULAC of Iowa

1. LULAC is the Iowa branch of the oldest and largest Latino civil rights organization in the country. Its mission is to promote education and civic engagement within the Latino community and to fight for the civil rights of Latinos. 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 of importance to the Latino community. Declaration of Joe Henry (Henry Decl.) ¶ 3.

2. LULAC of Iowa is divided into 20 councils and has approximately 600 dues paying members. Henry Decl. ¶ 4.

3. LULAC has many members with limited English proficiency. Henry Decl. ¶ 9.

4. A particular focus of LULAC's mission is voter engagement, including voter registration and mobilization efforts. Henry Decl. ¶¶ 5–6.

5. The current application of the Iowa English Language Reaffirmation Act and the injunction in *King* significantly hampers LULAC's voter mobilization and registration efforts. Henry Decl. ¶¶ 10–14.

6. LULAC is unable to send its members with limited English proficiency useable voter registrations forms or absentee ballot request forms in Spanish because county officials believe they cannot provide such forms, and—even when LULAC translates the existing forms and provide them to its members—county officials will not accept them. Henry Decl. ¶ 10.

7. LULAC has contacted local elections officials in both Des Moines and Muscatine to request assistance in translating official state voting documents or to confirm that LULAC's translation of documents are correct so that LULAC can accurately assist its members. LULAC has been told by county officials that they cannot assist LULAC with any translation efforts or provide LULAC with any assistance regarding the correct translation of official state voting documents due to *King* and the Iowa English Language Reaffirmation Act. Henry Decl. ¶ 11.

8. Whenever there is any change in voting hours or locations such information is provided only in English and LULAC must undertake time and money translating the information and conveying it to its members with limited English proficiency. Henry Decl. ¶ 12–14.

9. Recently, voters in Muscatine were sent a postcard about changes in voting precinct information. The postcard was only in English. The LULAC council in Muscatine worked to translate this information into Spanish and then distribute a translated postcard to members with limited English proficiency and/or to convey updated information to affected members in Spanish. Henry Decl. ¶ 12.

10. In addition to attempting to translate forms and provide translations for limited English proficiency members, LULAC members frequently set aside time to be available to answer questions about specific voting forms from other members with limited English proficiency. Henry Decl. ¶ 13.

11. The time and money LULAC spends translating English materials into Spanish would otherwise be devoted to other mission-critical efforts like walking neighborhoods to get out the vote, attending community events to attract new members, and placing advertisements on social media to encourage voting in the Latino community generally. Henry Decl. ¶¶ 13–14.

B. County Auditors' enforcement of the English-Only Law

12. Joel Miller is the County Auditor and Commissioner of Elections for Linn County, Iowa, a position he has held since February 20, 2007. Declaration of Joel Miller (Miller Decl.) ¶ 2. As county auditor, he is entrusted to administer all elections in Linn County. *Id.* ¶ 3.

13. During his time as county auditor, Mr. Miller has received requests from the public to provide or accept voting materials in languages other than English. Miller Decl. ¶ 4. Due to concerns about complying with the Iowa English Language Reaffirmation Act, Iowa Code § 1.18, his office has declined those requests. *Id.*

14. If a court ruled that the Iowa English Language Reaffirmation Act, Iowa Code § 1.18, did not apply to some or all voting materials, Mr. Miller’s office would provide and accept voting materials in languages other than English. Miller Decl. ¶ 5.

15. If a court ruled that the Iowa English Language Reaffirmation Act, Iowa Code § 1.18, did not apply to some or all voting materials, Mr. Miller’s office would provide at least some of those voting materials in Spanish. Miller Decl. ¶ 5.

16. Respondent Sue Lloyd is the County Auditor for Buena Vista County.

17. In an interview she gave to Iowa Public Radio in 2020, Ms. Lloyd expressed that there is “interest” from other counties in translating voter forms because she had “been contacted by some other counties asking about the forms.” Declaration of Shayla L. McCormally (McCormally Decl.) Ex. A at 5.

18. When Ms. Lloyd gave this interview, Buena Vista was required to accept and provide voting materials in Spanish pursuant to Section 203. Ms. Lloyd expressed that “she thinks Iowa is diverse enough that other counties should be allowed to translate, at least into Spanish.” McCormally Decl. Ex. A at 4.

C. Provision of voting materials to individuals with limited English-proficiency

19. According to the U.S. Census Bureau, there were 25,428 citizens of voting age with limited English proficiency in Iowa in 2020. *See* Declaration of Dr. Rene Rocha, Exhibit A, Expert Report of Dr. Rene R. Rocha (“Rocha Rep.”) ¶ 10. Spanish speakers make up 58.7% of voting-age citizens with limited English proficiency. *Id.*

20. Nineteen percent of eligible Latino voters in Iowa have limited proficiency in English. Rocha Rep. ¶ 13.

21. Language minorities in the United States are afforded specific protections under Section 203 of the Voting Rights Act (VRA). Section 203 requires that certain jurisdictions provide multilingual access to registration or voting notices, as well as forms, instructions, assistance, or other materials or information relating to the electoral process. 52 U.S.C. §10503. Section 203 coverage protections apply when large numbers of eligible voters belonging to a single language minority group are clustered in a political subdivision (over 10,000 persons or 5% of the total electorate). 52 U.S.C. §10503(b)(2)(A).

22. Multiple peer-reviewed studies have concluded that Latino citizens residing in jurisdictions covered by Section 203 are more likely to register to vote and to vote. Rocha Rep. ¶¶ 24-29.

23. A peer-reviewed study by Michael Jones-Correa entitled “Language Provisions Under the Voting Rights Act: How Effective Are They?” published in *Social Science Quarterly* in 2005, found that Latinos residing in Section 203 covered jurisdictions were 4.4% more likely to have voted in the 1996 and 2000 election cycles as compared to Latinos in non-covered jurisdictions. Rocha Rep. ¶ 24.

24. Another study of voter turnout during the 2000 election—Michael Parkin, Frances Zlotnick, “English Proficiency and Latino Participation in U.S. Elections,” *Politics & Policy* 39 (2011)—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. Rocha Rep. ¶ 25.

25. A third study (this one 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. Rocha Rep. ¶ 27 (citing Daniel J. Hopkins, “Translating into Votes: The Electoral Impacts of Spanish-Language Ballots,” *American Journal of Political Science*, 55 (2011)).

26. A fourth study (this one using official records 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. Rocha Rep. ¶ 29 (citing Bernard L. Fraga, and Julie Lee Merseth, “Examining the Causal Impact of the Voting Rights Act Language Minority Provisions,” *Journal of Race, Ethnicity, and Politics* 1 (2016)).

27. Based on his review of this academic literature, Plaintiffs’ expert Rene Rocha—a professor of political science and Latina/o/x Studies at the University of Iowa—concluded that a lack of access to multilingual election materials translates to reduced rates of voter registration and turnout among citizens with limited English proficiency. Rocha Rep. ¶ 34.

D. The July 2021 Administrative Petition and response

28. On July 28, 2021, LULAC sought to clarify certain issues related to the English-Only Law by filing a Petition for Declaratory Order with the Secretary under Iowa Code § 17A.9 and Iowa Administrative Code r. 721-9.1(17A). See *Pet. by League of United Latin Am. Citizens of Iowa for Declaratory Order on Title II, Chapter 48A (Voter Registration) & Section 53.2 (Absentee Ballot Request) of the Iowa Code* (July 28, 2021) (the “Administrative Petition”), attached as Ex. 2 to Pet.’s Am. Pet.

29. The Administrative Petition sought 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.*

30. On September 27, 2021, the Secretary issued 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.” Letter from Molly Widen, Legal Counsel for the Office of the Iowa Secretary of State, to Shayla McCormally, McCormally & Cosgrove, PLLC (Sept. 27, 2021), attached as Ex. 3 to Pet.’s. Am. Pet.

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Respectfully submitted,

/s/ Shayla McCormally _____

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