

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,

**SUPPLEMENT TO PETITIONER'S
RESISTANCE TO RESPONDENTS'
PREVIOUS MOTION FOR SUMMARY
JUDGMENT**

Respondents.

On November 8, 2022, this Court entered an Order instructing the parties to submit any cross-motions for summary judgment in final form, along with any supplemental supporting documentation or memoranda by February 1, 2023, and any oppositions to those final cross-motions for summary judgment by March 1. *See* Order (Nov. 8, 2022).¹ Consistent with that Order,

¹ The Court issued its November 8, 2022 Order in response to LULAC's request to continue the trial date and extend the deadlines for summary judgment motions until after the conclusion of all discovery. *See* Mot. to Continue Trial & Permit Mot. for Summ. J at 4–5 (Oct. 28, 2022). Respondents had initially moved for summary judgment on October 19, 2022, approximately 6 weeks before the discovery deadline. *See* Mot. for Summ. J. (Oct. 19, 2022). LULAC filed its opposition to Respondents' summary judgment motion on November 7, 2022, but prior to filing that opposition LULAC requested that the Court instead establish a schedule for the parties to cross-move for summary judgment following the close of discovery. *See* Mot. to Continue Trial & Permit Mot. for Summ. J at 4. The Court heard argument on LULAC's motion and ultimately granted LULAC's request, continuing the then-scheduled trial and establishing the current summary judgment briefing schedule. *See* Order (Nov. 8, 2022).

Petitioner League of United Latin American Citizens of Iowa (“LULAC”) submitted its final motion for summary judgment and accompanying memorandum and supporting evidence on February 1. *See* Pet’r’s Mot. for Summ. J. (Feb. 1, 2023); Pet’r’s Br. in Supp. of Mot. for Summ. J. (“LULAC’s MSJ Br.”). This Court accordingly scheduled a hearing on LULAC’s summary judgment motion. *See* Order Setting Hearing (Feb. 7, 2023). Respondents did not file a final summary judgment motion by February 1.

LULAC interprets that silence to indicate that Respondents no longer intend to move for summary judgment in this matter. But to the extent Respondents intend to rely on their previous summary judgment filings, *see* Mot. for Summ. J. (Oct. 19, 2022); Br. in Supp. of Resp’ts’ Mot. for Summ. J. (Oct. 19, 2022) (“Resp’ts’ Br.”), LULAC renews its previously filed Brief in Opposition to Respondents’ Motion for Summary Judgment and in Support of Petitioner’s Proposed Cross-Motion for Summary Judgment (Nov. 7, 2022) (“LULAC’s Opp’n Br.”), and files this supplement to incorporate additional evidence obtained in subsequent discovery that occurred after the previous summary judgment filings. This evidence further demonstrates that: (1) LULAC’s injuries will be redressed by the requested relief, and (2) non-English voting materials are necessary to ensure individuals with limited English proficiency can exercise the constitutional right to vote.

A. LULAC’s injuries are redressable.

Discovery conducted since LULAC’s Opposition Brief was filed reinforces the direct link between LULAC’s injuries and its requested relief.² *See* LULAC’s Opp’n Br. at 19–20; Am. Pet.

² LULAC’s operative complaint seeks: (1) a declaration that non-English voting materials are exempt from the Iowa English Language Reaffirmation Act of 2001, now codified at Iowa Code §§ 1.18, 4.14 (the “English-Only Law”), under Iowa Code § 1.18(5)(h) (the “Rights Exception”), and (2) the dissolution of the injunction issued by this Court in *King v. Mauro*, No. CV6739, slip op. at 31 (Iowa Dist. Ct. Mar. 31, 2008, corrected Apr. 8, 2008). Am. Pet. ¶¶ 43–50.

¶¶ 43–50. Respondents previously argued that a declaratory judgment would not redress LULAC’s injuries because it would not result in county auditors providing non-English voting materials, and that LULAC therefore lacks standing. Resp’ts’ Br. at 13–16. But Respondent Buena Vista County Auditor Sue Lloyd testified that Buena Vista County had distributed Spanish voter registration forms until the *King* lawsuit was filed, and that if not for the *King* injunction, her office would continue to provide these materials. Pet’r’s Statement of Undisputed Material Facts (Feb. 1, 2023) (“Pet’r’s SOF”) ¶¶ 41, 43. Ms. Lloyd further confirmed that other counties had contacted her asking for copies of Buena Vista’s translated voting materials, but that she did not provide them “because of the injunction” in *King*. *Id.* ¶ 50.³

Testimony from Respondents Iowa Secretary of State Paul Pate (the “Secretary”), the Iowa Voter Registration Commission (“the Commission”), and Ms. Lloyd also confirms that they interpret the *King* injunction to prohibit them from accepting or distributing voting materials in non-English languages. *Id.* ¶¶ 21–24, 41–43, 50, 52. All four county Respondents admitted the same in discovery. *Id.* ¶ 39. LULAC’s requested relief would remove this unlawful prohibition and allow counties to offer non-English voting materials, providing redressability sufficient for standing. *See* Ruling on Resp’ts’ Mot. to Dismiss at 12 (Mar. 7, 2022); LULAC Opp’n Br. at 18–19; *Fed. Election Comm’n v. Akins*, 524 U.S. 11, 25 (1998) (“Those adversely affected by a discretionary agency decision generally have standing to complain that the . . . decision [was based]

³ Ms. Lloyd’s testimony mirrors the earlier declaration of Joel Miller, County Auditor and Commissioner of Elections for Linn County, which LULAC first filed in support of LULAC’s Opposition Brief and also re-filed in support of LULAC’s MSJ Brief. In that declaration Mr. Miller states that if a court ruled that the English-Only Law did not apply to some or all voting materials, his office would provide and accept voting materials in Spanish and other non-English languages. Pet’r’s SOF ¶ 56. Mr. Miller also states that he has received requests from the public to provide or accept voting materials in other languages, but his office has declined those requests due to concerns about complying with the English-Only Law. *Id.* ¶ 55.

upon an improper legal ground” even if the agency “might later, in the exercise of its lawful discretion, reach the same result for a different reason.”).

This evidence further demonstrates that a proper interpretation of the English-Only Law (and an order vacating the *King* injunction) is likely to redress LULAC’s injuries. *See* Ruling on Resp’ts’ Mot. to Dismiss at 12–13 (explaining that LULAC’s burden on redressability is “relatively modest” and that LULAC “need not demonstrate that there is a guarantee of redress through a favorable decision”).

B. Non-English voting materials are necessary to exercise the right to vote.

Discovery conducted since LULAC’s Opposition Brief has also reaffirmed that non-English voting materials are *necessary* for limited English proficiency voters to exercise the franchise, making them exempt from the English-Only Law. This exemption is a result of the Rights Exception, which states that the English-Only Law does not apply to “[a]ny 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).

Turnout data from the November 8, 2022 general election in Buena Vista County shows the necessity of non-English voting materials for limited English proficiency voters. In the 2018 general election, federal law required Buena Vista County to provide election materials in Spanish, but those protections were lifted in December 2021. *See* LULAC’s MSJ Br. at 22–23. And in the first general election following the removal of Buena Vista County’s Spanish-language materials, the County saw a nearly 20 percent decrease in turnout, from 53 percent in the 2018 general election to only 43 percent in the 2022 general election.⁴ This is consistent with the unrebutted

⁴ *Compare* 2018 Election Results, “Statistical Reports by County” at 22, Iowa Sec’y of State, available at: <https://sos.iowa.gov/elections/pdf/2018/general/countystats.pdf> (accessed Jan. 31, 2023), *with* 2022 Election Results, “Statistical Reports by County” at 30, Iowa Sec’y of State,

conclusion of LULAC’s expert Dr. Rene Rocha, who explained that lack of access to multilingual election materials likely results in reduced rates of voter registration and turnout among individuals with limited English proficiency. Pet’r’s SOF ¶ 20.

Testimony from multiple deponents—including Respondents themselves—also confirms the necessity of translated voting materials for individuals with limited English proficiency. Respondent Sue Lloyd, for instance, explained that counties should be allowed to provide translated materials “in order to help their voting population that might need assistance if they can’t read English yet” and agreed that such materials would help voters with limited English proficiency exercise the franchise. *Id.* ¶ 51. The Office of Latino Affairs’ Rule 1.707(5) representative testified that it has received requests for voting information in Spanish and American Sign Language in particular, *id.* ¶ 34, and it had repeated meetings with the Secretary’s office about “increasing voter access” where its representatives explained to the Secretary’s team that information on voting, such as “what the requirements are to be a voter and what you might see when you get to the polls to familiarize people with polling,” “would be better provided in people’s native languages.” *Id.* ¶ 36; *see also id.* ¶ 37. The Office further explained that “if you’re unable to read or understand the information about voting, it would, in any circumstance, preclude you from participation unless you had access to someone who could help you,” which is “not true for everyone.” *Id.* ¶ 35; *see also id.* ¶¶ 30, 34.

Testimony from the Secretary’s Rule 1.707(5) representative also supports the conclusion that individuals with limited English proficiency often need translated materials to vote. While Iowa Code § 49.90 permits individuals “who cannot read the English language” to receive

available at: <https://sos.iowa.gov/elections/pdf/2022/general/countystats.pdf> (accessed Jan. 31, 2023).

assistance at the polls—a legislative acknowledgment that such language usage is necessary to secure the right to vote—the Secretary’s representative admitted that there is no such accommodation for other parts of the voting process, such as registering to vote or casting an absentee ballot. Pet’r’s SOF ¶ 26.⁵ The Secretary’s representative also conceded that the assistance available to voters at the polling place under Iowa Code § 49.90 has a significant flaw: all of the sources of information about the assistance available under Iowa Code § 49.90 (including signs at polling places and the Secretary’s website) appear in English only. Pet’r’s SOF ¶ 27.

Coupled with the arguments and evidence offered in support LULAC’s Opposition Brief, this additional evidence further demonstrates that non-English voting materials are necessary for limited English proficiency voters to exercise the franchise. Such language usage falls under the Rights Exception and is exempt from the English-Only Law.

CONCLUSION

For the reasons detailed in LULAC’s Opposition Brief and supplemented by the evidence described herein, this Court should deny any contemplated request for summary judgment from Respondents.

⁵ Section 208 of the VRA creates similar protections for voters who require assistance in the poll booth because of “blindness, disability, or inability to read or write.” 52 U.S.C. § 10508.

Dated this 1st day of March, 2023.

Respectfully submitted,

/s/ Shayla McCormally _____

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