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)

BRIEF FOR APPELLANTS

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

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.

ROUTING STATEMENT

This case presents a substantial question of enunciating legal principles, whether a district court has authority to modify or dissolve a permanent injunction absent a substantial change in the law or facts. In *Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. 22-2036, 2023 WL 4635932 (Iowa June 16, 2023), this Court affirmed by operation of law a district court decision that held it did not have that authority. In non-precedential opinions accompanying the order, all six participating justices apparently agreed that a substantial change in either law or facts is a prerequisite to the later modification of a permanent injunction. Retention by this Court is appropriate to answer the question in a precedential opinion. *See* Iowa R. App. P. 6.1101(2)(f).

It is also worth noting that whether the English Language Reaffirmation Act, codified at Iowa Code section 1.18, exempts "voting materials" is a substantial issue of first impression in this Court. *See* Iowa R. App. P. 6.1101(2)(c).

NATURE OF THE CASE

In 2008, a Polk County district court permanently enjoined the Secretary of State and the Voter Registration Commission from printing Iowa's official voter registration forms in languages other than English. *See King v. Mauro*, Polk Cnty. No. CV006739 (Iowa Dist. Ct. Mar. 31, 2008). The court relied on the Iowa English Language Reaffirmation Act of 2001, which generally requires "[a]ll official documents" to "be in the English language." Iowa Code § 1.18(3). League of United Latin American Citizens of Iowa ("LULAC") was not a party to that proceeding.

In 2021, LULAC petitioned the Polk County district court to dissolve the *King* injunction and issue a declaratory judgment that the Act does not prohibit printing voting materials in languages other than English. *See* D0037, Am. Pet. ¶¶ 47–50, B. It named as Respondents the Secretary, the Commission, and four county auditors who were petitioners in *King*. Respondents (collectively "the Secretary") moved to dismiss the petition, arguing that LULAC could not collaterally attack a permanent injunction entered more than a decade prior, and that it lacked standing to obtain a declaratory judgment. D0030, Mot. to Dismiss. The district court granted the Secretary's motion in part; it held that the doctrine of *res judicata* barred LULAC's request to dissolve the *King* injunction. D0042, Ruling on Mot. to Dismiss.

LULAC moved the district court to reconsider, arguing that *res judicata* did not apply because LULAC was neither a party nor in privity with a party in *King*. D0044, Mot. to Reconsider. The district court granted the motion and vacated its prior decision on the motion to dismiss. D0051, Ruling on Mot. to Reconsider. The Parties proceeded with cross-motions for summary judgment. The district court granted summary judgment for LULAC and dissolved the *King* injunction. D0110, MSJ Ruling. After another hearing on remedies, the district court entered a declaratory judgment interpreting Iowa Code section 1.18(5)(h) to exempt a broad array of voting materials from the Act's general requirement that official documents be printed in English alone. D0119, Order on Relief and Costs. This appeal followed.

STATEMENT OF THE FACTS

In early 2002, Governor Vilsack signed into law the Iowa English Language Reaffirmation Act of 2001. *See* Iowa English Reaffirmation Act of 2001, ch. 1007, 2002 Iowa Acts 16 (codified at Iowa Code §§ 1.18, 4.14). The Act declares English "to be the official language of the state of Iowa" and "the language of government in Iowa." Iowa Code § 1.18(2)–(3). And with only certain exceptions, the Act requires "[a]ll official documents, regulations, orders, transactions, proceedings, programs, meetings, publication, 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" to "be in the English language." Iowa Code § 1.18(3). Those exceptions include, among others, the "[u]se of proper names" and "[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)(g)–(h).

Despite the Act's plain language, shortly after its passage the Secretary of State began providing voter registration forms in Spanish and other non-English languages on his website. *King v. Mauro*, Polk Cnty. No. CV006739, at *3–4. (Iowa Dist. Ct. Mar. 31, 2008). And a long-time Voter Registration Commission rule continued to authorize county auditors to provide voter registration forms

in other languages if they decided it "would be of value." Iowa Admin Code r. 821-2.11 (July 2, 2008); *see also King*, No. CV006739, at *3.

Four county auditors—and other petitioners that were ultimately dismissed for lack of standing—sued the Secretary of State and the Voter Registration Commission in 2007. They brought a judicial review action under chapter 17A, seeking to enjoin the Secretary of State from providing non-English voter registration forms because it violates the Act's requirement that official documents be only in English. They also sought a declaratory judgment that the administrative rule authorizing non-English forms violates the Act.

The district court agreed with the county auditors. It reasoned that voter registration forms are "official documents" and that the text, structure, and purpose of the Act thus prohibits use of non-English languages on the forms. *See King*, No. CV006739, at *18–20. The court rejected contrary arguments that the Act merely requires one English-language version of official documents, that it gives complete discretion to elected officials to use other languages, and that the Act is unconstitutional. *See id.* at *17–30. And the court noted that there was nothing in the record to support—and no party argued— that voter registration forms were "necessary or required to secure the right to vote," which would exempt them from the Act under section 1.18(5)(h). *Id.* at *30.

Starting in 2017, federal law required Buena Vista County to translate certain voting materials into Spanish under section 203 of the federal Voting Rights Act. D0098, Pet. Stat. of Facts ¶ 44. The Secretary provided a Spanish language version of the official voter registration form for use in Buena Vista County in the 2018 and 2020 elections. D0102 (Exh.2), Lloyd Tr. 19:10–22:19. After the 2020 census, the federal Department of Justice notified the county that it no longer met the section 203 threshold. D0102 (Exh.2) 22:20–23:7. With no federal law requirement, the county stopped providing the translated form. *Id.*

In July 2021, LULAC petitioned the Secretary for a declaratory order under the Iowa Administrative Procedure Act. D0098, ¶ 57. It asked whether county auditors could use the Spanish language version of the official voter registration and absentee ballot request forms. D0037 (Att.2), Admin. Pet. ¶ 19. It also asked whether county auditors are required to accept the Spanish language version of the National Mail Voter Registration Form. D0037 (Att.2) ¶ 20. The Secretary responded to the petition in September 2021, explaining that the *King* injunction prohibited the use of languages of than English for the official voter registration form. D0037 (Att.3), Resp. to Pet. It did not address the National Mail Voter Registration Form or the absentee ballot request forms, but the Secretary's designee testified in deposition that county auditors

could accept Spanish language absentee ballot request forms so long as they complied with the law in other respects. D0102 (Exh.1), Widen Tr. 51:2–53:1.

Linn County Auditor Joel Miller is not a party to this case, but he did provide a declaration stating that he has received requests to provide or accept "voting materials" in languages other than English. D0100, Miller Decl. ¶ 4. He explained that due to "concerns about complying" with the Act, he declines those requests. D0100 ¶ 4. He also claimed that he would provide and accept "voting materials" in languages other than English if "a court ruled" that such materials are exempt from the Act. D0100 ¶ 5.

ARGUMENT

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.

I. LULAC cannot collaterally attack a permanent injunction entered more than a decade prior absent a substantial change in the facts or law.

The district court erred when it granted summary judgment to LULAC and dissolved the *King* injunction. The Secretary preserved this error by arguing that the district court lacked authority to dissolve a permanent injunction absent a substantial change in the facts or law. The Secretary does not argue that a genuine dispute of material fact exists, and this Court must determine only whether the district court correctly applied the law. *See Zimmer v. Vander Waal*, 780 N.W.2d 730, 732 (Iowa 2010).

A. No substantial change in the facts or law justified the district court's decision to dissolve the *King* injunction.

A permanent injunction, as the name says, "is unlimited in respect of time." *Bear v. Iowa Dist. Ct. for Tama Cnty.*, 540 N.W.2d 439, 441 (Iowa 1995). Yet "[t]he court which rendered the injunction may modify or vacate the injunction if, over time, there has been a substantial change in the facts or law." *Id.*; *see also Den Hartog v. City of Waterloo*, 926 N.W.2d 764, 769–70 (Iowa 2019) (affirming dissolution of permanent injunction on enjoined party's motion based on changed factual circumstances).

The district court acknowledged in its ruling that the law has not changed since the entry of the *King* injunction in 2008. D0110

at *11. Rather, it relied on a change in the "legal issues brought before the court." *Id.* In other words, LULAC presented a different argument than that presented in *King*. The district court explained that it would "defy both common sense and justice to hold that parties to the injunction are permanently bound because one party, for whatever reason, did not argue that the Rights Exception applies to voting materials." *Id.* But the district court's rationale is unprecedented and would make permanent injunctions "permanent" in name alone.

In 2023, this Court affirmed by operation of law a district court decision declining to modify a prior injunction. *Planned Parenthood of the Heartland v. Reynolds*, No. 22-2036, 2023 WL 4635932 (Iowa June 16, 2023). Two non-precedential opinions accompanied the order. In those opinions, all six participating justices agreed that a substantial change in the facts or law is a prerequisite to the modification of a permanent injunction. *Id.* at *5-6 (Waterman, J., joined by Christensen, C.J., and Mansfield, J.); *Id.* at *16-17 (McDonald, J., joined by McDermott and May, JJ.).

In one opinion, the authoring justice explained that "[a] motion to dissolve a permanent injunction does not attack the correctness of the original judgment. Instead, the motion contends there has been a substantial change in facts or law such that it would be inequitable to continue to enforce the permanent injunction." *Id.* at

*16 (McDonald, J.). Here, LULAC attacks the correctness of the original judgment, albeit under a different legal theory. But the theory advanced by LULAC and accepted by the district court existed at the time of the original judgment; it does not result from a change in the law. Indeed, *King* mentions the possible applicability of the exception that LULAC now urges; it noted that the parties did not raise the argument and nothing in the record supported its application to that case. *King*, Polk Cty. No. CV06739, at *29–30.

A request to reopen an injunction "so the *courts* can change the law *and then* vacate the injunction in the same case" is "something unprecedented in Iowa jurisprudence." *Planned Parenthood*, 2023 WL 4635932, at *5 (Waterman, J.). But that is what LULAC seeks here. Iowa Code section 1.18(5)(h) has not been interpreted to exempt voting materials from the Act; the district court did so for the first time here. The district court's conclusion that it would be "inequitable" to allow a permanent injunction to remain in force even though, in the judge's view, a better argument could have been raised to defeat it, flouts a first principle of jurisprudence: stare decisis, "to stand by things decided." *See State v. Brown*, 930 N.W.2d 840, 854 (Iowa 2019) ("Stare decisis 'is an important restraint on judicial authority and provides needed stability in and respect for the law.'").

Indeed, the district court here went one step further than the relief sought by the State in *Planned Parenthood*. There, the State contended a significant change in the law: both the U.S. Supreme Court's opinion in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) and this Court's opinion in *Planned Parenthood of the Heartlands v. Reynolds*, 975 N.W.2d 710 (2022) changed the standards of review under the federal and State constitutions to laws protecting unborn life. Three Justices disagreed that the applicable standard of review had changed and, for that reason, did not support dissolving a permanent injunction. *Planned Parenthood*, 2023 WL 4635932, at *7 (Waterman, J.). Less than two weeks later, the district court here explained that neither a change in the law nor in the facts is necessary to dissolve a permanent injunction. D0110 at *10–11.

Beyond the district court's exceeding of the judicial power, the form of this lawsuit as a collateral attack on issues already litigated and decided is also improper. Rather than seeking to intervene in *King v. State*, LULAC has filed a new case with a new case number to relitigate an issue already decided by the district court. Issue preclusion "is a type of res judicata 'from relitigating in a subsequent action issues raised and resolved in [a] previous action.'" *Barker v. Iowa Dep't of Pub. Safety*, 922 N.W.2d 581, 587 (Iowa 2019) (quoting *Emp'rs Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d

17, 22 (Iowa 2012)). Issue preclusion serves the important role of preventing "the anomalous situation, so damaging to public faith in the judicial system, of two authoritative but conflicting answers being given to the very same question." *Id.*

Each of the four *Barker* elements that a party must establish are present here. The issue here, whether the Act prohibits voting materials in languages other than English (1) is identical to the issue leading to the injunction in *King v. Mauro*, (2) was litigated in that case, (3) was material and relevant to it, and (4) was essential to the resulting judgment. *Id.* at 587–88. There are few lawsuits that risk issue preclusion more than collateral attacks seeking to dissolve a permanent injunction. Such a suit necessarily raises the specter of relitigating facts and issues already decided.

LULAC contends that it is not the same party that litigated the earlier case, but this Court "abandoned the strict doctrine of mutuality in both offensive and defensive uses of issue preclusion." *Id.* at 588. In *Barker*, the fact that the State, rather than the Department of Public Safety, was a party to the earlier lawsuit did not stop Barker from using issue preclusion to estop DPS's later argument. *Id.* at 589–90.

This court should make clear that would-be parties that dislike an earlier legal result or injunction cannot relitigate the same issue ad nauseam in hopes of drawing a more favorable result.

The district court erred and exceeded the bounds of Iowa law by dissolving a permanent injunction despite making a finding that there had been no substantial change in facts or law. This Court should vacate the district court's order.

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

In Iowa, standing is a jurisdictional requirement. *Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780, 794 (Iowa 2021). Iowa courts do not issue advisory opinions. *Id.* at 791 (citing *Schmidt v. State*, 909 N.W.2d 778, 800 (Iowa 2018)). And "[i]f the court can't fix your problem, if the judicial action you seek won't redress it, then you are only asking for an advisory opinion." *Id.* at 791. Standing requires an injury-in-fact, causation, and redressability. Standing's redressability requirement applies with equal force to declaratory judgment actions as to any other case. *Id.* at 794 (citing *Bechtel v. City of Des Moines*, 225 N.W.2d 326, 330 (Iowa 1975)). And that requirement is not met here.

When a declaratory judgment action is resolved on summary judgment, review is for correction of errors at law. *W. States Ins. Co. v. Continental Ins.*, 602 N.W.2d 360, 362 (Iowa 1999). Questions of standing are also reviewed for correction of errors at law. *Iowa Citizens*, 962 N.W.2d at 787. LULAC asked a Polk County district court to declare that section 1.18(5)(h) exempts "voting materials"

from the Act. But such a declaration would not have any force outside Polk County. *See* Iowa R. Civ. P. 1.1101 ("Courts of record *within their respective jurisdictions* shall declare rights, status, and other legal relations whether or not further relief is or could be claimed.") (Emphasis added).

LULAC contends that it has standing because the Linn County auditor's declaration that he provided voting materials only in English because of concern about the Act. But the Linn County auditor is not a party to this case, and this case was not filed in Linn County. *See Democratic Senatorial Campaign Committee v. Pate*, 950 N.W.2d 1, 8–9 (Iowa 2020) (district court's view of Secretary's legal authority in one county does not affect the judgment of a different district court in a different county).

Rule 1.1102 permits "[a]ny person . . . whose rights, status or other legal relations are affected by any statute" to have "any question of the construction or validity thereof" determined by declaratory order. But LULAC cannot avail itself of that procedure because *its* rights, status, or other legal relations are not affected by the Act. As a result, the district court's order declaring that "voting materials" are exempt from the Act under to section 1.18(5)(h) is a purely advisory opinion.

Had the Linn County auditor brought a declaratory judgment action or had LULAC sought relief that could be granted in Polk

County, this standing issue would not preclude relief. But allowing LULAC to sue in Polk County because the Linn County auditor sees his rights or duties being impeded defies logic.

Nor has LULAC contended that it is asserting third-party rights by the Linn County auditor. That makes sense, because a plaintiff "must first show that a state's regulation of the plaintiff's activities adversely affects the rights of another" to bring a derivative-rights claim. *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 962 N.W.2d 37, 56–57 (Iowa 2021). That was not attempted here.

Injunctions operate against specific defendants by requiring them to enforce—or not to enforce—Iowa law. Just as injunctive relief cannot be granted against the State to erase a law, neither can this attempt to dissolve an injunction in Polk County be justified by alleging harms by a non-party in Linn County. Indeed, it is not even clear that the injunction entered against the Polk County auditor in *King v. State* binds the Linn County auditor—which itself is raises difficult questions about causation, too.

This Court should find LULAC lacks standing and reverse with orders to dismiss LULAC's claim for lack of standing.

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.

The district court held a broad range of "voting material" exempt from the Act's English-only requirement based on two flawed legal theories. Iowa Code section 1.18(5)(h) exempts from the Act "[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). The Parties did not dispute that the right to vote is guaranteed by the federal and State constitutions, but they did not agree on the meaning of the phrase "any language usage . . . necessary to secure" the right.

The district court, siding with LULAC, interpreted the phrase to mean "any language usage" including English. D0110 at 7. In other words, if it is necessary for the government to use language at all to secure a right, the government may use any language it chooses. That interpretation produces the same infirmity as the proposed interpretations of sections 1.18(3) and 1.18(6)(a) that *King* rejected.

In *King*, the respondents argued that the Secretary should be allowed to print official voter registration forms in languages other than English because section 1.18(3), which requires "[a]ll official documents . . . shall be in the English language," does not say "*and*

in no other language." *King*, Polk Cty. No. CV06739, at *19. They argued that so long as the form was printed in English, State or county officials could translate the forms to other languages as well. *King* rejected that interpretation as contrary to the "underlying purpose and policy of the statute," which was to "encourage every citizen of this state to become more proficient in the English language." *King*, Polk Cty. CV06739, at *19–20; *see also* Iowa Code § 1.18(2); *Bankers Standard Ins. Co. v. Stanley*, 661 N.W.2d 178, 180 (Iowa 2003). It held that the Act should be interpreted to expressly preclude the use of non-English languages in official government documents. *King*, Polk Cty. CV06739, at *20.

The *King* respondents also argued that the Secretary should be allowed to translate the voter registration form into other languages under to Iowa Code section 1.18(6)(a), which allows State officers to communicate in a language other than English, "if that . . . officer deems it necessary or desirable to do so." The court disagreed, explaining that such a broad interpretation of the exception would swallow the rule. *King*, Polk Cty. No. CV06739, at *20–21.

Here, the district court's conclusion is also indefensibly broad. The Secretary's interpretation, that *non-English* language usage is exempted when *non-English* language usage is necessary to secure a constitutional right, better serves the purpose and policy of the statute.

The district court also misinterpreted the Voting Rights Act's requirements when it cited to a summary of congressional findings to support a "prohibition against English-only elections." D0110 at *9–10 (citing 52 U.S.C. § 10303(f)). The Secretary does not dispute that complying with the Voting Rights Act is exempt from the Act under section 1.18(5)(h). But the relevant section does not apply to any political subdivision in Iowa because none has a large enough percentage of language-minority citizens to trigger its protections. *See* 52 U.S.C. § 10303.

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. The district court's opinion adopting LULAC's argument, if extended to its logical conclusion, would require providing non-English voting materials. 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 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).

Actual Voting Rights Act enforcement in Iowa helps show why the district court's conclusion was wrong. Not too long ago, in 2017, federal law required Buena Vista County to translate certain voting materials into Spanish under section 203 of the federal Voting Rights Act. D0098, Pet. Stat. of Facts ¶ 44. That is because the Spanish-speaking voting population was high enough that the Voting Rights Act's requirements came into effect. Then, because State law requires adherence to federal law, the State provided Spanish-language materials for use in Buena Vista County in the 2018 and 2020 elections. D0102 (Exh.2), Lloyd Tr. 19:10–22:19.

But after the 2020 census, the federal Department of Justice notified the county that it no longer met the section 203 threshold. D0102 (Exh.2) 22:20–23:7. Absent the federal law requirement, the county stopped providing the translated form. *Id*. Because federal and State law work in tandem, when the federal government does not require providing non-English voting materials the State must adhere to its own law that precludes providing them.

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 specific lan-

guage usage covered by the permanent injunction or in the declaratory judgment issued by the district court. Unlike a literacy test, the Act itself has no legal effect on the right to vote. And the only impediment for language minorities under these circumstances—limited English proficiency—is neither immutable nor attributable to any State action.

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.

REQUEST FOR ORAL SUBMISSION

The State requests to be heard in oral argument.

Respectfully submitted,

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CERTIFICATE OF COST

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/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 4,256 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 February 28, 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*
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