

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS OF IOWA,

Petitioner,

v.

PETITION IN LAW
AND EQUITY

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 STEPHANIE BURKE,
in her official capacity,

Respondents.

COMES NOW Petitioner League of United Latin American Citizens (“LULAC”) of Iowa praying for a declaratory judgment that the Iowa English Language Reaffirmation Act (the “English-Only Law”), Iowa Code § 1.18, does not apply to voting materials, including ballots, registration and voting notices, forms, instructions, and other materials and information relating to the electoral process. Further, Petitioner requests that this Court dissolve its previous injunction prohibiting Respondents Iowa Secretary of State Paul Pate (the “Secretary”) and Iowa Voter Registration Commission (the “Commission”) from “using languages other than English in the official voter registration forms of this state.” *King v. Mauro*, No. CV6739, slip op. at 31 (Iowa Dist. Ct. Mar. 31, 2008) (attached as Exhibit 1). In support thereof, Petitioner states the following:

STATEMENT OF THE CASE

1. The State of Iowa has a rich history of diverse peoples and cultures. It also, however, has a history of discrimination against language minorities. In 1918, Governor William Harding enacted the Babel Proclamation—a prohibition on the use of any non-English language in public. Governor Harding explained that the measure would encourage assimilation by Germans as well as “the filth of Denmark.”¹ A year later, Nebraska followed suit and enacted a law that prohibited teaching non-English languages. The U.S. Supreme Court condemned Nebraska’s law, declaring: “The protection of the Constitution extends to all, to those who speak other languages as well as those born with English on the tongue.” *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923).

2. The right to vote similarly extends to all citizens of voting age, regardless of language. In 1965, Congress took action to protect this right for language minorities; the Voting Rights Act (the “VRA”) banned literacy tests and included special protections for “persons educated in American-flag schools in which the predominant classroom language was other than English.” Pub. L. No. 89-110, § 4(e)(1), 79 Stat. 437, 439. A decade later, Congress added further protections for language minorities through Section 203 of the VRA, which requires that all voting materials in a jurisdiction be provided in the minorities’ native languages if certain demographic requirements are met. *See* 52 U.S.C. § 10503.

3. Against the backdrop of the federal government’s ongoing efforts to protect the voting rights of language minorities, the Iowa Legislature enacted the English-Only Law in 2002,

¹ Bryce T. Bauer & Dan Manatt, ‘*Babel Proclamation*’ Targeted Iowa Immigrants 100 Years Ago, Des Moines Register (May 22, 2018), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2018/05/22/iowa-governor-banned-all-foreign-languages-100-years-ago-immigration/630506002>.

which requires that “[a]ll official documents . . . or actions taken or issued . . . shall be in the English language.” Iowa Code § 1.18(3).

4. But the Legislature also included an important exception: the English-Only Law expressly states that its restrictions do *not* apply to “[a]ny language usage required by or necessary to secure the rights guaranteed by the Constitution and the laws of the United States of America or the Constitution of the State of Iowa.” *Id.* § 1.18(5)(h) (the “Rights Exception”).

5. Despite the plain language of the Rights Exception, the English-Only Law currently operates as an obstacle to voting for Iowans with limited English-language proficiency. In 2008, this Court permanently enjoined the Secretary and the Commission from “using languages other than English in the official voter registration forms of this state” based on its interpretation of the English-Only Law. *King*, slip op. at 31. The Court determined that the English-Only Law “expressly preclude[s] the use of non-English languages in official government documents unless one of the enumerated exceptions is implicated.” *Id.* at 20. Notably, in applying the English-Only Law to voter registration materials, the Court did *not* decide whether use of non-English language forms was required or necessary to secure the right to vote. Instead, the Court expressly declined to reach the issue because the Rights Exception had not been raised by the parties. *See id.* at 29–30.

6. Today, more than eight percent of Iowans predominantly speak languages other than English.² Spanish speakers are the largest language minority in Iowa; there are over 50,000 Iowa citizens of voting age whose predominant language is Spanish.³ Buena Vista County satisfies the demographic requirements of Section 203 and is thus required to provide all voting materials

² *See* U.S. Census Bureau, American Community Survey, 5-year estimate 2015-2019, Table S1601, available at <https://data.census.gov/cedsci/>.

³ *Id.*

in Spanish, but Spanish speakers outside Buena Vista County—and other language minorities with limited English-language proficiency—face unnecessary barriers to voting due to an erroneous interpretation and implementation of the English-Only Law.⁴

7. As the Iowa Supreme Court has noted, “[v]oting is a fundamental right in Iowa.” *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 848 (Iowa 2014). All eligible citizens are entitled to vote under Article II, Section 1 of the Iowa Constitution. And both federal law—in particular, the VRA—and the U.S. Constitution protect “the right of all qualified citizens to vote.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). Accordingly, under the plain terms of the Rights Exception, the English-Only Law’s requirements do not apply to “[a]ny language usage required by or necessary to secure the [right to vote].” Iowa Code § 1.18(5)(h).

8. This suit prays for a declaratory judgment interpreting the scope of the Rights Exception and exempting voting materials from the requirements of the English-Only Law. Specifically, this Court should declare that because the right to vote is guaranteed by the Iowa Constitution, the U.S. Constitution, and federal law—and because Congress has already determined that native-language voting materials are necessary to secure the right to vote for citizens with limited English-language proficiency—the English-Only Law does not apply to voting materials, including ballots, registration and voting notices, forms, instructions, and other materials and information relating to the electoral process.

9. Ultimately, whatever scope the Court gives to the Rights Exception, it should dissolve the *King* injunction. As it currently stands, that injunction permanently prohibits the use of any non-English voter registration forms—without regard for whether they are necessary to

⁴ Although Buena Vista County has a particularly high concentration of Spanish speakers, over 97 percent of Iowa’s Spanish-speaking citizens of voting age live outside Buena Vista County. *Id.*

secure the right to vote. The Court acknowledged that this prohibition might run afoul of the Rights Exception, explaining that it did not address the conflict only because the parties did not raise it. *King*, slip op. at 29–30. Petitioners raise it now, and the answer is beyond dispute. For Iowans with limited English-language proficiency, voter registration forms in their native languages are necessary to secure the right to vote. However the Court construes the scope of the Rights Exception, its plain terms require the dissolution of the current permanent injunction prohibiting the use of “languages other than English in the official voter registration forms of this state.” *Id.* at 31.

JURISDICTION AND VENUE

10. This Court has jurisdiction under Iowa Code § 602.6101.

11. Jurisdiction with respect to the *King* injunction is proper under Iowa Rule of Civil Procedure 1.1510, as the judgment was obtained in this Court.

12. Venue in Polk County is proper under Iowa Code § 616.3(2) because the cause or some part thereof arose in the county.

PARTIES

13. Petitioner League of United Latin American Citizens of Iowa is part of LULAC, an organization that has approximately 150,000 members throughout the United States and Puerto Rico and more than 600 members in Iowa. LULAC is the largest and oldest Latino civil rights organization in the United States. It advances the economic condition, educational attainment, political influence, health, housing, and civil rights of all Hispanic nationality groups through community-based programs operating at more than 1,000 LULAC councils nationwide. LULAC of Iowa is comprised of 22 councils located throughout the state. Its members, constituents and each of its councils include voting-age Latino citizens of Iowa who are disproportionately

burdened by the prohibition on the use of Spanish-language voting materials. LULAC of Iowa must also divert substantial resources and attention from other critical missions to address the adverse impact on its members and constituents caused by the failure to accept Spanish-language voting materials and assist them in attempting to surmount these barriers to voting. Because of the lack of Spanish-language voting materials, LULAC of Iowa has suffered and will continue to suffer irreparable harm. Unless set aside, the mistaken enforcement of the English-Only Law and the injunction prohibiting the use of non-English voter registration materials will continue to inflict injuries for which LULAC of Iowa has no adequate remedy at law.

14. Iowa Secretary of State Paul Pate is named as a Respondent in his official capacity. He is Iowa's chief state election official, state commissioner of elections, and state registrar of voters and, as such, is responsible for the administration of elections. *See* Iowa Code §§ 47.1(1)–(3), 47.7(1). His responsibilities include, but are not limited to, setting forth “uniform election practices and procedures” and supervising local election officials regarding the proper methods of conducting elections. *Id.* § 47.1(1)–(3). The Secretary was a party to the *King* litigation and, as stated in response to a recent inquiry by Petitioner, is still subject to the *King* injunction, which “prevents the dissemination of official voter registration forms for this state in languages other than English.” *See* Correspondence from Office of the Iowa Secretary of State, Sept. 27, 2021 (attached as Exhibit 2).

15. The Iowa Voter Registration Commission is named as a Respondent. The Commission was a party to the *King* litigation and is currently subject to the injunction prohibiting “using languages other than English in the official voter registration forms of this state.” *King*, slip op. at 31. Since the Commission is directly implicated by the existence and proposed dissolution of the *King* injunction, it is a necessary party under Iowa Rule of Civil Procedure 1.234.

16. Buena Vista County Auditor Sue Lloyd is named as a Respondent in her official capacity. She is the auditor and commissioner of elections for Buena Vista County. *See* Iowa Code § 47.2(1). Her office was a petitioner in the *King* litigation and has an interest in the *King* injunction, which prohibits “using languages other than English in the official voter registration forms of this state.” *King*, slip op. at 31. She is therefore a necessary party under Iowa Rule of Civil Procedure 1.234.

17. Calhoun County Auditor Robin Batz is named as a Respondent in her official capacity. She is the auditor and commissioner of elections for Calhoun County. *See* Iowa Code § 47.2(1). Her office was a petitioner in the *King* litigation and has an interest in the *King* injunction, which prohibits “using languages other than English in the official voter registration forms of this state.” *King*, slip op. at 31. She is therefore a necessary party under Iowa Rule of Civil Procedure 1.234.

18. Jefferson County Auditor Scott Reneker is named as a Respondent in his official capacity. He is the auditor and commissioner of elections for Jefferson County. *See* Iowa Code § 47.2(1). His office was a petitioner in the *King* litigation and has an interest in the *King* injunction, which prohibits “using languages other than English in the official voter registration forms of this state.” *King*, slip op. at 31. He is therefore a necessary party under Iowa Rule of Civil Procedure 1.234.

19. Montgomery County Auditor Stephanie Burke is named as a Respondent in her official capacity. She is the auditor and commissioner of elections for Montgomery County. *See* Iowa Code § 47.2(1). Her office was a petitioner in the *King* litigation and has an interest in the *King* injunction, which prohibits “using languages other than English in the official voter

registration forms of this state.” *King*, slip op. at 31. She is therefore a necessary party under Iowa Rule of Civil Procedure 1.234.

FACTUAL AND LEGAL ALLEGATIONS

I. The English Only-Law does not apply to language usage required by or necessary to secure state and federal rights.

20. The English-Only Law requires that “[a]ll official documents, regulations, orders, transactions, proceedings, programs, meetings, publications, or actions taken or issued . . . shall be in the English language.” Iowa Code § 1.18(3). This Court in *King* interpreted this restriction to “preclude[] the use of non-English languages in official government documents unless one of the enumerated exceptions is implicated.” *King*, slip op. at 20.

21. Among the enumerated exceptions to the English-Only Law is the Rights Exception, which exempts from the English-language requirement, “[a]ny language usage required by or necessary to secure the rights guaranteed by the Constitution and the laws of the United States of America or the Constitution of the State of Iowa.” Iowa Code § 1.18(5)(h). Not only does this exception permit non-English language usage that is “*required*” by state or federal law, it also permits any language usage “*necessary*” to secure rights guaranteed by the Iowa Constitution, the U.S. Constitution, or federal law.

22. There is no ambiguity in this exception to the English-Only Law: if a language other than English is either required by *or* necessary to protect rights guaranteed by the Iowa Constitution, the U.S. Constitution, or federal law, its use is permissible notwithstanding the other mandates of the English-Only Law. As the right to vote is protected by the Iowa Constitution, the U.S. Constitution, and federal law—and native-language materials are necessary to protect this right—voting materials fit precisely within the Rights Exception.

II. The right to vote is protected by the Iowa Constitution.

23. Since the founding of the State of Iowa, the right to vote has been expressly protected by the Iowa Constitution—albeit initially in shamefully truncated form. *See* Iowa Const. art. III, § 1 (1844) (“In all elections which are now, or hereafter may be authorized, every white male citizen of the United States . . . shall be entitled to vote.”). Today, however, the Iowa Constitution entitles every qualified citizen of the United States “to vote at all elections.” Iowa Const. art. II, § 1.

24. “The right to vote is a fundamental political right.” *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978). The ability to vote is at the “heart of representative government and is ‘preservative of other basic civil and political rights.’” *Chiodo*, 846 N.W.2d at 848 (quoting *Reynolds*, 377 U.S. at 562). The Iowa Constitution not only protects citizens from being denied the right to vote, but also requires meticulous scrutiny of “regulatory measures abridging the right to vote.” *Id.* at 856 (quoting *Devine*, 268 N.W.2d at 623).

25. Access to voting materials in their native languages is necessary for Iowans with limited English-language proficiency to register to vote, cast ballots, and generally participate in the electoral process. For example, voter registration forms—which are only available in English under the *King* injunction—require signatories to attest, under penalty of perjury, that they meet all the necessary requirements of a registered voter. Iowa Code § 48A.11(1)(I). Iowans with limited English-language proficiency cannot be expected to navigate the electoral process in a language they cannot understand.

26. Given the Iowa Constitution’s longstanding and extensive protections for the franchise, the Rights Exception can only be read to exempt voting materials from the requirements of the English-Only Law.

III. The right to vote is protected by the U.S. Constitution and federal law.

27. The U.S. Constitution undeniably protects the right of all qualified citizens to vote. The “political franchise of voting” has long been held to be a “fundamental political right, because [it is] preservative of all rights.” *Harper v. Va. Bd. Of Elections*, 383 U.S. 663, 667 (1966) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). Indeed, the “right to vote freely for the candidate of one’s choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Reynolds*, 377 U.S. at 555.

28. Federal statutes confirm that the U.S. Constitution’s voting protections extend to language minorities. In 1965, Congress took its first step to protect the voting rights of language minorities by restricting the use of literacy tests. Though literacy tests are commonly associated with discrimination against Black voters in the South, the VRA made clear that Congress was also particularly concerned with discrimination against Spanish-speaking citizens from Puerto Rico. *See* Pub. L. No. 89-110, § 4(e), 79 Stat. 437, 439 (1965) (“[T]o secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is *necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.*” (emphasis added)).

29. In 1975, Congress expanded federal statutory protections for language minorities with the creation of Section 203 of the VRA. Section 203 is designed to rectify the exclusion of language-minority citizens from participation in the electoral process. *See* 52 U.S.C. § 10503(a). Once a jurisdiction’s voting-age population reaches certain numerical or proportional thresholds, and if that jurisdiction’s language-minority group has a lower literacy rate than the national average, it becomes a covered jurisdiction. *See id.* § 10503(b)(2). A covered jurisdiction is required to provide “any registration or voting notices, forms, instructions, assistance, or other materials or

information relating to the electoral process, including ballots” in the language of the applicable minority group as well as in English. *Id.* § 10503(c).

30. Currently, based on determinations by the U.S. Census Bureau, Buena Vista and Tama Counties are the only covered jurisdictions in Iowa under Section 203. *See* Voting Rights Act Amendments of 2006, Determinations Under Section 203, 81 Fed. Reg. 87532.

31. Though Section 203’s coverage formula *requires* the provision of non-English language materials in only Buena Vista and Tama Counties, such remedial measures are no less *necessary* for any other Iowa citizens with limited English-language proficiency. Put another way, while Section 203 *requires* only Buena Vista and Tama Counties to provide voting materials in the language of minority groups, Congress’s determination that these materials are *necessary* to ensure that language minorities can effectively exercise the franchise applies throughout the state, and indeed the nation.

32. Because Section 203 reflects Congress’s determination that non-English voting materials are “necessary to secure the rights guaranteed by the Constitution and the laws of the United States of America,” native language voting materials fit precisely within the plain language of the Rights Exception. Iowa Code § 1.18(5)(h).

33. Given the robust federal constitutional and statutory protections of the right to vote, the Rights Exception can only be read to exempt voting materials from the requirements of the English-Only Law.

IV. Despite the applicability of the Rights Exception to voting materials, the Secretary and the Commission are currently enjoined from using non-English voter registration materials.

34. In 1983, the Commission promulgated a rule that authorized county auditors, with the assistance of the Secretary, to translate “any approved voter registration form” into a language other than English if the county auditor “determine[d] that such a form would be of value in the

[auditor's] county.” Iowa Admin. Code r. 821-2.11 (the “Registration Translation Rule”). Beginning in 2003, former Secretary Chet Culver exercised his authority under this rule to make non-English voter registration forms available on the Secretary’s website—a practice continued by his successor, Michael Mauro. *See King*, slip op. at 1.

35. In 2007, a collection of legislators, county auditors, and private individuals filed suit to enjoin the Registration Translation Rule.⁵ The petitioners in that case argued that the English-Only Law, which took effect on July 1, 2002, barred the translation of election materials into any non-English language.

36. While the *King* Court granted the petitioners’ request and enjoined the Secretary “from using languages other than English in the official voter registration form,” *id.* at 31, it also recognized that the Rights Exception “might justify the use of non-English voter registration forms.” *Id.* at 29–30. Ultimately, the Court declined to address whether the Rights Exception applied to the voter registration forms at issue “because the issue [was] not [] raised” by the parties. *Id.* at 29.

37. Despite the *King* Court’s silence on the critical question of whether the Rights Exception applies, the Secretary and the Commission remain under a permanent injunction barring the use of non-English voter registration forms. Indeed, in response to Petitioner’s recent request to allow counties to offer Spanish-language voter registration forms, the Secretary’s Office responded that the *King* injunction “prevents the dissemination of official voter registration forms for this state in languages other than English.” Ex. 2.

⁵ This Court ultimately held that only the county auditors had standing to challenge the Registration Translation Rule. *See King*, slip op. at 16.

38. The *King* injunction is inconsistent with the Rights Exception on its own terms. It prohibits the use of non-English voter registration forms, without regard for whether that language use is necessary to secure the right to vote. The *King* court acknowledged that it never squarely addressed this question, but the answer is plain: voter registration is a necessary prerequisite to exercising the franchise. Regardless of the scope of the Rights Exception, the *King* injunction cannot stand because non-English voting registration materials are necessary for Iowans with limited English-language proficiency to secure the right to vote

39. Ultimately, the *King* injunction is founded on an erroneous interpretation of the English-Only Law, since it permanently prohibits the distribution of non-English voter registration forms despite the clear applicability of the Rights Exception. Now that this Court has occasion to interpret the scope of that exception—and declare that all voting materials fall within it—the Court must also dissolve the *King* injunction.

CAUSES OF ACTION

COUNT I

Declaratory Judgment

40. Petitioner realleges and incorporates by reference all prior paragraphs of this Petition and the paragraphs in the counts below as though fully set forth herein.

41. This matter is appropriate for declaratory relief pursuant to Iowa Rule of Civil Procedure 1.1101, since granting such relief would terminate the legal dispute that gave rise to this Petition.

42. Specifically, Petitioner is entitled to declaratory relief stating that that the English-Only Law does not apply to voting materials, including ballots, registration and voting notices,

forms, instructions, and other materials and information relating to the electoral process, because they are exempt under the Rights Exception enumerated in Iowa Code § 1.18(5)(h).

43. Alternatively, Petitioner is entitled to an order declaring that the English-Only Law does not apply to voting materials, including ballots, registration and voting notices, forms, instructions, and other materials and information relating to the electoral process, that are provided to eligible electors with limited English-language proficiency because they are exempt under the Rights Exception enumerated in Iowa Code § 1.18(5)(h).

COUNT II

Injunction on a Judgment or Final Order

44. Petitioner realleges and incorporates by reference all prior paragraphs of this Petition and the paragraphs in the counts below as though fully set forth herein.

45. The Secretary and the Commission are under a permanent injunction from this Court prohibiting the use of “languages other than English in the official voter registration forms of this state.” *King*, slip op. at 31.

46. Under the plain terms of the Rights Exception, Iowa’s English-Only Law does not apply to any language usage necessary to secure the right to vote. Registering to vote is a necessary prerequisite to vote, and Iowa citizens with limited English-language proficiency cannot be expected to navigate that process in a language they cannot understand.

47. Therefore, Petitioner requests that this Court dissolve its previous injunction issued in *King v. Mauro* under Iowa Rule of Civil Procedure 1.1501 because it is inconsistent with the terms of the Rights Exception enumerated in Iowa Code § 1.18(5)(h). Such relief is proper because the judgment in question was issued by this Court.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court enter the following relief against Respondents:

- A. An order declaring that the Iowa English Language Reaffirmation Act, Iowa Code § 1.18, does not apply to voting materials, including ballots, registration and voting notices, forms, instructions, and other materials and information relating to the electoral process, because they are exempt under Iowa Code § 1.18(5)(h). Or, in the alternative, an order declaring that the Iowa English Language Reaffirmation Act, Iowa Code § 1.18, does not apply to voting materials, including ballots, registration and voting notices, forms, instructions, and other materials and information relating to the electoral process that are provided to eligible electors with limited English-language proficiency because they are exempt under Iowa Code § 1.18(5)(h).
- B. An order dissolving the permanent injunction entered by this Court in *King v. Mauro*, No. CV6739 (Iowa Dist. Ct. Mar. 31, 2008), prohibiting the use of “languages other than English in the official voter registration forms of this state.”
- C. An order awarding Petitioner its costs, disbursements, and reasonable attorneys’ fees incurred in bringing this action pursuant; and
- D. Such other and further relief as the Court deems just and proper.

Dated this 27th day of October, 2021.

Respectfully submitted,

/s/ Shayla L. McCormally _____

Shayla L. McCormally AT0009611
McCORMALLY & COSGROVE, PLLC
4508 Fleur Drive
Des Moines, Iowa 50321
Telephone: (515) 218-9878
Facsimile: (515) 218-9879
shayla@mciowalaw.com

Uzoma N. Nkwonta*
John M. Geise*
William K. Hancock*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
Telephone: (202) 968-4490
unkwonta@elias.law
jgeise@elias.law
whancock@elias.law

Jonathan P. Hawley*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
jhawley@elias.law

Counsel for Plaintiff

**Applications for admission pro hac vice
forthcoming*