IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF IOWA,

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 STEPHANIE BURKE, in her official capacity,

Respondents.

PETITION IN LAW AND EQUITY

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)(l). 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*

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**Applications for admission pro hac vice forthcoming*

Exhibit 1

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

STEVE KING, U.S. ENGLISH ONLY, INC., SCOTT RENEKER, JOHN ERNST, JUDY HOWREY, KAREN STRAWN, PAUL McKINLEY, JERRY BEHN, RALPH WATTS, and NGU ALONS, **Petitioners,** **v.** **MICHAEL MAURO, as Secretary of State of the State of Iowa, and as Chairperson of the Voter Registration Commission, and the VOTER REGISTRATION COMMISSION,** **Respondents.**	**Case No. CV6739** **RULING ON PETITION FOR JUDICIAL REVIEW**

INTRODUCTION

This case was before the Court for oral argument and final submission on December 21, 2007. The petitioners were represented by their attorney, Rand S. Wonio. The respondents were represented by the Iowa Attorney General's Office. Having given the matter due consideration the court now makes the following ruling.

STATEMENT OF THE CASE

In this action the Petitioners assert that the Respondents are violating Iowa Code §1.18, the Iowa English Language Reaffirmation Act (the "Act"), by posting voter registration forms on the Iowa Secretary of State's website in non-English languages that can be used by citizens to register to vote, a practice instituted by former Secretary of State Chester Culver and continued by current Secretary of State Michael Mauro. The Petitioners seek a permanent injunction restraining the Respondents from any further use of voter

registration forms that are printed in languages other than English. The Petitioners further seek a judgment declaring Iowa Administrative Code section 821–2.11, the administrative regulation authorizing the production of non-English voter registration forms, unlawful. The pertinent facts for purposes of this ruling are as follows.

The Iowa Language Reaffirmation Act. The Act was signed into law by Governor Tom Vilsack on March 1, 2002, and became effective on July 1, 2002. The purpose of the Act is clearly stated in its introduction wherein the legislature made the following findings and declarations:

> a. The state of Iowa is comprised of individuals from different ethnic, cultural, and linguistic backgrounds. The state of Iowa encourages the assimilation of Iowans into Iowa's rich culture.
>
> b. Throughout the history of Iowa and of the United States, the common thread binding individuals of differing backgrounds together has been the English language.
>
> c. Among the powers reserved to each state is the power to establish the English language as the official language of the state, and otherwise to promote the English language within the state, subject to the prohibitions enumerated in the Constitution of the United States and in laws of the state.
>
> 2. In order to encourage every citizen of this state to become more proficient in the English language, thereby facilitating participation in the economic, political, and cultural activities of this state and of the United States, the English language is hereby declared to be the official language of the state of Iowa.

In furtherance of its stated goal of promoting the English language within the state, the Act provides as follows:

> Except as otherwise provided for in subsections 4 and 5, the English language shall be the language of government in Iowa. All 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) (2007).

Voter Registration. The Secretary of State is a constitutional officer within the executive branch of state government. Among his numerous duties, the Secretary serves as the State Commissioner of Elections, the State Registrar of Voters, and Chairperson of the Voter Registration Commission. The Voter Registration Commission is responsible for prescribing the forms required for the registration of voters in Iowa by rules promulgated pursuant to Chapter 17A of the Iowa Code.

In his capacity as state commissioner of elections, the Secretary of State is responsible for supervising the activities of the county commissioners of elections. Under Iowa law, county auditors are designated as the county commissioners of elections and are responsible for conducting voter registration and conducting all elections within their respective counties. County commissioners of elections must utilize the registration forms prescribed by the Voter Registration Commission for purposes of registering qualified voters within their counties.

Since 1983, a rule promulgated by the Voter Registration Commission has authorized county commissioners of elections to provide voter registration forms to prospective voters in languages other than English. This rule currently provides as follows:

> Notwithstanding any other provision of these rules, any county commissioner may cause production of any approved voter registration form in a language other than English if the commissioner determines that such a form would be of value in the commissioner's county. The registrar shall assist any county commissioner with the translation of voter registration forms upon the request of the county commissioner.

IOWA ADMIN. CODE § 821–2.11. The Secretary of State, in his capacity as the State Registrar of Voters, is the "registrar" responsible for assisting county commissioners with the translation of voter registration forms as required by this rule.

In 2003, former Secretary of State Chester Culver began to provide voter registration forms online to voters in languages other than English. As of 2006, voter registration forms

have been available to the public in non-English languages of Spanish, Vietnamese, Laotion and Bosnian. Current Secretary of State Michael Mauro has continued to make these forms available through the Iowa Secretary of State's website. The Petitioners contend that the provision of these forms fro use in registering citizens to vote violates the Act.

Parties. The Petitioners in this matter are Steve King, Scott Reneker, Joni Ernst, Judy Howrey, Karen Strawn, Paul McKinley, Jerry Behn, Ralph Watts, Ngu Alons and U.S. English Only, Inc. Each of the Petitioners' asserted interest in the outcome of this litigation may be summarized as follows:

a. Steve King – Steve King is a taxpayer in the State of Iowa and is a United States Congressman who represents the Fifth Congressional District of Iowa. Mr. King was formerly a member of the Iowa Senate. Mr. King claims that he introduced the Iowa English Language Reaffirmation Act in the senate and moved for its passage.[1] Mr. King claims that he has a vital interest in the enforcement of the Act as a member of congress, a citizen of the state of Iowa, and as a taxpayer interested in the efficient and proper provision of official business and use of government funds, including voter registration that complies with the law.

b. Scott Reneker, Joni Ernst, Judy Howrey and Karen Strawn – Scott Reneker is the Auditor of Jefferson County, Iowa. Joni Ernst is the Auditor of Montgomery County, Iowa. Judy Howrey is the Auditor of Calhoun County, Iowa. Karen Strawn is the Auditor of Buena Vista County, Iowa. As auditors of their respective counties, these officials are designated as the county commissioners of elections within their counties and are responsible for conducting voter registration and elections. The auditors claim to be

[1] The Petitioners submitted an affidavit from Mr. King explaining his view of the intent of the legislation at issue. The respondent's objected and moved to strike the affidavit. At oral argument the Petitioners conceded the point on which the motion to strike is based. The court therefore sustained the motion to strike and the court has not considered Mr. King's affidavit in resolving the issues presented.

adversely affected by the actions of the Respondents because they are placed at risk of violating the Act by being required to supply and/or accept voter registration forms printed in languages other than English. The auditors further assert that they are subject to suit in their roles as county commissioners of elections if they decline to accept the forms. These individuals are also taxpayers in the state of Iowa and claim to have an interest in ensuring that government funds are not used for non-budgeted expenses, such as those which may be incurred through the provision, acceptance, and translation of non-English voter registration forms.

c. **Paul McKinley, Jerry Behn, and Ralph Watts** – Paul McKinley and Jerry Behn are members of the Iowa Senate. Ralph Watts is a member of the Iowa House of Representatives. These legislators claim to have a vital interest in the enforcement of the Act. They also claim to be interested, as taxpayers in the state of Iowa, in the efficient and proper provision of official business within the state and use of government funds, including voter registration that complies with the law.

d. **Ngu Alons** – Ngu Alons is a citizen and taxpayer of the state of Iowa. Alons claims to be interested in the efficient and proper provision of official business and use of government funds, including voter registration that complies with the law.

e. **U.S. English Only, Inc.** – U.S. English Only, Inc. is a citizens action group dedicated to preserving the unifying role of the English Language in the United States. This entity asserts "that learning and speaking English is the single greatest empowering tool that immigrants must have to succeed," and therefore challenges the Respondents' use of non-English voter registration forms because it believes "that the actions of [the Respondents] are hindering such opportunities for immigrants."

ANALYSIS

The Respondents assert that the Petitioners lack standing to challenge the decision of Secretary of State Mauro to make voter registration forms available to voters in languages other than English and lack standing to challenge the administrative rule authorizing that practice. Because standing is a necessary pre-requisite to the invocation of the court's jurisdiction, the court must first address this issue.

I. DO THE PETITIONERS HAVE STANDING TO MAINTAIN THIS ACTION?

"Standing has been defined to mean that a party must have 'sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of the controversy.'" *Berent v. City of Iowa City,* 738 N.W.2d 193, 202 (Iowa 2007) (quoting *Birkhofer ex rel. Johannsen v. Brammeier,* 610 N.W.2d 844, 847 (Iowa 2000)). To establish standing, a complaining party "must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Id.*[2] These two requirements are separate and both must be met by the Petitioners in order to have standing. *Citizens for Responsible Choices v. City of Shenandoah,* 686 N.W.2d 470, 475 (Iowa 2004).

The Petitioners assert that they have standing to make these challenges either by virtue of their pecuniary interest as taxpayers within the state, or as citizens who have a right to require the government to enforce its laws. The Petitioners also assert that Scott Reneker, Joni Ernst, Judy Howrey and Karen Strawn have standing to challenge the actions at issue by virtue of their status as county auditors responsible for conducting voter registration within their respective counties. The court will address each of these claims for standing in turn.

A. Taxpayer Standing. The Iowa Supreme Court has recognized that a taxpayer has standing to challenge the actions of governmental bodies or public officers where the

[2] The same standards apply to a party's challenge of administrative agency action by way of a petition for judicial review. *Richards v. Iowa Dept. of Revenue & Finance,* 454 N.W.2d 573, 575 (Iowa 1990).

actions complained of could have a direct impact on the amount of taxes the taxpayer would have to pay, even if the alleged injury is no different than that of any other similarly situated taxpayer. *Richards v. Iowa Department of Revenue and Finance,* 454 N.W.2d 573, 575-76 (Iowa 1990). *See also Elview Construction Co., Inc. v. North Scott Community School District,* 373 N.W.2d 138, 142 (Iowa 1985) (school district taxpayers have standing to challenge allegedly illegal expenditures by school board); *Riso v. Pottawattamie Board of Review,* 362 N.W.2d 513, 515 (Iowa 1985) (tenant had standing to challenge tax assessment against leased property where tenant was obligated under lease to pay property taxes); *In re Chicago, Milwaukee, St. Paul and Pacific Railroad Co.,* 334 N.W.2d 290, 293 (Iowa 1983) (resident and property taxpayer of county through which railroad ran could challenge Iowa Railway Finance Authority Act because it could affect county's available resources and future property taxes). These cases seem to follow the "well-established rule" that a person may pursue an action as an aggrieved taxpayer if the challenged action would increase the person's taxes or diminish a fund to which the person has contributed. *Alons v. Iowa Dist. Court for Woodbury County,* 698 N.W.2d 858, 864 (Iowa 2005). The bounds of taxpayer standing under this rule are not, however, limitless. Where a challenged action may only incidentally and indirectly affect a fund to which a taxpayer has contributed and as a result of the day to day operations of a governmental body, without an express order or appropriation providing for the use of such funds, standing will not lie. *See id.* at 871; *Polk County v. Dist. Court,* 110 N.W. 1054, 1054-55 (Iowa 1907); *see also Hein v. Freedom From Religion Foundation, Inc.,* 127 S. Ct. 2553, 2566 (2007). If a taxpayer's claimed injury is not directly connected to the pecuniary impact of the challenged act, there is no standing. *See Citizens for Responsible Choices v. City of Shenandoah,* 686 N.W.2d 470, 475 (Iowa 2004) (alleged issuance of revenue bonds by municipalities could not be challenged by

plaintiffs who were not taxpayers in those municipalities and could not be financially impacted by the bonds).

In this case, the Petitioners assert that there are costs associated with the provision of non-English voter registration forms that will increase their tax burden and/or diminish a fund to which they have contributed, and that they have sustained a pecuniary injury as a result which is sufficient to confer taxpayer standing under the authorities just cited. Specifically, the Petitioners assert that there are costs associated with maintaining the non-English forms on the Secretary of State's website, that time and effort was expended by state personnel in creating the forms, that state personnel must expend time and effort in interpreting and investigating the forms, and that county auditors must be trained in the use of the forms. While the court acknowledges that the Secretary of State has incurred specific costs at one point in time in providing for non-English voter registration forms, the pecuniary impact resulting from the use of the forms has only incidentally and indirectly affected the Petitioners' interest as taxpayers, and therefore cannot qualify as the type of direct pecuniary injury sufficient to support a finding of taxpayer standing.

First, with regard to the costs associated with creating and maintaining voter registration forms, it is undisputed that the former Secretary of State incurred only $630 in expenses for the purpose of translating updated voter registration forms into non-English languages. (*See* Joint Stipulation, p. 2, ¶ 4). No additional amounts have been expended for these purposes since the current Secretary of State assumed office. Furthermore, it is undisputed that the State does not incur a fee for maintaining these forms on the Secretary of State's website. (*See* Joint Stipulation, p. 2, ¶ 5). It is further conceded that the Secretary does not print and maintain non-English voter registration forms at his office in bulk. Anyone wishing to obtain such a form must print a copy from the Secretary of State's website. (*See*

Joint Stipulation, p. 2, ¶ 6). Consequently, any costs incurred in creating and/or maintaining non-English voter registration forms are minimal at best, and were incurred prior to Secretary Mauro's succession to office.

Secondly, there is no evidence in the record demonstrating that as a result of providing these forms in an alternative language, the State has incurred, or will incur in the future, any additional administration expenses beyond that which is incident to the proper registration of voters and the training of county auditors in general. The non-English voter registration forms at issue are an exact replica of the standard forms provided in English save for the use of a different language. The design and arrangement of the forms makes it impossible to mistake the questions and information sought on the form even though the headings are stated in a different language. For example, the section of the form that requests the registrant's telephone number is in the same location and looks exactly the same on both the English and Spanish versions of the form except that the words "telephone number" are stated in English and Spanish, respectively. Thus, there is no need to have someone translate one of the foreign language forms for anyone reviewing the form as long as the reviewing person had an English version of the form for comparison. The court therefore rejects the Petitioners' argument that a translator will be necessary for purposes of receiving and verifying information provided on the non-English voter forms. The Petitioners illustrated this point themselves when in argument they submitted a copy of an actual Spanish language version of the form that had been submitted in one of the counties. The registrant had check-marked "Si" in response to the question "are you a citizen of the United States?", which question was printed in Spanish on the form. The Petitioners argued that this makes it difficult for them to determine if the registrant is a citizen. This is a preposterous argument. The truth of the answer to the question has nothing to do with the language in which it was asked. What the

Petitioners were seemingly really arguing is that it is difficult to determine the citizenship of persons who do not speak English. Whether this is true or not has nothing to do with the language in which the form is printed. Thus whatever costs are incurred in reviewing and investigating answers given on non-English voter registration forms will be the same as they would be if the forms were printed only in English.[3]

Additionally, there is no evidence in the record indicating that county auditors are required to undergo training at taxpayers' expense in addition to the training that is normally provided to county auditors in the course of their continuing education. County auditors receive information regarding non-Englsih voter forms during continuing education seminars that deal with variety of topics bearing upon the duties of county commissioners of elections generally. (*See* Reneker Affidavit, ¶ 6). There has been no specific allotment or appropriation of funds for purposes of separately training county auditors in the use of non-English voter registration forms. The court rejects any argument that the mere provision of information regarding non-English registration forms during a continuing education seminar covering a variety of topics somehow diminishes a fund to which Petitioners have contributed.

The issue of taxpayer standing in this case therefore boils down to the expenditure of $630 in 2006 for purposes of creating voter registration forms in languages other than English. There is no evidence indicating that a specific appropriation or order was made for that expenditure. Rather, apparently, the funds were taken from appropriations made for general administrative expenses within the Office of the Secretary of State. The pecuniary impact this expenditure has had on an individual taxpayer is infinitesimal.

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[3] In fact, one can easily imagine that administering the voter registration process would be made even more difficult and costly if voter registration forms were not provided in alternative languages for those who do not speak English. It is simply logical that, first, persons who do not speak English would require more assistance in filling out the forms and, second, there would be less confidence in the accuracy, and therefore further investigation and verification required, of forms completed by registrants who can't understand them.

The Petitioners assert that the amount in controversy has no bearing on the issue of standing. The court disagrees. The Petitioners' argument is essentially that, having paid taxes into the treasury of the State of Iowa at some point, they have a continuing interest in ensuring that those funds are not used for purposes other than those authorized by law regardless of the amount of funds expended. The court finds persuasive the conclusion among federal authorities that such an interest is "too generalized and attenuated" to support taxpayer standing. *See Hein,* 127 S. Ct. at 2563; *see also Alons,* 698 N.W.2d at 869 ("the federal test for standing is not dissimilar from our own test . . . . We therefore consider the federal authority persuasive on the standing issue."). Under Iowa law, to support a finding of taxpayer standing, a litigant must demonstrate a pecuniary injury that is directly connected to the impact of a challenged act such that the litigant can be said to have a direct interest in the outcome of the case. *See Alons,* 698 N.W.2d at 871; *Richards,* 454 N.W.2d at 575-76. The Petitioners have not demonstrated that the provision of non-English voter registration forms will increase the amount of taxes that they will be required to pay, nor have they demonstrated that a fund to which they have contributed will somehow be diminished beyond that which is normally to be expected as a consequence of registering qualified voters. The incidental impact that a 2006 expenditure of $630 (taken from general administrative funds) may have had on the amount of funds Petitioners have contributed at some point to the treasury of this state is too indeterminable, indirect, and attenuated to support a finding of taxpayer standing. The court concludes therefore that the Petitioners' status as taxpayers alone is insufficient to afford them standing to seek the relief requested.

B. Citizen standing. The Petitioners assert that even if they cannot demonstrate a direct pecuniary injury to their interests as taxpayers sufficient to establish standing, they nevertheless have standing to bring this action as citizens of the State of Iowa who have a right

to require the government to enforce its own laws. In support of their argument the Petitioners point to a line of cases standing for the proposition that a citizen need not demonstrate a specific injury or damages for standing purposes when seeking to enforce rights in which the public has a vital interest. *See Hurd v. Odgaard,* 297 N.W.2d 355, 357 (Iowa 1980); *Iowa Mut. Tornado Ins. Ass'n v. Timmons,* 105 N.W.2d 209, 216 (Iowa 1960); *Claussen v. Perry,* 79 N.W.2d 778 (Iowa 1956); *Abbot v. Iowa City,* 277 N.W. 437 (Iowa 1938). The Petitioners assert that the public has a vital interest in ensuring that the government use only voter registration forms printed in English for purposes of registering qualified voters.

Iowa courts have refused to confer standing upon individuals who assert only a generalized grievance about the actions of their government without demonstrating an injury different from that of the public generally. *See Alons,* 698 N.W.2d at 870; *Vietnam Veterans Against the War v. Veterans Memorial Auditorium Commission,* 211 N.W.2d 333, 335 (Iowa 1973); *Polk County,* 110 N.W. at 1054. Indeed, the Iowa Supreme Court has cited favorably to the following principles developed from federal case law:

> [W]hen the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. Thus, a plaintiff raising only a generally available grievance about government-claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large-does not [provide a basis for standing].
>
> The claimed nonobservance of the law, "standing alone," affects only the generalized interest of all citizens, and such an injury is abstract in nature, which is not sufficient for standing.

Alons, 698 N.W.2d at 868-69 (internal citations omitted). While supporting the proposition that citizens need not always demonstrate a specific identifiable injury distinct from the population generally for standing to challenge governmental actions, the cases cited by the Petitioners cannot be read to completely eliminate the duty to demonstrate some specific

personal or legal interest in the outcome of a controversy that will in some way be affected by a challenged governmental action as a prerequisite to standing. Indeed, all of the litigants in the cited cases were able, at a minimum, to identify a direct interest in the outcome of litigation beyond the general desire to compel governmental compliance with the law. *See Hurd,* 297 N.W.2d at 358 (group of lawyers, as citizens and taxpayers of county, had standing to bring action to compel county board of supervisors to comply with its statutory duty to provide a suitable courthouse for the practical, day to day business of the county's citizens); *Iowa Mut. Tornado Ins.,* 105 N.W.2d at 216 (plaintiff, as a citizen, property owner, and taxpayer, had standing to bring action to compel insurance commissioner to require insurance company conducting business within the state to pay a two per cent premium tax on business conducted in state where failure to do so deprived the state of substantial revenue that would otherwise be collected from plaintiff and other similarly situated property owners, and would result in unfair discrimination in favor of insurance company over plaintiff); *Claussen v. Perry,* 79 N.W.2d 778, 782-83 (Iowa 1956) (plaintiffs, as residents and voters within county, had standing to bring action to compel county superintendent to call election for vote on consolidation of five rural independent school districts into one township independent school district where statute explicitly granted plaintiffs, along with majority of other residents, the right to demand submission of the question to the decision of the electors of the county, where plaintiffs' children were not receiving the modern education to which they were entitled, and where the consolidation would reduce plaintiffs' tax burden); *Abbot v. Iowa City,* 277 N.W. 437, 438-39 (Iowa 1938) (plaintiff, as a resident, citizen, elector, taxpayer, and consumer of electricity in city, had standing to commence action to restrain city from proceeding to construct a municipal power plant to supply electricity to city residents where majority of vote of legal electors in favor of the project was

required before the city could engage in such a large and costly undertaking). In this case, the Petitioners have identified no interest in the issue beyond the mere desire to ensure governmental compliance with the law. That is not the type of direct personal or legal interest in the outcome of a controversy sufficient to confer standing. *See Alons,* 698 N.W.2d at 870; *Vietnam Veterans Against the War,* 211 N.W.2d at 335.

C. Standing of County Auditors. The county auditors who are parties argue that they have standing to bring this action in their capacity as county commissioners of elections responsible for conducting voter registration within their respective counties. These officials argue that the Act forces them to question their authority to provide and/or accept voter registration forms printed in languages other than English, giving them a specific, personal, and legal interest in the issues raised in this lawsuit.

The Respondents answer this argument by citation to *Iowa Department of Revenue v. Iowa State Board. of Tax Review* wherein the Court recognized that subordinate officials do not have standing to challenge the decisions of a superior official or coordinate board or tribunal in the vertical chain of agency decision-making. 267 N.W.2d 675, 678 (Iowa 1978). The Respondents assert that because the county auditors are subject to the supervision of the Secretary of State, and are required to utilize forms prescribed by the Voter Registration Commission, they cannot be "aggrieved or adversely affected" persons who have standing to bring this action. *See id.* The court is not convinced, however, that this principle has application to the case at hand.

The Court's decision in *Southwest Warren Community School District v. Depart of Public Instruction* is instructive on this issue. 285 N.W.2d 173 (Iowa 1979). In that case, a school district expelled a special education student. On the student's appeal, the Department of Public Instruction, an entity superior to the school district, ruled that a special education

student could not be expelled from school by the district under any circumstance. The school district sought review in district court. In response to the Department of Public Instruction's argument that the school district lacked standing to bring its action based upon the holding in *Iowa Department of Revenue*, the Court clarified its prior ruling and held that the school district had standing to seek a judicial determination of its authority to expel a special education student under Iowa law. *Southwest Warren Cmty. Sch. Dist.,* 285 N.W.2d at 177. The Court distinguished between the type of situation presented in *Iowa Department of Revenue*, where a subordinate official sought to challenge the decision of a superior authority in the vertical chain of agency decision-making, and that presented in *Southwest Warren*, where a subordinate merely seeks a judicial determination as to the nature and extent of the subordinate's statutory powers. *Id.* at 177. The Court explained that cases like *Iowa Department of Revenue* involved "a superior authority [sitting] in review of a subordinate's exercise of powers which were entrusted by the legislature to the administrative discretion of the agency." *Id.* That circumstance is fundamentally different from a circumstance in which the subordinate does not challenge a "superior agency's reversal of an adjudication of a matter entrusted by statute to agency discretion," but rather seeks a judicial determination as to the nature and extent of the subordinate's statutory authority to engage in a given act. *Id; accord Polk County v. Iowa State Appeal Board,* 330 N.W.2d 267, 272 (Iowa 1983). Where, upon receiving a directive from a superior agency, the subordinate or superior's authority under relevant or enabling legislation is placed into question, and where the superior agency cannot authoritatively resolve the question presented, the subordinate possesses a specific, personal, and legal interest which is specially and injuriously affected for standing purposes. *See Southwest Warren Cmty. Sch. Dist.,* 285 N.W.2d at 177; *accord Polk County,* 330 N.W.2d at 272.

In this case the county auditors' petition is not based upon their dissatisfaction with the Respondents' reversal of an adjudication of a matter entrusted by law to the Respondents' discretion. Rather, they are seeking a judicial determination as to whether they may, consistent with the Act, provide and accept voter registration forms printed in languages other than English without violating the law. County auditors have been informed by the Secretary of State's Office that they must provide and accept voter registration forms printed in languages other than English for purposes of registering voters within the state. (*See* Howrey Affidavit, ¶¶ 6-7); (Ernst Affidavit, ¶¶ 6-7). This places the county auditors in the precarious position of choosing either to follow the Secretary of State's directive while questioning its legality or to refuse to follow that directive because they question its legality. This properly places the nature and extent of the county auditors' statutory powers into question, and is sufficient to give them a "'specific, personal, and legal interest' which has been 'specially and injuriously affected'" to confer upon them standing to challenge the Secretary of State's directive. *See Southwest Warren Cmty. Sch. Dist.,* 285 N.W.2d at 177-78.

Because they have failed to demonstrate that they have standing to challenge the actions at issue, the claims of the Petitioners Steve King, U.S. English Only, Inc., Paul McKinley, Jerry Behn, Ralph Watts, and Ngu Alons are dismissed. The Petitioners Scott Reneker, Joni Ernst, Judy Howrey and Karen Strawn, in their capacity as county commissioners of elections, do have standing to petition this court for review of the agency action at issue and the court now, therefore addresses their claims. To the extent the court hereinafter refers to the "Petitioners" in discussing the parties' positions and arguments, reference is to those Petitioners who the court has determined have standing.

I. DOES THE PROVISION OF VOTER REGISTRATION FORMS IN LANGUAGES OTHER THAN ENGLISH VIOLATE THE IOWA ENGLISH LANGUAGE REAFFIRMATION ACT?

Subject to several enumerated exceptions, the Act provides that "the English language shall be the language of government in Iowa." IOWA CODE § 1.18(3). The Act further provides 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." *Id.* The term "official action," is defined as "action taken by the government in Iowa or by an authorized officer or agent of the government in Iowa that" either: (a) binds the government; (b) is required by law; or (3) is subject to scrutiny by either the press or the public. *Id.*

The Petitioners argue that the provision of voter registration forms in languages other than English for use by citizens in registering to vote is "official action" and that the voter registration forms at issue are "official documents", both within the meaning of the Act. The Petitioners argue that the use of the forms is therefore prohibited. They further argue that the provision and use of the forms does not fall within the scope of one of the enumerated exceptions defined in subsections 4 and 5 of the Act.[4]

[4] Subsection 4 of section 1.18 of the Iowa Code provides that English only requirements shall not apply to:

a. The teaching of languages.

b. Requirements under the federal Individuals with Disabilities Education Act.

c. Actions, documents, or policies necessary for trade, tourism, or commerce.

d. Actions or documents that protect the public health and safety.

e. Actions or documents that facilitate activities pertaining to compiling any census of populations.

f. Actions or documents that protect the rights of victims of crimes or criminal defendants.

g. Use of proper names, terms of art, or phrases from languages other than English.

h. 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.

While the Respondents do not dispute that voter registration forms are "official documents" within the meaning of Iowa Code section 1.18(3), they suggest a construction of the Act that is far more permissive than that urged by the Petitioners.[5] The Respondents argue that because the Act provides that government documents "shall be in the English language," and not that such documents "shall be in English *and no other language*," it allows for the use of multilingual documents in the course of official government business as long as an English version of the document is also used. The Respondents also argue that even if the Act cannot be given the construction they suggest, providing non-English voter registration forms to voters is permitted under the Act's exception which allows for communication in non-English languages in the performance of official government business when deemed necessary or desirable. *See* IOWA CODE § 1.18(5)(a). Finally, the Respondents argue that the Act would be unconstitutional if construed as proposed by the Petitioners. The court will address each of these arguments separately.

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i. Any oral or written communications, examinations, or publications produced or utilized by a driver's license station, provided public safety is not jeopardized.

In addition, subsection 5 of section 1.18 provides:

> Nothing in this section shall be construed to do any of the following:
>
> a. Prohibit an individual member of the general assembly or officer of state government, while performing official business, from communicating through any medium with another person in a language other than English, if that member or officer deems it necessary or desirable to do so.
>
> b. Limit the preservation or use of Native American languages, as defined in the federal Native American Languages Act of 1992.
>
> c. Disparage any language other than English or discourage any person from learning or using a language other than English

[5] Because there exists no provision of law which vests Respondents with the authority to interpret the Act, the Court gives no deference to the Respondents' interpretation of its provisions. *See Birchansky Real Estate, L.C. v. Iowa Dept of Public Health,* 737 N.W.2d 134, 138 (Iowa 2007)

A. Interpretation of the Act. In determining the effect of a given statute, the ultimate goal is to ascertain the true intention of the legislature. *State v. Tarbox,* 739 N.W.2d 850, 853 (Iowa 2007). "Legislative intent is determined from the words chosen by the legislature, not what it should or might have said." *Id.* When the text of a statute is plain and its meaning clear, the court will "not search for a meaning beyond the statute's express terms or resort to rules of statutory construction." *Iowa Dept. of Transp. v. Soward,* 650 N.W.2d 569, 571 (Iowa 2002). It is only when a statute is ambiguous that the court resorts to such rules. *Id.*

The legislature's mandate that "all official documents . . . shall be in the English language" is clear and unambiguous, and is not amendable to the interpretation urged by the Respondents. The word "all" as used in this section connotes exclusivity in application, and the word "shall" imposes a duty as opposed to a permissive exercise of discretion. *See* IOWA CODE § 4.1(30). By providing that "all" official documents "shall" be in English, and by listing a number of exceptions to this general rule, it is clear that the legislature intended English to be the exclusive language used in official documents unless one of the exceptions is implicated. *See* IOWA CODE § 1.18(3). The court does not believe that the legislature was required, as suggested by Respondents, to expressly state that "English and *no other language*" should be used in official documents in order to preclude the use of other languages in those documents. The wording of section 1.18(3) as it stands is sufficient to convey that meaning.

Moreover, even if the court were to conclude that the language in question is reasonably susceptible to more than one interpretation, application of recognized rules of statutory construction would lead to the rejection of the interpretation urged by the Respondents. In determining the intention of the legislature, the court may consider "the underlying purpose and policy of the statute, and the consequences of different

interpretations." *Bankers Standard Ins. Co. v. Stanley,* 661 N.W.2d 178, 180 (Iowa 2003). The purposes and policies behind the Act are clearly stated. The Act recognizes that proficiency in English is crucial to the full participation by Iowa citizens in "the economic, political, and cultural activities of this state and of the United States." IOWA CODE § 1.18(2). The Act was therefore designed to "encourage every citizen of this state to become more proficient in the English language." *Id.* The purposes and policies behind the Act would be substantially undermined if the court were to accept the Respondents proposed construction of section 1.18(3). Logically, allowing multilingual official documents to be distributed to citizens as long as one English version of the document is also made available would not promote but would frustrate the purpose of encouraging English proficiency amongst Iowa residents.[6] The court therefore rejects the construction of section 1.18(3) offered by the Respondents, and concludes that the legislature has expressly precluded the use of non-English languages in official government documents unless one of the enumerated exceptions is implicated.

B. Applicability of Iowa Code section 1.18(5)(a). The Respondents contend that providing voter registration forms to voters in languages other than English is authorized by the exception set forth in section 1.18(5)(a) which, in relevant part, provides as follows:

> 5. Nothing in this section shall be construed to . . .
>
> a. Prohibit an individual member of the general assembly or officer of state government, while performing official business, from communicating through any medium with another person in a language other than English, if that member or officer deems it necessary or desirable to do so.

The Respondents assert that this exception is applicable to the use of alternate languages in official government documents, and authorizes the Secretary of State and the Voter

[6] If non-English official documents were always made available to citizens of the state who are not proficient in English, there would be no incentive to learn English to understand the documents. While there may indeed be many other reasons one would want to become more proficient in English, the ability to read and understand official documents disseminated by the government could likely, as recognized by the legislature, have some bearing on this decision.

Registration Commission to provide translated voter registration forms in non-English languages to prospective voters. The Petitioners argue that this exception was not meant to apply to the use of non-English languages in official government documents, but was rather created as an exception that authorizes unofficial or informal communication with other persons on an ad hoc basis when deemed necessary or desirable.[7] They argue that the Respondents' interpretation of this provision is contrary to the express intent of the legislature and would undermine the purpose of the Act by effectively rendering the mandate of section 1.18(3) meaningless. The court agrees with the Petitioners.

The Respondents' interpretation of section 1.18(5)(a) suffers from the same infirmity as does their interpretation of section 1.18(3). Again, section 1.18(3) is clear in mandating that all official government documents "shall be in the English language." If the Respondents' proposed interpretation of this exception is accepted, a government official could disregard this mandate anytime for any reason. This would allow this exception to swallow the rule. "When interpreting the meaning of a statute," courts must avoid a construction "which renders a part of the statute superfluous . . . and instead presume that each part of the statute has a purpose." *State v. Huan,* 361 N.W.2d 336, 338 (Iowa App. 1984). The Respondents' interpretation of section 1.18(5)(a) would deprive the Act of its essential purposes, and would render the requirement that official documents be printed only in English a suggestion instead of a mandate. The court cannot reasonably give this exception that meaning because it would conflict and interfere with the clearly stated purpose of the statute. The more reasonable interpretation of the meaning of this exception,

[7] Under the Petitioners' construction of this exception, a representative of the Secretary of State's Office would be able to communicate informally with a citizen through a letter printed in Spanish explaining how to use a voter registration form, but would be precluded from providing and accepting a voter registration form printed in Spanish for the purpose of registering the citizen as a qualified voter.

because it keeps the meaning of the statute consistent with its purpose as expressed by the legislature, is the interpretation proposed by the Petitioners.

C. Constitutionality of the Act.

Having determined that the Act requires all official government documents to be printed in English, the court must now address the Respondents' contention that the Act, as sought to be applied in this case, is unconstitutional. The Respondents assert that if the Act is interpreted to preclude the use of alternative languages in official government documents, it impermissibly infringes upon the free speech and equal protection rights of government actors and of citizens of the state who desire access to information in languages other than English. The Respondents urge the court to avoid the conclusion that the Act is unconstitutional by adopting a narrow construction of its terms that would permit the use of multilingual official documents in the course of official government business.

When determining the effect of a given statute, courts generally presume that the legislature intended the statute to comply with "the Constitution of the state and of the United States." IOWA CODE § 4.4(1). Consequently, "[i]f [a statute] is reasonably open to two constructions, one that renders it unconstitutional and one that does not," courts are obliged to construe the statute in a way that avoids unconstitutionality by adopting the construction that would pass constitutional muster. *State v. Carter,* 733 N.W.2d 333, 340 (Iowa 2007). However, in construing a statute so as to avoid unconstitutionality, courts may not assume the role of lawmaker by creating a new law that is contrary to the manifest intent of the legislature. *See State v. Iowa Dist. Court for Johnson County,* 730 N.W.2d 677, 679 (Iowa 2007) ("When a proposed interpretation of a statute would require the court to 'read something into the law that is not apparent from the words chosen by the legislature,' the court will reject it."); *State v. Schmidt,* 588 N.W.2d 416, 421-22 (Iowa 1998). When a

narrowing construction cannot be given to a statute to preserve the statute's constitutionality consistent with the intent of the legislature, courts must void the unconstitutional portion of the statute in its entirety.

For reasons already discussed in this ruling, the court cannot apply a narrowing construction to the Act that would permit the use of multilingual official documents in the course of government business and still leave the meaning and effect of the statute consistent with the intent of the legislature. The Act is simply not susceptible to the construction urged by the Respondents. Adopting such a construction would essentially create a new law that is inconsistent with the express policies and purpose of the Act. The court would then be improperly acting as a legislator as opposed to an impartial decider of cases and controversies. The court refrains therefore from adopting a strained construction of the Act that is contrary to legislative intent and instead confines its ruling to a determination of whether the government may constitutionally require that official government documents be printed only in English.

The constitutional concerns raised by so-called "English-only" laws reach beyond the mere issue of whether the government may place limitations on the type of language that may be used in official government documents. Courts addressing the constitutionality of "English-only" laws in other jurisdictions have held that such laws (or portions thereof) impermissibly infringe upon the First Amendment right to freedom of speech by depriving non-English speaking persons access to vital information imparted by their government,[8] by

[8] The United State Supreme Court recognizes that First Amendment protection is afforded not only to the source of communication, but also its recipient. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756-57 (1976). "Recipient speech rights are predicated on the idea that the First Amendment ensures 'public access to discussion, debate, and the dissemination of information and ideas.'" *Alaskans for a Common Language, Inc.*, 170 P.3d at 200 (quoting *First Nat'l Bank of Boston v. Belloti*, 435 U.S. 765, 783 (1978)). The Constitution therefore protects the right to receive information and ideas "because this is 'a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press and political freedom.'" *Id.* (quoting *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982).

preventing such persons from effectively communicating with their government and petitioning their government for redress, and by depriving government officials, agents, and employees the ability to communicate with the public. *See Alaskans for a Common Language, Inc. v. Kritz,* 170 P.3d 183 (Alaska 2007); *In re Initiative Petition No. 366,* 46 P.3d 123 (Okla. 2002); *Ruiz v. Hull,* 957 P.2d 984 (Ariz. 1998). The laws involved in these cases were construed to prohibit all governmental communications, both written and oral, by all members of the government, in any language other than English when conducting both official and unofficial state business, thereby imposing substantial if not complete communication barriers between the government and language minorities. *See Alaskans for a Common Language, Inc.,* 170 P.3d at 194-95; *In re Initiative Petition No. 366,* 46 P.3d at 127; *Ruiz,* 957 P.2d at 993-94. While the Act contains exceptions to the English-only requirement not contained in the laws at issue in these cases, and while it seemingly applies only to official as opposed to unofficial government action, the limited scope of individuals to whom the Act's main exception[9] applies coupled with the Act's sweeping definition of what constitutes "official action" raises many of the same constitutional concerns discussed in the cited cases.

The term "official action" embraces all action taken by the government or an authorized officer or agent of the government. The Act's proscriptions therefore apply not only to members of the general assembly and government officials, but also to government employees[10] at every level while engaged in "official action." *See id.* The informal communication exception of section 1.18(5)(a) authorizes members of the general assembly and government officials to communicate with members of the general public in non-

[9] The court considers the exception defined in §1.18(5)(a) to be the broadest exception because it has no limit on its applicability other than the subjective determination of a state official that a communication in a language other than English is "necessary or desirable."

[10] For most purposes, government employees acting on behalf of the state within the scope of their employment would constitute agents of the government for purposes of section 1.18(3). *See* RESTATEMENT (SECOND) OF AGENCY § 1.

English languages in the course of official business on an ad hoc basis, but there is no such exception provided for state and local government employees who provide services to the public and conduct daily governmental business on behalf of the state. Thus these employees, who may wish or find it necessary to communicate with members of the public in languages other than English in the course of their duties, can only do so lawfully if the communication does not constitute "official" action. While one could argue that the potentially deleterious effect this has on the first amendment rights of those wishing to convey or those wishing to receive information is ameliorated by the fact that the Act covers only "official" action, the Act's definition of what constitutes official action is not precise and in fact, is very broad. By its express terms, the Act forbids the use of languages other than English in "*[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." (*emphasis added*). "Official action" encompasses not only actions taken by government officers and agents that bind the government or are required by law[11], but also any action that is subjected to scrutiny by either the press or the public. This is a sweepingly broad definition of "official action" that could apply to many situations in which government employees and officers would find it desirable or even necessary to communicate with members of the public in a language other than English. Indeed, in this day and age, many operations of the government are subject to public scrutiny, from substantial transactions to the provision of minor government services that we take for granted on a daily basis. One must therefore ask what government action truly is not subject to public scrutiny in one form or another. The

[11] As noted earlier most acts carried out by State employees within the scope of their employment would presumably bind the government and probably every act a State employee carries out in furtherance of his or her duties could be argued to be required by law.

Act provides no further guidance in this regard, and leaves public employees largely to guess as to when their actions, taken in the course of government business, may be subject to the limitations imposed by the Act. This could have a chilling effect on speech by causing government employees to refrain from non-English communication altogether, both written and oral, formal and informal, while dealing with members of the general public. This uncertainty creates a law that could be construed as effectively imposing a prohibition on the use of non-English languages in the course of a substantial amount of government business, resulting in significant infringement upon the constitutionally protected right of citizens of this state to receive important information from their government. *See Alaskans for a Common Language, Inc.,* 170 P.3d at 204-09; *In re Initiative Petition No. 366,* 46 P.3d at 126-29; *Ruiz,* 957 P.2d at 996-1002. However, the precise issue now before the court does not implicate these broader concerns. Here the issue is only whether the government may require that all official government documents (in this case, voter registration forms) be printed in English and no other languages. The court therefore confines its determination to that precise issue.

In response to the Respondents' argument that the Act would be unconstitutional as applied in this case, the Petitioners assert that a ban on the use of non-English languages in official government documents would not violate the federal and state constitutions because the government has a right to control it message and to make decisions as to what message it will fund. The Petitioners point to U.S. Supreme Court cases which have recognized that the government may, under the appropriate circumstances, make choices about the messages it will or will not convey when it is the speaker. *See, e.g. Rust v. Sullivan,* 500 U.S. 123, 193 (1991). The Petitioners assert that the government, in requiring that official documents be printed only in English, would merely be controlling the manner in which it conveys its message and/or making a determination as to the message it will convey. The court agrees.

"The First Amendment to the United States Constitution prohibits Congress from making any law 'abridging the freedom of speech.' " *State v. McKnight,* 511 N.W.2d 389, 391 (Iowa 1994) (quoting U.S. Const. amend. 1). This amendment is made applicable to the states through the Fourteenth Amendment. *Cantwell v. Connecticut,* 310 U.S. 296, 303 (1940). "[T]he Iowa Constitution generally imposes the same restrictions on the regulation of speech as does the federal constitution." *State v. Milner,* 571 N.W.2d 7, 12 (Iowa 1997); *see* Iowa Const. art. I, § 7. Federal authorities discussing the parameters of free speech protection afforded by the First Amendment are therefore instructive in analyzing a law regulating speech under Iowa's constitution as well.

"The First Amendment's guarantee of freedom of speech prevents states from punishing the use of words or language not within narrowly limited classes of speech." *Milner,* 571 N.W.2d at 12 (internal citations and quotations omitted). Restrictions based upon the content of speech are generally suspect, and are subjected to the most exacting scrutiny by reviewing courts. *State v. Musser,* 721 N.W.2d 734, 744 (Iowa 2006).[12] However, not all regulations of speech based upon content must meet the demands of strict judicial scrutiny to survive constitutional review. *See Rust,* 500 U.S. at 193. The U.S. Supreme Court has recognized that when the state acts as speaker, it may make content-based choices as to the message it will convey without offending constitutional principles of free speech. *See Legal Servs. Corp. v. Velazquez,* 531 U.S. 533, 541 (2001); *Board of Regents of Univ. of Wis. System v. Southworth,* 529 U.S. 217, 229 (2000); *Rosenberger v. Rector & Visitors of the Univ. of Va.,* 515 U.S. 819, 833 (1995). Consequently, governments have been permitted "to regulate the

[12] Laws prohibiting communication in languages other than English are clearly restrictions on speech subject to constitutional scrutiny because "[s]peech in any language is still speech, and the decision to speak in another language is a decision involving speech alone." *Alaskans for a Common Language, Inc.,* 170 P.3d at 198 (quoting *Yniguez v. Arizonans for Official English,* 69 F.3d 920, 936 (9th Cir. 1995). Furthermore, courts have characterized such laws as content based restrictions because they select one form of speech over available alternatives and forbid the use of such alternatives in the course of communication. *Id.*

content of what is or is not expressed when it is the speaker or when it enlists private entities to convey its own message" under what has been termed the "government-as-speaker" doctrine. *Id*; *see Alaskans for a Common Language, Inc.*, 170 P.3d at 198.

The government-as-speaker doctrine, although recognizing that the government has discretion to control its own speech and the messages it conveys, it not without limitation. Courts addressing the government-as-speaker doctrine in the context of challenges to English-only laws in other jurisdictions have recognized that the doctrine has no application where states have sought to prohibit the use of non-English languages in almost every facet of government, from official to unofficial communications on almost every level. *See id.* As the court recognized in *Alaskans for a Common Language, Inc.*, the government-as-speaker doctrine generally applies where the government speakers acting on behalf of the state are narrowly defined, and where the governmental message sought to be conveyed is specific. *Id.* The doctrine therefore has no application to situations where the government's message "that communication must be in the English language – is to be conveyed by every state and local government official and employee in every single interaction such persons have with the public." *Id.*

The situation where the government seeks to broadly prohibit the use of non-English languages in the course of nearly all government business and transactions is fundamentally different from that in which the government simply wishes to publish official government documents solely in the English language. This, as recognized by the court in *Alaskans for a Common Language, Inc.,* would present a "highly specific situation ... in which the state could invoke the state-as-speaker doctrine to justify a requirement that government speech be in English." *Id.* Where the government seeks to require only that official government documents be printed in English, it has substantially narrowed the class of

activities and actors that that are affected by the ban on non-English languages, and the government's message – that English shall be the language of communication in official government documents – is specific. Such a limitation does not impose the same type of languages barriers between the government and its citizens as were condemned in the cases just discussed where English-only laws were held to be unconstitutional.

A ban on the use of non-English languages in official government documents would not prevent a state official from assisting a citizen to understand a voter registration form, or preclude the Secretary of State's Office from providing translation assistance online to prospective voters, thereby leaving alternative channels of communication open to citizens who require assistance in understanding official government documents. At least, as discussed, the Act could probably never be interpreted to preclude communication through such channels because such a blanket prohibition on communication would almost certainly be deemed unconstitutional as an impermissible infringement on the free speech rights of Iowa citizens. The court therefore finds that the State of Iowa may control its message by requiring that its official documents be printed only in the English language. Consequently, the Act's prohibition on the use of non-English languages in official government documents is not unconstitutional.

Without engaging in an extensive discussion of the matter because the issue has not been raised, the court takes note that one of the exceptions to the requirements of the Act, section 1.18(4)(h), authorizes "[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." This exception might justify the use of non-English voter registration forms. Recognizing that language barriers can serve as an impediment to voting, the federal Voting Rights Act prohibits any state or political subdivision from

imposing or applying any "voting qualification or prerequisite to voting, or standard, practice, or procedure" on the right to vote which results in an abridgement of voting rights for language minorities. 42 U.S.C. § 1973(a); *Hernandez v. Woodward,* 714 F. Supp. 963, 967 (N.D. Ill. 1989). However, the Respondents have not argued and there is nothing in this record that would support the contention that the Respondents' challenged activities were undertaken as a result of the determination that they were necessary or required to secure the right to vote to all citizens.

Because the court concludes that the government's ban on the use of non-English languages in official government documents is constitutional, it finds that the Act may be enforced to prohibit the dissemination of voter registration forms in a language other than English to be used by the general public to register to vote.

II. DOES IOWA ADMINISTRATIVE RULE 821–2.11 VIOLATE THE IOWA ENGLISH LANGUAGE REAFFIRMATION ACT?

As a final matter, the Petitioners seeks a declaration that Iowa Administrative Rule 821–2.11, authorizing the production of voter registration forms in languages other than English violates the Act.

Iowa Administrative Rule 821–2.11 provides:

> Notwithstanding any other provision of these rules, any county commissioner may cause production of any approved voter registration form in a language other than English if the commissioner determines that such a form would be of value in the commissioner's county. The registrar shall assist any county commissioner with the translation of voter registration forms upon the request of the county commissioner.

IOWA ADMIN CODE § 821–2.11. For the reasons already discussed, this rule plainly conflicts with the requirements of the Act that voter registration forms, as official government documents, be printed only in English.

"Relief from the department's action may be granted if the department's action was 'unreasonable, arbitrary, or capricious' or characterized by an abuse of discretion." *Auen v. Alcoholic Beverages Div., Iowa Dept. of Commerce,* 679 N.W.2d 586, 590 (Iowa 2003) (citations omitted); *see also* IOWA CODE § 17A.19(10)(n). Action is arbitrary when it is 'taken without regard to the law or facts of the case.'" *Id.* (citations omitted). Where an administrative rule or regulation is "clearly illegal, or plainly and palpably inconsistent with law, or clearly in conflict with a statute relative to the same subject matter," the court may declare it void. *Kelly v. Iowa Dept. of Social Serv.,* 197 N.W.2d 192, 201 (Iowa 1972).

In the present case, Iowa Administrative Rule 821–2.11 plainly conflicts with the Act. Its promulgation was therefore an arbitrary act in violation of law. The court must therefore declare Iowa Administrative Rule 821–2.11 void in its current form as an improper exercise of agency power.

ORDER

For all of the reasons just stated, the Respondents are enjoined from using languages other than English in the official voter registration forms of this state. It is the declaration of the court that Iowa Administrative Rule 821 – 2.11 is null and void.

IT IS SO ORDERED March 31, 2008.

DOUGLAS F. STASKAL, Judge
Fifth Judicial District of Iowa

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Exhibit 2

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SECRETARY OF STATE

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DES MOINES, IOWA 50319

OFFICE OF THE IOWA SECRETARY OF STATE

September 27, 2021

Shayla McCormally
McCormally & Cosgrove, PLLC
4508 Fleur Drive
Des Moines, Iowa 50321

Dear Ms. McCormally:

The Iowa Secretary of State's Office is still under an injunction stemming from *King v. Mauro*, No. CV6739, slip op. at 31 (Iowa Dist. Ct. Mar. 31, 2008), which prevents the dissemination of official voter registration forms for this state in languages other than English.

Sincerely,

Molly M. Widen
Legal Counsel