IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR POLK COUNTY

AMERICAN CIVIL LIBERTIES UNION OF IOWA FOUNDATION and **LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF IOWA,** Petitioners, vs. **IOWA SECRETARY OF STATE MATT SHULTZ,** Respondent.	Case No. CVCV009311 **BRIEF IN SUPPORT OF RESISTANCE TO RESPONDENT'S MOTION TO DISMISS** **(Motion filed 4/8/13)** **(Resistance filed 4/18/13)**

COME NOW the Petitioners, the American Civil Liberties Union of Iowa and the League of United Latin American Citizens of Iowa, by and through the undersigned counsel, upon request of the Court, respectfully submit this supplemental brief.

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STATEMENT OF THE CASE

Petitioners, American Civil Liberties Union of Iowa Foundation and League of United Latin American Citizens of Iowa challenge the adoption and promulgation by Respondent, Iowa Secretary of State Matt Schultz, of two administrative rules, the first, IAC § 721-21.100 (39A, 47) (hereinafter "Voting Law Complaint Rule"), allowing for anonymous citizen reports alleging voter misconduct leading to investigation and possible removal, and the second, IAC § 721-28.5 (47, 48A) (hereinafter "Voter Removal Rule"), allowing for Respondent's removal of voters from the list of registered voters based on the comparing of the voting list with unspecified state and federal databases which, in Respondent's view, indicate a likelihood of non-citizenship. *See* Addendum 1, previously filed[1].

These rules were implemented initially on or about July 20, 2012, and then again by way of a redundant rulemaking procedure known as "double-barreling" on or about February 20, 2013, becoming effective on or about March 27, 2013. Essentially, Respondent double-barreled the rules in question by adopting them first pursuant to the emergency rulemaking power as well as pursuant to the slower normal rulemaking process pursuant to Iowa Code §17A.4(1).

On or about September 13, 2012, the Polk County District Court temporarily enjoined enforcement of the rules in question which were then in effect pursuant to emergency rulemaking but not yet by way of normal rulemaking. After the emergency rules were enjoined, Respondent voluntarily rescinded and has not as of yet pursued further attempts to reintroduce the Voting Law Complaint Rule. *See* Addendum 2. Accordingly, the only rule that is presently in effect is the Voter Removal Rule, as implemented via normal rulemaking on or about March 27, 2013. It

[1] All references to Addenda are to the April 2, 2013 "Addenda in Support of Petitioner's Second Amended Petition for Judicial Review of Agency Action" filed by Petitioners in this case.

should be noted that minor changes were made between the original Voter Removal Rule and the presently effective version, thus slightly "relaxing" the rule's onerous requirements to voters.

The adoption of the rules throughout the entire duration of this case is problematic for a number of reasons. However, for purposes of the current Motion to Dismiss, Respondent only moves to dismiss Petitioner's challenge to the emergency rules. Respondent reasons that because a temporary injunction is now in place with regard to the emergency rules, because Respondent has voluntarily rescinded one of his own rules, and because the other rule has now been subsumed by the normal rulemaking procedure, there is no longer any controversy regarding the emergency adoption of the rules in question. For the reasons stated below, Petitioners assert that the issue is very much still present in this case and that this Court should deny Respondent's Motion to Dismiss, thereby allowing resolution of all issues at the time of final judgment in this matter with a full and complete record.

ARGUMENT

The adoption of the Voter Removal Rule via normal rulemaking and the voluntary rescission of the Voting Law Complaint rule do not supersede, moot, or nullify the temporarily enjoined emergency rules for three primary reasons, discussed in turn below. First, real and ongoing controversies persist as to all three of Petitioners' claims, for which declaratory relief does not amount to an advisory opinion. Second, even if the normal rulemaking procedure and voluntary rescission at this time constitute voluntary cessation of the enjoined rules, voluntary cessation would not render the matter moot in this case. There are no guarantees to ensure against the further potential harms prevented by the temporary injunction were it to be lifted as a result of dismissal without permanent relief. Third, in the alternative to this second argument,

this case meets the exception to mootness since it is capable of repetition while evading review, and thus falls within the court's public interest doctrine of redress.

I. NOTWITHSTANDING THE COMPLETION OF NORMAL RULEMAKING AND THE VOLUNTARY RESCISSION OF THE VOTING LAW COMPLAINT RULE, THERE REMAINS AN UNDERLYING CONTROVERSY AS TO ALL THREE OF PETITIONERS' CLAIMS FOR WHICH NO PERMANENT RELIEF HAS BEEN GRANTED.

Here, notwithstanding Respondent's actions, there remains an ongoing controversy as to all three of Petitioner's claims claims—(1) that the Secretary abused emergency rulemaking; (2) that the Secretary lacks statutory authority to promulgate these rules either through emergency OR normal rulemaking; and (3) that the rules will deprive qualified voters of the right to vote. Because claims 2 and 3 apply to the administrative rules adopted through emergency and normal processes, only Claim 1 has been challenged by Respondent, and thus, will be the only aspect of the Petition in dispute for this Motion.[2]

For the adoption of the rules pursuant to normal rulemaking and voluntary rescission of the Voting Law Complaint Rule to have rendered the underlying action moot, those processes must have substantially resolved or made academic the material issues of the underlying controversy. *Perkins v. Bd. of Supervisors of Madison County*, 636 N.W.2d 58, 64 (Iowa 2001) (A case is moot if it no longer presents a justiciable controversy because the underlying issues have become "academic or nonexistent."), *citing Iowa Bankers Ass'n v. Iowa Credit Union*

[2] Respondent asks to exclude "any challenge to the emergency rules" and that Petitioners be required to recast their petition to remove reference thereto. Respondent's Motion to Dismiss at 2. To the extent claims 2 and 3 potentially impact the normal and emergency rules, the determination by this court as to the mootness of claim 1 will ultimately determine whether claims 2 and 3 apply to an ongoing challenge to both the emergency and normal rules, or will be applied exclusively to the normal rule or rules.

Dep't, 335 N.W.2d 439, 442 (Iowa 1983) (distinguished on other grounds by *Godfrey v. State*, 752 N.W.2d 413 (Iowa 2008)). "The key in assessing whether an appeal is moot is determining whether the opinion would be of force or effect in the underlying controversy." *Perkins*, 636 N.W.2d at 64–65.

A mootness determination is strong medicine inasmuch as it evinces the absence of a case or controversy and deprives the court of jurisdiction. A distinction must be made between the existence of judicial power (questions of mootness) and its proper exercise (continued necessity for relief). *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U. S. 283, 289, 102 S. Ct. 1070, 1074, 71 L. Ed. 2d 152, 159 (1981). If there is any relief which can be granted, a case is never moot, and this remains true even if the principal objects of the case cannot be achieved. *Powell v. McCormack*, 395 U.S. 486, 496-500, 89 S. Ct. 1944, 1950-1953, 23 L. Ed. 2d 491, 502-4 (1969). Thus, the mootness doctrine is sparingly applied, and courts often retain jurisdiction to determine whether relief, as a matter of discretion, is appropriate.

To analyze this case in terms of the mootness doctrine, it is necessary to consider the special character of these proceedings in light of both the relief that might be afforded and the purpose to be achieved. Injunctive relief in Iowa is available for preventative as well as curative purposes where the public interest so requires. Relief may be afforded to enjoin future misbehavior injurious to the public interest even though there is no evidence that such misbehavior will continue to occur. This is particularly true when the prior misconduct appears to have been calculated, deliberate or intentional. *State ex rel. Turner v. United-Buckingham Freight.Lines. Inc.*, 211 N.W.2d 288 (Iowa 1973). It is beyond dispute that Respondent's adoption of the rules in question was intentional, including the use of emergency procedures despite the obvious lack of an emergency justifying their adoption.

With respect to declaratory relief it is well established that courts will not render advisory opinions. However, as our state's supreme court has recognized, "[o]ne of the purposes of declaratory relief is to determine and adjudicate a right, status or relation." *State v. Central States Electric Co. (Town of Jewel Junction , Intervenor)*, 28 N.W.2d 457. 466 (Iowa 1947). In this case there are rights, powers, and relationships at issue. For example, the Respondent's view of his own powers to remove new classes of voters from the voter registration rolls without express authorization by statute, and without a preliminary finding or action by the Voter Registration Commission, conflicts with the Petitioners' view on the Secretary's powers to do the same. Furthermore, Respondent's persistent belief in these disputed powers can be observed in his behavior, to be proved at the final disposition hearing, in the rules themselves, in his decision not to voluntarily rescind the emergency or normal proposed Voter Removal Rules, in his public statements, and in the arguments he has repeatedly made in this case.

The powers in question and the relationships at issue here are ongoing in nature. The parties are opposed in position and both sides have legally cognizable interests in the outcome. A decision will define their future powers and relationships, and such a decision would provide guidance to Respondent regarding his power to utilize emergency rulemaking in future cases affecting the rights of voters in the state. The harm from the previously adopted emergency version of the rules remains ongoing insofar as the chilling effect that even knowledge of the rules or apprehension of their reemergence could have on voters. Accordingly, the dispute is real, immediate and sufficiently joined to be justiciable. The public interest invites resolution. Declaratory and other equitable relief may be provided, and because such relief may be afforded, the case cannot be moot. *Powell v. McCormack, supra.*, p. 6. Further, in order to

avoid a mootness dismissal, a petition "need not catalog every consequence that may conceivably follow from a particular judgment," and where a judgment will have a "practical legal effect" on future governmental operations, the case is not moot. *Junkins v. Branstad,* 421 N.W.2d 130, 133 (Iowa 1988).

II. VOLUNTARY CESSATION DOES NOT RENDER THIS MATTER MOOT AND THERE ARE NO GUARANTEES TO ENSURE AGAINST THE FURTHER POTENTIAL HARMS PREVENTED BY THE TEMPORARY INJUNCTION WERE IT TO BE LIFTED AS A RESULT OF DISMISSAL WITHOUT PERMANENT RELIEF.

Respondent's voluntary rescission of the Voting Law Complaint Rule and changes to the Voter Removal Rule do not render the current issues moot. Voluntary cessation of a wrongful act would not render this case moot, because the Secretary has not met the heavy burden of showing that the conduct could not and would not resume or recur. The law is well settled that voluntary cessation of a wrongful act does not automatically render a case moot. *Friends of the Earth, Inc. v. Laidlaw Envtl. Serv. (TOC), Inc.*, 528 U.S. 167, 189 (2000); *Charleston Housing Auth. v. U.S. Dept. of Agric.*, 419 F.3d 729, 740 (8th Cir. 2005); *Pucket v. Rounds*, 2006 WL 120233 *8 (D.S.D. Jan. 17, 2006). The Supreme Court has recognized that, without the "voluntary cessation" exception, defendants would be free to return to their "old ways" and complaining parties would never receive the full legal remedies to which they are entitled. *Laidlaw*, 528 U.S. at 189. *See also Lankford v. Sherman*, 451 F.3d 496, 503 (8th Cir. 2006) ("If [voluntary cessation mooted out cases], the courts would be compelled to allow the defendant to return to its old practices without fear of reprisal.").

In *Bd. of Dirs. of Independent Sch. Dist. of Waterloo v. Green,* 259 Iowa 1260, 147 N.W.2d 854, the Iowa Supreme Court articulated:

> In general an action is moot if it no longer presents a justiciable controversy because the issues involved have become academic or nonexistent. It has also been said a case is moot when a judgment, if rendered, will have no practical legal effect upon the existing controversy. But, in actions where injunctive relief is sought, the cessation or completion of the objectionable act does not necessarily render the issue moot.

Danner v. Hass, 257 Iowa 654, 134 N.W.2d 534, 538-39 (Iowa 1965), overruled on other grounds by *Needles v. Kelley*, 261 Iowa 815, 822, 156 N.W.2d 276, 280 (1968)); *Gunnar v. Town of Montezuma*, 228 Iowa 581, 584, 293 N.W. 1; *Gray v. Sanders*, 372 U.S. 368, 375-76, 83 S.Ct. 801, 806, 9 L.Ed.2d 821; and *Sigma Chi Fraternity v. Regents of University of Colorado*, D.C., 258 F.Supp. 515, 523.

a. Respondent's Burden of Demonstrating that the Challenged Conduct Cannot Reasonably be Expected to Resume is "Formidable."

The test for determining when voluntary cessation of challenged conduct by the government will moot the claim against it requires a court to answer two questions: (1) whether the defendants' actions and behavior subsequent to the filing of the lawsuit make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur, *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000) (quoting *U.S. v. Concentrated Phosphate Export Assn., Inc.*, 393 U.S. 199, 203 (1968)), and (2) whether the party asserting mootness meets its "heavy, even formidable burden" of persuading the court that its challenged conduct cannot reasonably be expected to resume. *Laidlaw*, 528 U.S. at 189-90. The party seeking dismissal must affirmatively demonstrate that there is no reasonable expectation that the wrong will be repeated. *United States v. W. T. Grant Co.*, 345 U.S. 629, 632, 73 S. Ct. 894, 897, 97 L. Ed. 2d 1303, 1308 (1953). The United States Supreme Court elaborated on this test in *County of L.A. v. Davis*, 440 U.S. 625, 631, 99 S. Ct. 1379, 1383, 59 L. Ed. 2d 643, 649 (1979), articulating

the second prong as an inquiry into whether "interim relief or events completely eradicated the effects of the alleged violation."

In *W.T. Grant*, the United States Supreme Court was confronted with a claim of mootness based on the fact that, although federal law forbade certain interlocking corporate directorships, the offending directors had resigned their posts. The trial court granted summary judgment of dismissal for the defendants upon a finding that the case was moot because the threat of future violations was unlikely. In reversing the trial court's decision, the Supreme Court opined as follows:

> Both sides agree to the abstract proposition that voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i.e.*, does not make the case moot.. . . A controversy may remain to be settled in such circumstances,. . . *e.g., a dispute over the legality of the challenged practices*.. . .
>
> *The defendant is free to return to his old ways.* This together with the public interest in having the legality of the practices settled, militates against a mootness conclusion.. . . For to say that the case has become moot means that the defendant is entitled to a dismissal as a matter of right, ... The courts have rightly refused to grant defendants such a powerful weapon against public law enforcement.
>
> The case may nevertheless be moot if the defendant can demonstrate that "there is no reasonable expectation that the wrong will be repeated." The burden is a heavy one. Here, the defendants told the court that the interlocks no longer existed and disclaimed any intention to revive them. Such a profession does not suffice to make a case moot although it is one of the factors to be considered. . . .
>
> Along with its power to hear the case, the court's power to grant injunctive relief survives discontinuance of the illegal conduct.

W. T. Grant Co., 345 U.S. 629, 632 (internal citations omitted, emphasis supplied).

The mere announcement of changed policies and practices in response to newly amended regulations were inadequate to defeat the court's jurisdiction In *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 89 S. Ct. 361 (1968) the Supreme Court had to consider, *inter alia*, whether passage of a regulation that allegedly made it uneconomical

for the defendants to continue a challenged practice was sufficient grounds for declaring a case moot. In other words, the claim of mootness was based upon a presumed lack of future motive. The Court stated:

> [H]owever much the new regulation may reduce the practical importance of this case, it does not completely remove the controversy. * * * A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. But here we have only appellees' own statement that it would be uneconomical for them to engage in any further joint operations. Such a statement, standing alone cannot suffice to satisfy the heavy burden of persuasion which we have held rests upon those in appellees' shoes.

Id., 393 U.S. at 203, 89 S. Ct. at 364. Even in the case of rescission of the challenged voting rules following the commencement of litigation, such "tactical retreats" ordinarily do not suffice to moot a controversy—even if they may ultimately affect entitlement to or availability of relief. In *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U. S. 283, 102 S. Ct. 1070, 71 L. Ed. 2d 152 (1981) the Supreme Court concluded that the repeal of the offending portion of a municipal ordinance in apparent response to litigation did not render an issue moot. *Id.*, 455 U.S. at 288-9, 102 S. Ct. at 1074-5. Courts should be wary of efforts to defeat relief by reforms that seem timed to anticipate suit. *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 n.5, 73 S. Ct. 894. 897 n.5 (1953).

b. Respondent has not Met its Heavy Burden of Demonstrating that the Challenged Conduct Cannot Reasonably be Expected to Resume.

The Respondent has not established that the wrongful behavior in this case could not be reasonably expected to recur or resume. Neither the voluntary rescission of the Voting Law Complaint Rule, nor the "relaxation" of the Voter Removal Rule, will prevent the recurrence of the improper making of rules in a manner that exceeds the authority vested to the Office of the Secretary of State, nor will it in fact prevent the Secretary in taking other action inconsistent with

the law. In fact, it has the opposite effect, which is to avoid review of agency action taken on a temporary or emergency basis.

In *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000), the Court held that, before dismissing a case on mootness grounds, it must be "'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" (quoting *U.S. v. Concentrated Phosphate Export Assn., Inc.*, 393 U.S. 199, 203 (1968)). The problems—an abuse of emergency rulemaking law; an usurpation of the legislative powers of a coordinate branch of government; and the suppression of qualified but vulnerable voters in Iowa—are neither eradicated nor ensured "not to recur," and this action cannot be moot on the ground of voluntary cessation. *See Lowry ex rel. Crow v. Watson Chapel Sch. Dist.*, 540 F.3d 752, 761 n.8 (8th Cir. 2008) (rejecting defendant's mootness argument, finding that even though school had instituted a new policy, case was not moot absent clear evidence that unconstitutional behavior would not be repeated).

III. IN THE ALTERNATIVE, THIS CASE FALLS WITHIN THE EXCEPTION TO MOOTNESS OF BEING CAPABLE OF REPETITION YET EVADING REVIEW/PUBIC INTEREST DOCTRINE.

In federal courts, where the judiciary is constrained by constitutional restriction to hear only cases and controversies, the effect of mootness is a jurisdictional bar: a defendant who shows that a case has become moot is legally entitled to dismissal as a matter of law. *United States v. W.T. Grant Co.*, 345 U.S. 629, 632, 73 S. Ct. 894. 897 (1953). In Iowa, however, the question of mootness operates not as a question of power to hear a case but as a question of judicial restraint. *Rush v. Ray*, 332 N.W.2d 325, 326 (Iowa 1983), citing *City of Des Moines, v. Public Employment Relations, Bd.*, 275 N.W.2d 753, 759 (Iowa 1979). Therefore, this Court

enjoys more latitude that a federal court in determining whether it will hear an allegedly moot case. The court has invoked the exception of being capable of repetition yet evading review for matters in the public interest on a number of occasions.

Guidance for the exercise of this discretion is provided by our state supreme court. At times, mootness is overcome by a finding that an action is capable of repetition while evading review. *See* Rotunda, Nowak, and Young, *Treatise on Constitutional Law*, §2.13 (1986), which has evolved into Iowa's public interest exception to mootness doctrine. What's more, although this doctrine of justiciability is described in the cases as an exception to mootness dismissals, it is really more than that. As *Rush v. Ray* makes clear, there is an affirmative responsibility on the part of the district court to decide public interests questions if they are suitably presented. *Id.* at 327. The Court in this matter, at least as it relates to the issue of standing using an extremely similar analysis, has already concluded "the issues presented here are of...great public importance and interest to our system of government."

The test to be employed in analyzing the Court's responsibility to ensure review of important issues which may evade review are: (1) whether the issue is public in nature; (2) whether it is desirable to provide an authoritative adjudication for future guidance of public officials; and (3) whether there is a likelihood of recurrence. *Id.* at 326.

For example, in *Iowa Freedom of Information Council v. Wifvat*, 328 N.W.2d 920 (Iowa 1983), the court exercised its discretion to hear a case concerning the tension between a criminal defendant's sixth amendment right to fair trial and the first amendment right of access to judicial proceedings of the public and press. *Wifvat*, 328 N.W.2d at 922. The court explained:

> Generally we will not consider an action if it no longer presents a justiciable controversy. But claims should not be dismissed on mootness grounds where matters of public importance are presented and the problem is likely to recur. The United States Supreme Court has found cases of this type not moot where (1) the challenged action was

> in its duration too short to be fully appealed prior to its cessation or expiration and (2) a reasonable expectation existed that the same complaining party would be subjected to a similar action. We proceed therefore to the merits, even though our decision will have no practical effect on the criminal case.

Id. at 922 (internal citations omitted.)

The Iowa Supreme Court has not been reluctant to decide a case in the public interest when the powers of governmental officials have been drawn into question. See, *e.g., ICLU v. Critelli*, 244 N.W.2d 564 (Iowa 1976) (Judicial authority brought into question solely by pleading*); Rush v. Ray, supra.* The exception has been relied on to support other decisions providing guidance to public officials as to their legal responsibilities, *Stanley v. Fitzgerald*, 509 N.W.2d 454 (Iowa 1993), and instructing judges in the proper exercise of their discretion, *Department of General Services v. R.M. Boggs Co., Inc.*, 509 N.W.2d 454 (Iowa 1993).

In *City of Fort Dodge v. Janvrin*, 372 N.W.2d 209 (Iowa 1985) the public interest exception was invoked for the very purpose of deciding the limits of municipal home rule authority under the Iowa Constitution. The case involved a dispute over whether a city council had the power to require confirmation of an appointment even though it had done so. *Id.* The foregoing authority provides ample ground for applying the public interest exception in this case. *See also Bd. of Dirs. of Independent Sch. Dist. of Waterloo v. Green,* 259 Iowa 1260, *1265, 147 N.W.2d 854, **856-57 (Iowa 1967) ("[W]e find the present case falls within that important area involving the administration, operation, management and control of our public school system.")

The critical examination thus required in this case also makes sense from a judicial policy perspective. To require evidence of continual exercise of a disputed power would foreclose access to judicial review of agency action in this circumstance. The challenged official would merely have to argue at some stage in the proceedings that the power is not at that time being exercised and that the case has become moot. Similarly, to argue that a case is

not justiciable and therefore moot, because future transgressions of power may not be in all ways identical to past offenses is problematic. It is precisely this type of tactical maneuvering that the court should consider before accepting claims of mootness advanced by those who wish to avoid judicial scrutiny. In *City of Mesquite*, cited *supra*, p. 6, the United States Supreme Court found even less obvious legislative backpeddling to be unpersuasive.

This is not an unusual situation for a court to consider. The United States Supreme Court has also reviewed its policy toward legislative rescissions and corresponding claims of mootness in a the context of First Amendment challenges to legislation and has effectively held that legislative retreats do not render an overbreadth challenge moot. See, *Massachusetts v. Oakes*, 491 U.S. 576, 585-587, 109 S. Ct. 2633, 2639-2640, 105 L.Ed. 2d 493 (1989) (concurring op. supported by 5 justices) ("legislatures would have significantly reduced incentive to stay within constitutional bounds" if they could escape review by amending statutes under challenge); *c.f.*, *Osbourne v. Ohio*, 110 S. Ct. 1691, 1701-2 (1990) (explaining the holding in *Oakes*); *See also Ruff v. City of Leavenworth, Kan.*, 858 F. Supp. 1546, 1555 (D. Kan. 1994) (Repeal of a challenged city policy does not moot case).

Here, the issues of the Secretary's use of emergency rulemaking and his underlying statutory authority to promulgate rules of this type, as affecting the fundamental right to vote, are indisputably public in nature. Moreover, it is desirable to provide authoritative adjudication for future guidance of public officials in this case. The action of the Respondent in this case not only exceeded the confines of his office, but did so in a manner that showed little regard for the protection of voting rights, arguably the most important function of his office. Finally, there is a likelihood of recurrence, especially if the matter is dismissed in light of Respondent's adoption of a similar rule through normal processes. Petitioners fear such a dismissal would

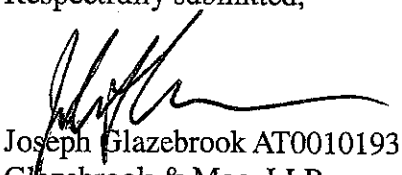
amount to a "green light" to continue with the challenged behavior. Therefore, should this Court find that the adoption of the normal version of the Voter Removal Rule and the voluntary rescission of the Voting Law Complaint Rule, and that the Respondent had successfully met their formidable burden of showing with absolute certainty that he challenged conduct could not occur, this particular action would fall under the Iowa Court's exception to mootness doctrine.

CONCLUSION

Respondent's adoption of a similar Voter Removal Rule through normal rulemaking and his voluntary rescission of the Voting Law Complaint Rule do not render this action Moot. Because there remains an ongoing controversy as to all three claims, this case should not be dismissed. Even if the Court considers the adoption of the normal Voter Removal Rule and Respondent's voluntary rescission of the Voting Law Complaint Rule to render Petitioner's first claim moot under normal circumstances, the Secretary has not met the heavy burden of showing that the conduct could not and would not resume or recur. Finally, even if the court finds that the matter is mooted, this case falls within the public interest exception to mootness and deserves full consideration to guide future actors.

WHEREFORE, the Petitioners, ACLU of Iowa and LULAC of Iowa, respectfully request that the Court deny the Respondent's motion for dismissal and grant any other action in the interest of justice.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties in the above case to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on the 10 day of May, 2013 by U.S. mail.

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Statement of compliance with Iowa R. Civ. P. 1.442(4) filed by mail with Polk County Clerk of Court on 5/10/13.