

JOHN B GOSTOVICH and CELESTE J KOEBERL
Complainants,

Case No. EL-20-29

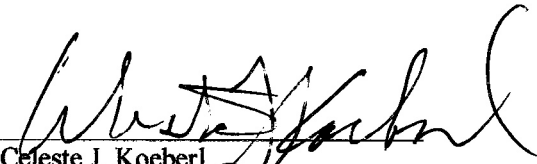
v.


TOWN OF HUDSON WISCONSIN,
HUDSON TOWN CLERK, VICKIE SHAW, and
HUDSON TOWN BOARD CHAIR, DON JORDAN
Defendants.

Affidavit in Support of Complaint

We, Celeste J. Koeberl and John B. Gostovich, Complainants in EL 20-29 Koeberl et al v. Jordan et al - Town of Hudson, being first duly sworn, on oath, state that we personally reviewed the Reply dated February 1, 2021, in response to the Response to our Complaint, dated January 12, 2021, and that statements in our Reply dated February 1, 2021 are true and correct based on our personal knowledge and to the best our knowledge and intent.

Dated: February 1, 2021

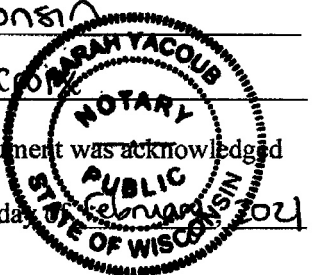

Celeste J. Koeberl


John B. Gostovich

State of: Wisconsin

County of: St. Croix

The foregoing document was acknowledged
before me 1st day of February, 2021



Sarah Yacoub
Notary Public
My Commission Expires: N/A WI State Bar
No. 1100326

TO: Wisconsin Elections Commission

FROM: Celeste Koeberl and John Gostovich
870 Strawberry Drive in the Town of Hudson Wisconsin

RE: Complainants' Reply to Respondents' Response in
EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson

DATE: February 1, 2021

In reply to the Response filed on behalf of the Town of Hudson, Town Clerk Vickie Shaw, and Town Chair Don Jordan (Respondents) by the Town attorney, Paul Mahler, in *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*, Celeste Koeberl and John Gostovich (Complainants) state as follows:

I. Overview

Regardless of whether the annual Hudson Town Caucus conducted under Wis. Stat. 8.05(1) is considered a public meeting of the town electorate, an electoral process, a primary, an election, or something else under Wisconsin laws, Complainants hold both statutory and constitutional rights to participate fully and equally in it.

During the on-going and worsening covid-19 pandemic, Respondents administered and conducted the Hudson Town Caucus on January 4, 2021 as an in-person-only gathering of Hudson Town electors from households throughout the Town.

Complainants did not attend and participate in the January 4, 2021 Hudson Town Caucus because Respondents' failures in the administration and conduct of the in-person Caucus made the Caucus inaccessible to Complainants and effectively excluded Complainants from participating in it.

Respondents failed to create and publicize in advance of the in-person-only January 4, 2021 Hudson Town Caucus a public health protection plan sufficient and effective to ensure that the public meeting would be conducted in full accord with federal, Wisconsin, St. Croix County, and Hudson School District recommended and required public health protections against covid-19 exposure and spread risks, and to reasonably protect the public health from the likely very high covid-19 exposure and spread risks of the in-person Caucus.

Respondents failed to require and enforce sufficient and effective protections against the likely very high covid-19 infection risks at the in-person Caucus that were in full accord with federal, Wisconsin, St. Croix County, and Hudson School District recommended and required public health protections against covid-19 infection risks, and that were reasonable and necessary to ensure all Hudson Town electors, including

Complainants, could attend and participate in the Caucus without substantial danger to their health and lives.

Complainants asked Respondents to provide an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus, specifically, a remote access and participation option, because the in-person Caucus was not accessible to Complainants due to the likely very high covid-19 infection risks at the in-person Caucus and Complainants' very high likelihoods of becoming severely ill, requiring hospitalization, and dying if they were infected at the in-person Caucus with the highly contagious novel coronavirus that causes covid-19.

Complainants requested the reasonable modification of a remote access and participation option in the January 4, 2021 Hudson Town Caucus for Mr. Gostovich under the Americans with Disabilities Act (ADA) because Mr. Gostovich is a qualified individual with a disability under the ADA, and his disability, along with his older age, other serious underlying medical or health conditions, and male sex, made it very likely he would become severely ill, require, hospitalization, and die if he were infected at the in-person Caucus with covid-19; because Mr. Gostovich's health and life would be put in substantial danger by the likely very high covid-19 infection risks at the in-person Hudson Town Caucus; and because the requested reasonable modification was necessary in order for Mr. Gostovich to safely, fully, and equally participate in the Hudson Town Caucus.

Complainants requested the reasonable accommodation of a remote access and participation option in the January 4, 2021 Hudson Town Caucus for Ms. Koeberl because, regardless of whether she also was a qualified individual with a disability under the ADA, if Ms. Koeberl were infected with covid-19 at the in-person Hudson Town Caucus then the disabled Mr. Gostovich, who is her spouse with whom she resides, also very likely would be exposed to and be infected with covid-19; because Ms. Koeberl's older age and serious underlying medical or health conditions made it very likely she would become severely ill, require hospitalization, and die if she were infected with covid-19 at the in-person Hudson Town Caucus; because Ms. Koeberl's health and life would be put in substantial danger by the likely very high covid-19 exposure risks at the in-person Hudson Town Caucus; and because the requested reasonable accommodation was necessary in order for Ms. Koeberl to safely, fully, and equally participate in the Hudson Town Caucus.

Respondents refused to provide Complainants' requested reasonable modification and accommodation of a remote access and participation option for the January 4, 2021 Hudson Town Caucus.

Respondents failed to provide Complainants with a written explanation of reasons why Respondents refused to and could not provide Complainants' requested reasonable modification and accommodation.

Respondents failed to discuss with or offer to Complainants another reasonable modification or accommodation that would be effective to ensure Complainants could fully and equally participate in the January 4, 2021 Hudson Town Caucus without being required to put their health and lives in substantial danger.

Respondents required Complainants EITHER to put their health and lives in substantial danger by attending the January 4, 2021 Hudson Town Caucus in-person, OR to forego their rights to participate in the Caucus in order to protect their health and lives.

Complainants assert that Respondents' actions and inactions violated and denied Complainants' statutory and constitutional rights to participate fully and equally in the January 4, 2021 Hudson Town Caucus.

OUTLINE:	pages 3 – 7
I. Overview	pages 1 – 3
II. Respondents' attorney misconstrues election law and its application to the Hudson Town Caucus.	pages 8 – 32
A. Numerous Wisconsin towns or villages held their January 2021 caucuses via a remote meeting platform.	pages 8 – 9
B. Wisconsin election law is not hostile to remote voting.	pages 9 – 10
C. Wisconsin election law is not hostile to voting via electronic ballots and transmitting votes online.	page 10
D. Compelling state interests to be achieved through the operation of Wisconsin election laws are to encourage elector participation, and to ensure that all electoral processes are open and accessible for full and equal participation by all electors.	pages 11 – 13
E. The 1 st and 14 th Amendments to the U.S. Constitution require that the Hudson Town Caucus be open and accessible for full and equal participation by all Hudson Town electors.	pages 14 – 32
i. Complainants hold statutory and fundamental constitutional rights to participate fully and equally in the Hudson Town Caucus.	pages 14 – 15
ii. Respondents' administration and conduct of the January 4, 2021 in-person-only Hudson Town Caucus unduly burdened Complainants' rights to participate fully and equally in the Caucus.	pages 15 – 25

- a. Application of the Anderson-Burdick balancing framework shows Respondents administration and conduct of the January 4, 2021 Hudson Town Caucus unduly burdened Complainants' 1st Amendment associational rights. pages 16 – 18
 - 1. Respondents' actions and inactions in administering and conducting the January 4, 2021 in-person-only Hudson Town Caucus extinguished Complainants' rights to participate. pages 16 – 17
 - 2. Respondents have compelling state interests in encouraging all Hudson Town electors to participate in the Hudson Town Caucus, in ensuring the integrity of the Caucus and protecting the rights of all electors to participate, in protecting the health and safety of electors, and in protecting the public health. pages 17 – 18
 - 3. Strict scrutiny applies to Respondents' extinguishment of Complainants' rights to participate in the January 4, 2021 Hudson Town Caucus. page 18
- b. Application of strict scrutiny shows Respondents unduly burdened Complainants' fundamental associational rights. pages 18 – 25
 - 1. Covid-19 pandemic; Characteristics of Complainants and Hudson Town electors; Public health protections; and the January 4, 2021 Hudson Town Caucus: pages 18 – 22
 - 2. Respondents' compelling state interests in the January 4, 2021 Hudson Town Caucus: page 22
 - 3. Respondents' choice to hold an in-person-only Hudson Town Caucus on January 4, 2021 during the on-going covid-19 pandemics was not effective, necessary, or narrowly tailored to further the compelling state interests here. pages 22 – 24
 - 4. Respondents had less restrictive and more effective means for furthering the compelling state interests in the January 4, 2021 Hudson Town Caucus. pages 24 – 25
- iii. Respondents violated Complainants' 14th Amendment Due Process Rights. pages 25 – 29
 - a. Complainants' "life, liberty, and property" interests: page 25

- b. Due process requires notice, hearing, and an impartial decisionmaker. page 26
- c. Respondents failed to provide notice, hearing, and an impartial decision regarding Complainants' requests for an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus. pages 26 – 29
- iv. Respondents violated Complainants 14th Amendment Equal Protection Rights. pages 29 – 33
 - a. Complainants' associational rights: page 30
 - b. Respondents prevented Complainants' equal exercise of their associational rights. pages 30 – 31
 - c. Incumbent Respondents were advantaged by Respondents' denials of Complainants' equal associational rights. pages 31 – 33

III. Respondents failed to fulfill their responsibilities to Mr. Gostovich under the Americans with Disabilities Act (ADA). pages 34 – 53

- A. Mr. Gostovich has a disability under the ADA that makes him especially likely to experience severe illness, require hospitalization, and die if he contracts covid-19; this does not make Mr. Gostovich's disability a "generalized fear of catching covid-19". pages 35 – 36
- B. Respondents failed to perform their duties under the ADA to provide reasonable modifications or accommodations in the January 4, 2021 Hudson Town Caucus that were necessary in order to ensure the Hudson Town Caucus would be fully and equally accessible to the disabled Mr. Gostovich. pages 37 – 45
 - i. The ADA requires primary consideration of the requested reasonable modification, as well as requires communication with the disabled individual regarding other effective reasonable modifications. page 37
 - ii. After refusing the requested reasonable modification, Respondents failed to communicate with Complainants regarding other effective reasonable modifications prior to the January 4, 2021 Hudson Town Caucus. pages 37 – 39
 - iii. Respondents failed to take actions other than Complainants' requested reasonable modification that were sufficient and

- effective to ensure the January 4, 2021 Hudson Town Caucus would be accessible to Mr. Gostovich and that he could participate fully and equally. pages 40 – 43
- iv. Respondents failed to ever give primary consideration to the requested reasonable modification. page 44
 - v. Respondents’ attorney’s suggested alternative modification was inadequate under the ADA. pages 44 – 45
- C. Under the ADA, the Town of Hudson was required to provide Complainants’ requested reasonable modification in the January 4, 2021 Hudson Town Caucus for Mr. Gostovich, unless Respondents could demonstrate and prove that doing so would be either an undue burden or fundamentally alter the essential nature of the Hudson Town Caucus. pages 46 – 53
- i. Respondents failed to perform their duties under the ADA to explain the reasons for denying Complainants’ requested reasonable modification. page 47
 - ii. A remote access and participation option is not an undue burden, either financially or administratively. pages 47 – 48
 - iii. A remote access and participation option for the Hudson Town Caucus does not make a fundamental alteration to the essential nature of the Caucus; rather, it preserves and furthers its essential nature. pages 48 – 53
 - a. The essential nature of the annual Hudson Town Caucus is that the Caucus is open and accessible to all Hudson Town electors and to the general public. pages 49 – 51
 - b. The reasonable modification of providing a remote access and participation option for the Hudson Town Caucus during the on-going covid-19 pandemic preserves and furthers the essential nature of the Hudson Town Caucus. pages 51 – 53
- IV. A remote access and participation option for the Hudson Town Caucus can also provide necessary security and privacy. pages 54 – 56**
- V. No judicial final findings or final determinations have been made on the merits of Complainants’ claims. pages 56 – 57**

VI. Respondents failed to fulfill their duties and responsibilities to ensure the January 4, 2021 Hudson Town Caucus was conducted with sufficient protections against covid-19 infection risks.	pages 57 – 60
A. Respondents are required to make and carry out practical and effective plans for safe conduct of the Hudson Town Caucus.	pages 57 – 58
B. Respondents failed to make and carry out a practical and effective plan for safe conduct of the Hudson Town Caucus during the covid-19 pandemic.	pages 58 – 60
i. Respondents failed to protect the public health.	pages 58 – 59
ii. Respondents failed to protect Caucus attendees.	page 59
iii. Respondents failed to provide an alternative to in-person participation in the Caucus.	page 60
VII. Conclusion	pages 60 – 62
ATTACHMENTS	pages 63 – 90

II. Respondents' attorney misconstrues election law and its application to the Hudson Town Caucus.

Respondents' attorney makes the head-spinning argument that the annual January Hudson Town Caucus is not required to be accessible for participation by all qualified Hudson Town electors because it is not an "election" or "primary" under Wisconsin election law; but, nevertheless, if the Hudson Town Caucus were an election, then cited provisions in Wisconsin election law about requirements for and definitions of "polling place", "ballot", and "voting machine", along with uncited provisions of Wisconsin election law that supposedly prohibit online voting in elections, must be controlling for the Hudson Town Caucus too, because there might be voting there, so it would be illegal for the Town of Hudson to provide an option of remote access and participation in the Hudson Town Caucus for any qualified Hudson Town elector for any reason. (See: January 12, 2021 Response, at Section II., *WEC EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

Apparently, other town and village attorneys have not been persuaded by that logic.

A. Numerous Wisconsin towns or villages held their January 2021 caucuses via a remote meeting platform.

Contrary to Respondents' attorney's assertion, it is not unprecedented, or apparently illegal, for a Wisconsin town or village to conduct its January 2021 Caucus under Wis. Stat. 8.05(1) either partially or entirely via a remote meeting platform, such as Zoom, during the on-going covid-19 pandemic.

A very brief Google search found that numerous Wisconsin towns and villages chose to hold their January 2021 Caucuses under Wis. Stat. 8.05(1) either partially or entirely online, including:

- Town of Bell in Bayfield County held its Town Caucus on January 12, 2021 via Zoom (see: <https://cornucopiawisconsin.org/january-12-town-board-agenda/>);
- Village of Birchwood held its Caucus on January 12, 2021 both in-person and via Zoom (see: <https://birchwoodvillagewi.com/2021/01/07/2021-caucus-1-12-2021-530-p-m/>);
- Town of Frankfort in Pepin County held its Town Caucus on January 12, 2021 both in-person and via Zoom (see: <https://townoffrankfort.tripod.com/>);
- Town of Colfax in Dunn County held its Town Caucus on January 13, 2021 both in-person and via Zoom (see: <https://www.facebook.com/Town-of-Colfax-Wisconsin-Municipal-Government-323328231572937/>);
- Town of West Point in Columbia County held its Town Caucus on January 14, 2021 both in-person and via Zoom (see: <https://www.townofwestpoint.us/government/notices/166/town-caucus/>);
- Town of Bayfield in Bayfield County provided online access via Zoom to its January 18, 2021 Town Caucus (see: <https://townofbayfield.com/2021/01/12/caucus-and-regular-january-town-board-meeting/>);

- Town of Stockholm in Pepin County held its Town Caucus on January 18, 2021 both in-person and via Zoom (see: https://www.townofstockholm.org/vertical/sites/%7B93B8D6FF-AF3C-41E2-BEB9-9DBB64A432DE%7D/uploads/January_18_2021_Caucus_and_Regular_Agenda.pdf);
- Town of Pleasant Springs in Dane County held its January 19, 2021 Town Caucus via Zoom (see: https://pleasantsprings.org/events/docs/event_113_11259.pdf); and
- Town of York in Green County held its January 21, 2021 Town Caucus via Zoom (<https://townofyork.org/january-caucus-nominees-needed/>).

Wis. Stat. 8.05(1) is part of Wisconsin election law in Wisconsin Statutes Chapters 5 - 12, all of which “shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to comply with some of their provisions.” Wis. Stat. 5.01(1).

It is not inconsistent with Wisconsin law, and is hardly much of a stretch at all, for a Wisconsin town or village to provide an option of remote access and participation in its annual Caucus meeting during the on-going covid-19 pandemic that would allow the public to safely observe its Caucus meeting, that would allow its qualified electors to safely participate in the candidate nomination and selection process, and that even would allow its qualified electors to vote on nominated candidates, if required.

When first considered, changes from the way we’ve always done things can seem challenging, and adopting new technologies can seem difficult, but the examples of other Wisconsin towns and villages that chose to conduct their January 2021 Caucuses either partially or entirely on a remote meeting platform, such as Zoom, demonstrate that it was both allowable under Wisconsin law, and practicable during the on-going covid-19 pandemic, for the Town of Hudson to also have offered a remote access and participation option for its customarily in-person-only annual Town Caucus meeting.

B. Wisconsin election law is not hostile to remote voting.

Contrary to Respondents’ attorney’s assertion, Wisconsin election law does allow electors to cast their election votes remotely from their living rooms in their homes.

Wisconsin electors may cast their election votes remotely from their living rooms whenever they vote by absentee ballots, as is permitted by Wisconsin Statutes Chapter 6, Subchapter IV, Voting Absentee.

During the on-going covid-19 pandemic, the Wisconsin Elections Commission (WEC) has strongly urged Wisconsin electors to vote absentee and cast their election votes remotely from their homes in order to be safer from covid-19 exposure risks. The WEC mailed absentee ballot applications to Wisconsin electors statewide to encourage and facilitate electors casting their election votes remotely from their homes, and in the November 3, 2020 General Election, nearly two million Wisconsin electors, including

Complainants and many other Hudson Town electors like Complainants, cast their votes remotely from their homes in order to be safer from covid-19 exposure risks.

(See: Milwaukee Journal Sentinel, “Wisconsin Elections Commission approves sending 2.7 million absentee ballot request forms to voters”, June 17, 2020, at <https://www.jsonline.com/story/news/politics/2020/06/17/wisconsin-elections-commission-finalize-mailing-absentee-ballot-request-forms/5329007002/>; and “Wisconsin election results”, at <https://projects.jsonline.com/topics/election/2020/11/3/wisconsin-election-breakdown-and-votecast-survey-results.html>)

C. Wisconsin election law is not hostile to voting via electronic ballots and transmitting votes online.

Contrary to Respondents’ attorney’s assertion, Wisconsin election law does not require that all election ballots be paper, and does not prohibit voting in elections via electronic means that transmit votes online.

Wisconsin election law in Wisconsin Statutes Chapter 5, Subchapter III, Electronic Voting Systems, allows the WEC to approve “voting machines” that are “electronic voting systems” which do not use paper ballots but do have a paper backup, and which also report electors’ votes by online transmission.

(See: Wis. Stat. 5.02(4m), 5.91(18), 5.905, 5.40, and 5.53 - 5.55; WEC, “Voting Equipment”, at <https://elections.wi.gov/elections-voting/voting-equipment>; and The Cap Times, “Wisconsin election infrastructure mostly secure—but inaccurate counts are hard to catch and correct”, October 10, 2020, available at https://madison.com/ct/news/local/govt-and-politics/wisconsin-election-infrastructure-mostly-secure-but-inaccurate-counts-are-hard-to-catch-and-correct/article_f2974298-58de-5de3-86a4-1c97c39d27f9.html)

D. Compelling state interests to be achieved through the operation of Wisconsin election laws are to encourage elector participation, and to ensure that all electoral processes are open and accessible for full and equal participation by all electors.

Although the decision was reversed on a different point, a unanimous 1980 Wisconsin Supreme Court opinion provides useful guidance to Respondents that the annual Hudson Town Caucus should be administered and conducted in a manner that ensures it is open and accessible for full and equal participation by all Hudson Town electors in order to serve the multifactor compelling state interests of encouraging participation in the electoral process by all Hudson Town electors, protecting the overall integrity of the candidate selection and election process, and protecting Hudson Town electors' rights to associate for political purposes.

(See: *State ex re. La Follette v. Democratic Party of U.S. of America*, 287 N.W.2d. 519, 93 Wis.2d 473 (Wis. 1980), reversed in *Democratic Party of the United States et al., Appellants, v. Wisconsin ex rel. Bronson C. Follette, et al.*, 450 U.S. 107, 101 S.Ct. 1010 (1981); and Geyh, Charles G., "It's My Party and I'll Cry If I Want To": *State Intrusions upon the Associational Freedoms of Political Parties – Democratic Party of the United States v. Wisconsin ex rel. La Follette* (1983). Articles by Maurer Faculty. 877. available at

<https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1876&context=facpub>)

In its 1981 decision reversing *La Follette v. Democratic Party, Id.*, the U.S. Supreme Court voided Wisconsin's mandate that the results of the State's open Presidential preference primary determined the allocation of votes cast by the State's delegates to the Democratic Party's National Convention, but the Court upheld Wisconsin's open Presidential preference primary. See: *Democratic Party v. Wisconsin, Id.*, reversing *La Follette v. Democratic Party, Id.*

The U.S. Supreme Court did not question the Wisconsin Supreme Court's opinion regarding the compelling state interest of encouraging elector participation in open and accessible candidate nomination and selection processes when it reversed the decision in *La Follette v. Democratic Party, Id.*:

"The Wisconsin Supreme Court considered the question before it to be the constitutionality of the 'open' feature of the state primary election law, as such. Concluding that the open primary serves a compelling state interest by encouraging voter participation, the court held the state open primary constitutionally valid. Upon this issue, the Wisconsin Supreme Court may well be correct. In any event, there is no need to question its conclusion here." *Democratic Party v. Wisconsin LaFollette, Id.*, 450 U.S. at 120 – 121.

In its opinion for *La Follette v. Democratic Party, Id.*, regarding matters unquestioned by the U.S. Supreme Court, the Wisconsin Supreme Court reviewed the history and

importance in Wisconsin election law and practices of preserving the integrity of the nomination process and of ensuring that the selections of candidates for federal, state, and local elected offices were made by electors through nomination processes that were open to full and equal participation by all qualified electors. The Wisconsin Supreme Court concluded the state had a compelling interest in protecting the integrity of the candidate nomination process, protecting the political association rights of electors, and encouraging increased elector participation in the political process.

“The state has a legitimate interest in protecting the overall integrity of the candidate selection process, the primary and the electoral process. This interest includes . . . protecting the rights of its citizens to . . . associate for political purposes . . .” *La Follette v. Democratic Party, Id.*, at 530.

“[F]acilitat[ing] and enlarg[ing] public discussion and participation in the electoral process [are] goals vital to self-governing people.’ *Buckley v. Valeo*, 424 U.S. 1, 92 – 93 . . . [citations omitted . . .] (1976). The legislature of this state believes democracy is best served by stimulating political activity.” *La Follette v. Democratic Party, Id.*, at 537.

The Wisconsin Supreme Court in *La Follette v. Democratic Party, Id.*, also discussed the vital and critical role of the process for nominating and selecting candidates to run for elected office as an integral part of the entire election process, and concluded that the process for nominating and selecting candidates should be considered as part of the election in which those candidates would run at a future date. The Wisconsin Supreme Court’s conclusion in 1980 was consistent with that reached by the Wisconsin Supreme Court in 1930:

“In *State ex. re. La Follette v. Kohler*, 200 Wis. 518, 599 – 560, 228 N.W. 895 (1930) this court said:

‘ . . . Elections are the means by which choices are made by the electors. When the process of choosing begins the election has been begun. Originally so far as the law was concerned it was supposed to begin and end on election day. Then the law extended it by taking notice of caucuses and conventions. Later it substituted the primary for the caucus and convention. While the process has been extended it still is one thing, the making of a choice. This unity is indicated by the fact that the law requires that with a nomination paper there shall be filed by the proposed candidate a declaration that if nominated and elected he will qualify.’” *La Follette v. Democratic Party, Id.*, at 539.

The Wisconsin Supreme Court in *La Follette v. Democratic Party, Id.* and in *La Follette v. Kohler, Id.*, concluded that it was as necessary for the candidate nomination process to be open and accessible for full and equal participation by all electors as it was necessary for the election among nominated candidates to be open and accessible for full and equal participation by all electors. The Court concluded that, especially because in many instances securing the earlier nomination was equivalent to winning the later election, it was necessary to consider both the nomination and the election together as

part of one electoral process that must be conducted throughout in a manner that was open and fair toward all electors and that encouraged all electors to participate. See: *La Follette v. Democratic Party, Id.* at 538; and *La Follette v. Kohler*, 228 N.W. 895, at 909 – 910 (1930).

Under the reasoning in both *La Follette v. Democratic Party, Id.*, and *La Follette v. Kohler, Id.*, an open and accessible opportunity for all qualified Hudson Town electors to participate fully and equally in the Hudson Town Caucus is essential to ensure the integrity of the entire electoral process for members of the Hudson Town Board.

E. The 1st and 14th Amendments to the U.S. Constitution require that the Hudson Town Caucus be open and accessible for full and equal participation by all Hudson Town electors.

The 1ST Amendment to the US Constitution guarantees the freedoms of speech, assembly, and petition, from which are derived associational rights.

These 1st Amendment rights are fundamental interests protected from undue burdens under the 14th Amendment to the U.S. Constitution through the Due Process Clause and the Equal Protection Clause.

“It is beyond debate that freedom to engage in association for the advancements of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech . . . [citations omitted]. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-61, 78 S.Ct. 1163 (1958).

All qualified Hudson Town electors, along with all potential candidate nominees for the Hudson Town Board whom electors might nominate or consider selecting through an election at the Hudson Town Caucus, have protected interests in the continued availability of political association opportunities.

i. Complainants hold statutory and fundamental constitutional rights to participate fully and equally in the Hudson Town Caucus.

Respondents’ attorney’s attempt to distinguish the Hudson Town Caucus from an “election” or “primary” or “polling place”—all of which are required to be made accessible to all electors, including electors who are disabled, handicapped, and/or elderly under provisions of Wisconsin election law—in support of his assertion that the Hudson Town Caucus is not required to be open and accessible for full and equal participation by all qualified Hudson Town electors is irrelevant.

Regardless of whether the annual Hudson Town Caucus conducted under Wis. Stat. 8.05(1) is considered a public meeting of the town electorate, an electoral process, a primary, an election, or something else under Wisconsin laws, Complainants hold both statutory and fundamental constitutional rights to participate fully and equally in it.

Wis. Stat. 8.05(1) grants every town elector a right to participate in the town caucus, to nominate candidates for the town board, and to vote in any election held at the town caucus to select candidates for a position on the town board.

The 1st Amendment grants Complainants fundamental rights to associate with others for political purposes, to take part in political processes, to express their views on issues

and candidates for elective offices, and to hear from candidates themselves, such as at the annual Hudson Town Caucus where Hudson Town electors join together to nominate and select candidates for Town Board positions.

Complainants' statutory and constitutional rights, as qualified Hudson Town electors, to participate fully and equally in the annual January Hudson Town Caucus that nominates and selects the candidates for Hudson Town Board whose names will be on the Spring Election ballot are foundational to representative democracy, because who is selected as a candidate for a Town Board position largely determines who soon will represent Complainants on the Hudson Town Board.

"As a practical matter, the ultimate choice of the mass of voters is predetermined, when the nominations have been made." *Newberry v. United States*, 256 U.S. 232, 286 (1921) (Pitney, J. dissenting).

ii. Respondents' administration and conduct of the January 4, 2021 in-person-only Hudson Town Caucus unduly burdened Complainants' rights to participate fully and equally in the Caucus.

Here, Complainants' rights to participate fully and equally in the January 4, 2021 Hudson Town Caucus are fundamental and essential to their participation in American democracy.

"Public participation in the election of government officers is the essence of the American system of representative democracy." *La Follette v. Democratic Party, Id.*, at 539.

The 14th Amendment serves to protect Complainants' fundamental interests in their 1st Amendment rights from being unduly burdened by the effects of Respondents' administration and conduct of the January 4, 2021 Hudson Town Caucus.

Of course, there must be governmental regulation of electoral processes such as the Hudson Town Caucus, and not every limitation or incidental burden on Complainants' rights to participate fully and equally is unconstitutional. Permissible governmental regulation may somewhat burden Complainants' rights to join with other Hudson Town electors in the Hudson Town Caucus for the purposes of nominating and selecting candidates for election to positions on the Hudson Town Board, and governmental regulation may substantially affect these rights where there is a sufficiently important governmental interest.

a. Application of the Anderson-Burdick balancing framework shows Respondents administration and conduct of the January 4, 2021 Hudson Town Caucus unduly burdened Complainants' 1st Amendment associational rights.

Courts often resolve conflicts between the governmental regulatory interest in electoral processes and an individual's freedom to associate for political purposes through a balancing process. The *Anderson-Burdick* test often is applied to various subsets of election law and administration. Under *Anderson-Burdick*, the level of scrutiny depends on the severity of the burden imposed: A substantial intrusion upon associational rights is unconstitutional without a showing of compelling governmental interest, while an insubstantial intrusion requires showing only a legitimate governmental interest. The validity of any particular governmental regulation must be determined by assessing the degree of infringement of the rights held by the individual against the legitimacy, strength, and necessity of the governmental interests and the means of implementing those interests.

(See: Matthew R. Pikor, *Voter ID in Wisconsin: A Better Approach to Anderson/Burdick Balancing*, 10 Seventh Circuit Rev. 465, at 470 - 475 (2015), available at <https://www.kentlaw.iit.edu/sites/ck/files/public/academics/jd/7cr/v10-2/pikor.pdf>)

Under the balancing framework articulated in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992), a court must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.” *Burdick*, 504 U.S. at 434. The court must (1) “determine the extent of the burden imposed by the challenged provision”; (2) “evaluate the interest that the state offers to justify that burden”; and (3) “judge whether the interest justifies the burden.”

1. Respondents' actions and inactions in administering and conducting the January 4, 2021 in-person-only Hudson Town Caucus extinguished Complainants' rights to participate.

In this instance, the nature and scope of Respondents' limitations on Complainants' fundamental rights were to entirely extinguish them.

Respondents' administration and conduct of the in-person-only January 4, 2021 Hudson Town Caucus during the on-going covid-19 pandemic effectively excluded Complainants from attending and participating in the nomination and selection of candidates for the Hudson Town Board because Respondents failed to ensure Complainants' health and lives would not be exposed to substantial danger from infection with covid-19 at the in-person-only Caucus.

It is immaterial whether Respondents' administration and conduct of the in-person-only Caucus directly or indirectly abridged Complainants' rights to associate for political purposes and to take part fully and equally in the political process. See: *NAACP v. Alabama, Id.* at 461; and *Brown v. Socialist Workers Committee*, 459 U.S. 87, 98 – 101 (1982).

In *NAACP v. Alabama, Id.*, a government action was found to abridge individuals' rights to associate because it likely would expose those individuals to private threats. "The crucial factor is the interplay of government and private action, for it is only after the initial exertion of state power . . . that private action takes hold." *NAACP v. Alabama, Id.*, at 462.

During the on-going covid-19 pandemic, Respondents administered and conducted an in-person-only Hudson Town Caucus on January 4, 2021 that resulted in abridging Complainants rights to associate for political purposes and to take part fully and equally in the political process: Complainants were required EITHER to put their health and lives in substantial danger from infection with covid-19 at the in-person-only Caucus, OR to forego their rights to participate in the Hudson Town Caucus in order to protect their health and lives from infection with covid-19 at the in-person-only Caucus.

Despite Complainants multiple requests for an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus that would not require Complainants to put their health and lives in substantial danger from infection with covid-19, Respondents refused to provide Complainants with any alternative to in-person attendance at the Caucus that would be sufficient and effective to allow Complainants to safely exercise their rights to participate fully and equally in the Caucus.

2. Respondents have compelling state interests in encouraging all Hudson Town electors to participate in the Hudson Town Caucus, in ensuring the integrity of the Caucus and protecting the rights of all qualified electors to participate, in protecting the health and safety of electors, and in protecting the public health.

Respondents have compelling governmental interests in the January 4, 2021 Hudson Town Caucus.

For any annual January Hudson Town Caucus, these interests are to encourage all Hudson Town electors to participate in the Caucus, to protect the overall integrity of the Caucus and ensure it is conducted in a fair and orderly manner under Wis. Stat. 8.05(1), and to protect the rights held by all Hudson Town electors to participate fully and equally in nominating and selecting candidates to appear on the Spring Election ballot. See: *La Follette v. Democratic Party, Id.*, at 530.

During the on-going covid-19 pandemic, Respondents also have compelling governmental interests in protecting the health and safety of Hudson Town electors

from infection with covid-19, and in protecting the public health from covid-19 exposure and spread risks. “The police power of the State is that power required to be exercised in order to effectually discharge within the scope of the constitutional limitations its paramount obligation to promote and protect the public health, safety, morals, comfort and general welfare of the people.” *Sinclair Ref. Co. v. City of Chicago*, 178 F.2d 214, 216 (7th Cir. 1949).

3. Strict scrutiny applies to Respondents’ extinguishment of Complainants’ rights to participate in the January 4, 2021 Hudson Town Caucus.

When government severely restricts—or as in this case extinguishes—an individual’s 1st and 14th Amendment rights of political association and rights to participate in an electoral process, then the burden on the individual’s fundamental associational rights must be justified by a compelling state interest, and strict scrutiny is made of the fit between the compelling state interest justifying the burden and the means chosen to achieve that compelling state interest, in order to determine whether the burden is narrowly tailored to further the compelling state interest by the least restrictive means. See: *Voter ID in Wisconsin, Id.* at 473 – 474.

Respondents’ administration and conduct of the in-person-only January 4, 2021 Hudson Town Caucus effectively prevented Complainants’ exercise of their fundamental rights to associate for political purposes and to participate in the political process. In these circumstances, strict scrutiny is required, where the burden must be narrowly tailored to further a compelling state interest by the least restrictive means. See: *Siefert v. Alexander*, 597 F.Supp.2d 860 (Wis. 2009).

b. Application of strict scrutiny shows Respondents unduly burdened Complainants’ fundamental associational rights.

1. Covid-19 pandemic; Characteristics of Complainants and Hudson Town electors; Public health protections; and the January 4, 2021 Hudson Town Caucus:

St. Croix County, where the Town of Hudson is located, was experiencing the rapidly escalating exponential growth of an uncontrolled covid-19 pandemic on December 1, 2020, when the Hudson Town Board set the January 4, 2021 Hudson Town Caucus.

(See: December 23, 2020 Complaint at pages 8 – 9, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*; and November 30, 2020 Koeberl/Gostovich memo to Hudson Town Board, “Dec. 1, 2020, Town of Hudson Board Meeting, Agenda item 7. Resolution 2020-4 Opposition to St. Croix Co. Proposed Communicable Disease Ordinance”, attached)

The covid-19 pandemic continued to worsen in St. Croix County from December 1, 2020 to the January 4, 2021 date of the in-person-only Hudson Town Caucus.

From December 1, 2020, to January 4, 2021, the Wisconsin Dept. of Health Services (WI DHS) reported that at least 1,697 more people in St. Croix were infected with the highly contagious novel coronavirus that causes covid-19; this was about a 32% increase in the total number of people infected with covid-19, from 5,232 on December 1, to 6,929 on January 4. For January 4, 2021, the St. Croix County Public Health Dept. reported that the seven-day-rolling-average of the daily number of people newly testing positive for covid-19 was at 33 per 100,000, and the seven-day-rolling-average of the daily percent of people newly testing positive for covid-19 was at about 22%. The WI DHS rated covid-19 case activity in St. Croix County during the two weeks prior to and including January 4, 2021, as HIGH. According to the Harvard Global Health Institute guidelines, any daily number of new cases above 25 per 100,000 indicated the highest RED covid-19 risk level, at which community spread of covid-19 was out of control and stay-at-home orders were necessary.

(See: December 23, 2020, Complaint at pages 8 -10, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*; WI DHS COVID-19 County Data, at: <https://www.dhs.wisconsin.gov/covid-19/county.htm>; WI DHS COVID-19: Disease Activity by Region and County, at: <https://www.dhs.wisconsin.gov/covid-19/disease.htm>; St. Croix County COVID-19 Dashboard, at: <https://infogram.com/st-croix-county-covid-19-dashboard-1h9j6gggxzn754g?live>; and Harvard Global Health Institute, “Key Metrics for COVID Suppression”, at: <https://globalhealth.harvard.edu/key-metrics-for-covid-suppression-researchers-and-public-health-experts-unite-to-bring-clarity-to-key-metrics-guiding-coronavirus-response/>)

Census data show that the Town of Hudson now has about 9,000 residents in about 3,000 households, and about 75% of Town residents are 18 or older, so there now may be about 6,750 Hudson Town electors. Census data show that about one-third of Hudson Town residents and electors, like Complainants, are 65 or older (11% or 990 people), have serious underlying medical or health conditions including obesity (27% of adults or 1,823 people), and/or are under 65 and disabled (5% or 450 people). Public health data show that if these one-third of Hudson Town residents and electors were infected with the highly contagious novel coronavirus that causes covid-19, then they would be highly likely to experience severe illness, require hospitalization, and die.

(See: U.S. Census, Quick Facts: Hudson Town, St. Croix Col, WI, at <https://www.census.gov/quickfacts/fact/table/hudsontownstcroixcountywisconsin/BZA110218>; and December 23, 2020, Complaint at pages 10 -11, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

During the weeks leading up to and at the time of the January 4, 2021 in-person Hudson Town Caucus, the federal, Wisconsin, and St. Croix County relevant recommended and required public health protections against covid-19 exposure and spread risks included that everyone, but especially people who were older, had underlying health conditions, and/or were disabled, should:

- Stay home if over 60 years old, pregnant, immunocompromised, obese, diabetic, have lung, kidney, and/or heart disease, and/or have or have had cancer (Wisconsin Governors Emergency Order #94);
- Not enter any indoor public space where anyone is unmasked (White House coronavirus task force);
- Avoid close contact with people from outside their immediate household (CDC and Wisconsin Governors Emergency Order #94);
- Avoid gatherings of any size with people outside their immediate household (Wisconsin Governors Emergency Order #94);
- Limit indoor public gatherings to no more than ten (10) people (St. Croix County Covid-19 Health Advisory);
- At all public gatherings of any size, every person should wear a mask and maintain six-foot distance from people outside their immediate household, seating should be assigned or fixed, a contact list should be made, and health screenings should be done (St. Croix County Covid-19 Health Advisory); and
- Limit numbers of individuals at meetings, and offer remote participation options (Wisconsin Governors Emergency Order #94).

(See: December 23, 2020 Complaint at pages 12 – 14, and Attachments at pages 37 – 44, WEC EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson)

Complainants, and other Hudson Town electors who like Complainants are older, have serious underlying medical or health conditions including obesity, and/or are disabled, made rational risk assessments regarding the in-person January 4, 2021 Hudson Town Caucus.

(See: Following Section III.B.iii. herein)

In the on-going and worsening covid-19 pandemic, Complainants, and other Hudson Town electors like Complainants, reasonably concluded that Respondents' proposed January 4, 2021 Hudson Town Caucus would put them in harm's way and would jeopardize their health and lives due to the likely very high covid-19 infection risks at the public, in-person, hour or longer, gathering of Hudson Town electors from households throughout the Town.

For Complainants and other qualified Hudson Town electors like them in age, medical or health conditions, and/or disabilities, the in-person-only January 4, 2021 Hudson Town Caucus administered and conducted by Respondents was not safely accessible, and they were intimidated and prevented from participating in it.

(See: December 23, 2020, Complaint at pages 12 -15, and Attachments at pages 24 – 44, WEC EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson)

Hudson Town electors in addition to Complainants, for example, 79-year-old Judy Green and her 75-year-old husband Jim Green, told Respondents they could not attend the January 4, 2021 Hudson Town Caucus in-person because the likely very high covid-

19 infection risks would threaten their health and lives, and these Hudson Town electors also requested a remote access and participation option for the January 4, 2021 Hudson Town Caucus.

(See: Email correspondence between Judy Green and Hudson Town Clerk Vickie Shaw, sent December 23, 2020 at 1:31PM and 2:07PM, attached; and Email correspondence between Judy Green and Hudson Town Supervisor Tim Foster, sent December 28, 2020 at 3:24PM and 4:45PM, attached)

To Complainants knowledge, many Hudson Town electors were intimidated and prevented from attending and participating in the January 4, 2021 in-person-only Hudson Town Caucus by the likely very high covid-19 infection risks at the public, in-person, hour or longer, gathering of Hudson Town electors from households throughout the Town that Respondents proposed to conduct.

Over the five weeks preceding the January 4, 2021 in-person-only Hudson Town Caucus, Complainants, and other people of whose efforts Complainants have knowledge, phoned, emailed, and/or texted numerous Hudson Town electors to encourage them to attend the Caucus and to ask them to consider nomination as candidates for positions on the Hudson Town Board. Almost all the Hudson Town electors who Complainants contacted, or who were contacted by people of whose efforts Complainants have knowledge, were 60 or older, and most contacted electors had medical or health conditions that made it likely they would become severely ill, require hospitalization, and die if they were infected with covid-19. Almost all contacted Hudson Town electors cited concerns about covid-19 infection risks at the public, in-person, hour or longer, gathering of Hudson Town electors from households throughout the Town that Respondents planned to conduct as the principal reason they did not plan to attend the January 4, 2021 Hudson Town Caucus.

Reports by people who attended the January 4, 2021 in-person-only Hudson Town Caucus, including from Hudson Town electors, journalists, and anti-mask activists, are that reasonable and necessary public health protections against covid-19 exposure and spread risks, including requiring that at all times all attendees maintain appropriate physical distance and wear masks, were not uniformly followed or enforced.

(See the following Section VI.B.ii. herein; Giese email sent January 5, 2021 at 12:49PM, attached; Photo of Caucus check-in from Wisconsin Watch article, attached; Activated Patriots Facebook page posts by Jessica Klatt and Crystal Mikle Randgaard, January 4, 2021, attached; and WEC EL 21-07 Denison v. Shaw et al, sworn Complaint, attached)

To Complainants' understanding, the January 4, 2021 in-person-only Hudson Town Caucus was attended by about 85 people, or about 0.013% of the about 6,750 Hudson Town electors who had rights to participate fully and equally in it. Candidates to run in the April 6, 2021 Spring Election for three of the five seats on the Hudson Town Board were selected by the about 0.013% of all eligible Hudson Town electors who attended the in-person-only Caucus. Only one person was nominated and will run unopposed for

election as Hudson Town Chair; and only two candidates were nominated for each of the positions of Hudson Town Board Supervisors #2 and #4, so an election at the Caucus among nominated candidates was not required.

2. Respondents' compelling state interests in the January 4, 2021 Hudson Town Caucus:

Respondents have compelling state interests regarding the January 4, 2021 Hudson Town Caucus that include encouraging all Hudson Town electors to participate in the Caucus, ensuring the integrity of the Caucus while also protecting the rights of all qualified Hudson Town electors to participate fully and equally, and, during the on-going covid-19 pandemic, protecting the health and safety of Hudson Town electors from infection with covid-19 and protecting the public health from covid-19 exposure and spread risks.

3. Respondents' choice to hold an in-person-only Hudson Town Caucus on January 4, 2021 during the on-going covid-19 pandemic was not effective, necessary, or narrowly tailored to further the compelling state interests here.

Respondents cannot show that their chosen means—holding an in-person-only Hudson Town Caucus on January 4, 2021 during the on-going covid-19 pandemic—was effective, necessary, or narrowly tailored to further the compelling state interests here.

Respondents failed to further the compelling state interest of encouraging all Hudson Town electors to participate in the Hudson Town Caucus. The likely very high covid-19 infection risks at the public, in-person, hour or longer, gathering of Hudson Town electors from households throughout the Town that Respondents proposed to conduct had the effect of intimidating many Hudson Town electors, including Complainants, and prevented many Hudson Town electors, including Complainants, from attending to participate in the Caucus.

Respondents failed to further the compelling state interest of ensuring the integrity of the Caucus. Public confidence that the process for nominating and selecting candidates for election to a majority of the positions on the Hudson Town Board was conducted in a manner that was open and accessible for full and equal participation by all Hudson Town electors was undermined by the extremely low elector participation rate—only about 0.013% of all Hudson Town electors attended the Caucus to nominate and select candidates.

Respondents failed to further the compelling state interest of protecting the rights of all Hudson Town electors to participate fully and equally in the Caucus—which is a part of ensuring the integrity of the Caucus. Respondents failed to ensure that the in-person-only Caucus during the on-going covid-19 pandemic would be safely accessible for full and equal participation by all Hudson Town electors, including the about one-third of Hudson Town electors who are older, have serious medical or health conditions, and/or

are disabled, and for whom infection with covid-19 at the in-person Caucus was a substantial danger to their health and lives.

Respondents failed to further the compelling state interests during the on-going covid-19 pandemic of protecting the health and safety of Hudson Town electors and of protecting the public health. Respondents failed to prepare, publicize in advance, and enforce at the Caucus a public health protection plan sufficient and effective to ensure that the public meeting was conducted in full accord with federal, Wisconsin, and St. Croix County recommended and required public health protections against covid-19 infection risks.

Respondents failed to further all of the above compelling state interests when Respondents failed to provide, to any Hudson Town elector for any reason, any alternative to in-person attendance at the Caucus. Respondents failed to preserve the rights of all Hudson Town electors to participate in the Caucus fully and equally when Respondents failed to provide an alternative way for Hudson Town electors to participate in the Caucus that would not present a substantial danger from covid-19 infection to their health and lives.

Respondents chosen means—holding an in-person-only Hudson Town Caucus on January 4, 2021 during the on-going covid-19 pandemic—was not narrowly tailored to further any of the compelling state interests here.

Respondents' administration and conduct of the in-person-only January 4, 2021 Hudson Town Caucus resulted primarily in effectively excluding from any participation in the Caucus the about one-third of qualified Hudson Town electors, including Complainants, whose older ages, serious underlying medical or health conditions including obesity, and/or disabilities made it very likely they would experience severe illness, require hospitalization, and die if they were infected at the in-person-only Caucus with covid-19.

Specifically, Respondents' administration and conduct of the January 4, 2021 Hudson Town Caucus were not effective, necessary, or narrowly tailored to further the compelling state interests here when:

- Respondents failed to effectively promote and facilitate participation in the Caucus by all Hudson Town electors—only about 85 Hudson Town electors out of the approximately 6,750 total Hudson Town electors, or about 0.013% of all Hudson Town electors, attended the in-person Caucus to nominate and select candidates for election to three of the five seats on the Hudson Town Board;
- Respondents failed to adopt required and recommended protections against covid-19 infection risks for the in-person Caucus that were in full accord with those issued by federal, Wisconsin, and St. Croix County public health officials;
- Respondents failed to publicize widely enough and far enough ahead of the Caucus date a sufficient and effective plan of protections against covid-19 infection risks for the in-person Caucus;
- Respondents failed to enforce reasonable and necessary public health protections against covid-19 infection risks at the in-person Caucus; and

- Respondents failed to provide any alternative to in-person attendance at the Caucus that would preserve the rights of Hudson Town electors to participate fully and equally in the Caucus, and would not present a substantial danger from covid-19 infection to the health and lives of Hudson Town electors.

4. Respondents had less restrictive and more effective means for furthering the compelling state interests in the January 4, 2021 Hudson Town Caucus.

Respondents could have chosen a less restrictive means of administering and conducting the January 4, 2021 Hudson Town Caucus that would have more effectively furthered the compelling state interests of encouraging all Hudson Town electors to participate in the Caucus, ensuring the integrity of the Caucus while also protecting the rights of all qualified Hudson Town electors to participate fully and equally, and, during the on-going covid-19 pandemic, protecting the health and safety of Hudson Town electors from infection with covid-19 and protecting the public health from covid-19 exposure and spread risks.

(See: December 23, 2020 Complaint at pages 18 – 19 and 20 – 21, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*; and following Section IV. herein)

The examples of other Wisconsin towns and villages that during the on-going covid-19 pandemic chose to conduct their January 2021 Caucus meetings either partially or entirely via a remote a meeting platform clearly demonstrate that there were less restrictive alternatives than an in-person-only January 4, 2021 Hudson Town Caucus which could have encouraged participation in the Caucus by all Hudson Town electors, ensured the integrity of the Caucus and allowed all qualified electors to safely participate without exposure to infection with covid-19, and also would have more effectively protected the public health from covid-19 exposure and spread risks.

The covid-19 pandemic and public health protection measures have caused local government officials and bodies to adopt alternatives to assembling people for in-person-only meetings that create risks of spreading the highly contagious novel coronavirus. Many local governments are conducting meetings open to the general public and to their electors either partially or entirely via telephone or video conferencing in order to allow access and participation while also protecting the meeting participants from infection with covid-19 and protecting the community against covid-19 exposure and spread risks.

(See: UW-Madison, Local Government Education, “Update – Government Meetings During Covid-19 Pandemic”, May 18, 2020, available at <https://localgovernment.extension.wisc.edu/update-government-meetings-during-covid-19-pandemic/>)

The Wisconsin Towns Association (WTA) has issued guidance regarding the conduct of town government operations during the on-going covid-19 pandemic, and has

assembled guides to technologies supporting alternatives to holding in-person-only meetings.

(See: WTA, “Town Government Operations During COVID-19: FAQs”, March 26, 2020, available at <https://www.wisctowns.com/documents/town-government-operations-during-covid-faq-march-26-update-final.pdf>; and WTA, “Town Options for Meeting Remotely”, March 26, 2020, available at <https://www.wisctowns.com/documents/covid-19-teleconference-options.pdf>)

The Wisconsin Dept. of Justice has issued advisories regarding how local governments may comply with open meetings obligations while conducting meetings either partially or entirely remotely during the on-going covid-19 pandemic.

(See: Wisconsin Dept. of Justice, Office of Open Government, “Covid-19 and Open Meetings”, March 16, 2020, available at <https://localgovernment.extension.wisc.edu/files/2020/03/AG-Advisory-OML-COVID19.pdf>; and “Additional Information Regarding Covid-19 and Open Meetings”, March 20, 2020, available at <https://www.doj.state.wi.us/news-releases/office-open-government-advisory-additional-information-regarding-covid-19-and-open>)

iii. Respondents violated Complainants’ 14th Amendment Due Process Rights.

Respondents violated Complainants’ procedural due process rights under the 14th Amendment by arbitrarily denying Complainants’ requests for an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus; by failing to provide Complainants with effective notice and an opportunity to be heard with respect to denials of Complainants’ requests; and by denying Complainants’ requests because of Respondents’ bias against requiring and enforcing protections from covid-19 infection.

a. Complainants’ “life, liberty, and property” interests:

Under the 14th Amendment’s Due Process Clause, Complainants may not be deprived of “life, liberty, or property without due process of law.” U.S. Const. amend. XIV, § 1.

Complainants’ health and lives are protected interests under the 1st and 14th Amendments.

Complainants’ 1st Amendment rights to associate for political purposes and to participate in political processes are protected liberty or property interests.

Wis. Stat. 8.05(1) grants every town elector a right to participate in the annual town caucus that nominates and selects candidates for town board positions; this creates statutory rights that are entitled to due process protection.

b. Due process requires notice, hearing, and an impartial decisionmaker.

Due process protects people against the mistaken or unjustified deprivation of life, liberty, or property by a government entity or official. Due process allows variances in procedure that are appropriate to the nature of the case, but due process must adequately meet core goals and requirements. The government entity or official must provide people with the core procedural due process elements of notice and a hearing before an impartial decisionmaker.

“The hallmarks of procedural due process are notice and an opportunity to be heard.” *Pugel v. Bd. of Trs. of Univ. of Ill.*, 378 F.3d 659, 662-63 (7th Cir. 2004).

The specific form such procedures must take is determined by considering, “first, the private interest that will be affected by the official action” including “the degree of potential deprivation;” “second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and, third “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335, 341 (1976).

Even the most rudimentary procedural due process also requires an impartial decisionmaker, and the decisionmaker should not have participated in making the decision under review. See: *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970).

“The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. [citations omitted] At the same time, it preserves both the appearance and reality of fairness, ‘generating the feeling, so important to a popular government, that justice has been done,’ [citations omitted] by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.” *Marshall v. Jerrico*, 446 U.S. 238, 242 (1980).

c. Respondents failed to provide notice, hearing, and an impartial decision regarding Complainants’ requests for an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus.

Here, Complainants requested from Respondents a remote access and participation option for the January 4, 2021 Hudson Town Caucus because the likely very high covid-19 infection risks at the public, in-person, hour or longer, gathering of Hudson Town electors from households throughout the Town that Respondents proposed to conduct were a substantial danger to Complainants’ health and lives due to Complainants’ older ages, medical or health conditions, disability, and/or sex, and Complainants required an

alternative to in-person attendance at the Caucus in order to participate fully and equally in the Caucus.

Here, Respondents first summarily denied Complainants' request; then Respondents ignored and never replied to Complainants' repeated requests for an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus during the on-going covid-19 pandemic.

(See: December 23, 2020 Complaint at pages 19 - 20, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*; and Following Sections III.B.ii. and iii. herein.)

Application of the *Mathews v. Eldridge, Id.*, outline (see **b.** immediately above) for determining what process was due to Complainants here, shows that:

First, the private interests at stake were Complainants' exercise of their rights as Hudson Town electors, without substantial danger to their health and lives, to participate in the Hudson Town Caucus that nominated and selected candidates who soon will represent Complainants on the Hudson Town Board. These are weighty private interests for Complainants. The Hudson Town Boards takes actions on local matters that are important to Complainants. The January 4, 2021 in-person Caucus was the single opportunity for Complainants to participate in nominating and selecting candidates for the Hudson Town Board whose names will appear on the April 6, 2021 Spring Election ballot. Who was nominated at the January 4, 2021 in-person Hudson Town Caucus as a candidate for a position on the Hudson Town Board would largely determine who soon would be elected to represent Complainants on the Hudson Town Board in the April 6, 2021 Spring Election. But Mr. Gostovich, because of his disability under the ADA, additional serious medical and health conditions including obesity, older age of 72, and male sex, would be very highly likely to experience severe illness, require hospitalization, and die if he were infected at the in-person Caucus with the highly contagious novel coronavirus that causes covid-19. And Ms. Koeberl, because of her serious medical and health conditions including obesity, and older age of 66, would be highly likely to experience severe illness, require hospitalization, and die if she were infected at the in-person Caucus with covid-19. The risks to Complainants of infection with covid-19 at the January 4, 2021 public, in-person, hour or longer, gathering of Hudson Town electors from households throughout the Town that Respondents proposed to conduct were likely very high. Without an alternative to in-person attendance at the Caucus, Complainants were required to give up their rights to participate in nominating and selecting Town Board candidates in order to protect their health and lives from the substantial danger of covid-19 infection at the in-person Caucus.

Second, it is certain that Respondents completely and erroneously deprived Complainants of their weighty private interest in nominating and selecting candidates who soon will represent them on the Hudson Town Board without being required to put their health and lives in substantial danger to do so, because—without first ever making any inquiries of Complainants about their requests for an alternative to in-person

attendance at the Caucus during the on-going covid-19 pandemic, and without first ever learning why the requested alternative was necessary in order for Complainants to participate fully and equally in the Caucus—Respondents first summarily rejected, and then just ignored, Complainants’ requests for an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus. Due to Respondents’ failures to listen to and communicate with Complainants, Respondents failed to fulfill their duties toward Mr. Gostovich under the Americans with Disabilities Act, and as a consequence Respondents may incur liabilities for their failures under the ADA that could have been easily avoided.

Third, Respondents have a compelling state interest in ensuring the integrity of the Hudson Town Caucus and its orderly conduct, but that also includes protecting the rights of all Hudson Town electors, including Complainants, to participate fully and equally in the Caucus without being required to put their health and lives in substantial danger. The functions involved here were protecting the health and safety of Complainants’ while also preserving Complainants’ rights to fully and equally participate in the local government electoral process. The fiscal and administrative burdens on Respondents might have been minimally increased if Respondents had engaged in early reasonable communication regarding Complainants’ requests for an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus, but it’s likely the burdens resulting from just saying “NO” will prove greater.

Here, Respondents also do not appear to be the required impartial decisionmaker regarding Complainants’ requests, because Respondents have previously demonstrated strong bias against requiring and enforcing protections from covid-19 exposure and spread risks that Complainants have requested Respondents to adopt.

At its October 27, 2020 meeting, without having first provided required public notice, the Hudson Town Board voted unanimously to create a resolution in opposition to a St. Croix County communicable disease ordinance regarding public health protections against covid-19 exposure and spread risks. Respondents took this October 27 action after entertaining an invited presentation by a Hudson Town elector well known for his anti-science and anti-public-health-protection views, and without also hearing from anyone with expertise and competence either in public health protection measures or in public health protection law. On October 28, Complainants objected in a written public comment to this October 27 action by Respondents. Respondents then noticed and included the proposed resolution in opposition to a St. Croix County communicable disease ordinance on the Hudson Town Board’s December 1, 2020 meeting Agenda. Complainants objected to Respondents’ adoption of the proposed resolution in a November 30, 2020 written public comment.

(See: October 27, 2020 Hudson Town Board Agenda and Minutes, attached; October 28, 2020 Koeberl/Gostovich memo to Hudson Town Board, “Public Comment Regarding Communicable Disease Ordinance”, attached; December 1, 2020 Hudson Town Board Agenda and Minutes, attached; and November 30, 2020 Koeberl/Gostovich memo to Hudson Town Board, “Dec. 1, 2020, Town of Hudson Board Meeting, Agenda

item 7. Resolution 2020-4 Opposition to St. Croix Co. Proposed Communicable Disease Ordinance, attached)

Respondents' late December 2020 replies to requests for an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus made by other Hudson Town electors indicate that Respondents had decided on December 1, 2020 to never engage in any good faith consideration of Complainants' requests for a remote access and participation option in the in-person Caucus for any reason.

Hudson Town Board Supervisor #2, Tim Foster, explained:

“. . . this meeting has been scheduled for the caucus since our December board meeting for in person practice high school at 6 PM. That is not going to change.”

(Email from Supervisor2@TownOfHudsonWI.com, December 28, 2020, 4:45PM, attached)

iv. Respondents violated Complainants 14th Amendment Equal Protection Rights.

The Fourteenth Amendment contains the equal protection clause: “. . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

Respondents violated Complainants equal protection rights under the 14th Amendment through Respondents' administration and conduct of the January 4, 2021 in-person-only Hudson Town Caucus.

Respondents failed to adopt, publicize, and enforce a plan of protections against covid-19 infection risks at the in-person Caucus that was sufficient and effective to ensure the in-person Caucus would be safely accessible for Complainants.

Respondents refused requests by Complainants for an alternative to in-person attendance at the Caucus.

Respondents effectively excluded Complainants from full and equal participation in their single opportunity to nominate and select candidates for the Hudson Town Board whose names will appear on the April 6, 2021 Spring Election ballot.

Respondents precluded Complainants from exercising their fundamental associational rights to participate fully and equally in nominating and selecting candidates to run for election in opposition to incumbent Respondents.

Respondents' exclusion of Complainants from participation in the in-person-only Caucus, and Respondents' exclusion of other Hudson Town electors who, like Complainants, opposed another election of incumbents on the Hudson Town Board whose terms expire in 2021, served to advantage incumbent Respondents and/or their

preferred successor candidates for election to the Town Board in the April 6, 2021 Spring Election.

a. Complainants' associational rights:

Under Wis. Stat. 8.05 (1), all Hudson Town electors hold equal associational rights to participate in the annual Hudson Town Caucus, to nominate candidates for Hudson Town Board positions, and to vote in the Caucus election to select among nominated candidates. The annual Hudson Town Caucus conducted under Wis. Stat. 8.05(1) is an integral and critical part of the election of Hudson Town Board members, and it is essential to the integrity of the entire electoral process that the Hudson Town Caucus be open and accessible for equal and full participation by all Hudson Town electors.

In *NAACP v. Alabama, Id.*, the court found that expressive association was a necessary corollary of free speech: “the freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” *NAACP v. Alabama, Id.*, at 460 – 461.

In *NAACP v. Alabama, Id.*, this right of expressive association worked to prohibit the government from abusing its authority to suppress a disfavored point of view, and it restricted the dominant political group’s authority to diminish the voices of those who challenged their hold on power.

Expressive association rights are grounded in a vision of how democracy should function. Political associational groups in power should not discriminate against individuals who are not part of their political group because that distorts the political process and entrenches the dominant political group in power.

(See: *Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673 (1976) ; and Daniel P. Tokaji, “A path through the thicket – the First Amendment right of association”, SCOTUSblog, August 10, 2017, at <https://www.scotusblog.com/2017/08/symposium-path-thicket-first-amendment-right-association/>)

b. Respondents prevented Complainants' equal exercise of their associational rights.

The freedom of expressive association that is protected by the 1st and 14th Amendments includes partisan political organization. See: *Elrod v. Burns, Id.* (1976)

Over the five weeks preceding the January 4, 2021 in-person-only Hudson Town Caucus, Complainants, and other people of whose efforts Complainants have knowledge, phoned, emailed, and texted numerous Hudson Town electors to encourage them to participate in the Caucus and to ask them to consider nomination as candidates for election to positions on the Hudson Town Board in the April 6, 2021

Spring Election. Most of the Hudson Town electors contacted by Complainants, or by other people of whose efforts Complainants have knowledge, were deterred from participating in the Caucus by the likely very high covid-19 infection risks at the public, in-person, hour or longer, gathering of Hudson Town electors from households throughout the Town that Respondents proposed to conduct, and the substantial danger to their health and lives from infection at the in-person Caucus with covid-19.

Complainants requested a remote access and participation option in the January 4, 2021 Hudson Town Caucus as an alternative to in-person attendance at the Caucus so that, without being subjected to substantial danger at the in-person Caucus, Complainants could exercise their equal association rights to participate in the Caucus and to nominate and select candidates to replace politically conservative incumbent members of the Hudson Town Board in the April 6, 2021 Spring Election.

Respondents' denials of Complainants' requests for an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus during the on-going covid-19 pandemic made the in-person-only Caucus inaccessible to Complainants, and effectively precluded Complainants from exercising their equal associational rights to participate in the Caucus and to nominate more politically liberal candidates to replace more politically conservative incumbents on the Hudson Town Board in the April 6, 2021 Spring Election. Respondents' refusals also effectively prevented the exercise of equal associational rights held by other Hudson Town electors whom Complainants had urged to participate in nominating and selecting more politically liberal candidates to replace more politically conservative incumbents on the Hudson Town Board.

c. Incumbent Respondents were advantaged by Respondents' denials of Complainants' equal associational rights.

Respondents, who include incumbent members of the Hudson Town Board whose current terms end in 2021 and whose positions will be filled through the April 6, 2021 Spring Election, advantaged themselves and/or their preferred successor candidates through their failures to ensure full compliance with federal, Wisconsin, and St. Croix County public health protections against covid-19 infection risks at the in-person-only January 4, 2021 Hudson Town Caucus, and through their refusals to provide an alternative to in-person attendance at the Caucus for any Hudson Town elector, for any reason, during the on-going covid-19 pandemic.

Respondents' actions and inactions regarding the administration and conduct of the January 4, 2021 Hudson Town Caucus had an invidious differential exclusionary effect on Hudson Town electors that worked to favor incumbent Respondents and/or their preferred successor candidates, and worked to disfavor Complainants and other Hudson Town electors who sought to replace more politically conservative incumbent Respondents on the Hudson Town Board through the nomination of more politically liberal candidates for election to the Hudson Town Board in the April 6, 2021 Spring Election.

To Complainants' knowledge, there is some indication that Respondents may have refused Complainants' requests for an alternative to in-person attendance at the Hudson Town Caucus, at least in part, with the intent to exclude participation by Complainants in the candidate nomination process at the Caucus, because incumbent Respondents assumed Complainants would nominate candidates to replace incumbent Respondents.

To Complainants knowledge, in mid-December 2020, a few days before Hudson Town Chair Jordan's December 18, 2020 angry phone call with Complainants in which Mr. Jordan denied Complainants' request for an alternative to in-person attendance at the Caucus and refused to provide information to Complainants regarding public health protections against covid-19 infection risks at the in-person Caucus, Mr. Jordan phoned Complainants' neighbor with angry complaints about Complainants' requests for an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus, and during that phone conversation Mr. Jordan asked whether Complainants planned to put forward a slate of candidates to replace incumbents on the Hudson Town Board.

"The Constitution protects against the compelled disclosure of political associations and beliefs. Such disclosures 'can seriously infringe on privacy of association and belief guaranteed by the First Amendment.' [citations omitted]. *Brown v. Socialist Workers Committee, Id.*, at *5.

But regardless of its intentionality, Respondents' failures to ensure full compliance with federal, Wisconsin, and St. Croix County public health protections against covid-19 infection risks at the in-person January 4, 2021 Hudson Town Caucus, coupled with Respondents' refusals to provide an alternative to in-person attendance at the Caucus that would allow Hudson Town electors to fully and equally participate in the Caucus without substantial danger to their health and lives, had an invidious differential exclusionary effect on Hudson Town electors.

Incumbent Respondents' failures to ensure the public, in-person, hour or longer, gathering of Hudson Town electors from households throughout the Town that Respondents proposed to conduct would not present likely very high covid-19 infection risks, along with Respondents' refusals of requests for an alternative to in-person Caucus attendance, had the effect of suppressing participation in the January 4, 2021 in-person-only Caucus by Hudson Town electors, including Complainants, who are older, have serious underlying medical or health conditions, are disabled, and/or oppose another election of the more politically conservative incumbent Respondents, and had the effect of preventing these Hudson Town electors, including Complainants, from exercising their equal rights of expressive association in the political process.

The exclusionary effect of Respondents' actions and inactions regarding the January 4, 2021 Hudson Town Caucus was unequal among Hudson Town electors because the risks of severe illness, hospitalization, and death with covid-19 increase substantially with age and with serious underlying medical or health conditions. This invidious differential exclusionary effect was greater for the about one-third of Hudson Town

electors who are 65 or older, have serious underlying medical or health conditions including obesity, and/or are disabled, than it was for Hudson Town electors who are younger, healthier, and non-disabled.

(See: December 23, 2020 Complaint at pages 10 – 13, *WEC 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

This invidious differential exclusionary effect also was greater for Hudson Town electors who identify politically as Democrats or Independents, than it was for Hudson Town electors who identify politically as Republicans. In the Town of Hudson, as across Wisconsin and the United States, whether to follow recommended and required public health protections against covid-19 exposure and spread risks has been politicized, and whether an individual supports requiring protections against covid-19 infection risks has become an indicator of political group identification. There is clear correlation between support for and concern about following public health protections against covid-19 infection risks and identification with more liberal political views, as well as clear correlation between opposition to covid-19 public health protections and identification with more conservative political views.

(See: December 23, 2020 Complaint at page 17, *WEC 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*; Email correspondence between Kate Larson and Hudson Town Supervisor Ken Thill, October 28, 2020, attached; Activated Patriots Facebook page posts by Jessica Klatt and Crystal Mikle Randgaard, January 4, 2021, attached; *WEC EL 21-07 Denison v. Shaw et al*, Complaint, attached; WisCONTEXT, “Face Masks, Wisconsin’s Pandemic Politics And The Limits Of Persuasion”, Sept. 2, 2020, at: <https://www.wiscontext.org/face-masks-wisconsins-pandemic-politics-and-limits-persuasion>; and WPR, “GOP State Senators Vote To Repeal Wisconsin’s Mask Mandate”, Jan. 26, 2021, at <https://www.wpr.org/gop-state-senators-vote-repeal-wisconsins-mask-mandate>)

Equal political associational rights are individual and personal rights. Every Hudson Town elector holds equal political associational rights to nominate and select candidates for the Hudson Town Board through participation in the Hudson Town Caucus. The injury to an individual Hudson Town elector from infringement on or extinguishment of that elector’s equal political associational rights to nominate and select candidates through the Caucus is not cured because another Hudson Town elector whose rights have not been infringed or eliminated might nominate the same candidates, nor is the injury less severe if there is not an election at the Caucus to select among nominated candidates.

The infringement or extinguishment of equal political associational rights is a serious harm not just to the individual elector, but also to our form of government.

Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government. See: *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964).

III. Respondents failed to fulfill their responsibilities to Mr. Gostovich under the Americans with Disabilities Act (ADA).

Title II of the ADA applies to state and local governments, including the Town of Hudson and its officials, employees, and representatives.

Subtitle A of title II of the ADA promises people with disabilities an equal opportunity to participate in the mainstream of public life offered to all Americans.

The Town of Hudson offers a variety of services, programs, and activities that are fundamental to the public and to everyday American life, including the annual Hudson Town Caucus for nominating and selecting candidates for the Hudson Town Board.

Under the ADA, people with disabilities must have an equal opportunity to participate in and benefit from the Town of Hudson's services, programs, and activities.

The ADA sets requirements for rules, policies, and procedures governing Hudson Town services, programs, and activities. Under the ADA, the Town of Hudson must ensure that all its services, programs, and activities are readily accessible to and usable by qualified individuals with disabilities, including the January 4, 2021 Hudson Town Caucus.

(See: 28 CFR 35.101, 35.102, 35.130, 35.149, and 35.160; US Dept. of Justice, "ADA Guide for Small Towns, Part One – The ADA's Requirements for Small Towns", March 2000, available at <https://www.ada.gov/smtown.htm>; US Dept. of Justice, "ADA Update: A Primer for State and Local Governments", June 8, 2015, available at https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html; and League of Wisconsin Municipalities, "Title II of the ADA: Ensuring Services and Programs Are Accessible to Those With Disabilities", March 2017, available at <https://www.lwm-info.org/DocumentCenter/View/1142/March-2017-Title-II-of-the-ADA-by-Claire-Silverman>)

"The primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of 'disability.' The question of whether an individual meets the definition of 'disability' under this part should not demand extensive analysis." 28 CFR 35.101(b).

A. Mr. Gostovich has a disability under the ADA that makes him especially likely to experience severe illness, require hospitalization, and die if he contracts covid-19; this does not make Mr. Gostovich's disability a "generalized fear of catching covid-19".

If a Hudson Town elector knows that he is severely allergic to hornet stings—so allergic that if he is stung by hornets he is very likely to experience a systemic anaphylaxis response that will quite likely kill him—that severely allergic Town elector's request for an alternative way to participate in the Hudson Town Caucus that does not require the severely allergic elector to sit in a room swarming with hornets is made because of the elector's medical allergic condition, not because of the elector's generalized fear of being stung by hornets.

Under the ADA, it is not the prerogative of the Town of Hudson, the Hudson Town Chair, the Hudson Town Clerk, or Respondents' attorney to substitute for the facts their assumptions regarding whether Mr. Gostovich is a qualified individual with a disability under the ADA, or to make aspersions regarding what is Mr. Gostovich's disability.

It is specious, disrespectful to Mr. Gostovich, and an example of Respondents' hostility to performing their ADA duties, for Respondents' attorney to dismiss Mr. Gostovich's disability under the ADA—a disabling medical condition making it very likely Mr. Gostovich will experience a systemic bodywide response that will quite likely kill him if he is infected with the highly contagious novel coronavirus that causes covid-19—and to snidely mischaracterize Mr. Gostovich's disability as "a generalized fear of catching covid-19". (See: January 12, 2021 Response at Section III.a., *WEC EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

Like the Hudson Town elector who is severely allergic to hornet stings and so requests the reasonable modification that he not be required to be exposed to swarms of hornets in order to participate in the Hudson Town Caucus, Mr. Gostovich requested the reasonable modification that he not be required to be exposed to infection with the highly contagious novel coronavirus that causes covid-19 in order to participate in the January 4, 2021 Hudson Town Caucus because he has a disabling medical condition that makes it very likely he will become severely ill, require hospitalization, and die if he is infected with covid-19.

Perhaps, if Respondents had ever made even the most perfunctory performance of their ADA duties at any time after Complainants first requested, on December 5, 2020 in an email to Hudson Town Chair Don Jordan, that Mr. Gostovich be provided with the reasonable modification of a remote access and participation option for the January 4, 2021 Hudson Town Caucus because of his disability, then Respondents' attorney would not be arguing in ignorance about Mr. Gostovich's disability under the ADA, and would not have invented the "fear of covid-19" straw man.

Had any of Respondents ever done more than summarily reject Complainants' requests for this reasonable modification without first bothering to listen to Complainants, they

could have learned that Mr. Gostovich has atrial fibrillation and a history of cerebral vascular accident (CVA) or stroke dating back to 2015; that this impairment prevented Mr. Gostovich from returning to his job during two separate six-months-long periods of medical treatment and rehabilitation; that the effects of this impairment required ADA accommodations when Mr. Gostovich did return to his job, substantially limited his job performance, and necessitated his retirement in February, 2020; and that this impairment continues to substantially limit Mr. Gostovich in his major life activities.

Had any of Respondents ever done more than summarily reject Complainants' requests for this reasonable modification without first bothering to listen to Complainants, they could have learned that Mr. Gostovich's multiple CVA and other neurologic events over the past five years put him at very elevated risks of having another stroke and dying if he is infected with covid-19. People with a history of stroke are at elevated risk of suffering another stroke; covid-19 frequently causes a bodywide increase in blood clot formation that further increases risk of stroke; people who have previously experienced a stroke are at higher risk of serious complications of covid-19, including severe illness, hospitalization, and death; people who have had a stroke are strongly advised by medical professionals to take extra precautions against infection with the highly contagious novel coronavirus during the on-going covid-19 pandemic; and covid-19 can be contracted by exposure to an infected person for as little as fifteen minutes over twenty-four hours.

(See: Harvard Health Publishing, Harvard Medical School, "COVID-19 basics", Jan. 1, 2021, available at <https://www.health.harvard.edu/diseases-and-conditions/covid-19-basics#:~:text=COVID%2Drelated%20strokes%20occur,response%20to%20the%20virus>; AHA Journal STROKE, "Clinical Course and Mortality of Stroke Patients with Coronavirus", July 31, 2020, available at <https://www.ahajournals.org/doi/10.1161/STROKEAHA.120.030642>; Cleveland Clinic, "What is the Coronavirus 15-Minute Rule?", Nov. 9, 2020, available at <https://health.clevelandclinic.org/what-is-the-coronavirus-15-minute-rule/>; and December 23, 2020 Complaint at pages 8 - 13, 19 - 20, and Attachments at pages 28 - 29, 31, 35, and 41, WEC *EL 20-29 Koeberl, et al v. Jordan, et al - Town of Hudson*)

Indisputably, Mr. Gostovich is a qualified individual with a disability as defined in Title II of the ADA, and that disability under the ADA is why Complainants requested the reasonable modification of a remote access and participation option for the January 4, 2021 in-person Hudson Town Caucus.

However, instead of promptly and in good faith undertaking performance of their ADA duties in response to Complainants' requests for a specific reasonable modification that was required to make the January 4, 2021 Hudson Town Caucus fully and equally accessible to Mr. Gostovich because of his disability under the ADA, Respondents and their attorney have directed their attention to distorting Mr. Gostovich's disability, and have directed their efforts to staunchly defending their initial December 1, 2020 decision about where and how to conduct the January 4, 2021 in-person-only Hudson Town Caucus.

B. Respondents failed to perform their duties under the ADA to provide reasonable modifications or accommodations in the January 4, 2021 Hudson Town Caucus that were necessary in order to ensure the Hudson Town Caucus would be fully and equally accessible to the disabled Mr. Gostovich.

Under the ADA, the Town of Hudson must reasonably modify its rules, policies, and procedures when their operation denies a qualified individual with a disability full and equal access to a Town service, program, or activity in order to avoid wrongfully discriminating against the qualified individual with a disability.

i. The ADA requires primary consideration of the requested reasonable modification, as well as requires communication with the disabled individual regarding other effective reasonable modifications.

The Town of Hudson must give primary consideration to the reasonable modification requested by the qualified individual with a disability. The Town can discuss alternative reasonable modifications with the individual who requested the particular reasonable modification. The Town may provide a different reasonable modification if the Town can show it will still be effective for the qualified individual with a disability who needs a reasonable modification in order to fully and equally participate in the Town's service, program, or activity.

(See: 28 CFR 35.130(b)(7)(i), 35.130(c), 35.150, and 35.164; US Dept. of Justice, "ADA Guide for Small Towns, Part One – The ADA's Requirements for Small Towns", March 2000, available at <https://www.ada.gov/smtown.htm>; US Dept. of Justice, "ADA Update: A Primer for State and Local Governments", June 8, 2015, available at https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html; and League of Wisconsin Municipalities, "Title II of the ADA: Ensuring Services and Programs Are Accessible to Those With Disabilities", March 2017, available at <https://www.lwm-info.org/DocumentCenter/View/1142/March-2017-Title-II-of-the-ADA-by-Claire-Silverman>)

ii. After refusing the requested reasonable modification, Respondents failed to communicate with Complainants regarding other effective reasonable modifications prior to the January 4, 2021 Hudson Town Caucus.

Other than to deny them, Respondents made no replies to Complainants' requests for a specific reasonable modification in the January 4, 2021 Hudson Town Caucus for Mr. Gostovich.

Respondents never informed Complainants about any features of the location for the in-person Caucus, other than that it was larger than the Hudson Town Hall meeting room.

Respondents never discussed with Complainants any alternative reasonable modifications for the in-person Caucus that they proposed to make in order to ensure

the Hudson Town Caucus would be safely accessible to Mr. Gostovich and ensure he could fully and equally participate in it.

Under the requirements of the ADA, it is not sufficient for Respondents to just say “NO” to Complainants’ request for a specific reasonable modification so that Mr. Gostovich, who is a qualified Hudson Town elector with a disability under the ADA, might participate fully and equally in the Hudson Town Caucus. But just say “NO” to Complainants’ requests for a specific reasonable modification in the January 4, 2021 Hudson Town Caucus is all that Respondents did.

(See: December 23, 2020 Complaint at pages 19 – 20, *WEC EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

On the morning of December 5, 2020, Complainants first learned in a phone conversation with Hudson Town Chair Jordan that at its December 1, 2020 regular meeting the Hudson Town Board had set the annual Hudson Town Caucus for 6PM on January 4, 2021 at the Hudson High School. In that phone conversation, Mr. Jordan told Complainants the decision to hold the Hudson Town Caucus in a meeting room at the high school instead of in the usual meeting room at the Hudson Town Hall was made to allow for more distance between attendees during the on-going covid-19 pandemic.

After that morning conversation with Hudson Town Chair Jordan, in an email sent to Mr. Jordan at 1:52 PM on December 5, 2020, Complainants explained that the in-person Caucus in the larger venue still would not be accessible to them, and first requested the reasonable modification of a remote access and participation option in the January 4, 2021 Hudson Town Caucus for Mr. Gostovich because of Mr. Gostovich’s disability.

(See: December 23, 2020 Complaint Attachments at pages 28 – 29, *WEC EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

In their December 7, 2020 follow up email to Hudson Town Chair Jordan, Complainants again explained that Mr. Gostovich had a disability which made the in-person Caucus inaccessible to him, and that Mr. Gostovich’s disability was the reason Complainants were requesting the reasonable modification of a remote access and participation option for the January 4, 2021 Hudson Town Caucus.

(See: December 23, 2020 Complaint Attachments at pages 31 – 32, *WEC EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

Hudson Town Chair Jordan made no further communication with Complainants about their requests for this reasonable modification for Mr. Gostovich until December 9, 2020, when, in another phone conversation, Mr. Jordan told Complainants the Town would not provide a remote access and participation option for the January 4, 2021 in-person Hudson Town Caucus.

Before Hudson Town Chair Jordan denied Complainants' request for a specific reasonable modification for Mr. Gostovich, neither Mr. Jordan, nor anyone else with the Town of Hudson, discussed with Complainants why the reasonable modification was requested and was necessary in order for the January 4, 2021 Hudson Town Caucus to be fully and equally accessible to Mr. Gostovich during the on-going covid-19 pandemic. Nor did anyone with the Town of Hudson ever offer to or discuss with Complainants any other reasonable modification that would effectively ensure full and equal accessibility to the Hudson Town Caucus for Mr. Gostovich.

Complainants repeated their request for the reasonable modification of a remote access and participation option for Mr. Gostovich in phone conversations with the Town's attorney, Paul Mahler, on December 10 and again with Hudson Town Chair Jordan on December 18, and in emails sent on December 11, 16, 18, and 26, 2020 to Mr. Jordan, Mr. Mahler, Hudson Town Clerk Vickie Shaw, and Hudson Town Board Supervisors Ken Thill, Tim Foster, Susan Blank, and Dan Fosterling.

(See: December 23, 2020 Complaint Attachments at pages 33 – 44, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

No one with the Town of Hudson ever made any email replies to Complainants' repeated requests for the reasonable modification of a remote access and participation option for Mr. Gostovich.

In their respective December 10 and 18 phone conversations with Complainants, Hudson Town attorney Mahler and Hudson Town Chair Jordan insisted that the plans made on December 1 for an in-person-only Hudson Town Caucus were entirely sufficient to satisfy Complainants' December 5 and following requests for a reasonable modification to those December 1 plans. In the December 10 phone call, Mr. Mahler told Complainants that people who could not participate in-person at this year's Caucus during the on-going covid-19 pandemic just would have to wait until next year when the covid-19 pandemic might be over. In the December 18 phone call, Mr. Jordan again told Complainants that the Town of Hudson would not provide a remote access and participation option for the Caucus.

(See December 23, 2020: Complaint at pages 19 – 20, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

After December 18, 2020, Respondents' never replied to Complainants' requests for the reasonable modification of a remote access and participation option in the Hudson Town Caucus for the disabled Mr. Gostovich.

iii. Respondents failed to take actions other than Complainants' requested reasonable modification that were sufficient and effective to ensure the January 4, 2021 Hudson Town Caucus would be accessible to Mr. Gostovich and he could participate fully and equally.

In December 16 and 18, 2020 emails to Respondents, Complainants asked how Respondents planned to conduct the January 4, 2021 Hudson Town Caucus in accord with federal, Wisconsin, and St. Croix County recommended and required public health protections against covid-19 exposure and spread risks so that it would be accessible to Complainants, as well as to other Hudson Town electors who were older, had serious underlying medical or health conditions, and/or were disabled.

(See: December 23, 2020 Complaint Attachments at pages 37 – 44, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

Respondents did not reply to Complainants' December 16 and 18, 2020 emailed requests for this relevant information.

Complainants phoned Hudson Town Chair Jordan on December 18, 2020 in an attempt to learn whether Respondents would provide a remote access and participation option for the January 4, 2021 Hudson Town Caucus; what, if any, public health protections against covid-19 infection risks Respondents planned to recommend or require for the in-person Caucus; and how Respondents' plans for the in-person Caucus might possibly make Complainants' requested remote access and participation option unnecessary as a reasonable modification for Mr. Gostovich or a reasonable accommodation for Ms. Koeberl. Complainants asked Mr. Jordan what specific precautions against covid-19 exposure and spread risks were planned for the in-person Caucus meeting. But Mr. Jordan became increasingly angry in response to Complainants' requests for information about how Respondents would conduct the in-person Caucus. Mr. Jordan exclaimed to Complainants that he "would not play twenty questions", would not call back to provide any additional information, and then abruptly hung up.

(See: December 23, 2020 Complaint at pages 19 – 20 and Attachments at pages 42 - 44, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

Following this un-informing December 18, 2020 phone conversation between Complainants and Hudson Town Chair Jordan, Respondents made no further replies to Complainants' requests for relevant information about Respondents' plans for conducting the in-person January 4, 2021 Hudson Town Caucus during the on-going covid-19 pandemic.

Not until after Hudson Town Clerk Shaw was informed by Complainants on the morning of December 23, 2020 that Complainants had filed a sworn complaint with the WEC regarding the in-person-only January 4, 2021 Hudson Town Caucus, did Ms. Shaw later that day FIRST post to the Hudson Town website ANY information regarding

Respondents' plans for ANY public health protections against covid-19 exposure and spread risks at the in-person Caucus meeting.

(See: Koeberl/Gostovich email sent to Hudson Town Clerk Vickie Shaw on December 23, 2020, at 7:57AM, attached; and Town Clerk Shaw email sent to Judy Green on December 23, 2020, at 2:07PM, attached)

In the afternoon of December 23, 2020, Hudson Town Clerk Shaw posted to the Town's website: "Due to the Covid-19 pandemic the Town will be holding the Caucus at the Hudson High School to provide a larger venue for the event. In accordance with Hudson School District policies and that of the Town, masks will be required to be worn. Exceptions will be made for those individuals with medical conditions. Contact tracing information will be obtained for individuals attending the Caucus. Attendees will be expected to maintain social distancing between household groups. The Town requests that only eligible electors attend to help minimize the size of the gathering."

This meager message posted on December 23, 2020 was the ONLY advance public information Respondents EVER provided to Town electors, including Complainants, about Respondents' plans for conducting the January 4, 2021 in-person-only Hudson Town Caucus during the on-going covid-19 pandemic. It was ALL the information Respondents provided for Hudson Town electors, including Complainants, to use when evaluating whether the in-person Hudson Town Caucus would be accessible to them so that they could participate fully and equally in it.

Complainants conducted a rational risk assessment, in which Complainants reviewed:

- Respondents' December 23, 2020 posted announcement of limited public health protection suggestions for the January 4, 2021 public, in-person, hour or longer, gathering of Hudson Town electors from households throughout the Town that Respondents proposed to conduct;
- Federal, Wisconsin, and St. Croix County recommended and required public health protections against covid-19;
- Contemporaneous public health data regarding the local incidence and community spread of covid-19; and
- Their individual risk factors for severe illness, hospitalization, and death if they were to be infected with covid-19 at the January 4, 2021 in-person Hudson Town Caucus.

(See: December 23, 2020 Complaint at pages 8 – 13, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

Respondents' December 23, 2020 website post of precautions against covid-19 for the January 4, 2021 in-person Hudson Town Caucus was inadequate relative to federal, Wisconsin, and St. Croix County recommended and required public health protections against covid-19 exposure and spread risks at that time.

The relevant federal, Wisconsin, and St. Croix County public health protections against covid-19 exposure and spread risks, which Complainants had provided to Respondents

in their December 16, 2020 email to Respondents, were that everyone, but especially people who were older, had underlying health conditions, and/or were disabled, should:

- Stay home if over 60 years old, pregnant, immunocompromised, obese, diabetic, have lung, kidney, and/or heart disease, and/or have or have had cancer (Wisconsin Governors Emergency Order #94);
- Not enter any indoor public space where anyone is unmasked (White House coronavirus task force);
- Avoid close contact with people from outside their immediate household (CDC and Wisconsin Governors Emergency Order #94);
- Avoid gatherings of any size with people outside their immediate household (Wisconsin Governors Emergency Order #94);
- Limit indoor public gatherings to no more than ten (10) people (St. Croix County Covid-19 Health Advisory);
- At all public gatherings of any size, every person should wear a mask and maintain six-foot distance from people outside their immediate household, seating should be assigned or fixed, a contact list should be made, and health screenings should be done (St. Croix County Covid-19 Health Advisory); and
- Limit numbers of individuals at meetings, and offer remote participation options (Wisconsin Governors Emergency Order #94).

(See: December 23, 2020 Complaint at pages 12 – 13, and Attachments at pages 37 – 44, *WEC EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

Respondents' December 23, 2020 website post of precautions against covid-19 for the January 4, 2021 in-person Hudson Town Caucus was inadequate in the context of contemporaneous public health data on the community incidence and spread of covid-19 at that time.

Contemporaneous public health data regarding the community incidence and spread of covid-19 in St. Croix County, where the Town of Hudson is located, showed:

- The Wisconsin Dept. of Health Services (WI DHS) reported that from December 1, 2020, when the Hudson Town Board set the January 4, 2021 in-person Hudson Town Caucus, to December 23, 2020, when Respondents posted their limited suggested precautions against covid-19 exposure and spread risks for the January 4, 2021 in-person Hudson Town Caucus, at least 1,244 more people in the community had been infected with covid-19. This was an increase of about 24% over about three weeks, from 5,227 total confirmed and probable cases of covid-19 on December 1 to 6471 total confirmed and probable cases of covid-19 on December 23, 2020. (See: WI DHS Covid-19: County Data, at <https://www.dhs.wisconsin.gov/covid-19/county.htm>)
- For the months preceding and the days following December 23, 2020, the WI DHS cumulative epidemic curve for covid-19 was steeply upward. This meant the number of people in the community who were confirmed to be infected with covid-19 was increasing rapidly. (See: DHS Covid-19: County Data, at <https://www.dhs.wisconsin.gov/covid-19/county.htm>)

- On December 23, 2020, the St. Croix County Covid-19 Dashboard reported that about 35% of people tested for covid-19 were found to be infected with covid-19, which was more than one in three. For the days preceding and following December 23, 2020, the St. Croix County Covid-19 Dashboard reported that the daily number of people newly testing positive for covid-19 ranged from 60 to 40 cases in a County with a population of less than 100,000 people. This meant the community incidence and spread of covid-19 was far above the threshold of 25 daily new cases per 100,000 people for the RED covid-19 risk level, at which the community spread of covid-19 is considered out of control and stay-at-home orders are necessary.

(See: St. Croix County COVID-19 Dashboard, at: <https://infogram.com/st-croix-county-covid-19-dashboard-1h9j6ggqxn754g?live>; and Harvard Global Health Institute, "Key Metrics for COVID Suppression", at: <https://globalhealth.harvard.edu/key-metrics-for-covid-suppression-researchers-and-public-health-experts-unite-to-bring-clarity-to-key-metrics-guiding-coronavirus-response/>)

Complainants informed Respondents in a December 26, 2020 email that Respondents' plan posted on December 23 was not sufficient and effective to ensure the in-person Hudson Town Caucus would be accessible for Complainants. Complainants renewed their request for the reasonable modification for Mr. Gostovich and the reasonable accommodation for Ms. Koeberl of a remote access and participation option in the Hudson Town Caucus. Complainants asked Respondents to reply in writing regarding what modifications and accommodations Respondents would make in the Hudson Town Caucus to ensure it would be accessible to Complainants so that they could participate fully and equally in it.

(See: Koeberl/Gostovich email to Hudson Town Clerk Vickie Shaw, et al, sent December 26, 2020 at 5:15PM, attached)

On December 28, 2020, Complainants phoned the Hudson Town Hall office to discuss their request for this reasonable modification and accommodation with Hudson Town Clerk Shaw, but were informed that Ms. Shaw was on vacation for that entire week and would not be available. Complainants were instructed to call Hudson Town Chair Jordan, but Mr. Jordan's voicemail was full, and they were unable to reach him.

None of Respondents made any communications with Complainants during the week of December 28, 2020, prior to the January 4, 2021 date of the Hudson Town Caucus.

iv. Respondents failed to ever give primary consideration to the requested reasonable modification.

Respondents' did reply to requests made by some other Hudson Town electors for the accommodation of a remote access and participation option in the January 4, 2021 in-person Hudson Town Caucus. (See: Email correspondence between Judy Green and Hudson Town Clerk Shaw, December 23, 2020, attached; and Email correspondence between Judy Green and Hudson Town Board Supervisor Foster, December 28, 2020, attached)

Respondents' replies to these accommodation requests made by other Hudson Town electors indicate that Respondents had decided on December 1, 2020 to never engage in any good faith consideration of the reasonable modification requested under the ADA for the disabled Mr. Gostovich regardless of why a remote access and participation option was required to make the in-person Hudson Town Caucus accessible during the on-going covid-19 pandemic.

As Hudson Town Board Supervisor Foster explained: ". . . this meeting has been scheduled for the caucus since our December board meeting for in person practice high school at 6 PM. That is not going to change."

(Email from Supervisor2@TownOfHudsonWI.com, December 28, 2020, 4:45PM, attached)

v. Respondents' attorney's suggested alternative modification was inadequate under the ADA.

Not until the late morning of January 4, 2021, during oral arguments in St. Croix County Circuit Court on emergency motions for relief brought by Complainants in a lawsuit against Respondents separate from WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*, did anyone representing the Town of Hudson ever offer Mr. Gostovich any alternative modification for the in-person-only 6PM January 4, 2021 Hudson Town Caucus.

The alternative modification then offered by Respondents' attorney Paul Mahler—to allow Mr. Gostovich to sit in his car out in the high school parking lot while the Caucus meeting took place in a room inside the high school, and to wait in his car out in the parking lot for someone to bring him a piece of paper on which he might write his vote for a nominee, if there was a vote on nominees after nominations of candidates were closed at the Caucus meeting taking place inside the high school—fell far short of achieving the ADA's fundamental purpose that people with disabilities be integrated into the mainstream of civic life.

The ADA requires that people with disabilities be provided all of the rights, privileges, advantages, and opportunities that others have when participating in civic activities.

In 42 U.S.C. section 12132, the “primary mandate” of Title II of the ADA is that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” *Lacy v. Cook Cty.*, 897 F.3d 847, 852 (7th Cir. 2018) (quoting 42 U.S.C. § 12132).

In some circumstances, the ADA allows, and may even require, different treatment of a person with a disability if such treatment is necessary in order for a qualified person with a disability to participate in a civic activity. “For example, if an elected city council member has a disability that prevents her from attending council meetings in person, delivering papers to her home and allowing her to participate by telephone or videoconferencing would enable her to carry out her duties.”

(US Dept. of Justice, “ADA Update: A Primer for State and Local Governments”, June 8, 2015, available at https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html)

But in the circumstances of the in-person January 4, 2021 Hudson Town Caucus, Respondents’ attorney’s offer of different treatment for the disabled Mr. Gostovich—that he sit in his car out in the high school parking lot while the Caucus meeting took place inside the high school, and wait in his car out in the parking lot for someone to bring him a piece of paper on which he might write his vote for a nominee, if there was a vote on nominees after nominations of candidates were closed at the Caucus meeting taking place inside the high school—entirely excluded Mr. Gostovich on the basis of his disability from participating in most all the civic activity of the Hudson Town Caucus.

C. Under the ADA, the Town of Hudson was required to provide Complainants' requested reasonable modification in the January 4, 2021 Hudson Town Caucus for Mr. Gostovich, unless Respondents could demonstrate and prove that doing so would be either an undue burden or fundamentally alter the essential nature of the Hudson Town Caucus.

When a local government's usual way of doing things denies qualified individuals with disabilities full and equal opportunities to participate in civic services, programs, or activities, the ADA requires the local government to make reasonable modifications in its usual policies, practices, and procedures, unless doing so would be an undue financial or administrative burden, or unless doing so would result in a fundamental alteration in the essential nature of the civic program or activity.

It is established law that a failure to make requested reasonable modifications in policies, practices, or procedures may constitute discrimination under Title II of the ADA.

"[U]nder the ADA, a public entity must reasonably accommodate a qualified individual with a disability by making changes in rules, policies, practices, or services when needed." *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 782-83 (7th Cir. 2002); 28 CFR 35.130(b)(7) (requiring reasonable modifications in the context of Title II). The requested modification must be reasonable, but the burden of proving reasonableness in this context "is not a heavy one." *Henrietta D. v. Bloomberg*, 331 F.3d 261, 280 (2d Cir. 2003); see *Lamone*, 813 F.3d at 507-08. Plaintiff need only show that the modification is "reasonable on its face," *Oconomowoc*, 300 F.3d at 783, and then the burden shifts to the defendant to demonstrate unreasonableness or prove that it "would 'fundamentally alter' the program," *Lamone*, 813 F.3d at 508 (quoting 28 CFR 35.130(b)(7)(i)).

Determinations of an undue burden or fundamental alteration are required to be made by the head of the local government or their designee, and must be accompanied by a written statement of the reasons for reaching the conclusions.

Determination of an undue burden must be based on all resources available for use in the service, program, or activity.

Determination of a fundamental alteration must be based on a change to such a degree that the original service, program, or activity is no longer the same.

When it is not possible to provide a particular requested reasonable modification due to a determination of undue burden or fundamental alteration, the local government must take other actions that would not result in undue burdens or fundamental alterations, but would still ensure that qualified individuals with disabilities received the benefits and services of the program or activity.

(See: 28 CFR 35.130(b)(7)(i), 35.150(a)(3), and 35.164; US Dept. of Justice, "ADA Guide for Small Towns, Part One – The ADA's Requirements for Small Towns", March

2000, available at <https://www.ada.gov/smtown.htm>; US Dept. of Justice, “ADA Update: A Primer for State and Local Governments”, June 8, 2015, available at https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html; and League of Wisconsin Municipalities, “Title II of the ADA: Ensuring Services and Programs Are Accessible to Those With Disabilities”, March 2017, available at <https://www.lwm-info.org/DocumentCenter/View/1142/March-2017-Title-II-of-the-ADA-by-Claire-Silverman>)

i. Respondents failed to perform their duties under the ADA to explain the reasons for denying Complainants’ requested reasonable modification.

Prior to Respondents’ attorney’s January 12, 2021 Response in WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*, no one with the Town of Hudson had ever provided Complainants with a written statement of any reasons why Respondents concluded the Town of Hudson could not provide Mr. Gostovich with the requested reasonable modification of a remote access and participation option for the in-person Hudson Town Caucus.

ii. A remote access and participation option is not an undue burden, either financially or administratively.

Neither the legal rights of Mr. Gostovich, nor those of other disabled Hudson Town electors, to attend and participate in the Hudson Town Caucus may be set aside and lost just because preserving the access and participation rights of disabled Hudson Town electors requires some additional bit of effort and problem-solving on the part of Respondents during the on-going covid-19 pandemic.

There is no state interest sufficient to justify discrimination against Hudson Town electors with disabilities where, as here, a reasonable modification is available. See, e.g., *Dees v. Austin Travis Cty. Mental Health & Mental Retardation*, 860 F. Supp. 1186, 1191 (W.D. Tex. 1994) (“[T]he standard Congress has determined that should be applied in assessing the reasonableness of the modification under the ADA is not a balancing test of competing interests ... but whether the modification can be made without fundamental alteration or undue burden such that disabled individuals will not be denied the equal opportunities enjoyed by others.”); cf. *Eckles v. Consol. Rail Corp.*, 94 F.3d 1041, 1050 n.15 (7th Cir. 1996) (noting the ADA “provide[s] statutory factors to be considered in determining whether a particular accommodation would produce an ‘undue hardship’”).

Acquiring a remote meeting platform sufficient for providing a remote access and participation option in the Hudson Town Caucus would not be an undue financial burden to the Town of Hudson. The financial cost of providing a remote access and participation option for the Hudson Town Caucus on a commonly used remote meeting platform such as Zoom is not high or “excessive in relation ... to the benefits,” *Vande Zande v. Wis. Dept. of Admin.*, 44 F.3d 538, 543 (7th Cir. 1995). For example, the Zoom plan for “Small & Medium Businesses” that allows hosting up to 300 participants in

group meetings up to thirty hours long has a current cost of \$199.90 per year, while the “Large Meetings” plan that allows including up to 500 or 1,000 interactive participants in a meeting starts at \$600 per year (see: <https://zoom.us/pricing>).

Complainants’ discussion of the ease of technology use in Complainants’ December 23, 2020 Complaint at pages 20 – 21 for WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*, goes to the point that providing a remote access and participation option in the Hudson Town Caucus would not be an undue administrative burden to the Town of Hudson. The administrative cost of providing a remote access and participation option for the Hudson Town Caucus on a commonly used remote meeting platform, such as Zoom, is not high or excessive in relation to the benefits because the requested modification would not be excessively difficult to accomplish.

iii. A remote access and participation option for the Hudson Town Caucus does not make a fundamental alteration to the essential nature of the Caucus; rather, it preserves and furthers its essential nature.

Respondents’ attorney argues that providing a remote access and participation option in the Hudson Town Caucus would “fundamentally alter the format of the Town’s nomination process”, describes the order of doing the Caucus business as laid out in Wis. Stat. 8.05(1), and asserts that “[i]n-person attendance is an ‘indispensable feature’ of the Town’s Caucus.” (January 12, 2021 Response, Sections I. and III.c., WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

Respondents’ attorney misapprehends what is the essential nature of the annual Hudson Town Caucus.

The essential nature of the annual town caucus under Wis. Stat. 8.05(1) is that the caucus is OPEN AND ACCESSIBLE FOR PARTICIPATION BY ALL TOWN ELECTORS, not that all town electors must participate only in-person.

Under the reasoning of the Wisconsin Supreme Court in *La Follette v. Kohler, Id.*, and in *La Follette v. Democratic Party, Id.*, reversed on a different point, the annual Hudson Town Caucus under Wis. Stat. 8.05(1), at which Hudson Town electors nominate and select candidates who may run opposed or unopposed for positions on the Hudson Town Board in the annual April Spring Election, should be considered part of the Town Board election, and should be conducted in a manner that is open and accessible for full and equal participation by all Hudson Town electors.

(See: Previous Section II.D. herein.)

A remote access and participation option for Hudson Town electors in the Hudson Town Caucus during the on-going covid-19 pandemic would preserve the essential nature of the Caucus—that the Caucus is open and accessible for participation by all Hudson Town electors.

Respondents' claim that providing the requested reasonable modification for Mr. Gostovich would fundamentally alter the essential nature of the Hudson Town Caucus is implausible and without merit.

Respondents' claim that providing the requested reasonable accommodation for Ms. Koeberl would fundamentally alter the essential nature of the Caucus is implausible and without merit.

Respondents' claim that providing a remote access and participation option in the Hudson Town Caucus for other qualified and eligible Hudson Town electors would fundamentally alter the essential nature of the Caucus also cannot be sustained.

Data about people living in the Town of Hudson show that about one-third of Hudson Town electors are 65 or older, have serious underlying medical or health conditions including obesity, and/or are disabled, so the likely very high covid-19 infection risks of the in-person-only January 4, 2021 Hudson Town Caucus were a substantial danger to the health and lives of this one-third of Hudson Town electors. Some portion of these Hudson Town electors reasonably would have been expected to have wanted to participate in the January 4, 2021 Hudson Town Caucus, but were prevented from attending the in-person Caucus by the risks of covid-19 infection at the in-person Caucus.

(See: December 23, 2020 Complaint at pages 10 – 13, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

Respondents cannot carry what is their burden to prove under Title II of the ADA: that Complainants' requested modification of a remote access and participation option in the January 4, 2021 Hudson Town Caucus would impose "significant financial or administrative costs" or "fundamentally alter the nature of the program or service." *Holzmueller v. Ill. High. Sch. Ass'n*, 881 F.3d 587, 594 (7th Cir. 2018); see *Disabled in Action*, 752 F.3d at 202.

- a. The essential nature of the annual Hudson Town Caucus is that the Caucus is open and accessible to all Hudson Town electors and to the general public.**

A Wisconsin town is a form of government with components of direct democracy, where the people living in the town govern themselves by voting on decisions at town meetings, and where the people living in the town exercise democracy through grassroots local leadership.

(See: Wisconsin Towns Association, "Town Government", at <https://www.wisctowns.com/about-us/town-government/>)

Regardless of whether the Hudson Town Caucus is considered a public meeting of the town electorate, an electoral process, a primary, an election, or something else,

Wisconsin law requires that the Caucus be open and accessible to all Hudson Town electors and to the general public.

Wisconsin Statutes Chapters 5 – 12 apply to electoral processes conducted by towns. Under Wis. Stat. 8.05(1), an annual town caucus is conducted as a meeting open to the general public, at which any qualified town elector may participate in nominating and selecting the candidates who soon will represent the town elector on his or her most local government body, the town board.

Wis. Stat. 8.05(1)(b) requires the Hudson Town Clerk to provide public notices of the date, time, and place of the annual Hudson Town Caucus for the benefit of all Hudson Town electors and the general public.

The WEC guidance manual for use by town clerks, “Procedures For Nomination Of Candidates By Caucus”, explains that the Caucus is open to the general public; but during the Caucus meeting, only qualified town electors may participate in electing Caucus officials and tellers, and only qualified town electors may participate in nominating candidates to be placed on the Spring Election ballot; during the Caucus election that is held when more than two nominations are made for one town office, only qualified town electors may vote to choose among nominated candidates.

(See: WEC, “Procedures For Nomination Of Candidates By Caucus”, December 2020, pages 2 – 3, available at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-12/Caucus%20Manual%20%28Rev%202020-12%29.pdf>)

In Wis. Stat. 8.05 and the WEC guidance manual, the essential nature of the annual town caucus is that the caucus is open and accessible to all town electors and to the general public.

Whether and how Wisconsin’s Open Meetings Law also may apply to the annual Caucus conducted under Wis. Stat. 8.05(1) are undecided questions. A 1977 Wisconsin Attorney General’s Opinion states that the annual town meeting is a meeting of the town electorate under Wisconsin Statutes Chapter 60 and is not a meeting of a “governmental body” subject to the public meeting noticing requirements of the Open Meetings Law, but this opinion does not specifically address the annual town caucus meeting conducted under Wis. Stat. 8.05(1).

(See: 66 Op. Att’y Gen. 237 (1977))

Wisconsin’s Open Meetings Law recognizes that representative government depends on an informed electorate, and intends to achieve the purpose of open government. When the Open Meetings Law applies, it requires local governments to ensure that public meetings are reasonably open and accessible to the public at all times, including to people with disabilities. Local governments are required to hold meetings in places and manners that ensure they are accessible with or without assistance to people with

disabilities, however the accessibility requirements of the ADA may be more rigorous than those of Wisconsin's Open Meetings Law.

(See: Wis. Stat. 19.81; Wisconsin DOJ, 69 Op. Att'y Gen. 251, 251 - 254 (1980); Wisconsin Dept. of Justice, "Wisconsin Open Meetings Law Compliance Guide", May 2019, pages 20 – 21, available at <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/OML-GUIDE.pdf>; and UW-Extension, Local Government Center, "Fact Sheet No. 1: Wisconsin Open Meetings Law", February 2018, available at <https://www.wisctowns.com/documents/fact-sheet.open-meetings.pdf>)

b. The reasonable modification of providing a remote access and participation option for the Hudson Town Caucus during the on-going covid-19 pandemic preserves and furthers the essential nature of the Hudson Town Caucus.

The essential nature of the annual Hudson Town Caucus is that the Caucus is open and accessible to all Hudson Town electors and to the general public.

But during the on-going covid-19 pandemic, leading up to and at the time of the January 4, 2021 in-person Hudson Town Caucus, the recommended or required federal, Wisconsin, and St. Croix County public health protection against covid-19 exposure and spread risks for Complainants, and for the about one-third of Hudson Town electors who like Complainants are 65 or older, have serious underlying medical or health conditions including obesity, and/or are disabled, were that all of these Hudson Town electors should stay home, avoid all gatherings of any size with people outside their immediate households, never enter any indoor space where anyone is not wearing a face covering, and always maintain at least six-foot distance from people outside our immediate households.

Like Complainants, some portion of this about one-third of Hudson Town electors, reasonably would have been expected to want to attend and participate in the January 4, 2021 Hudson Town Caucus.

But during the on-going covid-19 pandemic, the public, in-person, hour or longer, gathering of Hudson Town electors from households throughout the Town that Respondents proposed to conduct as the January 4, 2021 Hudson Town Caucus was inaccessible to Complainants, and to these additional about one-third of Hudson Town electors, because of the likely very high covid-19 exposure risks at the in-person Caucus, and the uniformly strict directives from federal, Wisconsin, and St. Croix County public health protection experts that in order to preserve their health and lives these electors must entirely avoid a public event with the characteristics of the in-person Caucus.

(See: December 23, 2020 Complaint at pages 8 – 15, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

Without an alternative to attending the January 4, 2021 Hudson Town Caucus in-person during the on-going covid-19 pandemic, the essential nature of the annual Hudson Town Caucus—that the Caucus is open and accessible to all Hudson Town electors and to the general public—was fundamentally eliminated for Complainants, and for the about one-third of Hudson Town electors like Complainants in older ages, underlying serious medical or health conditions, and/or disabilities.

In order to preserve the essential nature of the January 4, 2021 Hudson Town Caucus, an alternative to an in-person-only Caucus was required during the on-going covid-19 pandemic.

Many local governments have modified their usual policies, practices, and procedures for conducting in-person meetings open to the general public and to their electors in order to allow access and participation while also protecting the public health against covid-19 exposure and spread risks. Many local governments have adopted alternatives to creating a risk of spreading the highly contagious novel coronavirus by assembling people for in-person-only meetings, including holding meetings either partially or entirely via telephone or video conferencing. These alternatives to in-person-only meetings have not fundamentally altered the essential nature of these meetings; neither the business to be done at these meetings nor the order for doing that business have been fundamentally altered just because the meetings were held partially or entirely via telephone or video conferencing.

(See: UW-Madison, Local Government Education, “Update – Government Meetings During Covid-19 Pandemic”, May 18, 2020, available at <https://localgovernment.extension.wisc.edu/update-government-meetings-during-covid-19-pandemic/>)

Providing remote meeting options for the general public and electors has not fundamentally changed the essential nature of open meetings for governmental bodies. The Wisconsin Dept. of Justice has issued advisories regarding how local governments may comply with open meetings obligations while conducting meetings either partially or entirely remotely during the on-going covid-19 pandemic.

(See: Wisconsin Dept. of Justice, Office of Open Government, “Covid-19 and Open Meetings”, March 16, 2020, available at <https://localgovernment.extension.wisc.edu/files/2020/03/AG-Advisory-OML-COVID19.pdf>; and “Additional Information Regarding Covid-19 and Open Meetings”, March 20, 2020, available at <https://www.doj.state.wi.us/news-releases/office-open-government-advisory-additional-information-regarding-covid-19-and-open>)

The Town of Hudson itself has modified its usual policies, practices, and procedures for conducting its business through public Town governance meetings, such as the monthly meetings of the Hudson Town Board that are open to Town electors and the general public, by offering a remote access and participation option on Zoom that ensures reasonable accessibility for the general public and that allows Town electors to

participate remotely. This modification to the formerly in-person-only format of public Hudson Town governance meetings has not fundamentally altered the business that is done or the order of doing business at these meetings, even though this modification to the in-person format now allows some people to attend and participate in-person at the Hudson Town Hall meeting room, and now allows some people to remotely attend and participate. Providing the option of remote access and participation has not fundamentally altered the essential nature of Hudson Town governance meetings open to Town electors and the general public.

Respondents' own experiences with offering a remote access and participation option for Hudson Town governance public meetings that formerly followed an in-person-only format demonstrates there is no sound reason to conclude that a remote access and participation option for the Hudson Town Caucus would somehow fundamentally alter its essential nature—which is that the Caucus is open and accessible to all Town electors and to the general public—just because some people would attend and participate in person, while some people would attend and participate remotely.

The examples of the many Wisconsin towns and villages that chose to conduct their January 2021 Caucuses either partially or entirely via a remote meeting platform, such as Zoom, during the on-going covid-19 pandemic, further illustrate that a remote access and participation option in the Hudson Town Caucus would not fundamentally alter the essential nature of the Caucus.

Rather than fundamentally altering the essential nature of the Caucus, providing a remote access and participation option for the Hudson Town Caucus would preserve and further the essential nature of the Hudson Town Caucus by ensuring that the Caucus would be open and accessible to all Hudson Town electors and to the general public.

Even if we all were not in the midst of the on-going covid-19 pandemic, a remote access and participation option would make the annual Hudson Town Caucus more broadly open and accessible to more of the approximately 6,750 total Hudson Town electors. Many Hudson Town electors usually do not attend the dinnertime, early-January, in-person Caucus for other reasons, such as family obligations or transportation challenges. Allowing broader access and participation in our annual Hudson Town Caucus for more of our Hudson Town electors is an outcome that will enhance and strengthen our town form of government, where the people living in the Town of Hudson govern themselves and exercise democracy through grassroots local leadership.

IV. A remote access and participation option for the Hudson Town Caucus can also provide necessary security and privacy.

Complainants, as two qualified and eligible Hudson Town electors, objected to being effectively excluded from the in-person-only January 4, 2021 Hudson Town Caucus held during the on-going covid-19 pandemic, and Complainants requested the remedy of a remote access and participation option.

In defense of Respondents' refusals to provide a remote access and participation option for Complainants, Respondents' attorney raises alarm at the possibility that if a remote access and participation option were offered then too many qualified and eligible Hudson Town electors might participate in the annual Hudson Town Caucus.

Respondents' attorney worries that instead of the annual Hudson Town Caucus—usually held in-person, at dinnertime, on a January evening shortly after New Year's—being an in-person-only Caucus meeting typically attended by from seventy-five to one-hundred (75 - 100) Hudson Town electors—out of the approximately now 6,750 total Hudson Town electors—perhaps, if there were a remote access and participation option then hundreds of those other 6,650 Hudson Town electors might also participate in the annual Caucus meeting!

(See: January 12, 2021 Response, Section IV., *WEC EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

Respondents' attorney misses the point that under Wis. Stat. 8.05(1) Respondents are charged with administering and conducting the annual Hudson Town Caucus in a manner that ensures the Caucus WILL be open and accessible to ANY and ALL 6,750 Hudson Town electors AND the general public.

(See the previous Section II.D. and E. herein.)

The essential nature of the Caucus to be served and furthered by Respondents IS the possibility for ANY and ALL of the now about 6,750 Hudson Town electors, not just the usual gang of 75 – 100 characters, to have access to and be able to participate in the annual Hudson Town Caucus if they choose to; it is Respondents' duty and responsibility to ensure this possibility is made real, even if the tasks of administering and conducting the Caucus may be somewhat different than when just 0.013% of all 6,750 Hudson Town electors show up for the in-person-only Caucus.

The possibility of an increased administrative burden for Respondents if Respondents conducted the Hudson Town Caucus in a manner that encouraged and facilitated participation by many more Hudson Town electors is not a sufficient basis here for infringing Complainants' 1st and 14th Amendment associational rights to participate fully and equally in the January 4, 2021 Hudson Town Caucus. See: *Tashjian v. Republican Party*, 479 U.S. 208, 219 (1986).

In defense of Respondents' refusals to provide a remote access and participation option for Complainants, Respondents' attorney raises concerns about ensuring the privacy and security of voting during the annual Hudson Town Caucus, if an election to select among nominated candidates were required.

The examples of numerous Wisconsin towns and villages that chose to conduct their January 2021 Caucuses either partially or entirely via a remote meeting platform, such as Zoom, demonstrate that doing so is practical, manageable, and sufficiently secure and private.

Respondents may not yet be familiar with the technology and features for remote meetings that provide security and privacy. But at about a year into the on-going covid-19 pandemic, remote meeting platforms now are in common and frequent use by Wisconsin units of government for many functions that require security and privacy, and many remote meeting platforms, such as Zoom, have been proven to provide the required security and privacy.

(See: The Cap Times, "Going virtual: Operating remotely, local government bodies encounter opportunities, barriers", January 19, 2021, at: https://madison.com/ct/news/local/govt-and-politics/going-virtual-operating-remotely-local-government-bodies-encounter-opportunities-barriers/article_65b15c9e-6a37-518e-a32a-4c5952214e58.html)

Caucus participants, whether attending in-person or remotely, may be required to provide some type of documentation to prove they are qualified electors. A remote participant could be required show their ID and face on camera to be checked against the same list used by Town staff to confirm the IDs and eligibility of everyone attending in-person.

(See: WEC, "Procedures For Nomination Of Candidates By Caucus", December 2020, page 6, available at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-12/Caucus%20Manual%20%28Rev%202020-12%29.pdf>)

If there were a vote by Hudson Town electors on nominated candidates during the Caucus meeting, it would not be difficult to prevent people who have not been identified as qualified as Hudson Town electors from participating remotely at that time. For example, a Zoom meeting host may lock the meeting at any point in order to prevent anyone new from joining.

If secret balloting by Hudson Town electors were required in the Caucus election to select among nominated candidates, it would not be difficult to provide and conduct secret balloting remotely. For example, a remote participant on Zoom could be assigned an anonymous number to use when voting is required instead of being identified by their name in the Zoom meeting, or a remote participant could vote through Zoom's polling for meetings feature.

(See: Zoom Help Center: “Getting started with Zoom”, at: https://support.zoom.us/hc/en-us/articles/206175806#h_12512067-340a-4ca9-8d5b-f52a7ed016fb; “Managing participants in a meeting, and Controls for hosts and co-hosts”, at: https://support.zoom.us/hc/en-us/articles/115005759423-Managing-participants-in-a-meeting#h_221b3acc-9a66-4f0b-ad84-a70359148d1b; and “Polling for meetings”, at: <https://support.zoom.us/hc/en-us/articles/213756303-Polling-for-meetings>; and Zoom “Privacy & Security for Zoom Video Communications”, at <https://zoom.us/docs/en-us/privacy-and-security.html>)

In defense of Respondents’ refusals to provide a remote access and participation option for Complainants, Respondents’ attorney raises the specter of possible voter fraud in the Hudson Town Caucus being committed through impersonation of a qualified Hudson Town elector on a remote meeting platform. But the facts are that Wisconsin voter fraud of any kind is close to zero percent in all elections, and there is no reason to believe that the extremely rare incidence of voter fraud through impersonation would be any greater in voting via a remote meeting platform to select among nominated candidates for positions on the Hudson Town Board.

(See: Milwaukee Journal Sentinel, “Prosecutors received 158 voter fraud referrals since 2016. Few proved to be criminal”, October 30, 2020, at: <https://www.jsonline.com/story/news/politics/elections/2020/10/30/voter-fraud-wisconsin-prosecutors-find-few-criminal-cases/6087613002/>)

V. No judicial final findings or final determinations have been made on the merits of Complainants’ claims.

Following the December 29 5:35PM notice to Complainants from St. Croix County Assistant District Attorney Karl Anderson that his Office was declining to take action under Wis. Stat. 5.07 on the matters at issue in *WEC EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*, Complainants sought emergency and temporary relief in order to preserve their statutory and constitutional rights to participate in the January 4, 2021 Hudson Town Caucus.

On December 30, 2020, Complainants made a pro se filing of a Civil Rights Act, 42 USC section 1983, lawsuit against Respondents in St. Croix County Circuit Court, and made a pro se filing of Emergency Motion for relief. See: *John B. Gostovich and Celeste J. Koeberl v. Town of Hudson, Wisconsin, Vickie Shaw, and Don Jordan*, St. Croix County Circuit Court Case No. 20-CV-444.

In the late morning of January 4, 2021, St. Croix County Circuit Court Judge Nordstrand heard oral arguments on Complainants’ Emergency Motion for a Temporary Injunction, Writ of Mandamus, and/or Declaratory Judgment. Complainants appeared pro se. Respondents were represented by Hudson Town attorney Paul Mahler.

Complainants requested that the Court order the in-person-only 6PM January 4, 2021 Hudson Town Caucus to be delayed, order the Town of Hudson to provide a remote

participation option for the in-person Caucus, and/or issue a declaratory judgment in Complainants' favor.

At the conclusion of oral arguments, Judge Nordstrand denied Complainants' Emergency Motion For Relief.

Judge Nordstrand ruled only on preliminary motions, and did not make any final findings or final determinations on the merits of Complainants' claims.

Plaintiffs' "*Brief in Support of Plaintiffs' Emergency Motion for Declaratory Judgment and/or Writ of Mandamus and/or Temporary Injunctive Relief*" filed in St. Croix County Court Case No. 2020CV000444 is attached.

For Complainants' additional arguments and authorities regarding claimed violations of their statutory and constitutional rights, please see the attached "*Brief in Support of Plaintiffs' Emergency Motion*" at:

- Section 11(b) of the Voting Rights Act, pages 36 – 39;
- Americans with Disabilities Act, pages 40 – 47;
- Wis. Stat. 5.24(4)(a), pages 47 – 48;
- Wis. Stat. 5.36, pages 48 – 49;
- Wis. Stat. 5.25(5)(b), pages 49 – 50;
- Constitutional Rights to Vote, pages 51 – 55;
- Constitutional Due Process Rights, pages 55 – 58; and
- Constitutional Equal Protection Rights, pages 58 – 60.

VI. Respondents failed to fulfill their duties and responsibilities to ensure the January 4, 2021 Hudson Town Caucus was conducted with sufficient protections against covid-19 infection risks.

Respondents have duties and responsibilities to administer and conduct the annual January Hudson Town Caucus in a manner that ensures it will be open and safely accessible for full and equal participation by all Hudson Town electors.

(See the previous Sections II.D. and E. herein.)

A. Respondents are required to make and carry out practical and effective plans for safe conduct of the Hudson Town Caucus.

To satisfactorily fulfill their duties and responsibilities to ensure the integrity of the Hudson Town Caucus, Respondents must make practical plans that realistically take into account the circumstances and likely conditions in which the Hudson Town Caucus will be held.

For example, Respondents realistically consider the season and likely possible weather conditions when they take the practical step of setting both the date and an alternate "snow date" for the Hudson Town Caucus within the statutorily specified time period for

holding the annual Caucus of from January 2 through January 21. While Respondents don't make the weather and can't control the weather, it still is their duty and responsibility to make realistic plans for holding the annual January Hudson Town Caucus that are sufficient to avoid requiring Hudson Town electors to endanger their health and lives by going out in a major winter blizzard in order to participate in the Caucus.

While Respondents didn't start the covid-19 pandemic and can't stop it on their own, when Respondents set the January 4, 2021 date for the Hudson Town Caucus at almost a year into the on-going and worsening covid-19 pandemic, they had duties and responsibilities to make realistic plans that were sufficient to avoid requiring Hudson Town electors to endanger their health and lives by being exposed to likely high risks of infection with the highly contagious novel coronavirus that causes covid-19 in order to participate in the Caucus.

B. Respondents failed to make and carry out a practical and effective plan for safe conduct of the Hudson Town Caucus during the covid-19 pandemic.

During the on-going and worsening covid-19 pandemic, Respondents proposed holding a public, in-person, hour or longer, gathering of Hudson Town electors from households throughout the Town as the January 4, 2021 Hudson Town Caucus.

Respondents failed to administer and conduct the January 4, 2021 Hudson Town Caucus during the covid-19 pandemic with sufficient reasonable and necessary protections against covid-19 infection risks at the Caucus to effectively ensure the in-person Caucus was safely accessible to all Hudson Town electors, including Complainants, for their full and equal participation.

Because of Respondents' failures, Hudson Town electors, including Complainants, were required EITHER to put their health and lives in substantial danger from covid-19 infection by attending the in-person-only January 4, 2021 Hudson Town Caucus, OR to forego their rights to participate in the Caucus in order to protect their health and lives from infection with covid-19.

i. Respondents failed to protect the public health.

Respondents failed to adopt recommended and required protections against covid-19 infection risks for the in-person Caucus that were in full accord with those issued by federal, Wisconsin, and St. Croix County public health officials.

Respondents failed to publicize widely enough, and far enough ahead of the Caucus date, a sufficient and effective plan of protections against covid-19 infection risks for the in-person Caucus.

Respondents failed to enforce reasonable and necessary public health protections against covid-19 infection risks at the in-person Caucus.

Respondents' failures to sufficiently and effectively minimize covid-19 infection risks in the conduct of the January 4, 2021 Hudson Town Caucus exposed all Caucus attendees to unnecessarily elevated risks of harm from infection with the highly contagious novel coronavirus that causes covid-19.

In turn, all Caucus attendees then endangered the health and lives of everyone that each infected Caucus attendee came into close contact with during the two weeks or so after January 4, 2021.

(See: Previous Sections II.E.ii.b.1., III.A., and III.B.iii. herein; and December 23, 2020 Complaint at pages 8 – 13, and Attachments at pages 25 – 29, 32 – 43, WEC *EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson*)

ii. Respondents failed to protect Caucus attendees.

Contrary to Respondents' attorney's claims, Respondents failed to require and enforce sufficient and effective protections against covid-19 infection risks at the in-person January 4, 2021 Hudson Town Caucus that were reasonable and necessary to ensure all Hudson Town electors, including Complainants, could have attended and participated without substantial danger to their health and lives.

Journalists, anti-science and anti-mask activists, and other Hudson Town electors who attended the in-person January 4, 2021 Hudson Town Caucus reported multiple failures to comply with reasonable and necessary protections against covid-19 infection risks, including that:

- During the check-in process, Caucus attendees did not wear masks, and wearing masks was not required and enforced;
- During the check-in process, Caucus attendees did not maintain six-foot minimum distance between people from different households, and maintaining appropriate physical distance was not required and enforced;
- A group of people refused to voluntarily wear masks in order to enter the Caucus meeting room for reasons that were not medical, but the requirement to wear masks in the Caucus meeting room was not enforced, and people not wearing masks for other than medical reasons were admitted to the Caucus meeting room by a police officer; and
- The Caucus meeting room was smaller and more crowded than was anticipated, or than seemed safe to older electors.

(See: Photo of Caucus check-in from Wisconsin Watch article, attached; Activated Patriots Facebook page posts by Jessica Klatt and Crystal Mikle Randgaard, January 4, 2021, attached; Giese email sent January 5, 2021 at 12:49PM, attached; and WEC *EL 21-07 Denison v. Shaw et al*, Complaint, attached.)

iii. Respondents failed to provide an alternative to in-person participation in the Caucus.

Respondents failed to provide any alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus that both would not present a substantial danger from covid-19 infection to the health and lives of Hudson Town electors, and would preserve the rights of Hudson Town electors to participate fully and equally in the Caucus.

VII. Conclusion

Respondents' failures in their administration and conduct of the in-person-only January 4, 2021 Hudson Town Caucus resulted in likely very high covid-19 infection risks at the in-person Caucus that made the Caucus inaccessible to Complainants, effectively excluded Complainants from participation in the Caucus, and extinguished Complainants' statutory and constitutional rights to participate fully and equally in the Caucus.

Wis. Stat. 8.05(1) grants every Hudson Town elector a right to participate in the annual Hudson Town Caucus, to nominate candidates of their choice for the Hudson Town Board, and to vote in any election held at the Caucus to select candidates for a position on the Town Board.

The Americans with Disabilities Act (ADA) promises Hudson Town electors with disabilities equal opportunities to fully participate in and benefit from the Hudson Town Caucus.

Respondents effectively excluded Mr. Gostovich from participating in the Caucus by failing to perform their duties toward him under the ADA.

Mr. Gostovich is a qualified individual with a disability under the ADA that makes infection with covid-19 a substantial danger to his health and life. Mr. Gostovich requested the reasonable modification of a remote access and participation option for the in-person January 4, 2021 Hudson Town Caucus so that he could fully and equally participate in the Caucus without exposure to likely very high covid-19 infection risks at the in-person Caucus that would be a substantial danger to his health and life. Ms. Koeberl is the spouse of Mr. Gostovich and resides with him. Ms. Koeberl requested the reasonable accommodation of a remote access and participation option for the in-person Caucus so that she could fully and equally participate in the Caucus without exposure to likely very high covid-19 infection risks at the in-person Caucus that would be a substantial danger to Mr. Gostovich's health and life, as well as to her own health and life.

The 1st Amendment to the U.S. Constitution grants all Hudson Town electors fundamental rights to associate with others for political purposes, to take part in political processes, to express their views on issues and candidates for elective offices, and to hear from candidates themselves through participation in the annual Hudson Town

Caucus. The 14th Amendment to the U.S. Constitution protects the associational rights of all Hudson Town electors from being subjected to undue burdens by Respondents; requires Respondents to provide due process to Hudson Town electors regarding deprivation of their life, liberty, or property interests, including associational rights; and prohibits Respondents' unequal treatment of Hudson Town electors in regard to their associational rights.

Respondents' failures in their administration and conduct of the in-person-only January 4, 2021 Hudson Town Caucus extinguished Complainants' 1st Amendment associational rights to participate in the Caucus. Respondents failed to provide appropriate due process regarding extinguishment of Complainants' associational rights. Respondents failures in their administration and conduct of the in-person-only January 4, 2021 Hudson Town Caucus caused unequal treatment of Complainants in regard to their associational rights.

Respondents' attorney has argued in defense of, and as justification for these violations and denials of Complainants' statutory and constitutional rights to fully and equally participate in the January 4, 2021 Hudson Town Caucus that, in our changed circumstances resulting from the on-going covid-19 pandemic, it is more important to preserve the "format" of the Caucus than to preserve Complainants' rights.

Fundamentally, Respondents and Complainants propound opposed orientations regarding what is of primary importance and essential in regard to the annual Hudson Town Caucus.

Respondents' attorney argues that the "format" of the Caucus is primary; that the "format" is a meeting of Hudson Town electors who are physically present in the same room at the same time; and that the in-person meeting "format" is the essential nature of the Caucus that must be preserved, regardless of how the "format" affects the number and characteristics of Hudson Town electors who can and do attend the Caucus in-person to nominate and select candidates for election to the Hudson Town Board during the on-going covid-19 pandemic.

Respondents' primary emphasis on "format" shrinks the pool of Hudson Town electors who can and do participate in the Caucus to nominate and select candidates for election to the Hudson Town Board, and does so in an unequal manner that has greater exclusionary effects for Hudson Town electors who are older, have significant medical or health conditions, are disabled, and/or are more politically liberal or independent.

Complainants argue that the "function" of the Caucus is primary; that the "function" is a public meeting of Hudson Town electors which is open and accessible for full and equal participation by all Hudson Town electors; and that openness and accessibility for full and equal participation by all Hudson Town electors is the essential nature of the Caucus that must be preserved, so that more rather than fewer of all Hudson Town electors may participate in the Caucus to nominate and select candidates for election to

the Hudson Town Board, either by participating in-person or by participating via a remote meeting platform, during the on-going covid-19 pandemic.

Complainants' primary emphasis on "function" expands the pool of Hudson Town electors who may participate in the Caucus to nominate and select candidates for election to the Hudson Town Board, and does so in an equal manner for all Hudson Town electors.

The Wisconsin Supreme Court has concluded the state has multifactor compelling interests in encouraging increased elector participation in the political process while protecting the integrity of the candidate nomination process and protecting the political association rights of electors. The Wisconsin Supreme Court has concluded that the electoral process from the earlier-in-time nomination and selection of candidates through the later-in-time election to government office is unitary, and that the entire electoral process from beginning to end must be conducted in a manner that is open and accessible for full and equal participation by all electors.

U.S. Supreme Court decisions regarding the fundamental associational rights of individuals that are derived from the 1st Amendment and protected through the 14th Amendment compel concluding that the Hudson Town Caucus should function as a candidate selection process that is open and accessible for full and equal participation by all qualified Hudson Town electors.

For the reasons set forth, Complainants request that the Wisconsin Elections Commission issue guidance to Respondents that:

- 1) The Hudson Town Caucus must be administered and conducted in a manner that encourages and facilitates full and equal participation by all Hudson Town electors;
- 2) In the context of the covid-19 pandemic, the Hudson Town Caucus must be conducted in full compliance with recommended and required federal, Wisconsin, and St. Croix County public health protections against risks of infection with the highly contagious novel coronavirus that causes covid-19; and
- 3) In the context of the covid-19 pandemic, the Hudson Town Caucus must include a remote access and participation option to ensure opportunities for safe, full, and equal participation in the Caucus by all Hudson Town electors.

ATTACHMENTS:

- **October 27, 2020 Hudson Town Board Agenda and Minutes**
- **October 28, 2020 Koeberl/Gostovich memo to Hudson Town Board**, “Public Comment Regarding Communicable Disease Ordinance”
- **October 28, 2020 Email correspondence between Kate Larson and Hudson Town Supervisor Ken Thill**, sent at 1:49PM, 3:06PM, and 4:57PM
- **November 30, 2020 Koeberl/Gostovich memo to Hudson Town Board**, “Dec. 1, 2020, Town of Hudson Board Meeting, Agenda item 7. Resolution 2020-4 Opposition to St. Croix Co. Proposed Communicable Disease Ordinance”
- **December 1, 2020 Hudson Town Board Minutes**
- **December 23, 2020 Email from Koeberl/Gostovich to Hudson Town Clerk Vickie Shaw**, sent at 7:57AM
- **December 23, 2020 Email from Judy Green to Hudson Town Clerk Vickie Shaw**, sent at 1:31PM
- **December 23, 2020 Email from Hudson Town Clerk Vickie Shaw to Judy Green**, sent at 2:07PM
- **December 26, 2020 Email from Koeberl/Gostovich to Hudson Town Clerk Vickie Shaw, et al**, sent at 5:15PM
- **December 28, 2020 Email from Judy Green to Hudson Town Supervisor Tim Foster**, sent at 3:24PM
- **December 28, 2020 Email from Hudson Town Supervisor Tim Foster to Judy Green**, sent at 4:45PM
- **December 29, 2020 Email from St. Croix Co. Assistant District Attorney Karl Anderson to Celeste Koeberl**, sent at 5:35PM
- Plaintiffs’ ***Brief in Support of Plaintiffs’ Emergency Motion for Declaratory Judgment and/or Writ of Mandamus and/or Temporary Injunctive Relief*** filed in St. Croix County Court Case No. 2020CV000444
- **January 4, 2021 Photo of Hudson Town Caucus check-in** from Wisconsin Watch article
- **January 4, 2021 Activated Patriots Facebook page posts by Jessica Klatt and Crystal Mikle Randgaard**,

- **January 5, 2021 Email from Sally Giese, sent at 12:49PM**
- **January 13, 2021 Complaint in WEC EL 21-07 Denison v. Shaw et al**

TOWN OF HUDSON-TOWN BOARD MEETING AGENDA

Topic: Town of Hudson Board Meeting
Time: Oct 27, 2020 06:30 PM Central Time (US and Canada)

Join Zoom Meeting
<https://us02web.zoom.us/j/83302048828?pwd=OEttc3gvS0JCc1JJNEdwUjllQXI3QT09>

Meeting ID: 833 0204 8828
Passcode: 568001
One tap mobile
+19294362866,,83302048828#,,,,,,0#,,568001# US (New York)
+13017158592,,83302048828#,,,,,,0#,,568001# US (Germantown)

Dial by your location
+1 929 436 2866 US (New York)
+1 301 715 8592 US (Germantown)
+1 312 626 6799 US (Chicago)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)

Meeting ID: 833 0204 8828
Passcode: 568001
Find your local number: <https://us02web.zoom.us/u/k4UmIVajW>

1. Call to order by Town Chairman Jordan & Pledge of Allegiance
2. Action on Agenda – NOT necessarily in this order
3. Consent Agenda
 - a. Minutes
 - b. Building Inspector Report
 - c. Treasurer’s Report and payment of bills
 - d. Fire calls
 - e. Plan Commission minutes
 - f. Animal control report
 - g. Operator’s Licenses
4. Committee reports: Fire, Library, Wisconsin Towns Association, EMS
5. Chairman’s Report and road update
6. Public Comment – can only speak on items NOT on the agenda
7. Final plat of Summer Prairie 2nd addition
8. Concept presentation for the possible future use of the land in the NW quadrant of I-94 and Hwy 12
9. Marion Shaw presentation on County disease ordinance
10. Communications and Items for Future Agendas
 - A. Town Board members
 - B. Town Attorney and/or Town Staff

- **October 27, 2020 Hudson Town Board Minutes**

October 27, 2020

Chairman Jordan called the November Town Board meeting to order on October 27, 2020 at 6:30 pm on zoom.. Present were Town Supervisors Tim Foster, Ken Thill, Dan Fosterling, Susan Blank, Treasurer, Kris Garber, and Clerk, Vickie Shaw.

Motion by Supervisor Foster, 2nd by Supervisor Thill to approve the agenda as presented but not necessarily in that order. Motion carried.

. . .
Marion Shaw gave a presentation on the County disease ordinance. He has followed this ordinance through Pierce County. It has nothing to do with masks. St. Croix County is not listening to citizens. There have been many meetings. Legally, is this really an emergency? Is it constitutional? Motion by Thill, 2nd by Foster to support Marion Shaw presentation and the Town of St. Joseph resolution and to create a resolution in opposition to St. Croix County HHS county communicable disease ordinance. Motion carried 5-0.

Motion by Fosterling, 2nd by Foster to adjourn. Motion carried.

Respectfully Submitted,

Vickie Shaw, Town Clerk

TO: Town of Hudson Board

CC: St. Croix County Board of Supervisors, and
St. Croix County Public Health Officer

RE: Public Comment Regarding Communicable Disease Ordinance

DATE: October 28, 2020

FROM: Celeste Koeberl and John Gostovich
870 Strawberry Drive in the Town of Hudson

Please accept our written Public Comment regarding the October 27, 2020, Town of Hudson Board Resolution on a St. Croix County Communicable Disease Ordinance.

Please immediately revoke the October 27, 2020, Town of Hudson Board Resolution in Opposition to a St. Croix County Communicable Disease Ordinance.

Please support adoption of a St. Croix County Communicable Disease Ordinance that would allow the St. Croix County Public Health Officer to issue and enforce reasonable and necessary public health protection orders against covid-19 exposure and spread risks in our communities.

- I. **There was not sufficient prior Public Notice that such a Resolution would be considered by the Town of Hudson Board at its October 27, 2020, meeting.**

The published Agenda for the October 27, 2020, meeting of the Hudson Town Board (<https://townofhudsonwi.com/wp-content/uploads/2020/10/November-agenda.pdf>) failed to adequately notify people in the Town of Hudson that the Town Board would consider any Resolution regarding a St. Croix County Communicable Disease Ordinance

Item 9, "Marion Shaw presentation on County disease ordinance", is the single most related note on the published October 27th Meeting Agenda, and Item 9 does not mention any possible action to be considered by the Town of Hudson Board.

Item 9 is not adequate prior public notice to reasonably alert anyone in the Town of Hudson to the possible action that was taken by the Town Board on October 27th when it passed a Resolution in Opposition to a St. Croix County Communicable Disease Ordinance.

II. The Town of Hudson Board did not establish a sufficient basis for its Resolution at its October 27, 2020, meeting.

At its October 27, 2020, meeting, the Town of Hudson Board failed to hear and consider any relevant information provided by anyone with expertise and competence either in matters of public health protection or in the legal duties, powers, and authorities of local public health officers regarding the control of communicable diseases.

Prior to acting on any Resolution regarding a St. Croix County Communicable Disease Ordinance, the Hudson Town Board should hear and consider relevant information provided by the St. Croix County Public Health Department, the St. Croix County Office of Corporation Counsel, and the St. Croix County Health & Human Services Board, but the Town of Hudson Board did not do so at its October 27th meeting.

Rather, at its October 27th meeting the Town of Hudson Board engaged Item 9, “Marion Shaw presentation on County disease ordinance”.

During the twenty-seven years that we have owned our home on Strawberry Drive in the Town of Hudson, we have heard and read the comments of Marion Shaw and his like-minded colleagues on many topics.

We have previously heard Mr. Shaw speak regarding a St. Croix County Communicable Disease Ordinance at recent meetings of the City of Hudson Common Council, the St. Croix County Health & Human Services Board, and the St. Croix County Board of Supervisors. It is indisputably clear from his previous recent presentations that Mr. Shaw possesses absolutely no expertise or competence either in matters of public health or in the legal duties, powers, and authorities of public health officers regarding the control of communicable diseases.

III. The Town of Hudson Board should support adoption of a St. Croix County Communicable Disease Ordinance that would allow the St. Croix County Public Health Officer to issue and enforce reasonable and necessary public health protection orders against covid-19 exposure and spread risks in our communities.

Relevant public health data, public health protection expertise, and public health legal expertise are necessary for and should guide appropriate decision-making about how to protect our public health during our current covid-19 pandemic.

It is now clear from the public health data for St. Croix County that relying on only voluntary compliance with the St. Croix County Public Health Department’s recommended public health protections against covid-19 exposure and spread risks, including wearing masks and maintaining appropriate physical distance when out and about in public, has not been sufficient to reduce and slow the spread of covid19 in our St. Croix County communities.

The covid-19 cumulative epidemic curve for St. Croix County is sharply upward for September and October, and when that curve is sharply upward it means that covid-19 is spreading much wider and much faster within St. Croix County

(see: WI Dept. of Health Services Covid-19 County Data at <https://www.dhs.wisconsin.gov/covid-19/county.htm>).

Public health data reported by the WI DHS and the St. Croix County Public Health Department shows that:

On September 1, 2020, St. Croix County reported a cumulative total of **679** people who had been confirmed to have covid-19, but as of October 27, 2020, that number had increased to **1841**, which is a **271% increase in people confirmed to have contracted covid-19 over the last eight weeks.**

On September 1, 2020, about **151** people in St. Croix County were actively sick with covid-19, but as of October 27, 2020, that number had increased to **805**, which is a **533% increase in people currently sick with covid-19 in St. Croix County over the last eight weeks.**

On many recent single October days, St. Croix County has reported new confirmed covid-19 cases in from 30 up to 73 people.

People in every census tract within St. Croix County have been confirmed to have covid-19, and **about half of the people in St. Croix County who have been confirmed to have contracted covid-19 live in the Hudson area.**

(See: St. Croix County Covid-19 Dashboard at:

<https://sccdd.maps.arcgis.com/apps/opsdashboard/index.html#/859b5b36d25e47ec8512e86356ca8ac2>)

At meetings on October 7 and October 21, 2020, **members of the St. Croix County Health & Human Service Board and staff of the St. Croix County Public Health Department** explained that:

Both the numbers of people requiring hospitalization because of covid-19 and the numbers of people dead because of covid-19 are public health data that trail the cumulative numbers of people confirmed to have contracted covid-19 and trail the daily numbers of people with newly confirmed cases of covid-19 by from about two to six weeks.

The recent significant increases in the numbers of people in St. Croix County who have been confirmed to have contracted covid-19 portend highly likely and extremely concerning increases in the numbers of people in St. Croix County who will require hospitalization for covid-19 and who will die because of covid-19 in the next six to twelve weeks. (Also, see: Meet the Press, 10/18/2020, Top infectious-disease expert says 'the next 6 to 12 weeks are going to be the darkest of the entire

pandemic' at: <https://www.businessinsider.com/infectious-disease-osterholm-darkest-weeks-ofpandemic-2020-10?fbclid=IwAR12BsfJDciU3MWRjoyChlqbRGh4Gu0FcORh9Pz0EfJC2uvzM0W5y4mkF0>)

St. Croix County has no hospital ICU beds equipped to care for people with covid-19 who need intensive care, and the Twin Cities hospital ICU beds to which people in St. Croix County needing ICU care usually would be transferred are very close to full and very close to being unable to accept people from St. Croix county. (Also, see: Hudson Star Observer, 10/22/2020, Viewpoint: COVID-19 safety measures critical for local hospitals' health at <https://www.rivertowns.net/opinion/letters/6728908-Viewpoint-COVID-19-safetymeasures-critical-for-local-hospitals-health?fbclid=IwAR0dXq-8Q3I7ySixYtA8JzqbXYcidnMI0fQDABsC8oDICD-q7vYytwl9YPk>)

We need enforceable public health protections against covid-19 exposure and spread risks in St. Croix County now because not enough of us are voluntarily doing what needs to be done in order to reduce and slow the spread of covid-19 in our communities. It would be wonderful if most everyone in St. Croix County chose to voluntarily follow the recommendations of our St. Croix County Public Health Department about how to prevent the spread of the highly contagious novel coronavirus that causes covid-19, but that has not happened, and it is not likely to happen any time soon.

Wisconsin state law vests local public health officers, such as the St. Croix Public Health Officer, with certain duties, powers, and authorities to curtail the spread of communicable diseases, such as covid-19. However, in order for the St. Croix County Public Health Officer to use that authority to act for the best protection of our public health during our current covid-19 pandemic, the St. Croix County Board of Supervisors must first adopt a Communicable Disease Ordinance. (See: WI Counties Assoc., Guidance In Implementing Regulations Surrounding Communicable Diseases, at https://www.wicounties.org/uploads/legislative_documents/guidance-communicablediseases-final.pdf)

A loud minority may bray about infringements of their supposed “freedoms” and “rights”.

But, as **St. Croix County Corporate Counsel clearly explained** at the October 7, 2020, Digital Town Hall, “liberty” under the US Constitution does NOT include a “right” of individuals to make decisions about their own health that also endanger other people. Under the 10th Amendment and SCOTUS decisions over nearly 200 years, it is clear law that state and local governments may require reasonable and necessary public health protections during a pandemic such as our current covid-19 situation. (Also, see: American Bar Association, Two centuries of law guide legal approach to modern pandemic, at: <https://www.americanbar.org/news/abanews/publications/youraba/2020/youraba-april2020/law-guides-legal-approach-to-pandemic/>; and Yes, the government can restrict your

liberty to protect public health, at: <https://www.latimes.com/opinion/story/2020-0420/government-can-restrict-your-liberty-to-protect-public-health-courts-have-made-thatclear>)

We should allow public health data, public health protection expertise, and public health legal expertise, not uniformed opinions and politics, to determine how best to protect us all from the continuing and increasing spread of covid-19 here in St. Croix County. The highly contagious novel coronavirus that causes covid-19 is entirely nonpartisan, and it infects, sickens, and kills people regardless of their beliefs.

Please immediately revoke your October 27th Resolution.

Please recommend adoption by St. Croix County, without amendment and without further delay, of Version 3 of the Communicable Disease Ordinance.

- **October 28, 2020 Email correspondence between Kate Larson and Hudson Town Supervisor Ken Thill,**

----- Forwarded message -----

On Oct 28, 2020, at 1:49 PM, Kate Larson <katemlarson@gmail.com> wrote:

Dear Town Supervisors,

I strongly support a St. Croix County Communicable Disease Ordinance that would allow the St. Croix County Public Health Officer to issue and enforce public health protection orders.

I strongly urge you to revoke your resolution in opposition to the St. Croix County Communicable Disease Ordinance. This is extremely ill-advised action during our current covid-19 pandemic.

The St. Croix County and DHS data show that covid-19 is spreading widely and rapidly in St. Croix County.

Since September 1, 2020, the cumulative epidemic curve for St. Croix County has been sharply upward. On Sept. 1, St. Croix County had a cumulative total of 679 people who had been confirmed to have covid-19, but as of Oct. 27 that number had increased to 1841, which is a 271% increase in people confirmed to have covid-19 over the last eight weeks. On Sept. 1, about 151 people in St. Croix County were actively sick with covid-19, but as of Oct. 27 that number had increased to 805, which is a 533% increase in people currently sick with covid-19 in St. Croix County over the last eight weeks.

According to members of the St. Croix County Health & Human Services Board, St. Croix County has no ICU beds to care for covid-19 patients, and now the ICU beds in Twin Cities hospitals to which people in St. Croix County would be sent are nearly full (see: <https://www.startribune.com/614-minnesota-hospital-beds-filled-with-covid-19-patients/572872631/>).

The public health data make it clear that relying on only voluntary compliance with recommended public health protections against covid-19 exposure risks HAS NOT been sufficient to reduce and slow the spread of covid-19 in our St. Croix County communities.

Respectfully,

kate larson

To see the current covid-19 data for St. Croix County, go to the St. Croix County Covid-19 Dashboard at: <https://scccdd.maps.arcgis.com/apps/opsdashboard/index.html#/859b5b36d25e47ec8512e86356ca8ac2>

To see the cumulative epidemic curve for St. Croix County, go the WI Dept. of Health Services (DHS) Covid-19 County Data at: <https://www.dhs.wisconsin.gov/covid-19/county.htm>

On Wed, Oct 28, 2020 at 3:06 PM Ken Thill <Supervisor1@townofhudsonwi.com> wrote:

Kate,

I respectfully have to disagree.

Your support of an ordinance authorizing an unelected official to carry out duties that go directly against the Wisconsin state constitution and the Constitution of the United States does not supersede the fact that I signed an oath of office to support and defend the constitution of the United States/Wisconsin.

I,, **swear** (or affirm) that I will support the constitution of the United States and the constitution of the state of **Wisconsin**, and will faithfully and impartially discharge the duties of the **office** of to the best of my ability. So help me God. This isn't about wearing masks, social distancing and crowd sizes. This is however about opposing an overreaching and unconstitutional county ordinance.

We do not take these issues lightly and sometimes the decisions that we make are not easy to make, however, we have had an overwhelming majority support to create this resolution and unfortunately we won't all agree on items like this.

I signed the oath and have a duty to stand by it where I see fit. I do appreciate your input and wish more people would get involved in the conversation.

Respectfully,

Ken Thill | Supervisor 1

www.townofhudsonwi.com

From: **Kate Larson** <katemlarson@gmail.com>
Date: **Wed, Oct 28, 2020 at 4:57 PM**
Subject: Re: PLEASE REVOKE thIS
To: Ken Thill <Supervisor1@townofhudsonwi.com>

Thank you for your response.

Please direct me to the specific areas of the state and federal constitutions that you're referring to.

Thank you,
Kate Larson

TO: Town of Hudson Board

CC: St. Croix County Health & Human Services Board,
St. Croix County Board of Supervisors, and
St. Croix County Public Health Officer

RE: Dec. 1, 2020, Town of Hudson Board Meeting, Agenda Item 7.
Resolution 2020-4 Opposition to St. Croix Co. Proposed
Communicable Disease Ordinance

DATE: Nov. 30, 2020

FROM: Celeste Koeberl and John Gostovich
870 Strawberry Drive in the Town of Hudson

Please accept our written Comment regarding the **December 1, 2020, Town of Hudson Board Meeting Agenda Item "7. Discussion/action Resolution 2020-4 opposition to St. Croix County proposed communicable disease ordinance"**.

Please reject Resolution 2020-4.

Please support future adoption of a St. Croix County Communicable Disease Ordinance that will allow the St. Croix County Public Health Officer to issue and enforce reasonable and necessary public health protection orders against covid-19 exposure and spread risks in our communities.

I. Reject Resolution 2020-4 because there is not a proposed St. Croix County Communicable Disease Ordinance to oppose.

The Town of Hudson Board should reject Resolution 2020-4 because there is NO proposed St. Croix County Communicable Disease Ordinance to oppose.

There is not now a proposed Communicable Disease Ordinance under consideration by either the St. Croix Co. Health & Human Services Board (HHS) or the St. Croix County Board of Supervisors (BOS).

At its November 17, 2020, Special Meeting, a majority of the St. Croix County BOS voted "No" on a motion to approve the proposed Communicable Disease Ordinance that the St. Croix County HHS had recommended for adoption at its October 21, 2020, Special Meeting. The HHS has not since recommended adoption of another proposed Communicable Disease Ordinance to the BOS, and no such proposed ordinance is included on the BOS December 1, 2020, Regular Meeting Agenda.

(See: Nov. 18, 2020, HHS Regular Meeting Agenda at <https://stcroixcountywi.ig2.com/Citizens/FileOpen.aspx?Type=14&ID=2984&Inline=True>; Minutes, BOS, November 17, 2020, and Dec. 1, 2020, BOS Regular Meeting Agenda, at <https://stcroixcountywi.ig2.com/Citizens/FileOpen.aspx?Type=1&ID=2989&Inline=True>)

II. The Town of Hudson Board should support future adoption of a St. Croix County Communicable Disease Ordinance that will allow the St. Croix County Public Health Officer to issue and enforce reasonable and necessary public health protection orders against covid-19 exposure and spread risks in our communities.

Relevant public health data, public health protection expertise, and public health legal expertise are necessary for and should guide appropriate decision-making about how to protect our public health during our current covid-19 pandemic.

Public health data reported by the Wisconsin Dept. of Health Services (WI DHS) and the St. Croix County Public Health Department show that:

The covid-19 cumulative epidemic curve for St. Croix County has been sharply upward since September, and when that curve is sharply upward it means that covid-19 is spreading much wider and much faster within St. Croix County:

- On **Sept. 1**, St. Croix Co. had "only" **679** confirmed cases and **60** probable cases of covid-19, for a total of **739** cases;
- On **Oct. 1**, the County had **1142** confirmed cases and **71** probable cases of covid-19, for a total of **1213** cases;
- On **Nov. 1**, the County had **2547** confirmed cases and **110** probable cases of covid-19, for a total of **2657** cases; and
- By **Nov. 28**, the County had **4296** confirmed cases and **234** probable cases of covid-19, for a total of **4530** cases.

This is the escalating exponential growth of an uncontrolled pandemic: from Sept. 1 to Nov. 28, the number of people in St. Croix County with covid-19 has increased by about 613%, from 739 total cases on Sept. 1 to 4530 on Nov. 28.

(See: WI DHS Covid-19 County Data at <https://www.dhs.wisconsin.gov/covid-19/county.htm>)

As of **Saturday Nov. 28, 2020, 4296 people** who live in St. Croix County had been confirmed to have caught covid-19, and **234 more people** in St. Croix County had probable cases of covid-19, for a **total of 4530 people**; **at least 2221 of these 4530 people** had active cases of covid-19; **48 of these people** currently are hospitalized because they caught covid-19; and, **so far, 20 people** from St. Croix County have died because they caught covid-19. On recent single days in St. Croix County, as many as **142 people per day** have been confirmed to have caught covid-19.

People in every St. Croix County census tract have been confirmed to have caught covid-19, but about half of the people in the County who have caught covid-19 have a Hudson home address.

The age groups with the most confirmed cases of covid-19 are people ages 50 - 59 with 737 cases; people ages 40 - 49 with 735 cases; people ages 20 - 29 with 705 cases; people ages 30 - 39 with 622 cases; people ages 10 - 19 with 488 cases; and people ages 60 - 69 with 388 cases. People ages 70 - 99 have had a total of only 301 cases; and people ages 0 - 9 have had 154 cases. The likelihood of needing hospitalization, and of dying, because of covid-19 increases greatly with a person's age; so far, all of the people from St. Croix County who have died because they caught covid-19 have been older than 60.

(See: St. Croix Co. Covid-19 Dashboard at <https://scccdd.maps.arcgis.com/apps/opsdashboard/index.html#/859b5b36d25e47ec8512e86356ca8ac2>)

Covid-19 is spreading widely and rapidly in St. Croix County now.

People spread covid-19 when they are infected with the novel coronavirus that causes covid-19 and share their air with another person who is within six feet for as little as fifteen minutes over twenty-four hours. Many people who are carrying the virus do not know it and do not realize they are spreading it, but they are still making other people sick with covid-19.

(See: CDC, FAQs, How does the virus spread? at <https://www.cdc.gov/coronavirus/2019-ncov/faq.html?fbclid=IwAR2mxJ6YhpgyNbgswb1CNsgLgKjkcshiKHM4fi43Fgsdo1UmqRlzQyK6U6w#:~:text=The%20virus%20that%20causes%20COVID,many%20affected%20geographic%20areas>).

All that we can do now to slow and reduce the spread of covid-19 are to (1) minimize our contacts with other people by staying home except for essential trips out such as to get in-person medical care, **and (2) wear a face covering and maintain at least six-foot distance from others** when we must go out into our community.

(See: CDC, How to Protect Yourself & Others, at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html?fbclid=IwAR0MaeEqXIYwEXmvB8e0F0VbDVSwvXb3aZ6YdKFGSp4QdVKinS Ct9VHwnY>; and Mayo Clinic research shows masks help protect both wearer and those nearby from Covid-19, at: https://madison.com/news/state_and_regional/mayo-clinic-research-shows-masks-help-protect-both-wearer-and-those-nearby-from-covid-19/article_33ec8ec1-e990-5702-be00-e13dae4a36eb.html?fbclid=IwAR3NmQ5i62Cg7MXhZNPfCi SzYs5tx5Z9cwudXQ2571UtWGssckXIMvy0M#utm_source=madison.com&utm_campaign=/newsletter-templates/breaking&utm_medium=PostUp&utm_content=ec7c9842fe53042d6251d176017e3d9d90f99df0)

But it is clear from the public health data for St. Croix County that relying on only voluntary compliance with recommended public health protections against covid-19 exposure and spread risks—including staying home as much as possible, and wearing masks and maintaining appropriate physical distance when out and about in public—**has not been sufficient** to reduce and slow the spread of covid19 in our St. Croix County communities.

Not enough of us have been, and not enough of us now are, voluntarily doing what needs to be done in order to reduce and slow the spread of covid-19 in our communities. It would be wonderful if most everyone in St. Croix County chose to most always voluntarily follow the public health protection recommendations about how to prevent the spread of the highly contagious novel coronavirus that causes covid-19, but that has not happened. In fact, analyses of cell phone mobility data show that St. Croix County now has an overall “D” rating for “Social Distancing Activity”; a “D” rating for “Reduction in Average Mobility”; an “F” rating for “Reduction in Nonessential Visits”; and a “C” rating for “Encounters Density”, which is largely due to the low population density in much of the County.

(See: Social Distancing Scorecard for St. Croix County at <https://www.unacast.com/covid19/social-distancing-scoreboard?view=county&fips=55109>).

People in St. Croix County will continue to get sick with covid-19 at an escalating exponential rate unless and until most everyone here most always does all that we can to slow and reduce the spread of covid-19.

And as the numbers of people in St. Croix County who catch covid-19 keep going up, so will the numbers of people here requiring hospitalization because of covid-19 keep going up, and so will the numbers of people here dying because they caught covid-19 also keep going up, with a lag of about two to six weeks between numbers of new cases and hospitalizations and deaths. **But even before last week’s Thanksgiving gatherings at which people unknowingly further spread covid-19, our hospitals were close to the breaking point,** with shortages of staff and PPE.

(See: Hospitals in the Midwest ‘close to the breaking point’ amid surge in COVID-19 cases, at https://madison.com/wsj/news/local/health-med-fit/hospitals-in-the-midwest-close-to-the-breaking-point-amid-surge-in-covid-19-cases/article_24155cc7-0830-5c8f-825e-00de599518e7.html)

We cannot reduce and slow the spread of covid-19 in our communities until enough of us do what needs to be done to protect us all, and we are running out of time.

In the not too distant future, we will have no reasonable alternative but to take stronger necessary actions to protect our public health from the rapidly increasing covid-19 exposure and spread risks in our St. Croix County communities.

A loud minority may object to any and all County actions to protect our public health from the spread of covid-19 as infringements on their supposed “freedoms” and “rights”.

But “liberty” under our US Constitution does NOT include a “right” of individuals to make decisions about their own health that also endanger other people. Under the 10th Amendment and SCOTUS decisions over nearly 200 years, it is clear law that state and local governments may require reasonable and necessary public health protections during a pandemic such as our current covid-19 situation.

We can and should take reasonable and necessary actions to protect our public health in St. Croix County during our covid-19 pandemic that are within the bounds of constitutional law.

Proven to be effective, nonpharmaceutical public health protections against the spread of covid-19, for example, such as requirements that people wear face coverings when out in public, are no doubt well within the constitutional allowance for the exercise of government authority to quell a highly infectious disease pandemic.

(See: American Bar Association, Two centuries of law guide legal approach to modern pandemic, at:

<https://www.americanbar.org/news/abanews/publications/youraba/2020/youraba-april2020/law-guides-legal-approach-to-pandemic/>; Yes, the government can restrict your liberty to protect public health, at: <https://www.latimes.com/opinion/story/2020-0420/government-can-restrict-your-liberty-to-protect-public-health-courts-have-made-that-clear>; The Founding Fathers Would’ve Been Pro-Face Mask, at: <https://www.bloombergquint.com/gadfly/covid-19-quarantines-are-part-of-america-s-disease-fighting-story>; and WI Counties Assoc., Guidance In Implementing Regulations Surrounding Communicable Diseases, at https://www.wicounties.org/uploads/legislative_documents/guidance-communicablediseases-final.pdf)

For the benefit of all of us who live, work, do business, attend school, or visit in St Croix County, we should allow public health data, public health protection expertise, and public health legal expertise to determine how best to protect us all from the increasing spread of covid-19 here in St. Croix County.

The Hudson Town Board should support future adoption of a St. Croix County Communicable Disease Ordinance that will allow our St. Croix County Public Health Officer to issue and enforce reasonable and necessary public health protection orders against covid-19 exposure and spread risks in our communities.

- **December 1, 2020 Hudson Town Board Minutes**

December 1, 2020

Chairman Jordan called the December Town Board meeting to order on December 1, 2020 at 6:30 pm on zoom. Present were Town Supervisors Tim Foster, Ken Thill, Dan Fosterling, Susan Blank, Treasurer, Kris Garber, and Clerk, Vickie Shaw.

Motion by Supervisor Foster, 2nd by Supervisor Blank to approve the agenda as presented but not necessarily in that order. Motion carried.

Consent Agenda: The Chairman pulled Set the date for the Caucus and Humane Society contract renewal from the consent agenda.

...

Motion by Foster, 2nd by Thill to set the date for the 2021 Caucus for 6:00 PM on January 4, 2021 at the Hudson High School. Motion carried.

...

Discussion/action Resolution 2020-4 opposition to St. Croix County proposed communicable disease ordinance. This was not properly noticed on the November agenda to take action on a resolution. The Chairman pulled this item from the agenda as the county denied the ordinance.

....

- **December 23, 2020 Email from Koeberl/Gostovich to Hudson Town Clerk Vickie Shaw**, sent at 7:57AM

Begin forwarded message:

From: Celeste Koeberl <koeberl@mac.com>

Subject: **Wis. Stat. 5.06 complaint regarding Jan. 4, 2021 Hudson Town Caucus**

Date: December 23, 2020 at 7:57:26 AM CST

To: clerk@townofhudsonwi.com

Cc: John Gostovich <gostovich@mac.com>

Hudson Town Clerk, Vicki Shaw:

Today we will file a sworn complaint under Wis. Stat. 5.06(1) with the Wisconsin Elections Commission (WEC) regarding the January 4, 2021 Hudson Town Caucus (courtesy copy attached).

Under Wis. Stat. 5.07 and 5.08 the St. Croix County District Attorney may sue for injunctive relief to halt the January 4, 2021 Hudson Town Caucus until the defects and omissions in the plan for administering and conducting the Caucus, explained in our attached complaint, may be cured.

Celeste Koeberl and John Gostovich

- **December 23, 2020 Email from Judy Green to Hudson Town Clerk Vickie Shaw, sent at 1:31PM**

On 2020-12-23 13:31, j green wrote:

Hi Vicki, Jim and I are requesting a remote link to the Town Caucus. Thank you so much!
Judy Green

[Sent from Yahoo Mail for iPhone](#)

- **December 23, 2020 Email from Hudson Town Clerk Vickie Shaw to Judy Green, sent at 2:07PM**

Begin forwarded message:

From: j green <jfgjag@yahoo.com>
Subject: Fw: Hi
Date: December 23, 2020 at 8:48:57 PM CST
To: Celeste Koeberl <cjkoeberl@gmail.com>

And the reply no reply from Don Jordon that I sent previously.
Thanking you for all that you do and wishing you and John a very happy holiday. On to 2021 🎉

[Sent from Yahoo Mail for iPhone](#)

Begin forwarded message:

On Wednesday, December 23, 2020, 2:07 PM, clerk@townofhudsonwi.com wrote:

The Caucus is being held in-person at the High School. The Caucus is held in-person as voting is private and if needed, a primary will be held at the caucus. Below is the information from the Town website.

Town Caucus

Due to the Covid-19 pandemic the Town will be holding the Caucus at the Hudson High School to provide a larger venue for the event.

In accordance Hudson School District policies and that of the Town, masks will be required to be worn. Exceptions will be made for those individuals with medical conditions.

Contact tracing information will be obtained for individuals attending the Caucus.

Attendees will be expected to maintain social distancing between household groups.

The Town requests that only eligible electors attend to help minimize the size of the gathering.

Vickie Shaw
Town Clerk

- **December 26, 2020 Email from Koeberl/Gostovich to Hudson Town Clerk Vickie Shaw, et al, sent at 5:15PM**

From: Celeste Koeberl <koeberl@mac.com>

Subject: Again requesting reasonable accommodation and modification for participation and voting in Jan. 4, 2021 Hudson Town Caucus

Date: December 26, 2020 at 5:15:00 PM CST

To: clerk@townofhudsonwi.com

Cc: chairman@townofhudsonwi.com, supervisor1@townofhudsonwi.com, supervisor2@townofhudsonwi.com, supervisor3@townofhudsonwi.com, supervisor4@townofhudsonwi.com, Cindy Campbell <Cindy.Campbell@sccwi.gov>, cathy.halverson@da.wi.gov, Kelli.Engen@sccwi.gov, "James.Witecha@wi.gov" <James.Witecha@WI.Gov>, brianna.hanson@wisconsin.gov, fergusonpm@doj.state.wi.us, John Gostovich <gostovich@mac.com>

Hudson Town Clerk, Vicki Shaw:

Thank you for your December 23, 2020, 2:03PM, post to the Town of Hudson website with recommendations regarding covid-19 exposure and spread risks at the January 4, 2021 Hudson Town Caucus (<https://townofhudsonwi.com/2020/12/23/town-caucus/>).

My spouse, John Gostovich, and I are qualified and eligible Hudson Town electors who want to participate and vote in the January 4, 2021 Caucus; however, this local government electoral process still will not be reasonably accessible to us because our health and lives will be put at unreasonable risks by the likely still high covid-19 exposure and spread risks of in-person Caucus attendance, coupled with our older ages, serious underlying medical and health conditions, and qualified disability under Title II of the Americans with Disabilities Act, all of which will put us at unreasonable risks of becoming severely ill, requiring hospitalization, and dying if through in-person attendance at the Caucus we are infected with the highly contagious novel coronavirus that causes covid-19.

In the four previous 2020 elections during the on-going covid-19 pandemic, all voters had the options of absentee ballots and absentee voting as alternatives to in-person voting with its covid-19 exposure and spread risks, so we were not disenfranchised by being required either to put our health and lives at risk by voting in-person OR to protect our health and lives by foregoing voting.

We require and are requesting the reasonable accommodation and modification that the Town of Hudson provide us with an option of remote participation and voting for the January 4, 2021 Hudson Town Caucus, so that we are not forced to give up exercising our constitutional and civil voting rights in order to protect our health and lives from covid-19 as recommended by federal, Wisconsin, and St. Croix County public health officials.

Please reply by email regarding how the Town of Hudson will make accommodations and modifications for the January 4, 2021 Caucus so that we and no other Town electors will be

required to put health and life at unreasonable risks in order to participate and vote, and so that the Caucus will be accessible to all Town electors as required by law.

Thank you for your help.

Celeste Koeberl and John Gostovich
870 Strawberry Drive in the Town of Hudson

- **December 28, 2020 Email from Judy Green to Hudson Town Supervisor Tim Foster,**
sent at 3:24PM

On Dec 28, 2020, at 3:24 PM, j green <jfgjag@yahoo.com> wrote:

Hi Tim, Jim and I are requesting a zoom meeting for January 4 due to covid. Thank you! Judy Green

[Sent from Yahoo Mail for iPhone](#)

- **December 28, 2020 Email from Hudson Town Supervisor Tim Foster to Judy Green,**
sent at 4:45PM

Begin forwarded message:

On Monday, December 28, 2020, 4:45 PM, Tim Foster
<supervisor2@townofhudsonwi.com> wrote:

Judy, this meeting has been scheduled for the caucus since our December board meeting for in person practice high school at 6 PM. That is not going to change.

Tim Foster

- **December 29, 2020 Email from St. Croix Co. Assistant District Attorney Karl Anderson to Celeste Koeberl**, sent at 5:35PM

Begin forwarded message:

From: "Anderson, Karl" <Karl.Anderson@da.wi.gov>
Subject: FW: January 4, 2021 Hudson Town Caucus
Date: December 29, 2020 at 5:35:20 PM CST
To: "koeberl@mac.com" <koeberl@mac.com>

Ms. Koeberl,

I have reviewed your complaint that you filed with WEC as well as the emails that you have sent our office. The District Attorney is unavailable for medical reasons, so they were forwarded to me.

First, historically, the District Attorney's Office in St. Croix County has not gotten involved with elections complaints or open meetings complaints. Rather, we defer to the elections commission and DOJ. Frankly, our office is overworked as it is processing the criminal case load in the county.

That being said, I have spoken with the attorney for the Town of Hudson and the Wisconsin Elections Commission. I have also reviewed Wis. Stat. 5.07, which provides that the District Attorney may pursue an injunction.

I am sympathetic to your concerns about going to the caucus in person given the pandemic. However, I also understand the difficult position the Town of Hudson is in with the pandemic and trying to ensure that votes are anonymous and verified, while trying to prevent the spread of Covid.

Another issue is that it is not clear that Wis. Stat. 5.07 would apply to a caucus. The election occurs after the caucus, once the potential candidates are narrowed down to 2 candidates for election. Although the caucus narrows the candidates, similar to a primary, it is not clear that it is technically an election. Thus, I'm not sure the District Attorney, who is unavailable regardless, would even have authority to pursue an injunction under that statute.

The pandemic is a difficult time for everyone with unique challenges, and I completely understand your concerns. But in the end, this is not something our office will be pursuing, because the District Attorney is not available to file for an injunction, it's not clear he would have authority even if available, and this is not something we would typically get involved in.

Sincerely,

Karl Anderson
Assistant District Attorney
St. Croix County, WI



NARROW MARGIN

Wisconsin caucuses pose thorny safety issues during pandemic



School in Hudson, Wis., on Monday, Jan. 4, 2020. Two town residents unsuccessfully sought to force the town to allow High School in Hudson, Wis., on Monday, Jan. 4, 2020. Two town residents, John Gostovich and Celeste Koeberl, had filed a court case and formal complaint to allow residents to attend the event virtually in light of the COVID-19 pandemic. The unique structure of January caucuses raises questions about balancing inclusion and transparency with safety concerns. Their attempts were unsuccessful.

Tim Gruber for Wisconsin Watch

- **January 4, 2021 Activated Patriots Facebook page posts by Jessica Klatt and Crystal Mikle Randgaard**

Activated Patriots - Posts | Facebook 1/18/21, 2:15 AM
<https://www.facebook.com/ActivatedPatriots/posts/223249396180679> Page 2 of 11

I just got word that Town of Hudson is not allowing unmasked individuals into the school to caucus.

Voter suppression?

Stay tuned...

Activated Patriots - Posts | Facebook 1/18/21, 2:17 AM
<https://www.facebook.com/ActivatedPatriots/posts/223271316178487> Page 1 of 10

Activated Patriots

@ActivatedPatriots · Interest

[Learn More](#)

activatedpatriots.com

[Home](#) [Events](#) [More](#) [Like](#) [Message](#)

Activated Patriots

Jessica Klatt

Update on Town Hudson Caucus:

We the People are aware of our rights.

Face masks cannot lawfully be required.

Thank you to the officers that are there tonight, they are doing a wonderful job!

Activated Patriots - Posts | Facebook 1/18/21, 2:15 AM
<https://www.facebook.com/ActivatedPatriots/posts/223249396180679> Page 3 of 11
Most Relevant is selected, so some replies may have been filtered out.

· · 1w

Top Fan

Crystal Mikle Randgaard

Yup, however, one of the officers was nice enough to follow up for us. We were allowed in, but had to sit it the very very back. Could hardly hear, and we were still harassed while we were there.

[Like](#) [Reply](#) 2

· · 1w

Top Fan

Crystal Mikle Randgaard

Wayne Bjurstrom I was not embarrassed at all. We stood our ground. There were a good group of us too. Either way, I would not be embarrassed for having common sense.

- **January 5, 2021 Email from Sally Giese**, sent at 12:49PM

Begin forwarded message:

From: sally.giese@att.net

Subject: Re: Update On What Happened at the Hudson Town Caucus Last Night, Jan. 4, 2021

Date: January 5, 2021 at 12:49:06 PM CST

To: Celeste Koeberl <koeberl@mac.com>

Thanks for the info, Celeste.

I did go to the caucus last night just in case there was a vote or the Shaw/Gherke group put up some candidates. I also told Maggie that I would be there. I was a bit of a site to behold in my old, thick 95 mask, and safety glasses, standing in the far corner of a rather crowded room! Took a shower as soon as I got home to be on the safe side! I think the Town handled it pretty well, but the room was not as big as I was led to believe and the turnout larger. Standing in line to get certified in order to vote was dicey as there was not distancing and no requirement for masks. I talked to the cop but he deferred to the Town. Once you signed in, masks were required to enter the room.

Maggie mostly summed it up well. I was glad to get her info on Tony Dabruzzo. His father or some other relative did some concrete work for us years ago. He was great. The family is well-known but I have no idea how they stand on issues. It was significant to me that it was Bob Long who nominated Fosterling...not fond of his (Bob Long's) viewpoints. I also really do not have a good idea of where Maggie is on some issues. I'm mostly concerned with environment and I assume she is strong there. Can you give me some insight?

Thanks for your efforts to create a safe environment for the caucus. You put a lot of work into preparation for the hearing.

Oh, and Bill thought Maggie ought to drop the #sign and just make it supervisor 4 u. Pass that on to her if you want.

Sally

On January 4th 2021 I arrived at Hudson High School at approximately 5:45 pm. When I arrived I walked to the registration desk and gave the person at the desk my identification. At the time I was not wearing a mask. I do know that Wisconsin law does allow for an exemption for people with a medical issue, and they should not be asked to discuss their medical condition, nor need to defend it. Town of Hudson Clerk Vicki Shaw was next to the person who took my identification, and Vicki very loudly and aggressively told that person NOT to allow me to register if I didn't put my mask on. I put my mask on, as it was important to me to be able to exercise my right to vote. I walked into the room and removed my mask and another lady yelled at me from the registration desk to put my mask on or I would have to leave. I told her that it was not a law, and she repeated her threat. I put my mask on again and walked over to a table. My husband and son were also not wearing masks, and received similar harassment from the people at the registration desks. My husband did not know the names of any of the people checking them in. My son has a disability, which includes but is not limited to vocal cord paralysis, and my husband could see that the harassment by the people at the desk was making my son extremely anxious. He had to stand by my son so that he was not overly intimidated. They then walked over to the table to sit next to me. I had removed my mask at that point as it was difficult for me to breathe. Don Jordan began yelling towards our table that we had to put the masks on. I responded to him asking him if he knew that this was a deprivation of rights under the color of law. I could not hear his initial response, but I did hear him state that if anyone passed out they had paramedics standing by. He continued to threaten us, and then proceeded to go speak to the police officers as he appeared to be going to have us removed. We put our masks on in order to be able to exercise our constitutional right to vote. We did not wish to be deprived of this right. However I felt extremely threatened by the aggressive behavior of most of the employees of the Town of Hudson that evening who were actively working with voters.

Vicki Shaw in particular was very aggressive, threatening and rude to people who did not or were unable to comply with her orders to wear a mask. I could hear her speaking very loudly and in a derogatory manner to a gentlemen about people who did not want to wear a mask. Several people working for the Town of Hudson that night mentioned that the requirement for masks was due to a lawsuit that day. One person working that evening indicated that the judge had passed a law requiring the masks, so everyone "was on edge". I knew this could not be true, because I know a judge cannot pass a law, it has to come from the legislature. I also knew that the lawsuit that day had failed, although I didn't know the details of the case at that time. Therefore we were lied to by some employees that evening.

My understanding is that the Wisconsin Elections Commission does not require a mask to vote per the below link: [FAQs about Voting | Wisconsin Elections Commission](#) therefore we were acting in accordance with this knowledge. In addition our rights were violated under federal Department of Justice 18 US Code 242: [18 U.S. Code § 242 - Deprivation of rights under color of law | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#). That evening we were intimidated, harassed, threatened and treated with disdain when we were simply exercising our Constitutional rights in accordance with Wisconsin law. There was no regard for people with medical exemptions, except to say that we would be resuscitated if we were to pass out. I am extremely disturbed by this treatment to myself, my family and many other people who were there that evening.

FILED
01-04-2021
Circuit Court
St. Croix County, WI
2020CV000444

STATE OF WISCONSIN

CIRCUIT COURT

ST. CROIX COUNTY

JOHN B GOSTOVICH and CELESTE J KOEBERL

Plaintiffs,

Case No. 2020CV000444

Case Code 30701

v.

TOWN OF HUDSON WISCONSIN,
HUDSON TOWN CLERK, VICKIE SHAW, and
HUDSON TOWN BOARD CHAIR, DON JORDAN

Defendants.

BRIEF IN SUPPORT OF PLAINTIFFS'

EMERGENCY MOTION FOR DECLARATORY JUDGMENT

And/or WRIT OF MANDAMUS

And/or TEMPORARY INJUNCTIVE RELIEF

OUTLINE

INTRODUCTION

pages 6 – 9

BACKGROUND

pages 10 – 20

I. COVID-19 PANDEMIC

- A. COVID-19 Continues To Spread Exponentially Throughout St. Croix County And The Town Of Hudson In An Uncontrolled Pandemic. pp 10 – 12
- B. The Novel Coronavirus That Causes COVID-19 Will Spread Easily Among Hudson Town Electors Who Participate In-Person At The Hudson Town Caucus And Caucus Election. pp 12 – 13
- C. COVID-19 Will Pose A Health Risk To All Hudson Town Electors Who Participate In-Person At The Hudson Town Caucus And Caucus Election. p 13
- D. COVID-19 Will Be A Substantial Threat At The In-Person Hudson Town Caucus And Caucus Election To The Health And Lives Of Hudson Town Electors Who Are Older, Disabled, And/Or Have Serious Underlying Medical Or Health Conditions. pp 14 – 15
- E. One-Third Or More Of Hudson Town Electors Are At Substantial Risk From COVID-19. p 16
- F. Federal Public Health Protection Recommendations pp 17 18
- G. Wisconsin Public Health Protection Recommendations p 19
- H. St. Croix County Public Health Protection Recommendations p 20

II. JANUARY 4, 2021 HUDSON TOWN CAUCUS ELECTION PLAN

- A. Defendants Failed To Adopt Policies And Practices To Ensure Safe And Effective Caucus Election Access Despite Clear Warning Signs. p 21
 - 1. For Four Previous Elections In The On-Going COVID-19 Pandemic, Defendants Adopted Policies And Practices To Provide Alternatives To In-Person Voting In Order To Ensure Safe And Effective Voting Access For All Town Electors. pp 21 -22

2. For Hudson Town Board Meetings In The On-Going COVID-19 Pandemic, Defendants Adopted Policies And Practices To Provide An Alternative to In-Person Meeting Attendance In Order To Ensure Safe And Effective Access For All Town Electors And The Public. p 22
 3. Defendants' Chosen Site For The January 4, 2021 Hudson Town Caucus Election Easily Can Facilitate Providing Alternatives To In-Person Meeting Attendance and In-Person Voting To Ensure Safe And Effective Meeting Access For The Public And Safe And Effective Caucus Election Access For All Town Electors In The On-Going COVID-19 Pandemic. pp 22 - 23
 4. Defendants Have Declined to Adopt Reasonable and Necessary Policies and Practices To Ensure Safe And Effective Caucus Election Access For All Town Electors In The On-Going COVID-19 Pandemic. pp 23 - 26
- B. Defendants Refused To Make Reasonable Accommodations And Modifications Requested By Qualified and Eligible Hudson Town Electors And Necessary To Allow Safe And Effective Caucus Election Access In The On-Going COVID-19 Pandemic. p 27
1. Defendants Refused To Make Reasonable Accommodations For Electors Who Are Older Or Who Have Serious Underlying Medical Or Health Conditions And Whose Health And Lives Are Substantially Threatened By COVID-19 Exposure Risks At The In-Person Caucus Election. p 27 – 28
 2. Defendants Refused To Make Reasonable Modifications For Electors With Qualified Disabilities Under The Americans With Disabilities Act And Whose Health And Lives Are Substantially Threatened By COVID-19 Exposure Risks At The In-Person Caucus Election. pp 28 - 29
- C. Plaintiffs Have Attempted To Exhaust Their Administrative Remedies. p 30
1. Plaintiffs Filed A Sworn Complaint With The Wisconsin Elections Commission Under Wis. Stat. 5.06(1), EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson, December 23, 2020. p 30
 2. Plaintiffs Asked The St. Croix County District Attorney To Act Under Wis. Stat. 5.07 or 5.08 And To Sue For Injunctive Relief. p 31
- III. **ABSENT IMMEDIATE JUDICIAL INTERVENTION, THERE WILL BE WIDESPREAD DISENFRANCHISEMENT AT THE IN-PERSON ONLY JANUARY 4, 6PM, 2021 HUDSON TOWN CAUCUS AND CAUCUS ELECTION** p 32

LEGAL STANDARDS FOR INJUNCTION, MANDAMUS, AND JUDGMENT

- A. Temporary Injunction p 33
- B. Writ Of Mandamus p 34
- C. Declaratory Judgment p 35

ARGUMENT

- I. **PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR STATUTORY CLAIMS.** pp 36 – 50
 - A. Plaintiffs Are Likely To Prevail On Their Claim That Defendants' Failure To Ensure Safe Voting Conditions Violates Section 11(b) Of The Voting Rights Act. pp 36 – 39
 - B. Plaintiffs Are Likely To Prevail On Their Claim That Defendants' Failure to Make Reasonable Modifications For Voters With Disabilities Violates The Americans With Disabilities Act. pp 40 – 41
 - 1. Plaintiffs Are Qualified Individuals With Disabilities. p 41
 - 2. Plaintiffs Have Been Denied Access To A Government Program, And Defendants Cannot Prove That The Proposed Modifications Are Unreasonable. pp 41 - 47
 - C. Plaintiffs Are Likely To Prevail On Their Claims That Defendants' Failure To Ensure Safe Voting Conditions For Hudson Town Electors With Disabilities Violates Wis. Stat. 5.25(4)(a). pp 47 – 48
 - D. Plaintiffs Are Likely To Prevail On Their Claims That Defendants' Failure To Make Requested Accommodations For Hudson Town Electors With Disabilities Violates Wis. Stat. 5.36. pp 48 – 49
 - E. Plaintiffs Are Likely To Prevail On Their Claims That Defendants' Failure To Approve Safe Alternative Voting Locations For Elderly or Handicapped Hudson Town Electors Violates Wis. Stat.5.25(5)(b). pp 49 – 50

- II. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR US AND WISCONSIN CONSTITUTIONAL CLAIMS.** pp 51 – 60
- A. Plaintiffs Are Likely To Prevail On Their Claim That Defendants’ Caucus Election Administration Unduly Burdens Their Right to Vote Under *Anderson-Burdick*. pp 51 – 55
1. Failure To Ensure Safe In-Person Voting. p 52 – 53
2. Failure To Provide An Alternative To Unsafe In-Person Voting. pp 54 – 55
- B. Plaintiffs Are Likely To Prevail On Their Claim That Defendants Are Violating the Procedural Guarantees Of The Due Process Clause Of The Fourteenth Amendment To The US Constitution. pp 55 – 58
- C. Plaintiffs Are Likely To Prevail On Their Claim That Defendants’ Arbitrary Election Administration Violates The Equal Protection Clause Of The Fourteenth Amendment To The US Constitution. pp 58 – 60
- D. Plaintiffs Are Likely To Prevail On Their Claims That Defendants’ Arbitrary Election Administration Violates Their State Constitutional Rights To Equal Protection And Due Process Under Article I., And To Vote Under Article III. Section 1, Of The Wisconsin Constitution. p 60
- III. IN THE ABSENSE OF A TEMPORARY INJUNCTION, PLAINTIFFS WILL SUFFER IRREPARABLE HARM.** p 61 – 63
- IV. THE BALANCE OF HARDSHIPS SUPPORTS ISSUANCE OF A TEMPORARY INJUNCTION.** p 64
- V. AN INJUNCTION IS IN THE PUBLIC INTEREST.** p 64 – 65
- VI. IN THE ABSENSE OF A WRIT OF MANDAMUS, PLAINTIFFS WILL SUFFER IRREPARABLE HARM.** p 65 – 66
- VII. PLAINTIFFS ARE ENTITLED TO DECLARATORY JUDGMENT THAT AN IN-PERSON ONLY HUDSON TOWN CAUCUS AND CAUCUS ELECTION ARE A VIOLATION OF THEIR FUNDAMENTAL RIGHTS TO VOTE.** p 66
- CONCLUSION AND RELIEF REQUESTED** p 67 - 69

INTRODUCTION

We all have made many modifications in the things that we do and how we do them since mid-March 2020 when covid-19 became our new daily reality.

Plaintiffs Gostovich and Koeberl are asking the Town of Hudson to modify the 2021 Hudson Town Caucus and Caucus Election so that the Town Caucus and Caucus Election will be accessible to all of us who are qualified and eligible Town electors with legal rights to participate and vote, and so that all of us may participate and vote without being exposed to the novel coronavirus that is a substantial threat to our health and lives.

Plaintiffs seek a Temporary Injunction that the Town of Hudson is:

1. Enjoined from proceeding with the in-person only January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election; and
2. Enjoined from proceeding with a 2021 Town Caucus and Caucus Election in the on-going covid-19 pandemic until the Town's plan for conducting the 2021 Town Caucus and Caucus Election is modified to offer alternatives and accommodations that will ensure equal accessibility for all Town electors and will provide for safe participation and voting by all Town electors, so that all Town electors may participate and vote without risking either their health and lives or the health and lives of others.

Plaintiffs seek a Writ of Mandamus that the Town of Hudson must:

1. Provide an option of remote participation and voting for the 2021 Town Caucus and Caucus Election;
2. Inform Town electors of alternatives, accommodations, and modifications for the 2021 Town Caucus and Caucus Election to ensure equal accessibility for all Town electors and to provide for safe participation and voting by all Town electors, so that all Town electors may participate and vote without risking either their health and lives or the health and lives of others in-the ongoing covid-19 pandemic;
3. Take all appropriate actions to ensure that in-person participation and voting at the 2021 Town Caucus and Caucus Election will be safely conducted in the on-going covid-19 pandemic; and
4. Create and publicize a public health protection plan for the 2021 Hudson Town Caucus and Caucus Election sufficient to (i) ensure that the public meeting will be conducted in strict accord with federal, Wisconsin, St. Croix County, and Hudson School District recommended and required public health protections against covid-19 exposure and spread risks for the benefit of Caucus attendees, and (ii) prevent the public meeting from being a covid-19 super-spreader event for the benefit of all people in the community.

Plaintiffs seek a Declaratory Judgment that:

1. The January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election, which during the on-going covid-19 pandemic were planned to be conducted exclusively in-person as a public meeting of qualified and eligible Hudson Town electors, were unlawfully inaccessible to Plaintiffs and to the approximately one-third or more of qualified and eligible Hudson Town electors who are similarly situated to Plaintiffs due to their older ages, disabilities, and/or serious underlying medical or health conditions and their elevated risks of severe illness, hospitalization, and death from covid-19, and unlawfully violated the voting rights guaranteed to Plaintiffs and to all other similarly situated Hudson Town electors by the First and Fourteenth Amendments to the U.S. Constitution, federal law in Section 11(b) of the Voting Rights Act and in Title II of the Americans with Disabilities Act (ADA), Wisconsin Constitution Art. 1 and Art. III Sec. 1, and state law in Wis. Stat. 6.02(1), Wis. Stat. 5.25(4)(a), Wis. Stat. 5.25(5)(b), and Wis. Stat. 5.36.

BACKGROUND

I. COVID-19 PANDEMIC

A. COVID-19 Continues To Spread Exponentially Throughout St. Croix County And The Town Of Hudson In An Uncontrolled Pandemic.

St. Croix County, in which the Town of Hudson is located, is experiencing the rapidly escalating exponential growth of an uncontrolled covid-19 pandemic. From its **December 1, 2020** meeting, when the Hudson Town Board set the January 4, 2021 Hudson Town Caucus and Caucus Election, **to January 2, 2021, at least 1,382 more people in St. Croix County have been infected with the highly contagious novel coronavirus that causes covid-19.** As of December 30, 2020, St. Croix County reports that the **seven-day rolling average of people testing positive for covid-19 is at 20%, and any positive test rate above 5% indicates that the presence of covid-19 in the community is high.**

(See: St. Croix County COVID-19 Dashboard, at: <https://infogram.com/st-croix-county-covid-19-dashboard-1h9j6qggxzn754g?live>)

From **September 1 to January 2, 2021**, the number of people in St. Croix County with covid-19 **has increased by about 892%:** from 740 total cases on September 1, 2020, to 6,603 on January 2, 2021:

- On **Sept. 1**, St. Croix County had "only" 680 confirmed cases and 60 probable cases of covid-19, for a total of **740** cases;
- On **Oct. 1**, the County had 1,143 confirmed cases and 71 probable cases of covid-19, for a total of **1,214** cases;
- On **Nov. 1**, the County had 2,562 confirmed cases and 113 probable cases of covid-19, for a total of **2,675** cases;

- On **Dec. 1**, the County had 4,676 confirmed cases and 545 probable cases of covid-19, for a total of **5,221** cases; and
- By **Jan. 2**, the County had 5,455 confirmed cases and 1148 probable cases of covid-19, for a total of **6,603** cases.

(See: WI DHS Covid-19 County Data, at <https://www.dhs.wisconsin.gov/covid-19/county.htm>)

Since mid-November, people from Minnesota and Pierce County, adjacent to St. Croix County and the Town of Hudson, have been crowding into the Hudson bordertown bars, restaurants, and shops, where there are no enforced requirements to wear face coverings and maintain appropriate distance.

Over Christmas and New Year's, people gathered here to celebrate with their extended families, friends, neighbors, and strangers in bars and restaurants. At these holiday celebrations, some people infected others and some people became infected with the highly contagious novel coronavirus that causes covid-19.

The January 4th date of the 2021 Hudson Town Caucus is **ten days after Christmas and four days after New Year's Eve**, just when everyone who caught the novel coronavirus at holiday celebrations **will be shedding the highly contagious virus and will be highly infectious to others.**

People who are infected with covid-19 typically experience symptoms between two to fourteen days after exposure to the highly contagious novel coronavirus, but some people have no or very mild symptoms and do not realize they are infected and infectious to others. People with covid-19 are most infectious to others just before they experience symptoms, but some people shed the highly contagious novel coronavirus

for shorter or longer periods of time and may be infectious to others earlier than or beyond the end of a fourteen-day quarantine begun after symptoms first appear.

(See: CDC, COVID-19 FAQs, Symptoms & Emergency Warning Signs, Spread, at: <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Basics>; and CDC, COVID-19, Options to Reduce Quarantine for Contacts of Persons with SARS-CoV-2 Infection Using Symptom Monitoring and Diagnostic Testing, at: <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-options-to-reduce-quarantine.html>)

B. The Novel Coronavirus That Causes COVID-19 Will Spread Easily Among Hudson Town Electors Who Participate In-Person At The Hudson Town Caucus And Caucus Election.

The **Centers for Disease Control and Prevention** (CDC) explains that covid-19 spreads easily when people share their air with an infected person who breathes, talks, coughs, and/or sneezes among people who are within six-feet or are in an enclosed space with poor ventilation. People spread covid-19 when they share their air with another person for as little as fifteen minutes over twenty-four hours.

The **CDC** also explains that many people who are infected with the highly contagious novel coronavirus do not know it and do not realize they are spreading it, but they still are making other people sick with covid-19, and some of the people they infect may get very sick and die.

(See: CDC, FAQs, How does the virus spread?
at: <https://www.cdc.gov/coronavirus/2019-ncov/faq.html?fbclid=IwAR2mxJ6YhpgyNbgswb1CNsgLgKjkcshiKHM4fi43Fgsdo1Um9>

[RlzQyK6U6w#:~:text=The%20virus%20that%20causes%20COVID,many%20affected%20geographic%20areas\)](#)

Recent research, using a highly sensitive infrared camera capable of detecting exhaled breath, demonstrates how easily and widely the highly contagious novel coronavirus that causes covid-19 may be spread by airborne particles among people talking in a meeting room. It illustrates that the more people who are in the meeting room and the longer they are there, then the greater the viral load in the meeting room will be and the greater the risks will be to all meeting attendees of contracting covid-19, getting severely ill, requiring hospitalization, and dying. These risks are especially dangerous for everyone who is older, has serious underlying medical conditions, and/or is disabled. The risks of exposure increase even more when people are not wearing masks and are close together in an enclosed space or in an area with poor ventilation.

(See: Military-grade camera shows risks of airborne coronavirus spread, at: <https://www.washingtonpost.com/investigations/2020/12/11/coronavirus-airborne-video-infrared-spread/?arc404=true>).

C. COVID-19 Will Pose A Health Risk To All Hudson Town Electors Who Participate In-Person At The Hudson Town Caucus And Caucus Election.

Some people who are infected with the highly contagious novel coronavirus that causes covid-19 may have no illness symptoms, some may have mild symptoms, some may have severe symptoms and complications that require hospitalization, and some people will die.

(See: CDC, Symptoms of Coronavirus, at: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>)

D. COVID-19 Will Be A Substantial Threat At The In-Person Hudson Town Caucus And Caucus Election To The Health And Lives Of Hudson Town Electors Who Are Older, Disabled, And/Or Have Serious Underlying Medical Or Health Conditions.

Older people and people with underlying medical conditions including heart or lung disease or diabetes are at higher risks of developing more serious complications, requiring hospitalization, and dying if they are infected with the highly contagious novel coronavirus that causes covid-19.

(See: CDC, COVID-19, People at Increased Risk, at:

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>)

The **risks for severe illness and hospitalization with covid-19 increase with age**, and older adults are at the highest risks. In the United States, compared to people 18 to 29 years of age, people 65 to 74 years are five times more likely to require hospitalization and 90 times more likely to die, people 75 to 84 years are eight times more likely to require hospitalization and 220 times more likely to die, and people 85 or older are 13 times more likely to require hospitalization and 630 times more likely to die.

(See: CDC, COVID-19, Older Adults, at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>)

Eight out of ten covid-19 deaths reported in the United States have been in people 65 years old or older. **In Wisconsin, 92% covid-19 deaths have been in people 60 years or older. In St. Croix County, 96% of covid-19 deaths have been in people 60 years or older.**

(See: CDC, COVID-19, Older Adults, at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>; Wisconsin Dept. of Health Services (WI DHS), Percent of COVID-19 deaths by age group, at:

<https://www.dhs.wisconsin.gov/covid-19/deaths.htm#demographics>; and St. Croix County COVID-19 Dashboard, at: <https://infogram.com/st-croix-county-covid-19-dashboard-1h9j6qggxzn754g?live>)

Covid-19 fatality rates also are somewhat higher among men than women.

(See: Male sex identified by global COVID-19 meta-analysis as a risk factor for death and ITU admission, at: <https://www.nature.com/articles/s41467-020-19741-6>)

Adults of any age are at increased risk of severe illness if they are infected with the novel coronavirus that causes covid-19 and have certain medical conditions, including: cancer; chronic kidney disease; chronic obstructive pulmonary disease; heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; an immunocompromised state from organ transplant; **obesity or severe obesity**; pregnancy; sickle cell disease; smoking; and/or type 2 diabetes.

Adults of any age with other medical conditions may be at increased risk of severe illness from the virus that causes covid-19, including the medical conditions of: asthma; cerebrovascular disease; cystic fibrosis; high blood pressure; immunocompromised state; neurologic conditions, such as dementia; liver disease; **overweight**; pulmonary fibrosis; thalassemia; and/or type 1 diabetes.

(See: CDC, COVID-19, People with Certain Medical Conditions, at: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html)

E. One-Third Or More Of Hudson Town Electors Are At Substantial Risk From COVID-19.

Because of their disabilities, ages, and/or serious underlying medical conditions, **at least one-third of adults** residing in the Town of Hudson are at elevated risks of getting severely ill, requiring hospitalization, and possibly dying if they are infected with the highly contagious novel coronavirus that causes covid-19.

The US Census Bureau estimates that, **of the approximately 9,000 people now living in the Town of Hudson, about eleven percent (11%) or 990 people are 65 years or older** in age, and **about five percent (5%) or 450 people are disabled and under the age of 65.**

(See: US Census Bureau, Quick Facts, Hudson Town, St. Croix County, WI, at <https://www.census.gov/quickfacts/fact/table/hudsonstownstcroixcountywisconsin/BZA110218>)

In addition, the 2020 – 2022 Community Health Needs Assessment and Implementation Plan for St. Croix County (Healthier Together) reports that twenty-seven percent (27%) of adults in St. Croix County are obese. **If 27% of adults in the Town of Hudson are obese, that amounts to about 1,823 people.** The US Census Bureau estimates that about seventy-five percent (75%) of people in the Town of Hudson are older than 18, which is about 6,750 adults among the approximately 9,000 population here now, and 27% of 6,750 is 1,823 people.

(See: Healthier Together, p. 4, at <http://www.healthiertogetherstcroix.org/wp-content/uploads/2020/02/2020-2022-Healthier-Together-Community-Health-Needs-Assessment-and-Implementation-Plan.pdf>; and US Census Bureau, Quick Facts, Hudson Town, St. Croix County, WI, at

<https://www.census.gov/quickfacts/fact/table/hoodsonstcroixcountywisconsin/BZA110218>)

F. Federal Public Health Protection Recommendations

The CDC strongly cautions that it is especially important now for older people and people with serious underlying medical conditions, as well as those who live with them, to protect themselves from becoming infected with the highly contagious novel coronavirus that causes covid-19. The **CDC advises that older people and people with underlying medical conditions, as well as those who live with them, should take precautions**, including:

- Limit interactions with other people as much as possible;
- Avoid close contact with people who are sick;
- Maintain at least six-foot distance from people outside your immediate household;
- Cover your nose and mouth with a mask when around other people and/or out in public;
- Avoid interactions with people not wearing masks;
- Evaluate the covid-19 exposure and spread risks of events and gatherings:
 - The higher the level of community transmission, the higher the risk of covid-19 infection and spread;
 - Indoor events and gatherings generally are higher risk than those outdoors;
 - The more people present, the higher the risk of covid-19 infection and spread;
 - The more people one interacts with and the longer the interaction, the higher the risk of covid-19 infection and spread;

- An event or gathering of people not wearing masks is higher risk than one where all wear masks;
- Lowest risk: Virtual only activities, events, and gatherings;
- More risk: Smaller outdoor and in-person gatherings in which individuals from different households all maintain at least six-foot distance, all wear masks, all do not share objects, and all are from the same local area;
- Higher risk: Medium-sized in-person gatherings that maintain at least six-foot distance between people, but with attendees from outside the local area; and
- Highest risk: Large in-person gatherings where at least six-foot distance is not maintained between people and attendees are from outside the local area.

(See: CDC, COVID-19, How to Protect Yourself & Others, at:

<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; CDC, COVID-19, Deciding to Go Out, at: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html>; and CDC, COVID-19, Considerations for Events and Gatherings, at: <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>)

G. Wisconsin Public Health Protection Recommendations

Currently, the **Wisconsin Governor's Executive Order #94**, issued on November 10, 2020, advises us all to take specific precautions against further spread of covid-19, including:

- (1) Stay home, except for necessary trips out to get medical care, get food, and get to work;
- (2 a) Avoid gatherings of any size with individuals outside our immediate household, and wear a face covering and maintain at least six-foot distance whenever in proximity to individuals outside our immediate household;
- (2 c) Stay home if over 60 years old, pregnant, immunocompromised, obese, diabetic, have lung, kidney, and/or heart disease, and/or have or have had cancer; and
- (3) Limit numbers of individuals at meetings, and offer remote participation options.

(See: WI Governor's Ex. Ord. #94, at:

<https://evers.wi.gov/Documents/COVID19/EO094-COVIDRecommendations.pdf>)

The **Wisconsin Governor's Executive Order #1**, renewed on November 20, 2020, and in effect to January 19, 2021 unless further extended, with limited and specified exceptions **requires that every person age five or older wear a face covering when indoors or in an enclosed space**, other than a private residence, **and another person from outside their immediate household is present.**

(See: WI Governor's Ex. Ord. #1, at:

https://content.govdelivery.com/attachments/WIGOV/2020/11/20/file_attachments/1607585/Em001-NovFaceCovering.pdf)

H. St. Croix County Public Health Protection Recommendations

The **St. Croix County Public Health Department** similarly recommends that we all take specific precautions against further spread of covid-19, including:

- Follow advice of Wisconsin Governor's Executive Order #94;
- Limit indoor public gatherings to no more than ten (10) people;
- Limit outdoor public gatherings to no more than fifty (50) people; and
- At all public gatherings of any size, every person should wear a mask and maintain six-foot distance from people outside their immediate household, seating should be assigned or fixed, a contact list should be made, and health screenings should be done.

(See: St. Croix County Covid-19 Information, Health Advisory, at:

<https://www.sccwi.gov/951/Health-Advisory>)

II. JANUARY 4, 2021 HUDSON TOWN CAUCUS ELECTION PLAN

A. Defendants Failed To Adopt Policies And Practices To Ensure Safe And Effective Caucus Election Access Despite Clear Warning Signs.

On November 30, 2020, Plaintiffs submitted a written comment regarding Agenda Item “3.h. Set date for Caucus” for the December 1, 2020 Hudson Town Board meeting, and requested that in the on-going covid-19 pandemic the Town of Hudson allow qualified and eligible Hudson Town electors to participate and vote remotely in the 2021 Hudson Town Caucus in order to ensure that the 2021 Hudson Town Caucus would be accessible to all qualified and eligible Hudson Town electors who would be unable to attend the Caucus meeting in-person due to the high covid-19 exposure and spread risks at the in-person Caucus meeting.

1. *For Four Previous Elections In The On-Going COVID-19 Pandemic, Defendants Adopted Policies And Practices To Provide Alternatives To In-Person Voting In Order To Ensure Safe And Effective Voting Access For All Town Electors.*

For the last four 2020 federal, state, and/or local elections during the on-going covid-19 pandemic, the Town of Hudson and the Hudson Town Clerk have facilitated options for absentee ballots and absentee voting that allowed Town electors to avoid the covid-19 risks of in-person participation at the polling place on the election day.

Rather than vote in-person during the on-going covid-19 pandemic, many of the Hudson Town electors who are at elevated covid-19 risks because they are older, disabled, and/or have serious underlying medical conditions chose to request absentee ballots and use absentee voting in order to protect their health and lives from the covid-19 exposure and spread risks of in-person voting. Because of the covid-19 exposure and spread risks of in-person voting, Plaintiffs have voted absentee by requesting

absentee ballots mailed to their home and returning their absentee ballots by mail or by deposit in a designated drop box for the last four elections during the on-going covid-19 pandemic.

However, the traditional procedure for conducting a town caucus to nominate and elect candidates for a town office does not provide for the options of absentee ballots and absentee voting.

Without the functional equivalent of absentee ballots and absentee voting at the Town Caucus and Caucus Election, Town electors will be subjected to unreasonable covid-19 exposure and spread risks.

1. *For Hudson Town Board Meetings In The On-Going COVID-19 Pandemic, Defendants Adopted Policies And Practices To Provide An Alternative to In-Person Meeting Attendance In Order To Ensure Safe And Effective Access For All Town Electors And The Public.*

During the on-going covid-19 pandemic, the Hudson Town Board has provided the public with reasonable access to its regular monthly meetings via the remote meeting platform of Zoom.

2. *Defendants' Chosen Site For The January 4, 2021 Hudson Town Caucus And Caucus Election Easily Can Facilitate Providing Alternatives To In-Person Meeting Attendance and In-Person Voting To Ensure Safe And Effective Meeting Access For The Public And Safe And Effective Caucus Election Access For All Town Electors In The On-Going COVID-19 Pandemic.*

The Hudson High School, at which the January 4, 6PM, 2021 Hudson Town Caucus is scheduled to be held, is providing a remote instruction option for its students using the Google Meet platform during the on-going covid-19 pandemic. Should the Town choose to offer an option of remote participation and voting for the Caucus, the High School has the technological and staff capabilities to facilitate that option: IT staff

would be required to enable the Town's web camera and Zoom account to operate on the school's network, and the Hudson High School IT Director recommends that Town staff allow about an hour to set up and test the equipment and connection by no later than on the afternoon of January 4, in advance of the 6PM Caucus start.

3. *Defendants Have Declined to Adopt Reasonable and Necessary Policies and Practices To Ensure Safe And Effective Caucus Election Access For All Town Electors In The On-Going COVID-19 Pandemic.*

In previous years, such as at the 2019 Hudson Town Caucus and Caucus Election, from seventy-five to one-hundred (75 – 100) people from the Town of Hudson have attended the approximately one-hour meeting. Attendees arrived early and stood in a close line to show their IDs to Town staff stationed near the meeting room entrance who checked lists and confirmed attendees' identities and eligibility to participate and vote. After checking in, attendees took seats in the crowded meeting room, and talked with their neighbors until the Caucus was convened. Caucus officials explained the public meeting procedures; the assembled electors selected tellers, made nominations and seconds of candidates for each office on that year's Spring Election ballot, and voted on the nominees when required to elect candidates to appear on the Spring Election ballot. At the conclusion of business, many attendees lingered to talk more with their neighbors.

Now, the recommended federal, Wisconsin, and St. Croix County public health protections against covid-19 exposure and spread risks applicable to the at least 3,263 adults in the Town of Hudson who are 65 or older, disabled, and/or have serious underlying medical conditions such as obesity, are that they stay home, avoid all

gatherings with people outside their immediate household, and never enter any indoor space where anyone is not wearing a face covering.

Some portion of these 3,263 Town electors who are 65 or older, disabled, and/or have serious underlying medical or health conditions including obesity reasonably would be expected to want to participate and vote in the January 4, 2021 Hudson Town Caucus and Caucus Election.

On December 10, 2020, the Hudson Town Clerk issued the “Town of Hudson Notice of Caucus” for the in-person January 4, 2021 Town Caucus and Caucus Election. However, that December 10th Notice contained NO information about ANY policies and practices regarding covid-19 exposure and spread risks at the in-person meeting.

(See: Town of Hudson Notice of Caucus, at: <https://townofhudsonwi.com/wp-content/uploads/2020/12/2021-Notice-of-Caucus.pdf>)

Twice on December 11, and once each day on December 16 and 18, 2020, Plaintiffs emailed Hudson Town officials, including Board Chair Jordan and Town Clerk Shaw, with requests that the Town create and publicize to Town electors an effective plan for public health protections against covid-19 exposure and spread risks at the in-person January 4, 2021 Town Caucus and Caucus Election because the risks of infection from the novel coronavirus at the in-person meeting would be a substantial threat to the health and lives of at least one-third of the qualified and eligible Town electors.

In a phone conversation on the morning of December 18, 2020, Defendant Hudson Town Board Chair Jordan became increasingly angry in response to Plaintiff

Koeberl's requests for information regarding how the Town of Hudson would conduct the January 4, 2021 Hudson Town Caucus and Caucus Election in accord with federal, Wisconsin, St. Croix County, and Hudson School District recommended and required public health protections against covid-19 exposure and spread risks at the in-person meeting; Defendant Jordan exclaimed to Plaintiff Koeberl that he "would not play twenty questions", would not call back to provide any additional information, and then abruptly hung up. Following this December 18, 2020 phone conversation, Defendant Jordan has made no replies to Plaintiffs' emails requesting information about the Town of Hudson's plans for conducting the January 4, 2021 Hudson Town Caucus in the on-going covid-19 pandemic, and has made no replies to Plaintiffs' continuing requests for reasonable accommodations and modifications in the January 4, 2021 Hudson Town Caucus.

Not until the afternoon of December 23, 2020, and only AFTER Plaintiffs had already filed their sworn complaint regarding the proposed in-person only January 4, 2021 Town Caucus and Caucus Election with the Wisconsin Elections Commission, did Town Clerk Shaw ever post to the Hudson Town website any information regarding public health protection recommendations against covid-19 exposure and spread risks at the in-person January 4, 2021 Town Caucus and Caucus Election.

(See: Town Caucus, posted on December 23, 2020, at 2:03PM, by Vickie Shaw, at: <https://townofhudsonwi.com/2020/12/23/town-caucus/>)

During the last week of December leading up to the January 4, 2021 Hudson Town Caucus and Caucus Election, Defendant Town Clerk Shaw was on vacation and unavailable to respond to requests for reasonable accommodations and modifications,

or to respond to requests for information about how the Town Caucus and Caucus election would be conducted in the on-going covid-19 pandemic.

Prior to leaving on vacation, Defendant Town Clerk Shaw made no replies to Plaintiffs' verbal and written requests between December 16 to 27, 2020 for information about how the January 4, 2021 Hudson Town Caucus would be conducted in accord with federal, Wisconsin, St. Croix County, and Hudson School District recommended and required public health protections against covid-19 exposure and spread risks at the in-person Caucus meeting.

Prior to her vacation Town Clerk Shaw never responded to Plaintiffs' requests for information about how the January 4, 2021 Hudson Town Caucus would be conducted so as to preserve the voting rights of qualified and eligible Hudson Town electors who wanted to participate and vote but who could not attend the Caucus in-person due to its high covid-19 exposure and spread risks coupled with their risks of severe illness, hospitalization, and death if they are infected at the in-person Caucus meeting with the highly contagious novel coronavirus that causes covid-19.

B. Defendants Refused To Make Reasonable Accommodations And Modifications Requested By Qualified and Eligible Hudson Town Electors And Necessary To Allow Safe And Effective Caucus Election Access In The On-Going COVID-19 Pandemic.

1. *Defendants Refused To Make Reasonable Accommodations For Electors Who Are Older Or Who Have Serious Underlying Medical Or Health Conditions And Whose Health And Lives Are Substantially Threatened By COVID-19 Exposure Risks At The In-Person Caucus Election.*

Older qualified and eligible Hudson Town electors, such as 79-year-old Judy and 75-year-old Jim Green at 170 Starrwood, who in Mrs. Green's December 23 2:07PM and December 28 3:24PM, 2020 emails to Hudson Town officials informed Defendants that they could not attend the January 4, 2021 Hudson Town Caucus in-person because its high covid-19 exposure and spread risks would threaten their health and lives, have requested the reasonable accommodation and modification that the Town of Hudson provide an option of remote participation and voting for the January 4, 2021 Hudson Town Caucus.

Defendants did not make any reasonable efforts to provide the accommodation and modification in response to Mrs. Green's request so that Mr. and Mrs. Green would not be disenfranchised; instead, Mrs. Green's request was either ignored or summarily dismissed. In her December 23, 2020 email reply to Mrs. Green, Defendant Hudson Town Clerk Shaw wrote that "The Caucus is being held in-person at the High School. The Caucus is held in-person as voting is private and if needed, a primary will be held at the caucus." In his December 28, 4:45PM, 2020 email reply to Mrs. Green's written request for "a zoom meeting for January 4 due to the covid", Hudson Town Board Supervisor Tim Foster wrote: "Judy, this meeting has been scheduled for the

caucus since our December board meeting for in person practice high school at 6 PM. That is not going to change.”

2. Defendants Refused To Make Reasonable Modifications For Electors With Qualified Disabilities Under The Americans With Disabilities Act And Whose Health And Lives Are Substantially Threatened By COVID-19 Exposure Risks At The In-Person Caucus Election.

In a December 4, 2020 phone call with Wisconsin Elections Commission (WEC) Attorney Jim Witecha, Plaintiff Koeberl learned that, because of the on-going covid-19 pandemic, towns across Wisconsin were planning to conduct their annual town caucuses and caucus elections entirely on remote meeting platforms, and that state election laws did not prohibit a town from doing so.

In an email sent on December 5, 2020 at 1:52PM to Defendant Hudson Town Board Chair Don Jordan, Plaintiffs first informed Defendant Jordan in writing that Plaintiffs could not attend the January 4, 2021 Hudson Town Caucus and Caucus Election in-person because its high covid-19 exposure and spread risks would threaten their health and lives, and in this December 5th email Plaintiffs first requested specifically for themselves the reasonable accommodation of “a remote participation and voting option for the 2021 Caucus in order for the public meeting to be made reasonably accessible to us”. Plaintiffs repeated their request for this reasonable accommodation and modification in emails to the Defendants sent on December 7 at 10:29AM, December 11 at 9:22AM and 3:13PM, December 16 at 11:34AM, December 18 at 12:02PM, and December 26 at 5:15PM, 2020.

Defendants did not make any reasonable efforts to provide the accommodation and modification in response to Plaintiffs’ request so that Plaintiffs would not be

disenfranchised; instead, Plaintiffs' requests were refused, and Defendants made no offers or suggestions of other accommodations or modifications.

In a phone conversation on the afternoon of December 9, 2020 with Plaintiff Koeberl, Defendant Hudson Town Board Chair Jordan claimed that unspecified issues of security and confidentiality made it impermissible under state law and town government rules to provide an option of remote participation and voting in the January 4, 2021 Town Caucus and Caucus Election.

In a phone conversation on the morning of December 10, 2020 with Plaintiff Koeberl, Defendant Town of Hudson's attorney claimed that general issues of meeting security and voting privacy prevented providing an option of remote participation and voting for Town Caucus and Caucus Election, and told Plaintiff Koeberl that people who could not participate in-person at the January 4, 2021 meeting might just have to wait until next year when the covid-19 pandemic might be over.

Prior to leaving on vacation for the week before the January 4, 2021 Hudson Town Caucus and Caucus Election, Defendant Town Clerk Shaw made no reply to Plaintiffs' multiple requests for the reasonable accommodation and modification that the Town provide an option of remote participation and voting in the January 4, 2021 Hudson Town Caucus and Caucus Election.

C. Plaintiffs Have Attempted To Exhaust Their Administrative Remedies.

1. *Plaintiffs Filed A Sworn Complaint With The Wisconsin Elections Commission Under Wis. Stat. 5.06(1), EL 20-29 Koeberl, et al v. Jordan, et al – Town of Hudson, December 23, 2020.*

Plaintiff Koeberl had several more phone conversations with Wisconsin Elections Commission attorney Jim Witecha over the course of Plaintiffs' efforts to secure an accommodation and modification from the Town of Hudson that would allow Plaintiffs to safely participate and vote in the January 4, 2021 Hudson Town Caucus and Caucus Election during the on-going covid-19 pandemic. Plaintiff Koeberl learned that the Town of Hudson's plan to hold an entirely in-person Town Caucus and Caucus Election was an anomaly among towns in Wisconsin in the on-going covid-19 pandemic. Plaintiff Koeberl confirmed that Wisconsin election law regarding town caucuses and caucus elections did not prohibit offering an option of remote participation and voting, as Defendants and their attorney had asserted it did.

Following Defendant Town Board Chair Jordan's angry phone conversation with Plaintiff Koeberl on December 18, 2020, Plaintiffs filed an "Accessibility Concern" with the WEC, and on December 23, 2020 Plaintiffs filed a sworn complaint regarding the January 4, 2021 in-person only Hudson Town Caucus and Caucus Election with the WEC pursuant to Wis. Stat. 5.06(1).

Due to the timeline for the Town of Hudson's response to Plaintiffs sworn complaint to the WEC and for Plaintiffs reply, as well as the timing of holidays and staff vacations, the WEC will not complete its investigation and reach its determination on Plaintiffs' complaint until some time after the January 2 – 21 time period set in Wis. Stat. 8.05(1) for holding town caucuses and caucus elections expires.

2. Plaintiffs Asked The St. Croix County District Attorney To Act Under Wis. Stat. 5.07 or 5.08 And To Sue For Injunctive Relief.

Plaintiffs requested on December 22, 23, and 28, 2020 that the St. Croix County District Attorney take action under the authority in Wis. Stat. 5.07 or 5.08, but on December 29, 2020 the St. Croix County District Attorney declined to do so.

III. ABSENT IMMEDIATE JUDICIAL INTERVENTION, THERE WILL BE WIDESPREAD DISENFRANCHISEMENT AT THE IN-PERSON ONLY JANUARY 4, 6PM 2021 HUDSON TOWN CAUCUS AND CAUCUS ELECTION

At least one-third of qualified and eligible Hudson Town electors are 65 or older, under 65 and disabled, and/or have serious underlying medical or health conditions including obesity, and are at elevated risks of severe illness, hospitalization, and death from covid-19 if they are infected with the highly contagious novel coronavirus at the in-person only January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election.

Plaintiffs are among all of these Town electors who will be effectively denied access to the in-person only Town Caucus and Caucus Election because their health and lives will be substantially threatened by the high covid-19 exposure and spread risks at the in-person meeting.

Unlike previous elections during the on-going covid-19 pandemic, for the January 4, 2021 Hudson Town Caucus and Caucus Election there are no alternatives to in-person voting, such as absentee ballots and absentee voting, for Plaintiffs and the at least one-third of Town electors whose health and lives will be substantially threatened by the covid-19 exposure and spread risks of in-person only voting.

Without an option of remote participation and voting in the January 4, 2021 Hudson Town Caucus and Caucus Election during the on-going covid-19 pandemic, Plaintiffs and one-third or more of qualified and eligible Hudson Town electors will be disenfranchised, because Plaintiffs and this at least one-third of Town electors will be required EITHER to forego their rights to participate and vote in this in-person only local government electoral process in order to protect their health and lives, OR to put their health and lives in substantial danger by participating and voting in-person.

LEGAL STANDARDS FOR INJUNCTION, MANDAMUS, AND JUDGMENT

A. Temporary Injunction

1. **Wis. Stat. 813.02(1)(a):** When it appears from a party's pleading that the party is entitled to judgment and any part thereof consists in restraining some act, the commission or continuance of which during the litigation would injure the party, or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.
2. **Case Law:** A court may issue a temporary injunction when the moving party demonstrates four elements: 1) the movant is likely to suffer irreparable harm if a temporary injunction is not issued; 2) the movant has no other adequate remedy at law; 3) a temporary injunction is necessary to preserve the status quo; and 4) the movant has a reasonable probability of success on the merits. The granting or denial of injunctive relief is a matter of discretion for the circuit court. *Milwaukee Deputy Sheriffs' Association v. Milwaukee County*, 2016 WI App 56, 370 Wis 2d 644, 883 N.W.2d 154, 15-1577.

B. Writ of Mandamus

1. **Case Law:** Mandamus lies to compel an official to perform prescribed duties that are clear and unequivocal when the responsibility to act is imperative and the petitioner shows substantial damage will result from failure to perform the act. *Burns v. City of Madison*, 92 Wis. 2d 232, 284 N.W.2d 631 (1979).
2. **Case Law:** The elements of a writ of mandamus are: 1) a clear legal right; 2) a plain and positive duty; 3) substantial damages or injury should the relief not be granted; and 4) no other adequate remedy at law. *Voces de la Frontera, Inc. v. Clarke*, 2017 WI 16, 373 Wis. 2d 348, 891N.W.2d 803, 15-1152.

C. Declaratory Judgment

1. **Wis. Stat. 806.04(1) Scope.** Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree, except that finality for purposes of filing an appeal as of right shall be determined in accordance with s. [808.03 \(1\)](#).
2. **Case Law:** Declaratory judgment is appropriate if: 1) there is a controversy in which a claim is asserted against a party with an interest in contesting it; 2) the controversy is between adverse parties; 3) the party seeking relief has a legally protectible interest; and 4) the issue in controversy is ripe for determination. *Miller Brands-Milwaukee v. Case*, 162 Wis. 2d 684, 470 N.W.2d 290 (1991).
3. **Case Law:** By definition, ripeness required in a declaratory judgment is different from ripeness required in other actions. A plaintiff seeking a declaratory judgment need not actually suffer an injury before seeking relief under sub. (2). Nonetheless, a matter is not ripe unless the facts are sufficiently developed to allow a conclusive adjudication. *Milwaukee District Council 48 v. Milwaukee County*, 2001 WI 65, 244 Wis.2d 333, 627 N.W.2d 866, 98-1126.

ARGUMENT

I. **PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR STATUTORY CLAIMS.**

Plaintiffs assert claims for relief on both statutory and constitutional grounds. Plaintiffs' statutory claims are addressed first, in Section I. Plaintiffs' constitutional claims are addressed in Section II.

Plaintiffs assert violations of federal statutes, specifically: Section 11(b) of the Voting Rights Act; and Title II of the Americans With Disabilities Act.

Plaintiffs assert violations of Wisconsin voting laws, specifically: Wis. Stat. 5.25(4)(a), which requires a polling place to be accessible to all individuals with disabilities; Wis. Stat. 5.36, which allows any individual with a disability to request a specific accommodation to facilitate voting; and Wis. Stat. 5.25(5)(b), which allows elderly or handicapped electors to be reassigned to a different polling place within the municipality that is accessible to elderly or handicapped individuals.

A. Plaintiffs Are Likely To Prevail On Their Claim That Defendants' Failure To Ensure Safe Voting Conditions Violates Section 11(b) Of The Voting Rights Act.

Section 11(b) of the Voting Rights Act makes it unlawful for any person to "intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote." 52 U.S.C. § 10307(b) (formerly 42 U.S.C. § 1973i(b)). The statute encompasses governmental action that puts a voter in harm's way, even when the government does not directly inflict the harm or intend the harm to be inflicted.

In the on-going covid-19 pandemic, the Town of Hudson is planning to hold an exclusively in-person only Town Caucus and Caucus Election on January 4, 2021,

convening at 6PM, in a room of the Hudson High School. At this indoor public meeting, typically of from seventy-five to one-hundred (75 – 100) or more people and conducted over one-hour or longer, qualified and eligible electors from every household in the Town may gather together to nominate and elect candidates for three of the five seats on the Hudson Town Board that will be filled in the April 6, 2021 Spring Election: Chair, and Supervisors #2 and #4.

This local government electoral process will expose Town electors to unnecessarily elevated risks of harm by failing to ensure that in-person participants and voters in the Town Caucus and Caucus Election will be safe from covid-19 exposure, and by failing to provide Town electors with any alternative to in-person participation and voting in the Town Caucus and Caucus Election.

All electors who participate and vote in-person at this indoor public meeting of people from households throughout the Town will be put at unnecessarily elevated risks of harm from infection with the highly contagious novel coronavirus because the Hudson Town Caucus and Caucus Election are not in compliance with federal, Wisconsin, and St. Croix County public health recommendations against covid-19 exposure and spread risks. By conducting the Town Caucus and Caucus Election as an entirely in-person public meeting, Defendants threaten the health and lives of Town electors who participate and vote in-person and thereby violate Section 11(b).

Defendants also violate Section 11(b) by intimidating and preventing the participation and voting in the Hudson Town Caucus and Caucus Election of those qualified and eligible Town electors who will not take the risks of being infected with the

highly contagious novel coronavirus at the entirely in-person January 4, 2021 Hudson Town Caucus and Caucus Election.

Section 11(b) prohibits any actions that have the effect of intimidating voters, regardless whether the defendant intended the intimidation. Congress modeled Section 11(b) on Section 131(b) of the Civil Rights Act of 1957, 52 U.S.C. § 10101(b) (formerly 42 U.S.C. § 1971(b)), copying Section 131(b) verbatim, with one significant exception. Section 131(b) proscribes intimidation “for the purpose of” interfering with voting, but that statutory language is absent from Section 11(b): “The text of §11(b), unlike §131(b), plainly omits ‘for the purpose of,’ suggesting §11(b)’s deliberately unqualified reach.” *LULAC Richmond Regional Council v. Pub. Interest Legal Found.*, 2018 WL 3848404, at *4 (E.D Va. Aug. 13, 2018); see also Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. Rev. L. & Soc. Change 173, 204 (2015) (“Section 11(b) does not require a plaintiff to make any showing with regard to the defendant’s intent.”).

Reading Section 11(b) next to Section 131(b) shows the operative language of Section 11(b) is otherwise indistinguishable from Section 131(b), and it prohibits voter intimidation in all its forms—no act of violence, or any physical intimidation, is required. See *New York v. Horelick*, 424 F.2d 697, 700 (2d Cir. 1970) (Friendly, J.) (contrasting the Voting Rights Act to another provision of federal law that the court found applied only to “violent activity”). Conducting an electoral process in a manner that causes potential voters to fear that participation will jeopardize their safety is sufficient to violate the statute. Section 131(b) has long been interpreted to prohibit a jurisdiction from taking actions that have the effect of exposing voters to unsafe or intimidating

conditions. “The law is clear that a [jurisdiction] cannot effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be.” *United States v. Clark*, 249 F. Supp. 720, 729 (S.D. Ala. 1965); see *Katzenbach v. Original Knights of the Ku Klux Klan*, 250 F. Supp. 330, 341 (E.D. La. 1965). Section 11(b)’s prohibition against unlawful voter intimidation prohibits government officials from conducting an election without mitigating threats to voters’ safety at polling places.

Absent judicial intervention, Defendants will conduct the January 4, 2021 Hudson Town Caucus and Caucus Election in a manner that violates Section 11(b) by exposing Town electors to an unsafe and threatening situation in the on-going covid-19 pandemic.

Both of Plaintiffs, and many other of the at least one-third of Hudson Town electors who are similarly situated to Plaintiffs due to their older ages, serious underlying medical or health conditions, and/or disabilities and elevated risks of severe illness, hospitalization, and death from covid-19, will be threatened, intimidated, and disenfranchised by an entirely in-person January 4, 2021 Hudson Town Caucus and Caucus Election because in order to exercise their constitutional and civil rights to participate and vote in the Caucus Election they will be forced to choose between either attending the Caucus Election in-person, with its high covid-19 exposure and spread risks that threaten their health and lives, or protecting their health and lives by foregoing their rights to participate and vote in the Caucus Election.

B. Plaintiffs Are Likely To Prevail On Their Claim That Defendants' Failure to Make Reasonable Modifications For Voters With Disabilities Violates The Americans With Disabilities Act (ADA).

In 42 U.S.C. section 12132, the “primary mandate” of Title II of the ADA is that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” *Lacy v. Cook Cty.*, 897 F.3d 847, 852 (7th Cir. 2018) (quoting 42 U.S.C. § 12132). “Voting is a quintessential public activity.” *Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494, 507 (4th Cir. 2016); see *Disabled in Action v. Bd. of Elections in City of N.Y.*, 752 F.3d 189, 199 (2d Cir. 2014).

Title II of the ADA applies to the administration of local government electoral processes, such as the January 4, 2021 Hudson Town Caucus and Caucus Election.

The ADA’s Title II provisions apply to all aspects of the local electoral process. Local governments must ensure they do not have policies, procedures, or practices in place that interfere with or prohibit people with disabilities from participating and voting in local government electoral processes based on their disabilities. Title II of the ADA requires local governments to modify their electoral processes policies, practices, and procedures when modifications are necessary to avoid discrimination on the basis of an elector’s disability. Only if providing a requested modification would result in a fundamental alteration, or be an undue financial or administrative burden, is a local government not required to provide the requested modification necessary for a disabled elector to participate and vote in the local government electoral process; even then, the local government still has an obligation to provide, if possible, another modification that

will make the local government electoral process effectively and equally accessible to the disabled elector who has requested a modification.

(See, U.S. Dept. of Justice, Civil Rights Division, Disability Rights Section, “The Americans With Disabilities Act And Other Federal Laws Protecting The Rights Of Voters With Disabilities”, available at <https://www.justice.gov/file/69411/download>)

1. *Plaintiffs Are Qualified Individuals With Disabilities.*

In the ADA, the term disability means “a physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(1)(A).

Plaintiff Gostovich is a qualified individual with a disability Under ADA Title II Subtitle A, and ADA Title II Regulations: 28 C.F.R. Part 35, Subpart A, section 35.108 Definition of disability. Plaintiff Gostovich has a history of cerebral vascular accident (CVA) or stroke, the effects of which continue to limit his major life activities.

Plaintiff Gostovich is entitled to protections from discrimination on the basis of his disability in services, programs, and activities provided by the Town of Hudson, including the January 4, 2021 Hudson Town Caucus and Caucus Election.

2. *Plaintiffs Have Been Denied Access To A Government Program, And Defendants Cannot Prove That The Requested Modifications Are Unreasonable.*

Plaintiff Gostovich’s qualified disability puts him at high risk of becoming severely ill, requiring hospitalization, and dying if he is infected at the January 4, 2021 Hudson Town Caucus and Caucus Election with the highly contagious novel coronavirus that causes covid-19. Plaintiff’s history of CVA and his other serious underlying medical or health conditions put him at elevated risk of having another stroke, and covid-19 frequently causes a bodywide increase in blood clot formation that further increases risk

of stroke. (See: Harvard Health Publishing, Harvard Medical School, “COVID-19 basics”, Jan. 1, 2021, available at <https://www.health.harvard.edu/diseases-and-conditions/covid-19-basics#:~:text=COVID%2Drelated%20strokes%20occur,response%20to%20the%20vir> us.)

Because of the high covid-19 exposure risks at the in-person, public, indoor, one-hour or longer, meeting of electors from households throughout the Town of Hudson that the Town has proposed for the January 4, 2021 Hudson Town Caucus and Caucus Election, Plaintiffs have requested the reasonable modification of an option for remote participation and voting so that Plaintiff Gostovich is not required to put his health and life at significant risk in order to participate and vote in-person in this local government electoral process.

In an email to Hudson Town Board Chair Don Jordan, sent December 5, 2020, at 1:52PM, Plaintiffs first requested a remote participation and voting option for the January 4, 2021 Hudson Town Caucus and Caucus Election as an accommodation and modification necessary because of their older ages, health conditions, and disabilities to make the local government electoral process accessible to them. Plaintiffs repeated their request for this reasonable accommodation and modification once again on December 7 in an email sent at 10:29AM to Board Chair Jordan; twice more on December 11 in emails sent at 9:22AM and 3:13PM to Board Chair Jordan and to Hudson Town attorney Paul Mahler; once again on December 16 in an 11:34AM email to Hudson Town Clerk Shaw, Town Board Chair Jordan, Town Board Supervisors #1 Ken Thill, #2 Tim Foster, #3 Susan Blank and #4 Dan Fosterling, and Town attorney

Mahler; once more on December 18 in a 12:02PM email to Board Chair Jordan, Town Clerk Shaw, Board Supervisors Thill, Foster, Blank, and Fosterling, and Town attorney Mahler; and last on December 26 at 5:15PM, 2020, to Town Clerk Shaw, Board Chair Jordan, Supervisors Thill, Foster, Blank, and Fosterling, and Town attorney Mahler.

In response, Defendants have just said “NO”, or nothing at all.

Without an option for remote participation and voting in the January 4, 2021 Hudson Town Caucus and Caucus Election, or some other modification that will make this local electoral process accessible to Plaintiff Gostovich, he will be denied equal participation in this local government electoral process on the basis of his qualified disability under Title II of the ADA.

It is established law that a failure to make requested reasonable modifications in policies, practices, or procedures may constitute discrimination under Title II of the ADA. “[U]nder the ADA, a public entity must reasonably accommodate a qualified individual with a disability by making changes in rules, policies, practices, or services when needed.” *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 782-83 (7th Cir. 2002); 28 C.F.R. § 35.130(b)(7) (requiring reasonable modifications in the context of Title II). The requested modification must be reasonable, but the burden of proving reasonableness in this context “is not a heavy one.” *Henrietta D. v. Bloomberg*, 331 F.3d 261, 280 (2d Cir. 2003); see *Lamone*, 813 F.3d at 507-08. Plaintiff need only show that the modification is “reasonable on its face,” *Oconomowoc*, 300 F.3d at 783, and then the burden shifts to the defendant to demonstrate unreasonableness or prove that it “would ‘fundamentally alter’ the program,” *Lamone*, 813 F.3d at 508 (quoting 28 C.F.R. § 35.130(b)(7)(i)).

Defendants have never yet suggested or offered any other modification than the requested remote participation and access option to make the January 4, 2021 Hudson Town Caucus and Caucus Election effectively and equally accessible to Plaintiff Gostovich.

Nor have Defendants met the Title II ADA requirement to show either that Plaintiffs' requested modification of a remote participation and voting option would impose significant financial or administrative costs, or that it would fundamentally alter the January 4, 2021 Hudson Town Caucus.

In fact, Defendants cannot carry what is their burden to prove under Title II of the ADA: that Plaintiffs' requested modification of an option for remote participation and voting in the January 4, 2021 Hudson Town Caucus and Town Election will impose "significant financial or administrative costs" or "fundamentally alter[] the nature of the program or service." *Holzmueller v. Ill. High. Sch. Ass'n*, 881 F.3d 587, 594 (7th Cir. 2018); see *Disabled in Action*, 752 F.3d at 202.

The financial cost of providing an option of remote participation and voting for the January 4, 2021 Hudson Town Caucus and Caucus Election on a commonly used remote meeting platform such as Zoom is not high or "excessive in relation ... to the benefits," *Vande Zande v. Wis. Dept. of Admin.*, 44 F.3d 538, 543 (7th Cir. 1995). For example, the Zoom plan for "Small & Medium Businesses" that allows hosting up to 300 participants in group meetings up to thirty hours has a current cost of \$199.90 per year (see: <https://zoom.us/pricing>). As a practical matter, there may not be ANY additional cost to the Town of Hudson for providing an option of remote participation and voting in the January 4, 2021 Hudson Town Caucus and Caucus Election, because the Town

already has a Zoom account that it uses for monthly Town Board meetings in the on-going covid-19 pandemic.

The administrative cost of providing an option of remote participation and voting for the January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election on a commonly used remote meeting platform such as Zoom also is not high or excessive in relation to the benefits because the requested modification would not be excessively difficult to accomplish.

The Hudson High School, at which the Hudson Town Caucus and Caucus Election are scheduled to be held, is providing a remote instruction option for its students using the Google Meet platform during the on-going covid-19 pandemic. Should the Town choose to offer an option of remote participation and voting, Hudson High School has the technological and staff capabilities to facilitate that option: IT staff would be required to enable the Town's web camera and Zoom account to operate on the school's network, and the Hudson High School IT Director recommends that Town staff allow about an hour to set up and test the equipment and connection by no later than on the afternoon of January 4, in advance of the 6PM meeting start.

It would not be difficult to verify the identities and eligibility of Town electors who participate and vote remotely: for example, a remote participant could show their ID and face on camera to be checked against the same list used by Town staff to confirm the IDs and eligibility of everyone attending in-person.

It would not be difficult to prevent people who are not qualified and eligible Town electors from voting: for example, the Zoom meeting host may lock the meeting to prevent anyone new from joining.

It would not be difficult provide and conduct secret balloting by qualified and eligible Town electors who participate and vote remotely in the Caucus Election, if that is required: for example, a remote participant on Zoom could be renamed with an anonymous number to use when casting a ballot instead of being identified by their name in the Zoom meeting, and a remote participant could vote through Zoom's polling for meetings feature.

(See: Zoom Help Center: Getting started with Zoom, at:

https://support.zoom.us/hc/en-us/articles/206175806#h_12512067-340a-4ca9-8d5b-f52a7ed016fb; Managing participants in a meeting, and Controls for hosts and co-hosts, at: https://support.zoom.us/hc/en-us/articles/115005759423-Managing-participants-in-a-meeting#h_221b3acc-9a66-4f0b-ad84-a70359148d1b; and Polling for meetings, at: <https://support.zoom.us/hc/en-us/articles/213756303-Polling-for-meetings>)

And Hudson Town staff and officials already are familiar with Zoom, since in the on-going covid-19 pandemic the Town Board uses Zoom to provide a remote participation option in its monthly meetings for Town electors and to make these government meetings reasonably accessible to the public.

The legal rights of disabled Hudson Town electors to participate and vote in the local government electoral process through which their candidates to represent them on the Hudson Town Board are elected may not be set aside and lost just because preserving those participation and voting rights requires some additional bit of effort and minor problem-solving on the part of Hudson Town officials for this year's Town Caucus and Caucus Election in the on-going covid-19 pandemic. There is no state interest sufficient to justify discrimination against voters with disabilities where, as here, a

reasonable modification is available. See, e.g., *Dees v. Austin Travis Cty. Mental Health & Mental Retardation*, 860 F. Supp. 1186, 1191 (W.D. Tex. 1994) (“[T]he standard Congress has determined that should be applied in assessing the reasonableness of the modification under the ADA is not a balancing test of competing interests ... but whether the modification can be made without fundamental alteration or undue burden such that disabled individuals will not be denied the equal opportunities enjoyed by others.”); cf. *Eckles v. Consol. Rail Corp.*, 94 F.3d 1041, 1050 n.15 (7th Cir. 1996) (noting the ADA “provide[s] statutory factors to be considered in determining whether a particular accommodation would produce an ‘undue hardship’”).

The nature of Hudson Town Board meetings has not been fundamentally altered because in the on-going covid-19 pandemic those meetings include an option of remote participation and voting on Zoom. Similarly, the nature of the Hudson Town Caucus and Caucus Election would not be fundamentally altered just because some or all qualified and eligible Town electors may join the meeting via Zoom.

C. Plaintiffs Are Likely To Prevail On Their Claims That Defendants’ Failure To Ensure Safe Voting Conditions For Hudson Town Electors With Disabilities Violates Wis. Stat. 5.25(4)(a).

Wis. Stat. 5.25(4)(a) requires every polling place to be accessible to all individuals with disabilities; Wis. Stat. 5.02(15) defines polling place to mean the location where an elector’s vote is cast. Since qualified and eligible Hudson Town electors participating in the Hudson Town Caucus cast votes in the Caucus Election to elect candidates, the location where the Town Caucus is conducted is a polling place that must be accessible to all Town electors with disabilities.

But because of the risks of infection with the highly contagious novel coronavirus at the public, in-person, hour or longer, meeting of Hudson Town electors from households throughout the Town that is planned for the January 4, 2021 Hudson Town Caucus and Caucus Election, this polling place will NOT be accessible to Town electors with disabilities.

The risks of infection with the highly contagious novel coronavirus will especially endanger the health and lives of electors with disabilities, electors with serious underlying medical or health conditions, and/or older electors with their elevated likelihoods of becoming severely ill, requiring hospitalization, and dying from covid-19 if they are infected at the Town Caucus and Caucus Election.

These significant threats to the health and lives of disabled and/or elderly and/or medically or health compromised Town electors will make the entirely in-person Hudson Town Caucus and Caucus Election entirely inaccessible to them.

Requiring a disabled elector to subject his or her health and life to significant threats from covid-19 exposure at the in-person January 4, 2021 Hudson Town Caucus and Caucus Election in order to participate and vote in this local government electoral process imposes an impermissible obstacle to accessibility for the disabled elector.

D. Plaintiffs Are Likely To Prevail On Their Claims That Defendants' Failure To Make Requested Accommodations For Hudson Town Electors With Disabilities Violates Wis. Stat. 5.36.

Wis. Stat. 5.36 allows any elector with a disability to request that a specific type of accommodation be provided that will facilitate his or her voting.

Wis. Stat. 7.15(14) then requires the municipal clerk to make reasonable efforts to comply with requests for voting accommodations made by individuals with disabilities whenever feasible.

The Wisconsin Elections Commission (WEC) advises that municipal clerks are required to make reasonable accommodations for voter with disabilities. (See: WEC, Accessibility Resources for Clerks and Poll Workers, at:

<https://elections.wi.gov/elections-voting/voters/accessibility/resources-for-clerks>)

Defendants have failed to take up in good faith the requests for reasonable accommodations that will facilitate their participation and voting in the January 4, 2021 Hudson Town Caucus and Caucus Election that have been made by Plaintiffs, and also made by similarly situated Hudson Town electors who are disabled, have serious underlying medical or health conditions, and/or are older and so have elevated likelihoods of becoming severely ill, requiring hospitalization, and dying from covid-19.

Instead, Defendants have either summarily refused to make requested accommodations, or have made no reply at all to requests for accommodations.

E. Plaintiffs Are Likely To Prevail On Their Claims That Defendants' Failure To Approve Safe Alternative Voting Locations For Elderly or Handicapped Hudson Town Electors Violates Wis. Stat. 5.25(5)(b).

Wis. Stat. 5.25(5)(b) allows a municipal clerk to reassign elderly or handicapped electors to an alternative polling place within their municipality that is accessible to the elderly or handicapped individuals.

A polling place that puts the health and lives of elderly or handicapped voters at significant risks cannot be considered accessible to them.

But because of the risks of infection with the highly contagious novel coronavirus at the public, in-person, hour or longer, meeting of Hudson Town electors from households throughout the Town that Town officials plan to conduct, the January 4, 2021 Hudson Town Caucus and Caucus Election will do just that for elderly or handicapped Hudson Town electors at elevated risks of severe illness, hospitalization, and death from covid-19.

Plaintiffs, and all Town electors similarly situated to Plaintiffs by their older ages and/or handicaps and elevated risks of severe illness, hospitalization, and death from covid-19, require alternative accessible polling places for the January 4, 2021 Hudson Town Caucus and Caucus Election.

Under Wis. Stat. 5.25(5)(b), Hudson Town Clerk Shaw has authority to reassign elderly or handicapped Town electors such as Plaintiffs to alternative polling places in the Town that do not have the high covid-19 exposure and spread risks that will be present at the in-person Town Caucus and Caucus Election in order to ensure that participation and voting in the Caucus Election will be accessible to elderly or handicapped Town electors.

Plaintiffs, and other similarly situated elderly or handicapped Town electors, have requested reassignments to alternative locations in the Town that are accessible to them and from which they could safely cast their votes in the January 4, 2021 Caucus Election, namely: from their homes in the Town of Hudson over a remote meeting platform such as Zoom.

But Hudson Town Clerk Shaw has unreasonably refused to use her authority to make these requested reassignments.

II. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR U.S. AND WISCONSIN CONSTITUTIONAL CLAIMS.

A. Plaintiffs Are Likely To Prevail On Their Claim That Defendants' Caucus Election Administration Unduly Burdens Their Right to Vote Under *Anderson-Burdick*.

The right to vote embodied in the First and Fourteenth Amendments to the U.S. Constitution is a fundamental right.

Any alleged infringement on that right “must be carefully and meticulously scrutinized.” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). Under the balancing framework articulated in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992), a court must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Burdick*, 504 U.S. at 434. The court must (1) “determine the extent of the burden imposed by the challenged provision”; (2) “evaluate the interest that the state offers to justify that burden”; and (3) “judge whether the interest justifies the burden.” *DNC*, 2020 WL 1638374, at *11.

When voting rights are severely restricted, a law or practice “must be narrowly drawn to advance a state interest of compelling importance.” *Id.* (citation omitted). But even less-severe burdens must “be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Id.* (citations omitted). “In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to

burden the plaintiff's rights." *Lee v. Va. State Bd. Of Elections*, 843 F.3d 592, 605 (4th Cir. 2016).

The right to vote can be unjustifiably burdened under *Anderson-Burdick* through deficient election administration. See *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1319 (11th Cir. 2019) (Florida's deficient implementation of signature-match scheme established undue burden under *Anderson-Burdick*); *Common Cause/New York v. Brehm*, 2020 WL 122589, at *16 (S.D.N.Y. Jan. 10, 2020) (New York's deficient administration of its inactive-voter scheme established undue burden under *Anderson-Burdick*).

1. *Failure To Ensure Safe In-Person Voting.*

The January 4, 2021 entirely in-person Hudson Town Caucus and Caucus Election are not planned to be held in accord with federal, Wisconsin, and St. Croix County public health protection recommendations against covid-19 exposure and spread risks.

At this point in the on-going covid-19 pandemic, federal, Wisconsin, and St. Croix County public health officials recommend that people over 60 and people with serious underlying medical conditions and disabilities stay home, avoid all gatherings with people from outside their immediate households, and never enter any indoor space in which anyone is not wearing a face covering.

The St. Croix County Health Advisory in effect during the on-going covid-19 pandemic recommends public indoor gatherings should have no more than ten (10) people; and regardless of the size of the event, attendees should wear masks and maintain six-foot distance from people not in their immediate household, seating should

be assigned or fixed, a contact list should be made for covid-19 contact tracing, and health screenings should be done.

Wisconsin Governor's Executive Order #94, issued November 10, 2020, recommends holding business meetings online during the on-going covid-19 pandemic.

The risks of infection with the highly contagious novel coronavirus at the public, in-person, hour or longer, meeting of Hudson Town electors from households throughout the Town that is planned for the January 4, 2021 Hudson Town Caucus and Caucus Election will endanger the health and lives of everyone who attends in-person, and then will endanger the health and lives of everyone that each infected attendee comes into close contact with during the two weeks or so afterward.

It is an unconstitutional burden on the right to vote held by each Hudson Town elector to require that, in order to exercise his or her right to participate and vote in the Town Caucus and Caucus Election, the elector must subject his or her health and life, and the health and lives of his or her close contacts, to significant threats of illness and death.

Defendants cannot identify any interests sufficiently compelling to justify that severe burden on the right to vote.

Rather, protecting the health and safety of its citizens is our government's paramount interest. "The police power of the State is that power required to be exercised in order to effectually discharge within the scope of the constitutional limitations its paramount obligation to promote and protect the public health, safety, morals, comfort and general welfare of the people." *Sinclair Ref. Co. v. City of Chicago*, 178 F.2d 214, 216 (7th Cir. 1949).

2. Failure To Provide An Alternative To Unsafe In-Person Voting.

Defendants have no interests sufficient to justify completely disenfranchising all qualified and eligible Hudson Town electors who in the on-going covid-19 pandemic will not put their health and lives at unreasonable and unnecessary risks in order to participate and vote in-person at the January 4, 2021 Hudson Town Caucus and Caucus Election covid-19 super-spreader event.

For Hudson Town electors who are at high risk from covid-19, or whose household members are at high risk from covid-19, or who are actively infected with covid-19 themselves, an alternative to the entirely in-person January 4, 2021 Hudson Town Caucus and Caucus Election is necessary to ensure they can participate and vote at all.

It is feasible and practicable in the on-going covid-19 pandemic for the Town of Hudson to offer an option of remote participation and voting in the January 4, 2021 Hudson Town Caucus and Caucus Election via Zoom, or on another remote meeting platform in common use during the on-going covid-19 pandemic.

As discussed in I.B.2. above, remote participation and voting can be as orderly and secure and private as in-person proceedings at the Hudson Town Caucus and Caucus Election, and it is not costly in either financial or administrative aspects.

And in addition to providing a safe alternative for Hudson Town electors whose health and lives are threatened by the covid-19 exposure risks of an in-person Town Caucus and Caucus Election during the on-going covid-19 pandemic, an option of remote participation and voting would make the annual Hudson Town Caucus and Caucus Election more broadly open to greater numbers of qualified and eligible Town

electors who usually do not attend the dinnertime, early-January, in-person meeting for other reasons, such as family obligations or transportation challenges. Allowing broader access by more Town electors to our annual local government electoral process is an outcome that will enhance and strengthen our representative democracy.

B. Plaintiffs Are Likely To Prevail On Their Claim That Defendants Are Violating the Procedural Guarantees Of The Due Process Clause Of The Fourteenth Amendment To The US Constitution.

Plaintiffs are likely to succeed on their procedural due process claims because Defendants have summarily and arbitrarily rejected requests for accommodations that are necessary in order for Plaintiffs, and similarly situated qualified and eligible Hudson Town electors, to participate and vote in the January 4, 2021 Hudson Town Caucus and Caucus Election. Defendants have failed to provide effective notice and an opportunity to be heard with respect to denials of requests for alternatives to in-person participation and voting at the January 4, 2021 Hudson Town Caucus and Caucus Election.

Defendants have failed to provide clear, effective, and comprehensive notice to Hudson Town electors about modifications being made in light of covid-19 exposure and spread risks at the January 4, 2021 Hudson Town Caucus and Caucus Election.

No Hudson Town elector may be deprived of “liberty or property” without “due process of law.” U.S. Const. amend. XIV, § 1. The right to vote is fundamental, see *Harper v. Va. Bd. Of Elections*, 383 U.S. 663, 666 (1966), and is a “liberty” or property interest protected by the due process clause. See, e.g., *Raetzl v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354,1357 (D. Ariz. 1990). Wisconsin Statutes Chapter 8: Nominations, Primaries, Elections, in section 8.05(1) Caucus, grants every qualified and eligible town elector a right to participate and vote in the town caucus and

caucus election; this creates statutory rights that are entitled to due process protection. In addition to their statutory rights under Wis. Stat. 8.05(1) Caucus, Wisconsin election laws grant electors rights to an accessible polling place in Wis. Stat. 5.25(4)(a) and 5.25(5)(b), and rights to accommodations to facilitate voting in Wis. Stat. 5.36; these statutory provisions also create rights that are entitled to due process protections.

“The hallmarks of procedural due process are notice and an opportunity to be heard.” *Pugel v. Bd. of Trs. of Univ. of Ill.*, 378 F.3d 659, 662-63 (7th Cir. 2004). The specific form such procedures must take is determined by considering, “first, the private interest that will be affected by the official action” including “the degree of potential deprivation;” “second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and, third “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335, 341 (1976).

In the above outline for determining what process is due here, first, the private interest at stake here is the right held by a qualified and eligible town elector to participate and vote in the town caucus and caucus election that will elect candidates who later may represent that elector on his or her town board. This is a weighty private interest; town boards take actions on local matters that may be of great import to the town elector, and who is elected as a candidate for a town board position largely determines who later will be elected to the town board.

For Plaintiffs, and for similarly situated Hudson Town electors, who in the on-going covid-19 pandemic require and requested alternatives and accommodations as

guaranteed to them by Wis. Stat. 5.25(4)(a), 5.25(5)(b), and 5.36 for the in-person January 4, 2021 Hudson Town Caucus and Caucus Election, the right to participate and vote—at all—in electing candidates who later may represent them on the Hudson Town Board is the weighty private interest at stake.

Second, the likelihood is extremely high that Hudson Town officials have erroneously and completely deprived Hudson Town electors of their weighty private interests in electing candidates who later may represent them on the Town Board, because Hudson Town officials, including the Town Clerk, Town Board Chair, and Town Supervisors all have—without first making any inquiries of the Town electors about their specific requests for alternatives and accommodations in accord with their rights under Wis. Stat. 5.25(4)(a), 5.25(5)(b), and 5.36—summarily rejected all requests for alternatives and accommodations that in the on-going covid-19 pandemic are necessary in order for Plaintiffs, and for similarly situated Town electors, to be able to participate and vote in the January 4, 2021 Hudson Town Caucus and Caucus Election.

Third, the function involved is the most basic and important to our representative democracy: electing candidates who later may represent us in our local government body. At the January 4, 2021 Hudson Town Caucus and Caucus Election, Town electors will participate and vote to elect candidates for three of the five seats on the Town Board: Board Chair and Supervisors #2 and #4. While the Town has a legitimate interest in the orderly and proper conduct of the Town Caucus and Caucus Election under Wis. Stat. 8.05(1), the Town also has an obligation and duty to respect and comply with the requirements of other relevant Wisconsin election laws, including the grants of electors' rights to accessible polling places in Wis. Stat. 5.25(4)(a), to

alternative accessible polling places in 5.25(5)(b), and to accommodations to facilitate voting in Wis. Stat. 5.36. In the short term, the fiscal and administrative burdens on Town officials would have been slightly greater if they first had made reasonable inquiries regarding Plaintiffs' requested alternatives to and accommodations for the in-person January 4, 2021 Hudson Town Caucus and Caucus Election, rather than summarily rejecting all such requests; but in the longer term, having just said "NO" may prove to be much more burdensome.

The weighty private interests of Hudson Town electors in their rights to participate and vote in the Town Caucus and Caucus Election to elect candidates who later may represent them on the Town Board should not be so lightly cast aside, either by the Town Clerk who is charged with proper election administration in accord with Wisconsin election laws, or by the incumbent members of the Town Board who later may be challenged by the candidates elected in the Town Caucus and Caucus Election.

C. Plaintiffs Are Likely To Prevail On Their Claim That Defendants' Arbitrary Election Administration Violates The Equal Protection Clause Of The Fourteenth Amendment To The US Constitution.

"In decision after decision," the Supreme Court has held that the Equal Protection Clause protects voters' "right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972).²¹⁰ That guarantee extends not only to "the initial allocation of the franchise," but to "the *manner* of its exercise." *Bush v. Gore*, 531 U.S. 98, 104 (2000) (emphasis added). After granting citizens the right to vote, states therefore "may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Id.* at 104-105.

Defendants' proposed in-person only January 4, 2021 Hudson Town Caucus and Caucus Election violates Plaintiffs' rights, and the rights of all similarly situated Town electors, to participate in this local electoral process on an equal basis with other Town electors because of the manner in which it is proposed to be conducted: in-person only during the on-going covid-19 pandemic. The covid-19 exposure and spread risks at the public, in-person, hour or longer, meeting of Hudson Town electors from households throughout the Town that is planned for the January 4, 2021 Hudson Town Caucus and Caucus Election will prevent Plaintiffs, and all similarly situated Town electors, from being "able to participate on an equal footing in the election process," *Hadley*, 397 U.S. at 55, due to their older ages, disabilities, and/or serious underlying medical or health conditions and the high likelihoods that they will become severely ill, require hospitalization, and die if they are infected at the in-person only Town Caucus and Caucus Election with the highly contagious novel coronavirus. The in-person only Town Caucus and Caucus Election is "not a process with sufficient guarantees of equal treatment." *Bush*, 531 U.S. at 107. Some Hudson Town electors, such as Plaintiffs and the at least one-third of eligible and qualified Town electors who are similarly situated by their older ages, disabilities, and/or serious underlying medical or health conditions, will not have a safe and practical opportunity to participate and vote in this local electoral process if it is in-person only during the on-going covid-19 pandemic.

Defendants have not, and cannot, show any rationale for persisting with their plan to conduct an exclusively in-person Hudson Town Caucus and Caucus Election during the on-going covid-19 pandemic when it will result in such widespread arbitrary and disparate burdens on Town electors' rights to vote and participate in this local

government electoral process. While Defendants may be somewhat flummoxed by the task of adjusting the usual past manner of conducting the Town Caucus and Caucus Election to fit this year's reality of the on-going covid-19 pandemic, "practical difficulties" and "[t]he press of time" are not an "excuse for ignoring equal protection guarantees." *Bush*, 531 U.S. at. at 108. Defendants must take all reasonable measures to ensure that "the rudimentary requirements of equal treatment and fundamental fairness are satisfied." *Id.* at 105.

Defendants have not met that obligation, and every indication is that they will continue to refuse to offer any alternative option to an exclusively in-person Hudson Town Caucus and Caucus Election. Absent the Court's intervention and grant of Plaintiffs' requested relief, the entirely in-person Hudson Town Caucus and Caucus Election will go forward and will constitute an equal protection violation.

D. Plaintiffs Are Likely To Prevail On Their Claims That Defendants' Arbitrary Election Administration Violates Their State Constitutional Rights To Equal Protection And Due Process Under Article I., And To Vote Under Article III. Section 1, Of The Wisconsin Constitution.

The state and federal constitutions provide identical procedural due process and equal protection safeguards. *County of Kenosha v. C. & S. Management, Inc.*, 223 Wis. 2d 373, 588 N.W. 2d 236 (1982).

III. IN THE ABSENCE OF A TEMPORARY INJUNCTION, PLAINTIFFS WILL SUFFER IRREPARABLE HARM.

Plaintiffs, and all similarly situated Hudson Town electors, will suffer irreparable harms unless the Court acts to issue an injunction against proceeding with the January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election.

Inaction by the Court will result in denial of Plaintiffs' fundamental rights to vote in the January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election.

Inaction by the Court also will result in denial of the fundamental rights to vote held by the at least one-third of Hudson Town electors who are similarly situated to Plaintiffs due to their older ages, disabilities, and/or serious underlying medical or health conditions and their elevated risks of becoming severely ill, requiring hospitalization, and dying if they are infected with the highly contagious novel coronavirus that causes covid-19 at the January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election.

Courts consistently find that infringements on the right to vote cannot be remedied after the fact. See *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) ("Courts routinely deem restrictions on fundamental voting rights irreparable injury.") (collecting cases); *Obama for Am. v. Husted*, 697 F.3d 423, 435 (6th Cir. 2012) ("A restriction on the fundamental right to vote ... constitutes irreparable injury."); *DNC*, 2020 WL 1638374, at *11. Additionally, at least one court has found irreparable harm in the context of a Section 11(b) intimidation claim under the Voting Rights Act, like the one here, noting that if potential members of the electorate suffer intimidation "such that their right to vote freely is abridged, or altogether extinguished," they have been irreparably harmed. *Ariz. Democratic Party v. Ariz. Republican Party*, 2016 WL 8669978, at *11 (D. Ariz. Nov. 4, 2016).

Absent injunctive relief, Plaintiffs and all similarly situated Town electors will face a choice between disenfranchisement and risking severe illness, hospitalization, and death. An injunction is appropriate to prevent potential suffering, illness, and death.

Injunctive relief is especially appropriate in the on-going covid-19 pandemic because of the serious and irreparable public health consequences that will result from the public, in-person, hour or longer, meeting of Hudson Town electors from households throughout the Town that is planned for the January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election. Plaintiffs have shown that St. Croix County is experiencing the exponential growth of an uncontrolled covid-19 pandemic, and that covid-19 is widely present in the community. The risks of infection at the January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election with the highly contagious novel coronavirus that causes covid-19 will endanger the health and lives of everyone who attends in-person—and then will endanger the health and lives of everyone that each infected attendee comes into close contact with during the two weeks or so afterward.

Plaintiffs have no other adequate remedy at law. Money damages will not make Plaintiffs or other similarly situated Hudson Town electors whole after they are disenfranchised because the significant threats to their health and lives from the covid-19 exposure and spread risks at the exclusively in-person January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election will compel them to stay safe at home. See *League of Women Voters of N. C.*, 769 F.3d at 247 (“[O]nce the election occurs, there can be no do-over and no redress.”); *DNC*, 2020 WL 1638374, at *11; *Ariz. Democratic Party*, 2016 WL 8669978, at *11 (“[I]f some potential voters are improperly dissuaded from exercising their franchise, it is unlikely those voters can be identified, their votes

cannot be recast, and no amount of traditional remedies such as money damages would suffice after the fact.”).

Money damages also will not make Plaintiffs or other similarly situated Hudson Town electors whole if they do exercise their rights to participate and vote in the January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election in-person, but are then infected with the highly contagious novel coronavirus at the public, in-person, hour or longer, meeting of Hudson Town electors from households throughout the Town, and go on to suffer severe illness, require hospitalization, and die from covid-19.

Plaintiffs have demonstrated a reasonable probability of success on the merits of their claims.

A temporary injunction will not harm, or even substantially inconvenience, Defendants. By statute, a town caucus and caucus election may be held between January 2 and January 21, and the statute directs that, when possible, preference should be given to having the caucus and caucus election on January 21. Wis. Stat. 8.05(1)(a). Notice of the date, time, and place for the caucus and caucus election is required to be given by posting in the clerk’s office and by one publication in a newspaper just five days in advance. Wis. Stat. 8.05(1)(b). There is enough time between January 4 and 21 for the Town of Hudson to set and notice another date, time, and place for the town caucus and caucus election under Wis. Stat. 8.05(1), and for the Town of Hudson to adjust its plans for the manner in which the town caucus and caucus election will be conducted so that it will preserve, rather than violate, the constitutional and civil voting rights of Plaintiffs and of all other Town electors.

IV. THE BALANCE OF HARDSHIPS SUPPORTS ISSUANCE OF A TEMPORARY INJUNCTION.

The equities strongly favor issuing the injunctive relief requested by Plaintiffs.

That relief will permit the Town of Hudson enough time in the on-going covid-19 pandemic to make plans for and notice a 2021 Hudson Town Caucus and Caucus Election in which all Hudson Town electors, including Plaintiffs and all similarly situated Town electors, may participate and vote without risking either their health and lives or the health and lives of others. Defendants will have the small administrative burden of planning a Hudson Town Caucus and Caucus Election to be held by no later than January 21 that is modified and offers alternatives and accommodations that will ensure equal accessibility and provide for safe participation and voting by all Town electors during the on-going covid-19 pandemic. But “administrative inconvenience” alone cannot justify an intrusion upon fundamental rights. *Taylor v. Louisiana*, 419 U.S. 522, 535 (1975).

V. AN INJUNCTION IS IN THE PUBLIC INTEREST.

Defendants, Plaintiffs, all Hudson Town electors, and the larger community have strong interests in safe, accessible, and orderly local government electoral processes. “As a general matter, enforcing constitutional rights is in the public interest,” and that rule applies here because “certainly, the public interest favors permitting as many qualified voters to vote as possible.” *DNC*, 2020 WL 1638374, at *14 (quotations and citation omitted); see also, e.g., *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). The relief proposed by Plaintiffs is narrowly tailored to achieve that end.

Defendants, Plaintiffs, all Hudson Town electors, and the larger community have strong interests in avoiding infection with the highly contagious novel coronavirus and

reducing and slowing the spread of covid-19. The in-person only January 4, 2021 Hudson Town Caucus and Caucus Election would be a covid-19 super-spreader event.

VI. IN THE ABSENCE OF A WRIT OF MANDAMUS, PLAINTIFFS WILL SUFFER IRREPARABLE HARM.

Plaintiffs and all qualified and eligible Hudson Town electors have fundamental rights to participate and vote in the 2021 Hudson Town Caucus and Caucus Election.

The Town of Hudson, Hudson Town Clerk, Hudson Town Board Chair, and Hudson Town Board Supervisors all have clear and positive duties to conduct the 2021 Hudson Town Caucus and Caucus Election in compliance with all requirements of the U.S. and Wisconsin Constitutions and of the federal and Wisconsin election laws.

Plaintiffs and all qualified and eligible Hudson Town electors will suffer irreparable harms from violations and denials of their fundamental rights to vote in the the 2021 Hudson Town Caucus and Caucus Election unless the Town Caucus and Caucus Election are conducted in compliance with all requirements of the U.S. and Wisconsin Constitutions and of the federal and Wisconsin election laws.

Plaintiffs, all qualified and eligible Hudson Town electors, the Town of Hudson, and the larger community all will suffer irreparable harms from failures or omissions to conduct the 2021 Hudson Town Caucus and Caucus Election in strict compliance with all federal, Wisconsin, and St. Croix County public health protection recommendations and requirements against covid-19 exposure and spread risks.

Plaintiffs have attempted to exhaust their administrative remedies by filing a sworn complaint with the Wisconsin Elections Commission (WEC) under Wis. Stat. 5.06, but the WEC will not complete its investigation and issue its decision until

sometime after the statutory time period for conducting the Hudson Town Caucus and Caucus Election has run.

Plaintiffs have attempted to exhaust their administrative remedies by asking the St. Croix County District Attorney to take action under Wis. Stat. 5.07 in St. Croix County Circuit Court, but the St. Croix County District Attorney has declined to take up this matter.

Plaintiffs have no other adequate remedy at law. Inaction by the Court will result in violations and denials of the fundamental rights to vote held by Plaintiffs and by all qualified and eligible Hudson Town electors for the 2021 Hudson Town Caucus and Caucus Election.

VII. PLAINTIFFS ARE ENTITLED TO DECLARATORY JUDGMENT THAT AN IN-PERSON ONLY HUDSON TOWN CAUCUS AND CAUCUS ELECTION ARE A VIOLATION OF THEIR FUNDAMENTAL RIGHTS TO VOTE.

This is a controversy in which Plaintiffs are asserting claims against Defendants who have an interest in contesting Plaintiffs' claims.

This controversy is between adverse parties.

Plaintiffs have legally protectable interests in their constitutional and civil rights to participate and vote in the local government electoral processes of the 2021 Hudson Town Caucus and Caucus Election.

The facts are sufficiently developed, and the issues in controversy are ripe for determination.

If the Court does not act immediately, Plaintiffs' constitutional and civil voting rights will be spoiled and lost.

CONCLUSION

For the reasons stated, Plaintiffs respectfully request the Court issue a Temporary Injunction that:

1. Enjoins the Town of Hudson from proceeding with the January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election;
2. Enjoins the Town of Hudson from proceeding with a 2021 Town Caucus and Caucus Election in the on-going covid-19 pandemic until the Town's plan for conducting the 2021 Town Caucus and Caucus Election is modified to offer alternatives and accommodations that will ensure equal accessibility for all Town electors and will provide for safe participation and voting by all Town electors, so that all Town electors may participate and vote without risking either their health and lives or the health and lives of others; and
3. Provides such other injunctive relief as is necessary to rectify the unlawful violations and denials of the rights to vote held by Plaintiffs and similarly situated Town electors.

Plaintiffs further request the Court order Defendants, for the 2021 Hudson Town Caucus and Caucus Election, to:

1. Provide an option of remote participation and voting to all qualified and eligible Town electors for the 2021 Town Caucus and Caucus Election on a remote meeting platform such as Zoom, or another remote meeting platform of the Town's choice that is in common use during the on-going covid-19 pandemic;
2. Inform Town electors of alternatives, accommodations, and modifications for the 2021 Town Caucus and Caucus Election to ensure equal accessibility for all Town electors and to provide for safe participation and voting by all Town electors, so that all Town electors may participate and vote without risking either their health and lives or the health and lives of others in-the ongoing covid-19 pandemic;
3. Take all appropriate actions to ensure that in-person participation and voting at the 2021 Town Caucus and Caucus Election will be safely conducted in the on-going covid-19 pandemic; and
4. Create and publicize a public health protection plan for the 2021 Hudson Town Caucus and Caucus Election sufficient to (i) ensure that the public meeting will be conducted in strict accord with federal, Wisconsin, St. Croix County, and Hudson School District recommended and required public health protections against covid-19 exposure and spread risks for the benefit of Caucus attendees, and (ii) prevent the public meeting from being a covid-19 super-spreader event for the benefit of all people in the community.

Plaintiffs further request the Court issue a Declaratory Judgment that:

1. The January 4, 6PM, 2021 Hudson Town Caucus and Caucus Election, which during the on-going covid-19 pandemic were planned to be conducted exclusively in-person as a public meeting of qualified and eligible Hudson Town electors, were unlawfully inaccessible to Plaintiffs and to the approximately one-third or more of qualified and eligible Hudson Town electors who are similarly situated to Plaintiffs due to their older ages, disabilities, and/or serious underlying medical or health conditions and their elevated risks of severe illness, hospitalization, and death from covid-19, and unlawfully violated the voting rights guaranteed to Plaintiffs and to all other similarly situated Hudson Town electors by the First and Fourteenth Amendments to the U.S. Constitution, federal law in Section 11(b) of the Voting Rights Act and in Title II of the Americans with Disabilities Act (ADA), Wisconsin Constitution Art. 1 and Art. III Sec. 1, and state law in Wis. Stat. 6.02(1), Wis. Stat. 5.25(4)(a), Wis. Stat. 5.25(5)(b), and Wis. Stat. 5.36.

Plaintiffs further request the Court:

1. Grant such relief as the Court may deem just and proper.

Dated: January 3, 2021

Respectfully submitted,

Celeste J Koeberl, pro se