

STATE OF WISCONSIN CIRCUIT COURT ST. CROIX COUNTY

JOHN B GOSTOVICH and CELESTE J KOEBERL

Plaintiffs,

Case No. _____
Case Code 30701

v.

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

Defendants.

COMPLAINT UNDER CIVIL RIGHTS ACT, 42 U.S.C.
§1983

Plaintiffs, proceeding pro se, bring this Complaint under Civil Rights Act 42 U.S.C. §1983, pursuant to the First and Fourteenth Amendments of the United States Constitution and Article 3, 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. 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.

I. STATEMENT OF CLAIM

- a. The Town of Hudson is depriving plaintiffs and qualified electors similarly situated of rights secured by the Constitution and laws, namely the right of qualified electors to vote as guaranteed by the First and Fourteenth Amendments of the United States Constitution, and Article III Section 1 of the Wisconsin Constitution.

- b. Defendants are acting under the color of Wisconsin State law, namely Wis. Stat. 8.05, 8.05(1), which allows Defendants to convene a caucus for the purposes of voting and election of candidates to be placed on a given ballot in an election.
- c. The procedural protections of the Due Process Clause of the 14th Amendment are triggered given that the state action of Defendants implicates constitutionally protected interests in life, liberty or property. *Board of Regents v. Roth*, 498 U.S. 564 (1972).
- d. Defendants are convening an in-person caucus on Monday, January 4, 2021 at which time qualified electors of the Town of Hudson will vote on the candidates to be placed on the ballot for the Spring 2021 Election.
- e. Defendants refuse to make reasonable accommodations to allow remote attendance and participation, thereby unlawfully excluding anyone whose disability or circumstances preclude in-person participation, which not only includes the Plaintiffs but an estimated third of eligible electors.
- f. Defendants unreasonably and unlawfully prevent Plaintiffs and similarly situated electors within the Town of Hudson from exercising their right to vote and participate in the local Caucus Election which determines the candidates that will be placed on the ballot for the Spring 2021 Election.
- g. Plaintiffs and similarly situated electors, estimated to be approximately one-third of eligible electors in the Town of Hudson, are of the age and or health condition that precludes public gatherings during the COVID-19 pandemic, particularly in circumstances by which there is no enforceable mask mandate. A caucus that is conducted solely in-person during a pandemic carries the risk of exposure to COVID-19, which for Plaintiffs and similarly situated qualified electors brings a substantial risk

of death. Plaintiffs and similarly situated qualified electors therefore must choose between taking a substantial risk to their life and exercising their right to vote as guaranteed by the United States Constitution, federal law, Wisconsin Constitution, and Wisconsin state law, which effectively unreasonably and unlawfully denies Plaintiffs and similarly situated qualified electors their right to vote.

II. JURISDICTION

1. This action is being brought under 42 U.S.C. §1983 because Defendants, each acting under color of state law are imminently set to deprive Plaintiffs of their right to vote secured under the United States Constitution.
2. This action arises under the First and Fourteenth Amendments to the United States Constitution. This Court has subject matter jurisdiction of this action, as a § 1983 action may be brought in a state court or a federal court. *Terry v. Kolski*, 78 Wis. 2d 475, 254 N.W.2d 704 (1977); *Riedy v. Sperry*, 83 Wis. 2d 158, 265 N.W.2d 475 (1978).
3. Venue is proper given that the Town of Hudson is in St. Croix County.

WHEREFORE, Plaintiffs request that this Court:

- A. Declare the Defendants' upcoming in-person Caucus Election scheduled for January 4, 2021 to be a violation of the civil rights of the Plaintiffs and those similarly situated qualified electors so long as it fails to allow for remote attendance and participation.
- B. Grant facial temporary injunctive relief prohibiting Defendants from engaging in the scheduled in-person only Caucus Election on January 4, 2021.

- C. Issue such further injunctive relief as necessary to rectify the unconstitutional denial of the right to vote to Plaintiffs and similarly situated qualified electors.
- D. Grant such relief as the Court may deem just and proper.

I declare under the penalty of perjury that the foregoing is true and correct.

Complaint signed this 30th day of December, 2020



CELESTE J. KOEBERL



JOHN B. GOSTOVICH