UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

CHRYSTAL EDWARDS, TERRON EDWARDS, JOHN JACOBSON, CATHERINE COOPER, KILEIGH HANNAH, KRISTOPHER ROWE, KATIE ROWE, CHARLES DENNERT, JEAN ACKERMAN, WILLIAM LASKE, JAN GRAVELINE, TODD GRAVELINE, ANGELA WEST, DOUGLAS WEST, and all others similarly situated,

Plaintiffs,

v.

ROBIN VOS, in his official capacity as Speaker of the Wisconsin State Assembly; SCOTT FITZGERALD, in his official capacity as Majority Leader of the Wisconsin State Senate; WISCONSIN STATE ASSEMBLY; WISCONSIN STATE SENATE; WISCONSIN ELECTIONS COMMISSION; MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S. JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR., and MARK L. THOMSEN, in their official capacities as members of the Wisconsin Elections Commission, and MEAGAN WOLFE, in her official capacity as the Administrator of the Wisconsin Elections Commission,

Defendants.

Case No. 20-CV-340

AMENDED CLASS ACTION COMPLAINT FOR DAMAGES, DECLARATORY JUDGMENT, AND INJUNCTIVE RELIEF

NATURE OF THE CASE

1. This is a putative class action pursuant to Fed. R. Civ. P. 23 seeking (a) damages arising from Defendants' denial of certain Plaintiffs' right to vote in the April 7, 2020 Wisconsin

Presidential Primary and Spring Election (the "Spring Election"); and (b) prospective injunctive and declaratory relief requiring Defendants to establish reasonable, disability accessible, and constitutionally sufficient voting procedures. (including voting by mail) for Wisconsin's August 11, 2020 Partisan Primary and November 3, 2020 General and Presidential Election (the "Future 2020 Elections").

2. Despite a worldwide pandemic involving a novel coronavirus known as COVID-19 that to date has infected more than 3.4 million people and killed more than 240,000 individuals worldwide, the Defendants acted to pursue partisan political goals to the detriment of all Wisconsin citizens in an intentional and self-serving attempt to disenfranchise thousands of voters in the Spring Election.

3. This Court well knows the pre-election lawsuits that arose from the Wisconsin Legislature's enormous indignity committed through forcing Wisconsin voters to the polls on April 7, 2020. This action is first directed at the past harm caused by the Defendants' action and inaction, seeking damages under the Americans With Disabilities Act to remedy the deprivation of rights suffered by certain Plaintiffs and the Class they seek to represent. In addition, the threat to public health of the pandemic that the Defendants ignored when they deprived thousands of Wisconsin residents of the right to vote in the Spring Election is nearly certain to persist throughout the remainder of this year. Therefore, this action seeks an injunction to establish for the Future 2020 Elections procedures that will ensure that the unconstitutional and discriminatory actions of Defendants surrounding the Spring Election are not repeated as Wisconsin seeks to diminish the public health risks associated with COVID-19.

4. Plaintiffs seek relief for violations of their right to vote, protected by the First Amendment to the U.S. Constitution and by their Fourteenth Amendment right to equal protection

of the laws, pursuant to 42 U.S.C. § 1983; and in accordance with the Americans with Disabilities Act (codified at 42 U.S.C. § 12101 *et seq.*). Each of the representative plaintiffs tells a story about how the Defendants' insistence on conducting the Spring Election during the pandemic left them disenfranchised and unable to exercise their fundamental right to vote without impairment of that choice. Each intends to vote in the Future 2020 Elections.

5. This lawsuit demonstrates that there is no compelling justification, let alone rational basis, for the Defendants to have refused to take action in rescheduling the Spring Election despite full knowledge of the inherent risks to the electorate of proceeding, nor to similarly refuse to act to protect the lives and health of citizens who wish to exercise their fundamental rights in the Future 2020 Elections. The rationale for challenging Defendants' conduct with respect to the Spring Election further supports the prospective injunctive relief sought here, because COVID-19 will continue to affect the ability of Wisconsin residents to vote safely and in-person in 2020 such that the Court should establish constitutionally sufficient procedures to ensure that Plaintiffs and all other Wisconsin residents not be forced to choose between preserving their health and their lives, or exercising their constitutional right to vote in the Future 2020 Elections.

6. The United States Supreme Court long ago ruled in *Reynolds v.* Sims, 477 U.S. 533 (1964) that voting is a fundamental right guaranteed by the U.S. Constitution:

> Undeniably the Constitution of the United States protects the right **of all qualified citizens** to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that **all qualified voters have a constitutionally protected right to vote**, *Ex parte Yarbrough*, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274, and **to have their votes counted**, *United States v. Mosley*, 238 U.S. 383, 35 S.Ct. 904, 59 L.Ed. 1355. In *Mosley* the Court stated that it is 'as equally unquestionable that the right to have one's vote counted is as open to protection . . . as the right to put a ballot in a box.' 238 U.S., at 386, 35 S.Ct., at 905. **The right to vote can neither be denied outright**, *Guinn v. United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340, *Lane v. Wilson*, 307 U.S. 268, 59 S.Ct. 872, 83 L.Ed. 1281, nor destroyed by alteration of ballots, see *United States v.*

> *Classic*, 313 U.S. 299, 315, 61 S.Ct. 1031, 1037, 85 L.Ed. 1368, nor diluted by ballot-box stuffing *Ex parte Siebold*, 100 U.S. 371, 25 L.Ed. 717, *United States v. Saylor*, 322 U.S. 385, 64 S.Ct. 1101, 88 L.Ed. 1341. As the Court stated in *Classic*, 'Obviously included within the right to choose, secured by the Constitution, **is the right of qualified voters within a state to cast their ballots and have them counted** . . . .' 313 U.S., at 315, 61 S.Ct., at 1037. Racially based gerrymandering, *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110, and the conducting of white primaries, *Nixon v. Herndon*, 273 U.S. 536, 47 S.Ct. 446, 71 L.Ed. 759, *Nixon v. Condon*, 286 U.S. 73, 52 S.Ct. 484, 76 L.Ed. 984, *Smith v. Allwright*, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987, *Terry v. Adams*, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152, both of which result in denying to some citizens their right to vote, have been held to be constitutionally impermissible.
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> Undoubtedly, the right of suffrage is a **fundamental matter** in a free and democratic society. Especially since the right to exercise the franchise in a **free and unimpaired** manner is preservative of other basic civil and political rights, **any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized**. Almost a century ago, in *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220, the Court referred to '**the political franchise of voting' as 'a fundamental political right, because preservative of all rights**.' 118 U.S., at 370, 6 S.Ct., at 1071. Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free **and unimpaired** fashion is a bedrock of our political system.

7. The Defendants understood the dangers of COVID-19 before the Spring Election and cavalierly (and for clearly political reasons) refused to take action to postpone it, which decision flouted every credible public health pronouncement about COVID-19 in the United States and the decisions of at least 18 other states and territories that followed the direction of doctors, scientists, epidemiologists, virologists, infectious disease specialists, and public health experts by making alternative arrangements for their spring elections. Unsurprisingly, and tragically, as of April 29, 2020, fifty-two people who participated in the Wisconsin Spring Election had tested positive for COVID-19, and the investigation was not yet complete.

8. Through this action, Plaintiffs seek, on behalf of themselves and each class member that they seek to represent, damages under the Americans with Disabilities Act in relation to the Spring Election as well as prospective injunctive relief as to the Future 2020 Elections in Wisconsin due to the COVID-19 pandemic. Specifically, they ask the Court to certify a Class and specified sub-classes as asserted in this Amended Complaint and order the following:

a. Entry of a judgment for damages incurred by Plaintiffs and the Class due to their inability to vote in the Spring Election as provided for under the Americans with Disabilities Act (codified at 42 U.S.C. § 12101 *et seq.*); and

b. Prospective injunctive relief establishing safe, reasonable, disability accessible, and constitutionally sufficient voting procedures for Wisconsin residents seeking to vote in the Future 2020 Elections, including but not limited to, mail-in voting procedures that allow all those eligible to vote in Wisconsin to do so from the safety of their home without being required to request an absentee ballot, and procedures sufficient to allow in-person voting by voters whose disabilities affect their ability to vote by mail.

9. Wisconsin voters deserve orderly process and procedures to vote this year that do not obligate them to choose between risking (or being terrified for) their lives, and their fundamental right to vote, which since the Supreme Court's 1886 decision in *Yick Wo* has been recognized as a fundamental element of United States citizenship. Because there is no compelling justification or rational basis for the Defendants' insistence on pursuing the Spring Election or any election this year in a manner that forces voters to choose between their health and their right to vote, Plaintiffs ask the Court to award damages to the Plaintiffs and class members whose rights under the Americans With Disabilities Act were violated by the Defendants' insistence on

conducting the Spring Election with no consideration of the effect of COVID-19 on those Plaintiffs, and to ensure that the rights of all eligible voters in Wisconsin are preserved and protected in future elections while the pandemic runs its course.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over Plaintiffs' claims under 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 12133 because this action arises under the U.S. Constitution and federal statutory law. It seeks relief for the Plaintiffs based on past and expected future deprivations of constitutional and federally guaranteed statutory rights. Defendants have taken action, and refused to act, under color of state law. Jurisdiction further vests under 42 U.S.C. §§ 1983 and 1988; and 42 U.S.C. § 12101 *et seq*. Because this action seeks declaratory relief, the Court is further authorized to grant such relief under 28 U.S.C. § 2201 *et seq*.

11. The Court has personal jurisdiction over each and every Defendant as they are all state actors who have been sued in their official capacities based on their conduct surrounding the Spring Election. All of the individual Defendants are state officials who reside in Wisconsin and work in their official capacities in and around Madison, Wisconsin.

12. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(1) because all Defendants reside in Wisconsin and one or more of them resides in this judicial district. In addition, venue is proper in this district because a substantial part of the events giving rise to these claims occurred in this district as contemplated by 28 U.S.C. § 1391(b)(2).

PARTIES

Plaintiffs

13. Plaintiffs Chrystal and Terron Edwards are 37 and 40 years old, respectively. They are married adults and African American residents of Milwaukee, Wisconsin. They vote regularly in state and local elections and plan to vote in the Future 2020 Elections. Terron is diabetic and

therefore an individual with a disability pursuant to the ADA. The Edwardses have three children residing with them; their son has spina bifida and a daughter has asthma. Both because of their disabilities they are at high risk of contracting and transmitting COVID-19. They educated themselves as much as possible about the pandemic and the government reaction to the pandemic. They were not able to vote early; while they did order absentee ballots in mid-March 2020, they never received those ballots. The Edwardses did not vote in person in the Spring Election because they were concerned that voting in person posed undue risks of their own illness or death, their family's, and the community's. They were also very concerned about the reduction in total City of Milwaukee polling places from the usual 180 to only five would result in high numbers of voters going to each one and long lines that would increase the possibility of exposure to COVID-19. They usually vote at a nearby polling place on Green Bay Avenue, but for the Spring Election they would have gone to Riverside High School. The Edwardses are adequate class representatives within the meaning of Fed. R. Civ. P. 23(a)(4) and are prepared to represent one or more of the sub-classes defined in paragraphs 79 and 80 of this Amended Complaint.

14. Plaintiff John Jacobson is an adult resident of Milwaukee, Wisconsin. He teaches social studies, politics, and history at Shorewood High School. He votes regularly in state and local elections and plans to vote in the Future 2020 Elections. He ordered an absentee ballot for the Spring Election on or about March 18, 2020 and requested that it be sent to his family home in Southern Illinois. He was in Illinois before and on April 7, 2020, because he needed to care for his elderly parents during the COVID-19 pandemic. He was available to assist his parents out of state because Governor Evers closed all Wisconsin public schools as part of the State's efforts to reduce person-to-person contact during the pandemic. Mr. Jacobson's absentee ballot never came, and as a result he was not able to vote in the Spring Election. Mr. Jacobson is an adequate class

representative within the meaning of Fed. R. Civ. P. 23(a)(4) and is prepared to represent one or more of the sub-classes defined in paragraphs 79 and 80 of this Amended Complaint.

15. Plaintiff Catherine Cooper is an adult resident of Fox Point, Wisconsin. She votes regularly in state and local elections and plans to vote in the Future 2020 Elections. Ms. Cooper requested an absentee ballot from the State of Wisconsin before the Spring Election. The ballot never came. Ms. Cooper did vote in the Spring Election but was torn doing so because of the health risks of COVID-19; more specifically, her mother who has compromised lungs and other health issues lives with her and she was concerned about exposing her mother to the virus. She is concerned about her decision to do so and seeks to avoid having to vote in person in the Future 2020 Elections. Ms. Cooper is an adequate class representative within the meaning of Fed. R. Civ. P. 23(a)(4) and is prepared to represent one or more of the sub-classes defined in paragraphs 79 and 80 of this Amended Complaint.

16. Kileigh Hannah is an adult resident of Fox Point, Wisconsin. She votes regularly in state and local elections and plans to vote in the Future 2020 Elections. Ms. Hannah ordered an absentee ballot on or about March 22, 2020 and she never received it. She and her husband were out of town at their cottage until just before the Spring Election. Ms. Hannah has multiple sclerosis and is immunosuppressed, so she is at a very high risk for contracting the COVID-19 virus and for life-threatening complications if she did. Ms. Hannah is an individual with a disability within the meaning of the ADA. She was unable to vote because of her disability and fear of death or sickness. Ms. Hannah is an adequate class representative within the meaning of Fed. R. Civ. P. 23(a)(4) and is prepared to represent one or more of the sub-classes defined in paragraphs 79 and 80 of this Amended Complaint.

17. Plaintiffs Kristopher and Katie Rowe are adult residents of Glendale, Wisconsin. They regularly vote in state and local elections and plan to vote in the Future 2020 Elections. The Rowes each ordered absentee ballots for the first time in the Spring Election and received them by mail. They completed and mailed their ballots back on April 1, 2020. Upon checking Wisconsin's online database, there is no record of either of them voting since the February 18, 2020 election. Upon information and belief, despite their compliance with every facet of the law, their ballots were never received by elections authorities and they will not count. The Rowes are concerned that these circumstances will repeat during the Future 2020 Elections. The Rowes are adequate class representatives within the meaning of Fed. R. Civ. P. 23(a)(4) and are prepared to represent one or more of the sub-classes defined in paragraphs 79 and 80 of this Amended Complaint.

18. Plaintiff Charles Dennert is an adult resident of Milwaukee, Wisconsin. He is a sophomore at Marquette University and usually votes. Mr. Dennert plans to vote in the Future 2020 Elections. He ordered an absentee ballot on March 24, 2020, but never received it. In April, he was temporarily staying in his family home in Waukesha, Wisconsin, recovering from a fractured leg and was unable to drive. He had no means of transportation to his Milwaukee polling location in order to vote and was therefore unable to vote in the Spring Election. Mr. Dennert is an adequate class representative within the meaning of Fed. R. Civ. P. 23(a)(4) and is prepared to represent one or more of the sub-classes defined in paragraphs 79 and 80 of this Amended Complaint.

19. Plaintiff Jean Ackerman is 89 years old and an adult resident of Milwaukee, Wisconsin. Ms. Ackerman votes in regularly in state and local elections and plans to vote in the Future 2020 Elections. She has mobility and other health issues and, as such, is an individual with a disability within the meaning of the ADA. Ms. Ackerman ordered an absentee ballot before the

Spring Election, but never received it. She was unable to vote because of fear of illness or death due to COVID-19 and her disability. Ms. Ackerman also did not want to risk the health of others around her. Ms. Ackerman is an adequate class representative within the meaning of Fed. R. Civ. P. 23(a)(4) and is prepared to represent one or more of the sub-classes defined in paragraphs 79 and 80 of this Amended Complaint.

20. Plaintiff William Laske is an adult resident of Milwaukee, Wisconsin. He regularly votes in state and local elections and plans to vote in the Future 2020 Elections. He ordered an absentee ballot on March 20, 2020, but never received it; he did receive a mailing on March 25, 2020 confirming that his request for an absentee ballot had been received. Mr. Laske has a respiratory disease and is on immune-suppressant medication and oxygen; exposure to the COVID-19 virus would likely kill him. Mr. Laske is an individual with a disability within the meaning of the ADA. He ultimately did not vote because he would not risk illness or death. Mr. Laske is an adequate class representative within the meaning of Fed. R. Civ. P. 23(a)(4) and is prepared to represent one or more of the sub-classes defined in paragraphs 79 and 80 of this Amended Complaint.

21. Plaintiffs Jan and Todd Graveline are adult residents of Milwaukee, Wisconsin; they are married. The Gravelines regularly vote in state and local elections and plan to vote in the Future 2020 Elections. They ordered absentee ballots before the Spring Election, but never received them. On April 7, 2020, the Gravelines decided to try to vote in person and went to Riverside High School to do so. Ms. Graveline did vote; while standing in line, Mr. Graveline grew concerned with the number of people in line and their proximity to him. Out of fear of contracting the COVID-19 virus, Mr. Graveline decided to leave the polling site because he feared illness or death. He did not vote as a result. The Gravelines are adequate class representatives

within the meaning of Fed. R. Civ. P. 23(a)(4) and are prepared to represent one or more of the sub-classes defined in paragraphs 79 and 80 of this Amended Complaint.

22. Plaintiffs Angela and Douglas West are 61 and 55 years old, respectively. They are adult African American residents of Milwaukee, Wisconsin. Mr. West has lung and heart conditions; he uses oxygen on a regular basis. Mr. West is an individual with a disability within the meaning of the ADA. Ms. West works in the healthcare field. The Wests regularly vote in state and local elections and plan to vote in the Future 2020 Elections. They usually vote at a school just three blocks from their house, but due to the limitations on the number of polling locations in the City of Milwaukee for the Spring Election, they would have had to travel to Washington High School to exercise their franchise. The Wests ultimately chose not to vote out of concerns for their safety. The Wests are adequate class representatives within the meaning of Fed. R. Civ. P. 23(a)(4) and are prepared to represent one or more of the sub-classes defined in paragraphs 79 and 80 of this Amended Complaint.

Defendants

23. Defendant Robin Vos ("Vos") is, pursuant to Section IV, Article 4 of the Wisconsin Constitution, a duly elected member of the Wisconsin State Assembly, the lower house in the Wisconsin Legislature established pursuant to Article IV, Section 1 of the Wisconsin Constitution. Vos serves as Speaker of the Assembly pursuant to Wis. Stat. §§ 13.13(1) and 13.46(1). As Speaker, Vos controls the legislative agenda in the Assembly and maintains the authority to close down debate and votes considered by the Assembly. Vos is sued in his official capacity.

24. Defendant Scott Fitzgerald ("Fitzgerald") is, pursuant to Section IV, Article 5 of the Wisconsin Constitution, a duly elected member of the Wisconsin State Senate, the upper house in the Wisconsin Legislature established pursuant to Article IV, Section 1 of the Wisconsin

Constitution. Fitzgerald serves as Majority Leader of the Senate pursuant to Wis. Stat. §§ 13.13(3) and 13.46(1). As Majority Leader, Fitzgerald controls the legislative agenda in the Senate and maintains the authority to close down debate and votes considered by the Senate. Fitzgerald is sued in his official capacity.

25. Defendant Wisconsin State Assembly (the "Assembly") is the lower house in the Wisconsin Legislature established pursuant to Article IV, Section 1 of the Wisconsin Constitution. Its leadership is controlled by Vos.

26. Defendant Wisconsin State Senate (the "Senate") is the upper house in the Wisconsin Legislature established pursuant to Article IV, Section 1 of the Wisconsin Constitution. Its leadership is controlled by Fitzgerald.

27. Defendant Wisconsin Elections Commission (the "Commission") is a governmental agency created under Wis. Stat. § 5.05. It administers and enforces Wisconsin election laws and is made up of six members. Four are appointed by Wisconsin's four legislative leaders and two are appointed by the Governor. The Commission staff is non-partisan. The Commission has its offices and principal place of business at 212 E. Wisconsin, Third Floor, Madison, WI, 53703.

28. Defendant Marge Bostelmann ("Bostelmann") is a member in good standing of the Commission. Bostelmann resides in Green Lake, Wisconsin and was appointed to the Commission by then-Governor Scott Walker. Her term ends on May 1, 2024. Bostelmann is sued in her official capacity.

29. Defendant Julie M. Glancey ("Glancey") is a member in good standing of the Commission and its Secretary. Glancey resides in Sheboygan Falls, Wisconsin and was appointed

to the Commission by Governor Tony Evers. Her term ends on May 1, 2021. Glancey is sued in her official capacity.

30. Defendant Ann S. Jacobs ("Jacobs") is a member in good standing of the Commission. Jacobs resides in Milwaukee, Wisconsin and was appointed to the Commission by Senate Minority Leader Jennifer Shillings. Her term ends on May 1, 2021. Jacobs is sued in her official capacity.

31. Defendant Dean Knudson ("Knudson") is a member in good standing of the Commission and its Chairman. Knudson resides in Hudson, Wisconsin and was appointed to the Commission by Vos. His term ends on May 1, 2024. Knudson is sued in his official capacity.

32. Defendant Robert F. Spindell, Jr. ("Spindell") is a member in good standing of the Commission. Spindell resides in Milwaukee, Wisconsin and was appointed to the Commission by Fitzgerald. His term ends on May 1, 2021. Spindell is sued in his official capacity.

33. Defendant Mark L. Thomsen ("Thomsen") is a member in good standing of the Commission. Thomsen resides in Milwaukee, Wisconsin and was appointed to the Commission by Assembly Minority Leader Gordon Hintz. His term ends on May 1, 2024. Thomsen is sued in his official capacity.

34. Defendant Meagan Wolfe ("Wolfe") is the Administrator of the Commission. Wolfe resides in Madison, Wisconsin and oversees the Commission's work as a non-partisan employee. Wolfe is sued in her official capacity.

FACTUAL BACKGROUND

COVID-19 and the Novel Coronavirus

35. On December 31, 2019, medical officials in Wuhan City, Hubei Province of China ("Wuhan") reported to the China Country Office of the World Health Organization ("WHO") about cases of pneumonia with unknown cause. Within four days, Wuhan had a total of 44 patients

fitting this description. By January 7, 2020, Chinese authorities had isolated the disease as a novel coronavirus. The term "coronavirus" applies to a large group of viruses that cause disease in animals and humans. They often circulate among camels, cats, and bats. Sometimes they evolve and affect human beings. WHO named the novel coronavirus "COVID-19" on February 11, 2020 and we use that term in this Amended Complaint to refer to the disease giving rise to the current global pandemic as it affects Wisconsin.

36. On January 20, 2020, a 35-year old man from Seattle, Washington was diagnosed with COVID-19, the first such case identified in the United States. In its first "Situation Report" a day later, WHO informed that there were 282 known cases of COVID-19 worldwide; most of those cases were in various Chinese provinces but a few others existed in Japan, Korea, and Thailand. The Seattle case had just entered the data set and did not make WHO's first published report. By the time of WHO's publication, six individuals had died of COVID-19. On January 30, 2020, WHO declared COVID-19 a "Public Health Emergency of International Concern."

37. COVID-19 took off like a rocket. By March 11, 2020, WHO reported that there were more than 118,000 cases of the disease worldwide in at least 110 countries and territories, with great concern about a sustained risk of global spread. That day, WHO classified COVID-19 as a pandemic, which the U.S. Centers for Disease Control ("CDC") defines as follows:

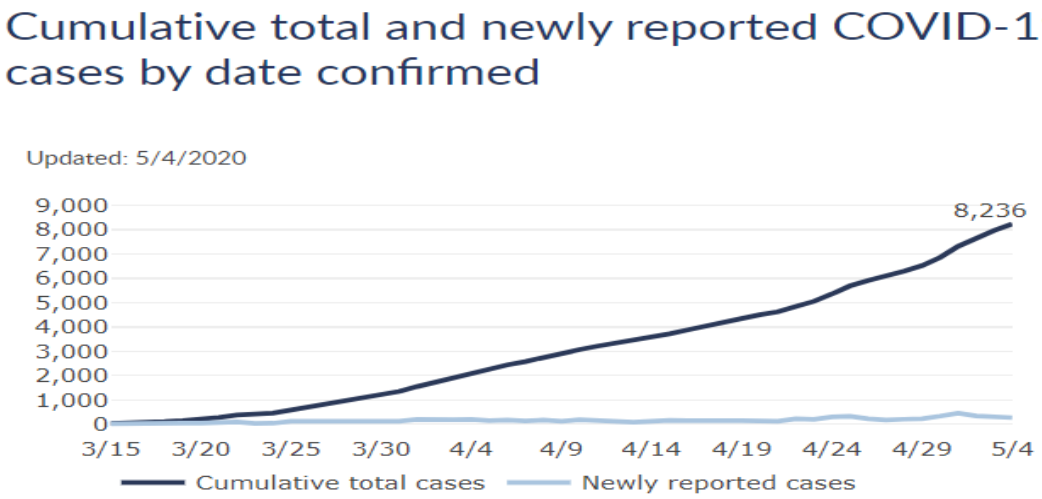
> Pandemics happen when new (novel) . . . viruses emerge which are able to infect people easily **and** spread from person to person in an efficient and sustained way. Because the virus is new to humans, very few people will have immunity against the pandemic virus, and a vaccine might not be widely available. The new virus will make a lot of people sick. How sick people get will depend on the characteristics of the virus, whether or not people have any immunity to that virus, and the health and age of the person being infected.

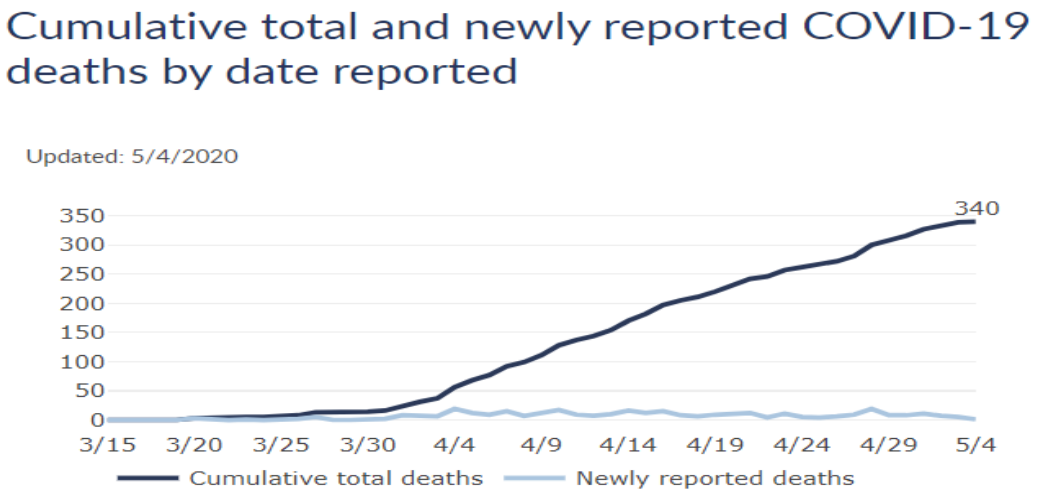
CDC Website, accessed on April 11, 2020 at https://www.cdc.gov/flu/pandemic-resources/basics/index.html. Dr. Tedros Adhanom Ghebreyesus, WHO Director-General, said at

the time of the pandemic declaration: "This is not just a public health crisis, it is a crisis that will touch **every sector**. So every sector and every individual must be involved in the fights." Jamie Ducharme, "World Health Organization Declares COVID-19 a 'Pandemic:' Here's What That Means," *Time*, March 11, 2020, accessed on April 11, 2020 at https://time.com/5791661/who-coronavirus-pandemic-declaration/.

38. COVID-19 is a disease that spreads exponentially and has demonstrated its ability to transmit easily among the population, often without detection, with the ability to wreak havoc on healthcare resources throughout the world. Cognizant of the highly contagious nature of the disease, on March 12, 2020 Wisconsin Governor Tony Evers declared a public health emergency to direct all resources needed to respond to and contain COVID-19 in Wisconsin. The following day, President Donald J. Trump declared a national emergency concerning the pandemic. The prediction of WHO's Dr. Ghebreyesus seems quite obvious in hindsight. A mere month after WHO's declaration of a pandemic, Johns Hopkins University (Coronavirus Resource Center) (the "JHU Website") reported a total of 1,754,457 COVID-19 cases worldwide and 107,520 deaths. *See* JHU Website, accessed on April 11, 2020 at https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6. In the **nine days** between April 11, 2020 and April 20, 2020, the JHU Website reported an additional 677,635 cases of COVID-19 worldwide and 59,274 deaths. *Cf.* https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6, accessed on April 20, 2020. As of April 11, 2020, the JHU Website reported 514,415 COVID-19 cases in the United States with 18,586 deaths. Nine days later, on April 20, 2020, the same website reported 749,666 cases with 35,012 deaths. *See* https://coronavirus.jhu.edu/us-map, accessed on April 20, 2020.

39. According to the Wisconsin Department of Public Health Services (the "DHS"), there have been 8,236 laboratory-confirmed COVID-19 cases in Wisconsin with 340 deaths as of May 4, 2020. DHS Website, "Outbreaks in Wisconsin," accessed on May 4, 2020 at https://www.dhs.wisconsin.gov/outbreaks/index.htm. Just as with the rest of the world, Wisconsin experienced exponential growth of COVID-19; as of February 6, 2020, Wisconsin had no reported cases, but as these graphs from the DHS website demonstrate new cases and deaths climbed exponentially on a daily basis starting around March 15, 2020:





The data being analyzed by scientists and medical professionals are largely incomplete and likely understate the number of people who are and have been infected with COVID-19, because a large number of individuals who have the disease are believed to be asymptomatic or presymptomatic. The Centre for Evidence-Based Medicine at Oxford University in England studied the proportion of COVID-19 carriers who were either entirely asymptomatic or presenting mild symptoms and concluded that between 5 and 80 percent of people testing positive for the disease may be asymptomatic. *See* Carl Heneghan, Jon Brassey, and Tom Jefferson, COVID-19: What Proportion are Asymptomatic, Centre for Evidence Based Medicine, accessed on April 11, 2020 at https://www.cebm.net/covid-19/covid-19-what-proportion-are-asymptomatic/. For example, 18 percent of those who tested positive for COVID-19 on the Diamond Princess Cruise showed no symptoms, as did 57 percent of the residents at the King County, Washington long-term care facility where the disease first took hold in the United States. Whether the number of asymptomatic individuals is on the low range (five percent) or the high range (80 percent), it is quite clear that many people are carrying COVID-19 without knowing it. In addition, studies demonstrate that presymptomatic individuals – those who have not yet manifested any symptoms, but who are infected with the virus – pose a significant risk of transmitting the virus to others. Wei WE, Li Z, Chiew CJ, Yong SE, Toh MP, Lee VJ. Presymptomatic Transmission of SARS-CoV-2 — Singapore, January 23–March 16, 2020; MMWR Morb Mortal Wkly Rep 2020;69:411–415; He, X., Lau, E.H.Y., Wu, P. *et al.* Temporal dynamics in viral shedding and transmissibility of COVID-19. *Nat Med* (2020). The result is that hundreds of thousands of people around the world, including many who live in Wisconsin, have the virus, but do not know it and therefore are presently ensuring the disease's ongoing spread, despite a growing effort by governments around the world to "flatten the curve."

40. The wildly disparate data on who presents with symptoms illustrates an even larger point about COVID-19, namely the inaccuracy of testing to date with false positives and negatives as well as the inability to test populations on a larger scale to gain knowledge about the contagion and how best to isolate it. *See* Sheila Kaplan and Katie Thomas, "Despite Promises, Testing Delays Leave Americans 'Flying Blind,'" *New York Times*, April 6, 2020, last accessed on April 11, 2020 at https://www.nytimes.com/2020/04/06/health/coronavirus-testing-us.html.

41. While science is still catching up to the virus, we also know that COVID-19 presents a life-threatening challenge to certain highly vulnerable segments of the population. Those over the age of 65; with lung conditions (including chronic asthma); who are immune-compromised (such as cancer patients, those with HIV/AIDS, and those on immunosuppressant medication for diseases such as rheumatoid arthritis); diabetic or pre-diabetic patients; those suffering from chronic kidney or liver disease; individuals living in long-term nursing facilities; and those with a body mass index of over 40 are all particularly vulnerable to this virus based on the medical community's experiences on the frontlines of the fight. In Wisconsin, DHS has been recommending for more than a month that individuals in these groups, in particular, stay home to avoid exposing themselves to COVID-19. *See* DHS Website, "COVID-19: Are You at Higher Risk of Serious Illness," last accessed on April 11, 2020 at https://www.dhs.wisconsin.gov/covid-19/risks.htm.

42. COVID-19 has had and will continue to have a disproportionate impact on urban centers and particularly on African Americans and the poor (regardless of race). *See e.g.*, Rashawn Ray, "Why are Blacks Dying at Higher Rates from COVID-19?", April 9, 2020, *Brookings Institution*, accessed on April 17, 2020 at https://www.brookings.edu/blog/fixgov/2020/04/09/why-are-blacks-dying-at-higher-rates-from-

covid-19/; Robert Samuels, "Covid-19 is Ravaging Black Communities: A Milwaukee Neighborhood is Figuring Out How to Fight Back," April 6, 2020, *Washington Post*, accessed on April 17, 2020 at https://www.washingtonpost.com/politics/covid-19-is-ravaging-black-communities-a-milwaukee-neighborhood-is-figuring-out-how-to-fight-back/2020/04/06/1ae56730-7714-11ea-ab25-4042e0259c6d_story.html; Ben Poston et al., "L.A. Releases First Racial Breakdown of Coronavirus Fatalities; Blacks Have Higher Death Rate," April 7, 2020, *Los Angeles Times*, accessed on April 17, 2020 at https://www.latimes.com/california/story/2020-04-07/l-a-releases-first-racial-breakdown-of-coronavirus-fatalities-african-americans-have-higher-death-rate.

43. Clyde W. Yancy, M.D., M. Sc., a cardiologist and academic from Northwestern University, recently summed up the impact of COVID-19 on African Americans this way:

> In Chicago, more than 50% of COVID-19 cases and nearly 70% of COVID-19 deaths involve black individuals, although blacks make up only 30% of the population. Moreover, these deaths are concentrated mostly in just 5 neighborhoods on the city's South Side. [Citation omitted.] In Louisiana, 70.5% of deaths have occurred among black persons, who represent 32.2% of the state's population. [Citation omitted.]. In Michigan, 33% of COVID-19 cases and 40% of deaths have occurred among black individuals, who represent 14% of the population. [Citation omitted.] If New York City has become the epicenter, this disproportionate burden is **validated again** in underrepresented minorities, especially blacks and now Hispanics, who have accounted for 28% and 34% of deaths, respectively (population representation: 22% and 29%, respectively). [Citation omitted.]
>
> The Johns Hopkins University and American Community Survey indicate that to date, of 131 predominantly black counties in the US, the infection rate is 137.5/100 000 and the death rate is 6.3/100 000. [Citation omitted.] **This infection rate is more than 3-fold higher than that in predominantly white counties**. Moreover, this death rate for predominantly black counties is 6-fold higher than in predominantly white counties. Even though these data are preliminary and further study is warranted, **the pattern is irrefutable: underrepresented minorities are developing COVID-19 infection more frequently and dying disproportionately**.

Clyde W. Yancy, M.D., M.S.c., "COVID-19 and African Americans," JAMS, April 15, 2020, accessed on April 17, 2020 at https://jamanetwork.com/journals/jama/fullarticle/2764789.

44. Wisconsin urban centers, particularly in the highly segregated City of Milwaukee, exemplify this grim reality. Of the 45 people confirmed to have died from complications of COVID-19 in Milwaukee County as of March 30, 2020, 33 were African American. *See* Mary Spicuzza et al., "'A Perfect Storm': African Americans in Milwaukee, Already Facing Health Disparities, Hit Hard by Coronavirus," April 3, 2020, *Milwaukee Journal Sentinel*, accessed on April 17, 2020 at https://www.jsonline.com/story/news/2020/04/03/african-americans-milwaukee-hit-hard-coronavirus/5111950002/.) As of May 3, 2020, the total number of deaths attributable to COVID-19 climbed to 189, and 94 were African American (Milwaukee County COVID-19 Dashboard, accessed on May 3, 20202 at https://county.milwaukee.gov/EN/COVID-19). David R. Williams, public health professor and chairman of the Department of Social and Behavioral Sciences at Harvard University, when asked to speak about Milwaukee's situation with COVID-19 and its impact on the African American community, explained it this way: "Here is a virus attacking individuals, and they're more vulnerable physically and they're also vulnerable socioeconomically . . . We have mountains of evidence that indicates people of color in this country have higher levels of underlying stressors." *Id.* In his view, COVID-19 and the longstanding problems associated with the overall health and socioeconomic disparity in certain communities has created a "perfect storm." *Id.*

45. DHS data reported as of May 3, 2020 demonstrates that Wisconsin's mostly urban counties have been hit hardest by COVID-19. *See* DHS Website, "COVID-19: County Data," accessed on May 3, 2020 at https://www.dhs.wisconsin.gov/covid-19/county.htm. Specifically, Brown County (1,272 cases), Dane County (443 cases), Kenosha County (521 cases), Milwaukee

County (3,147 cases), Racine County (408 cases), and Waukesha County (356 cases) contain approximately 80 percent of the 7,660 COVID-19 cases in the state as of that date. *Id*.

46. With full knowledge of the inability of science to establish who is carrying the disease based solely upon displaying symptoms, how easily it transmits from person to person, and the deadly nature of COVID-19, the Defendants nevertheless intentionally chose to shirk their oaths of office, do nothing to postpone the Spring Election, and disenfranchise a large segment of Wisconsin's population in the process. The Defendants named in this Amended Complaint who were charged with running and administering the Spring Election, sent a segment of Wisconsin's 3,387,130 registered voters to vote in person in a statewide election involving, among other things, the 2020 presidential nomination, a Wisconsin Supreme Court seat, three seats on the Wisconsin Court of Appeals, numerous circuit court races, and a statewide referendum amidst the first pandemic of this scale since the 1918 influenza that killed approximately 50 million people worldwide. This included approximately 26,000 voters in Madison and 19,000 in Milwaukee. This cavalier attitude to public health and safety is remarkable: 18 other states and territories (Alaska, Connecticut, Delaware, Georgia, Hawaii, Indiana, Kentucky, Louisiana, Maryland, Montana, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, West Virginia, Wyoming, and Puerto Rico) deemed it reasonable and necessary to postpone or alter the approach to their spring elections because COVID-19 posed a grave and immediate threat to public health in those states. Not so in Wisconsin, according to the Defendants, particularly the Legislative Defendants who had every opportunity to remedy this, but chose not to.

Wisconsin's Safer at Home Order

47. The first COVID-19 diagnosis in Wisconsin occurred on March 15, 2020. On March 24, 2020, Governor Evers announced that he intended to enter an executive order setting

forth the rules by which citizens of Wisconsin would be allowed to interact with one another during the term of the order. The following day Andrea Palm, the Secretary-Designee of Wisconsin's DHS, entered Emergency Order No. 12 (the "Safer at Home Order") at the direction and with the authority of the Governor, which took effect at 8:00 a.m. on March 25, 2020. The Safer at Home Order authorizes law enforcement to enforce it, the violation of which is punishable up to 30 days imprisonment or up to a $250 fine, or both. A copy of the order is at https://evers.wi.gov/Documents/COVID19/EMO12-SaferAtHome.pdf, last accessed on April 11, 2020. Plaintiffs hereby incorporate by reference into this Complaint the Safer at Home Order.

48. The Safer at Home Order makes a number of findings and orders that are relevant to this litigation. They include:

a. Establishing that "social distancing," the practice of keeping at least six feet apart from others and avoiding direct physical contact, is the only effective means of slowing the rate of COVID-19 infections (Safer at Home Order, p. 2);

b. Concluding that, despite prior emergency orders from Wisconsin and elsewhere banning mass gatherings, the rates of infection continue to drastically increase such that additional measures were needed to slow the rate of COVID-19 infections in Wisconsin (Safer at Home Order, p. 2);

c. Prohibiting all non-essential businesses and operations from remaining open during the crisis and prohibiting all public and private gatherings of any number of people not part of a single household unless specifically permitted by the Order (Safer at Home Order, p. 3);

d. Closing public schools and libraries, public amusement, and salons and spas (Safer at Home Order, p. 4);

e. Imposing an obligation on all citizens of Wisconsin to follow DHS and CDC guidelines regarding COVID-19 care (Safer at Home Order, p. 4);

f. Obligating those "at high risk of severe illness from COVID-19 and people who are sick . . . to stay in their home or residence to the extent possible except as necessary to seek medical care;" (Safer at Home Order, p. 4);

g. Identifying "essential" activities, governmental functions, and businesses and operations (Safer at Home Order, pp. 2, 7-14);

h. Exempting healthcare and public health operations, human service operations, and essential infrastructure from the effects of the order (Safer at Home Order, pp. 6);

i. Establishing the meaning of "essential" travel (Safer at Home Order, pp. 2, 15);

j. Implementing minimum basic operational rules for how "essential" businesses and government functions should operate during the term of the order (Safer at Home Order, pp. 2, 15); and

k. Requiring all persons residing in Wisconsin to follow "social distancing" rules, including maintaining appropriate distancing from each other and washing their hands in a manner provided within the order (Safer at Home Order, pp. 15-16.)

49. While Wisconsin's court system and its personnel were exempt from the order, Governor Evers acknowledged the Wisconsin Supreme Court's authority over a response to COVID-19 and the caseload in all 72 circuit courts of Wisconsin. At this time, the Wisconsin Supreme Court has closed down substantially all jury trials and most other in-person proceedings indefinitely and until further order of the court. This Court and the Eastern District of Wisconsin have imposed similar restrictions on in-person activities such as oral argument and hearings. Other

court systems throughout the nation have imposed similar restrictions consistent with the public health need to practice social distancing.

50. On April 16, 2020, Governor Evers amended the Safer at Home Order. In addition to extending the social distancing obligations until May 26, 2020, the amended order closed public schools in Wisconsin for the 2019-2020 school year, enabled public libraries to provide services via "curbside delivery," conditionally opened golf courses, and otherwise adjusted approaches to certain essential and non-essential businesses and travel. While Wisconsin has seen its COVID-19 doubling rate extend from 3.4 days in March (at the time Governor Evers entered the Safer at Home Order) to 12 days after nearly a month of the order's application, https://www.dhs.wisconsin.gov/covid-19/prepare.htm, recent public protests about the restrictions and Defendants' pursuit of the Spring Election leave open a very real possibility of enhanced infections in this state.

51. Reporting on a so-called "second wave" of COVID-19 suggests that the world will encounter another exponential explosion of cases later this year and into 2021:

> Epidemics of infectious diseases behave in different ways but the 1918 influenza pandemic that killed more than 50 million people is regarded as a key example of a pandemic that occurred in multiple waves, with the latter more severe than the first. It has been replicated – albeit more mildly – in subsequent flu pandemics. Other flu pandemics – including in 1957 and 1968 – all had multiple waves. The 2009 H1N1 influenza A pandemic started in April and was followed, in the US and temperate northern hemisphere, by a second wave in the autumn. How and why multiple-wave outbreaks occur, and how subsequent waves of infection can be prevented, has become a staple of epidemiological modelling studies and pandemic preparation, which have looked at everything from social behaviour and health policy to vaccination and the buildup of community immunity, also known as herd immunity. While second waves and secondary peaks within the period of a pandemic are technically different, the concern is essentially the same: the disease coming back in force.

Peter Beaumont, "Will There be a Second Wave of Coronavirus?", April 20, 2020, *The Guardian*, last accessed on April 20, 2020 at https://www.theguardian.com/world/2020/apr/20/will-there-be-second-wave-of-coronavirus-.

52. Scientific forecasts about the mortality, morbidity, and scope of this second wave of infection have only grown since the Spring Election. On April 21, 2020, Robert Redfield, Director of the CDC, stated that "There's a possibility that the assault of the virus on our nation next winter will actually be even more difficult than the one we just went through," because the COVID-19 virus would be infecting the population at the same time as the seasonal flu, taxing the capacity of the health care system. Lena H. Sun, "CDC director warns that second wave of coronavirus is likely to be even more devastating," accessed on May 4, 2020 at https://www.washingtonpost.com/health/2020/04/21/coronavirus-secondwave-cdcdirector/

53. Likewise, the Center For Infectious Disease Research And Policy at the University of Minnesota released a report on April 30, 2020 that reviewed available data on the COVID-19 pandemic and historical data on other deadly pandemics, concluding that "[w]hichever scenario the pandemic follows (assuming at least some level of ongoing mitigation measures), **we must be prepared for at least another 18 to 24 months of significant COVID-19 activity**, with hot spots popping up periodically in diverse geographic areas." COVID-19: The CIDRAP Viewpoint at 6, University of Minnesota Center For Infectious Disease Research and Policy (April 30, 2020) (emphasis added).

54. With no vaccine that can prevent or reduce COVID-19 available yet, insufficient time for the community's development of "herd immunity," and evidence demonstrating that countries which have loosened initial stringent restrictions have experiences sharp increases in infection rates shortly after easing up, the likelihood of Wisconsin having to continue to deal with

the effects of COVID-19 into 2021 remains high. This fact alone suggests that Wisconsin should not repeat its Spring Election performance and establish (now—rather than at the last minute) reasonable, disability accessible, and constitutionally sufficient procedures to allow all residents duly qualified to vote, to do so by mail, or otherwise in a way that does not unduly burden their lives and health.

The Pre-Election Litigation and the Governor's Order to Postpone

55. On March 18, 2020, the Democratic National Committee and Democratic Party of Wisconsin filed an action seeking to modify Wisconsin's procedures for the Spring Election, captioned *Democratic National Committee, et al. v. Bostelmann, et al.*, Case No. 3:200cv-00249-wmc (W.D. Wis.) (the "DNC Litigation"). On March 26, 2020, Reverend Greg Lewis of Souls to the Polls and a host of others sought similar relief in a lawsuit captioned *Lewis, et al. v. Knudson, et al.*, Case No. 3:20-cv-00284-wmc (W.D. Wis.); the plaintiffs in that case specifically sought to postpone the Spring Election. That same day, Sylvia Gear and others filed a similar lawsuit captioned *Gear, et al. v. Knudson*, Case No. 3:20-cv-00278 (W.D. Wis.). These cases (collectively the "Pre-Election Litigation") sought, among other things, to postpone the Spring Election based on concerns with in-person voting during the COVID-19 crisis, and to adjust absentee balloting procedures so Wisconsin voters could use mail-in procedures to exercise their right to vote without fear of contracting a potentially lethal disease.

56. On March 20, 2020, the district court presiding over the DNC Litigation extended the deadline to register to vote electronically from March 18, 2020 to March 30, 2020. It concluded that the burden imposed on the State to extend the deadline to allow would-be voters to register to vote electronically was outweighed by the value of allowing such voters additional time to register electronically in the face of evidence suggesting that in-person registration was restricted because

of public health concerns about COVID-19 transmission. In so deciding, the district court heard evidence showing that 11 to 12 percent of voters in previous elections had registered at their polling places on the day of the election.

57. As the COVID-19 crisis continued to escalate, on March 27, 2020 Governor Evers urged the Wisconsin Legislature to enact legislation allowing absentee ballots to be sent to every registered voter. While he had the authority to order the Wisconsin Legislature into session, the Governor encouraged the Legislative Defendants to serve the greater good, stating: "This is not a Republican issue or a Democratic issue—this is an issue of democracy. I don't care who gets the credit, I just want to make sure that everyone has the chance to vote this April. We don't have time for politics—we have to get this done, folks."

58. Defendants Fitzgerald and Vos never took the Governor up on his request and refused to call the Assembly and Senate into session to consider an alternative approach to the Spring Election. Instead, the next day, on March 28, 2020 they admonished Dane County Clerk Scott McDonnell and Milwaukee County Clerk George Christenson for advising voters who wanted absentee ballots, but were unable to upload an image of a photo ID to obtain one (a requirement on the website where such requests were made), to deem themselves "indefinitely confined," which classification would exempt them from the image-uploading requirement. The clerks had been advising people that the Safer at Home Order meant everyone is indefinitely confined. The Republican Party of Wisconsin filed an original action against McDonnell with the Supreme Court of Wisconsin, which accepted jurisdiction and enjoined McDonnell from advising voters that they could deem themselves "indefinitely confined" solely due to the Safer at Home Order.

59. On April 2, 2020, the district court presiding over the Pre-Election Litigation rendered a decision on the motions and relief sought by the plaintiffs in those three (now consolidated) cases. Before rendering that decision, this Court discussed the consequences of the Wisconsin Legislature's refusal to postpone the Spring Election:

> [T]he three most likely consequences of proceeding with the election on this basis are (1) a dramatic shortfall in the number of voters on election day as compared to recent primaries, even after accounting for the impressive increase in absentee voters, (2) a dramatic increase in the risk of cross-contamination of the coronavirus among in-person voters, poll workers and, ultimately, the general population in the State, or (3) a failure to achieve sufficient in-person voting to have a meaningful election *and* an increase in the spread of COVID-19. Nevertheless, the Wisconsin State Legislature and Governor apparently are hoping for a fourth possibility: that the efforts of the WEC Administrator, her staff, the municipalities and poll workers, as well as voters willing to ignore the obvious risk to themselves and others of proceeding with in-person voting, will thread the needle to produce a reasonable voter turnout and no increase in the dissemination of COVID-19.

(4/2/20 Decision and Order, pp. 3.)

60. The April 2, 2020 decision of the district court gave plaintiffs in the Pre-Election Litigation partial relief. Among other things, this Court (a) enjoined the enforcement of the requirement under Wis. Stat. § 6.87(6) that absentee ballots must be received by 8:00 p.m. on election day to be counted and extended the deadline for receipt of absentee ballots to 4:00 p.m. on April 13, 2020; (b) enjoined the enforcement of the requirement of Wis. Stat. §6.86(1)(b) that absentee ballot requests must be received by April 2, 2020, and extended the deadline for receipt of absentee ballot requests by mail, fax or email (and if deemed administratively feasible, in the sole discretion of the WEC Administrator, online) to 5:00 p.m. on April 3, 2020; and (c) enjoined the enforcement of Wis. Stat. § 6.87(2) as to absentee voters who have provided a written affirmation or other statement that they were unable to obtain a witness certification despite reasonable efforts to do so, provided that the ballots are otherwise valid.

61. In its April 2, 2020 decision, the district court did not decide whether the actual voter turnout, ability to vote on election day, or overall conduct of the election and counting votes timely has undermined citizens' right to vote. (4/2/20 Decision and Order, pp. 5 n.3.) Now, with the benefit of the facts of the Spring Election in hand, this action seeks to remedy these very issues by holding the Defendants responsible for failing to alter the date and procedures for the election, and in so doing directly depriving certain Plaintiffs of their right to vote. With the Assembly and Senate entirely controlled by Defendants Vos and Fitzgerald, the Legislative Defendants deprived thousands of Wisconsin citizens of their fundamental constitutional right to vote and their rights under the Americans with Disabilities Act that requires the Defendants to provide adequate accommodations for individuals with disabilities to be able to vote.

62. On April 3, 2020, the day after this Court resolved the motions in the Pre-Election Litigation cases, Governor Evers exercised his authority to compel the Wisconsin Legislature into session to take up the issue of postponing the Wisconsin Primary. In calling the legislature into special session, the Governor urged the legislature to enact legislation allowing an all-mail election, to send a ballot to every registered voter who has not already requested one by May 19, 2020, and to extend the time for those ballots to be received to May 26, 2020.

63. By this point, the Republican National Committee (which this Court had allowed to intervene in the Pre-Election Litigation cases) **and** the Wisconsin Legislature (which later obtained the right to intervene from the Seventh Circuit) appealed Judge Conley's April 2, 2020 decision to the United States Court of Appeals for the Seventh Circuit. They sought to stay the decision pending a full appeal. In a short 4-page ruling, the Seventh Circuit denied the requested stay as to this Court's order (a) extending the deadline for the receipt of absentee ballots to 4:00 p.m. (Central Daylight Time) on April 13, 2020; and (b) extending the deadline for the receipt of

absentee ballot requests to 5:00 p.m. on April 3, 2020. Notwithstanding those results, the Court of Appeals granted the stay with respect to this Court's decision altering the need for witness certification on absentee ballots on the basis that the district court did not give sufficient consideration to the appellants' concerns with the risk of voter fraud.

64. In a joint statement following the Governor's April 3, 2020 executive order calling the Wisconsin Legislature into special session, Defendants Vos and Fitzgerald disingenuously blamed Governor Evers for causing confusing at such a late date:

> In a crisis, people look for certainty. In elections during uncertain times, it's important that no one questions the process. That's why it's so disappointing that Gov. Evers has flip-flopped on the very question that we have been discussing over the past month. If the governor had legitimate concerns, we could have come to a bipartisan solution weeks ago. This discussion would have happened long before today. The only bipartisan discussion we've had was to ensure the election would continue safely and to maximize the opportunity to vote absentee.

There is nothing rational about this assertion. Less than three weeks before this statement, there had only been a single, isolated COVID-19 case diagnosed in Wisconsin. As Governor Evers pointed out in response to Defendants' political rhetoric, the pandemic was worsening with each passing day and like any responsible leader he acted on the facts as they evolved, not as they once were. Of course, neither Vos nor Fitzgerald ever intended to "ensure the election would continue safely and to maximize the opportunity to vote absentee."

65. The Legislative Defendants in fact chose to do the exact opposite. Nothing proves this more than the approach the Assembly and Senate took to the first special legislative session held on April 4, 2020 at 4:00 p.m. Each chamber spent less than 20 seconds in their session to "gavel in and gavel out" without considering Governor Evers' request to take action about the Spring Election. Instead, they simply adjourned and agreed to reconvene at 10:00 a.m. on April 6, 2020 where, as it turned out, they again spent a sum total of 20 seconds each in the sham exercise

of pretending to consider the Governor's request to consider the impact of COVID-19 on the election before adjourning. This legislative **inaction** forms the heart of this case, because the failure of the State and the Legislative Defendants to postpone the Spring Election or otherwise establish balloting procedures to ensure that all qualified voters could vote directly caused the deprivation of the constitutional and statutory rights of the Plaintiffs and the class members they seek to represent, and threatens to cause those injuries to recur in the Future 2020 Elections.

66. On Sunday, April 5, 2020, numerous Wisconsin mayors sent a letter to Secretary-Designee Palm at DHS asking her to use the power provided to her office under Wis. Stat. § 252.03(2) to "close schools and forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics."

67. The following morning, Governor Evers entered Executive Order No. 74 delaying the Spring Election to June 9, 2020 or another agreed-upon date established by the Assembly and Senate. In the order, he again convened the legislature into special session and further authorized all persons duly serving in office and up for election to continue to serve until the election was held and certified by the Commission.

68. True to form and personality, Defendant Vos promptly tweeted in response to the Governor's executive order: "We don't live in a banana republic where the executive can just cancel elections because he doesn't want to hold them." The intent of the Legislative Defendants had never been to hold a full and fair election. At every opportunity where they could have both accounted for the safety of the electorate and preserved the fundamental right to vote, they chose to adhere to a process they knew would restrict the franchise in violation of the Plaintiffs' constitutional rights.

69. Within hours of the Governor's order on April 6, 2020, the Wisconsin Legislature at Defendant Vos and Fitzgerald's direction filed an original action in the Wisconsin Supreme Court seeking to overturn the order suspending the Spring Election to June 9, 2020. In a matter of hours, the Court enjoined Executive Order No. 74, concluding that none of the provisions cited in the order for suspending the election supported Governor Evers' decision to do so.

70. Several hours later, the United State Supreme Court issued a *per curiam* decision that reversed Judge Conley's April 2, 2020 decision extending the deadline for the receipt of both absentee ballot requests and completed absentee ballots. In so doing, the Court stayed enforcement of Judge Conley's order and held that a Wisconsin voter's absentee ballot must either be (a) post-marked by election day, April 7, 2020 and received by the Commission no later than April 13, 2020; or (b) hand-delivered to a certified polling location by 8:00 p.m. (Central Daylight Time) on April 7, 2020, the day of the Special Election.

71. What constitutes a "post-mark" is unclear. On April 10, 2020, the Commission vigorously debated how it would define a ballot envelope as post-marked when it was asked to certify the election results after they were announced on April 13, 2020.

72. The Legislative Defendants' protests about election fraud concerns and voter confusion are a sham. Indeed, at one point Defendants Vos and Fitzgerald sought to move the election for their preferred Wisconsin Supreme Court candidate (Dan Kelly) when they learned he would face election on the same day as Wisconsin's presidential primary. Knowing that national contests involving presidential elections typically result in higher voter turnout and believing that higher voter turnout favored Democrats and nonpartisan candidates supported by Democrats (like Kelly's challenger), political expedience was always on Vos and Fitzgerald's mind. Their latest turn is just more of the same – but now, at the cost of Plaintiffs' constitutional rights.

The Spring Election

73. On April 7, 2020, Wisconsin proceeded to conduct its in-person election despite having no substantial justification or rational basis for doing so in the midst of the worst public health emergency in America since the 1918 influenza pandemic. Plaintiffs originally brought this action before the 4 p.m. April 13, 2020 deadline for the announcement of the Spring Election results. Plaintiffs do not pursue in this Amended Complaint what they did originally: namely injunctive relief that would allow them to cast ballots in the Spring Election, because of the practical difficulty of obtaining such relief when it is clear that their votes could not possibly change the result of any election in which they would have voted. Instead, they have amended their complaint in order to seek relief intended to help prevent the fiasco that occurred when the Defendants abridged Plaintiffs' right to vote in the Spring Election.

74. Nearly every community in Wisconsin faced volunteer shortages at the polls, during the Spring Election, because many who typically would volunteer as poll-workers chose or were required to forego that work in order to comply with the Safer at Home Order and in order to protect about their health (as well as that of their family and the public at large) by not exposing themselves to carriers of COVID-19 for fear of becoming infected to their own detriment and the detriment of others. In Milwaukee, a community of approximately 592,028 people, **180** polling places were reduced to **five**. Lines of more than two hours surrounded some polling locations while each person standing in line participated in a mass gathering which, but for the election, would have subjected them to arrest and fine under the Safer at Home Order, and exposed themselves to each other and ultimately the poll-workers and National Guard members who ran the polls, despite their best efforts to maintain distance.

75. Pursuant to Article IV, Section 28 of the Wisconsin Constitution, Defendants Vos and Fitzgerald (indeed, each member of the Assembly and Senate) each took an oath to "support the Constitution of the United States and the Constitution of the State of Wisconsin" where they agreed to "faithfully and impartially discharge the duties of said office to the best of [their] ability." This action seeks to redress the Defendants' ongoing and flagrant acts in relation to the Spring Election which demonstrate the violations of the oath each member of the Assembly and Senate took to support – not infringe – the constitutional rights of Wisconsin residents generally and the voters specifically.

76. Having achieved his legislative aim of pushing through the Spring Election despite the concerns for public safety, Defendant Vos proclaimed on election day that there was nothing to worry about and that voters should simply come on out and vote. The morning of April 7, 2020, he tweeted: "You are **incredibly safe** to go out." (Emphasis added.) In what should be considered one of the most perverse and tone-deaf exercises of judgment in history, this is how Defendant Vos showed up, purportedly to work at the "incredibly safe" polls, on April 7, 2020:

Defendant Vos later described his polling place, in sparsely populated Burlington, as less risky than shopping for groceries. Needless to say, few if any of the voters that Vos forced to the polls had the kind of personal protective equipment ("PPE") he obviously believed to be necessary to

protect himself from the possibility of infection from being in vicinity of the very voters he ordered to the poll that day.

77. Despite an established shortage of PPE for medical personnel in our nations' hospitals, Defendant Vos insisted that Wisconsin voters throw caution to the wind and show up to exercise their fundamental right to vote. Long ago, the United States Supreme Court concluded that state legislatures could not take action (or inaction) that thwarted or otherwise established impediments to voting. By forcing electors like Plaintiffs and the class of voters they seek to represent to choose between their personal safety and exercising their Constitutional right to fully and fairly vote, the Legislative Defendants placed a massive impediment in the way of Wisconsin voters' ability to exercise the franchise on April 7, 2020.

Class Allegations

78. Plaintiffs propose two Classes distinguished by the remedial and prospective relief they seek in this Amended Complaint.

79. Class I (the "ADA Class") consists of all Wisconsin voters registered to vote as of April 7, 2020 who, due to their disabilities, were protected as of that date by the Americans with Disabilities Act and (a) did not vote in person on April 7, 2020; (b) sought to vote absentee but did not receive a ballot despite requesting one from the State prior to April 7, 2020; or (c) completed and delivered via U.S. Mail or in person an absentee ballot that is now invalid based on the April 3, 2020 decision of the United States Court of Appeals for the Seventh Circuit or the April 6, 2020 decision of the United States Supreme Court in the matters referred to in this Complaint as the Pre-Election Litigation.

80. Class II (the "Future 2020 Election Class") consists of all Wisconsin residents eligible to vote in either of the Future 2020 Elections. While all members of the Future 2020

Election Class are protected from violations of their rights under the First and Fourteenth Amendments, a subset of the class is also protected by the ADA.

81. This case may be appropriately maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure because all of the prerequisites set forth under Rule 23(a) and 23(b) are met.

Rule 23(a) Factors

82. Numerosity. Members of Class I and Class II are so numerous that joinder of all such members is impracticable, if not impossible. Although the exact size of Class I is unknown to Plaintiffs at this juncture, the Commission reported as of April 1, 2020 that Wisconsin had 3,387,130 registered voters. While obviously many of these individuals voted by absentee ballot or in-person (despite the risk) in the Spring Election, it is believed and alleged that the number of persons that were denied the right to vote in that election based on the allegations in this Amended Complaint, and who are classified as "disabled" within the meaning of the ADA, is in the thousands. Class II is equally numerous within the meaning of Fed. R. Civ. P. 23(a)(1) as a large portion of Wisconsin's 5,822,000 residents are believed eligible to vote (or register and then vote) before either of the Future 2020 Elections.

83. Existence of Common Questions of Fact and Law. There are questions of law and fact common to Class I and II with respect to the liability issues, remedies, and anticipated affirmative defenses. Specifically, such common issues include, but are not limited to:

a. Class I and Class II members are all residents of the State;

b. Class I members were registered to vote in-person or by absentee ballot on April 7, 2020;

c. All members of Class I were subject to COVID-19 exposure in Wisconsin and are presumed as of April 7, 2020 to have lacked immunity to the disease;

d. The Safer at Home Order applied to all residents of Wisconsin seeking to vote in the Spring Election;

e. The requirements for in-person and absentee voting are identical for each member of Class I and Class II;

f. Those from Class I who attempted to vote via absentee ballot and took action consistent with this Court's April 2, 2020 decision were equally affected by the Seventh Circuit's April 3, 2020 modifications to that decision and the United States Supreme Court's April 6, 2020 decision reversing it;

g. Members of the ADA Class are defined by the Americans with Disabilities Act and the scope of their rights under that statute are defined and limited by the provisions of that federal legislation;

h. In the likely event that COVID-19 continues to pose a significant threat to public health by the time of the Future 2020 Elections, all members of Class II will face the same Hobson's choice later this year as those in Class I who were obligated to choose between their health or their constitutional right to vote in the Spring Election;

i. Whether Defendants' conduct in relation to the Spring Election warrants damages for members of Class I;

j. The damages caused by Defendants in relation to their conduct over the Spring Election stem from the same uniform misconduct and deprivation of Plaintiffs' rights; and

k. Whether Defendants' conduct in relation to the Spring Election warrants preliminary and/or permanent injunctive relief for each member of Class II which seeks a uniform and consistent way to vote in the Future 2020 Elections, and/or a way to vote that satisfies the Defendants' affirmative obligation to provide options for in-person voting that negate the restrictions imposed by current Wisconsin law that impermissibly burden their fundamental right to vote and/or constitute illegal discriminate against persons with disabilities.

84. Typicality. Plaintiffs are members of both Class I and Class II alleged above. Their claims have a common origin and share common bases. Plaintiffs' claims originate from the same illegal and constitutionally invalid practices of the Defendants, and the Defendants have acted in the same way toward the Plaintiffs and each member of the Classes. If brought and prosecuted individually, the claims of Class I and Class II members would necessarily require proof of the same material and substantive facts, rely upon the same remedial theories, and seek the same relief.

85. Adequacy. Each Plaintiff named in this Complaint will fairly and adequately protect the interests of the Class because they and their counsel possess the requisite resources and experience to prosecute this case as a class action. Plaintiffs' interests do not conflict with the interests of the members of the Classes they seek to represent.

Rule 23(b) Factors

86. Fed. R. Civ. P. 23(b)(1). The prosecution of separate actions by Class I and Class II members would create a risk of inconsistent or varying adjudications with respect to individuals that would establish incompatible standards of conduct for parties opposing the class under Fed. R. Civ. P. 23(b)(1)(A). In addition, the prosecution of separate actions would create a risk of adjudications with respect to individual members of each Class that would, as a practical matter,

be dispositive of the interests of the other members not parties to the adjudications, and substantially impair, or impede their ability to protect their interests under Fed. R. Civ. P. 23(b)(1)(B).

87. Fed. R. Civ. P. 23(b)(2). They seek prospective injunctive relief on behalf of Class II in relation to the Future 2020 Elections. Defendants have acted, refused to act, or likely will continue to act on grounds that apply generally to both Class I and Class II by refusing to respect the constitutional rights of the Class, or otherwise provide reasonable accommodations pursuant to the Americans with Disabilities Act, so that final injunctive relief or corresponding declaratory relief is appropriate respecting each Class as a whole.

88. Fed. R. Civ. P. 23(b)(3). As to Class I and its pursuit of damages, there are common questions of law or fact common to Class I members that predominate over any questions affecting only individual members of the Class. A class action is also superior to other available methods for fairly and efficiently adjudicating this controversy as provided for in Fed. R. Civ. P. 23(b)(3)(A) to (D).

89. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. The names and addresses of the members of Class I and Class II are available from the Commission and/or the State of Wisconsin, which maintains a list of all registered voters, those who voted in the April 7, 2020 election in-person or by absentee ballot, those who sought the right to vote absentee, and those eligible to register to vote and vote in the Future 2020 Elections.

CLAIMS FOR RELIEF

First Claim for Relief
Violations of Amendments I and XIV of The U.S. Constitution
42 U.S.C. § 1983
Total Deprivation of Voting Rights

90. Plaintiffs reallege Paragraphs 1 through 89 as if set forth in full.

91. The First Amendment guarantees the rights of citizens to participate in the political process, including the right to vote.

92. The Fourteenth Amendment provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

93. The Fourteenth Amendment's Due Process Clause recognizes that an individual's right to liberty encompasses the right to vote, which may not be deprived without due process of law.

94. The United States Supreme Court ruled in *Reynolds v. Sims* that because "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."

95. States are not obligated by the U.S. Constitution to allow absentee voting. However, once they decide to make absentee voting available, under ordinary circumstances, a state that denies absentee ballots to some voters while allowing other voters in similar or identical circumstances to use absentee ballots, without affording a comparable alternative means to vote, is engaging in arbitrary, invidious discrimination that violates the Equal Protection Clause. When the State's arbitrary discrimination rests on its stubborn refusal to acknowledge how the most serious public health crisis in the United States for more than a century would certainly destroy many voters' ability to participate in the Spring Election, the State's violation of its citizens' most

fundamental right is outrageous. This principle applies with equal force to the effect COVID-19 is anticipated to have on the Future 2020 Elections.

96. The Wisconsin Supreme Court's ruling of April 6, 2020 established that Governor Evers did not have the right to issue an executive order postponing the election, meaning that right and authority in Wisconsin existed solely and exclusively with the Assembly and the Senate, which chose not to take action despite the pandemic. Such inaction is the equivalent of action under the law. Given their exclusive authority under Wisconsin law as interpreted by the Wisconsin Supreme Court over controlling the mode, method, and timing of Wisconsin Elections, the Legislative Defendants should be ordered to establish procedures for the Future 2020 Elections that are reasonable, fair, and constitutionally sufficient given the pandemic.

97. The United States Supreme Court's *per curiam* decision on April 6, 2020 stayed the April 2, 2020 order of the United States District Court in the Pre-Election Litigation, and thus rendered unenforceable the District Court's rulings allowing voters using absentee ballots one additional week to have their ballots post-marked and received by municipal clerks. The Supreme Court ruled that under its precedents, this Court should have refused to alter state election rules on the eve of an election. Plaintiffs bring this Amended Complaint now—well in advance of the Future 2020 Elections—to ensure that any alterations in Wisconsin's ordinary election procedures that are required during this most extraordinary public health crisis to safeguard the fundamental right to vote, free of discrimination based on race or disability, are put in place well before either of the Future 2020 Elections.

98. When the Wisconsin Legislature, under the leadership of Defendant Fitzgerald in the Senate and of Defendant Vos in the Assembly, convened on Saturday, April 4, 2020 under

Governor Evers's call for a special session seeking to postpone the Spring Election, Defendants Fitzgerald and Vos each gaveled their sessions dead within 17 seconds in total.

99. The April 4, 2020 special session was like a fixed fight; the outcome had obviously been decided in advance. Plaintiffs, and all members of the Classes they seek to represent, then faced a Hobson's choice: risk their health and lives – along with the health and lives of their families and neighbors – by voting in person during a pandemic, or preserve their health, stay home, and forego exercising a citizen's most fundamental right. Plaintiffs were in this impossible position only because the Defendants gave literally no weight to the agonizing choice that Plaintiffs faced. With good reason, Plaintiffs believe the Defendants will take a similarly cavalier attitude about voting in the Future 2020 Elections such that the Court should establish reasonable and constitutionally sufficient rules for those elections, including, but not limited to, the right to vote by mail for all Wisconsin residents. For example, Republican Assembly Majority Leader Jim Steineke has proclaimed that changes in Wisconsin's voting system because of the pandemic are not necessary, because "[w]e saw how flexible our system is where a vast majority of people who don't normally vote absentee found a way to vote absentee[.]" Riley Vetterkind, "All mail-in voting happens in other states, but Wisconsin Republicans aren't interested amid COVID-19 pandemic," accessed on May 4, 2020 at https://madison.com/wsj/news/local/govt-and-politics/all-mail-in-voting-happens-in-other-states-but-wisconsin-republicans-arent-interested-amid-covid/article_e3fbd76b-8ad8-50b4-a99c-4c4a51a05529.html.

100. The Spring Election took place as scheduled. Fears that eligible citizens would not vote are no longer mere speculation. Instead, those fears became real deprivations of constitutional rights thousands and thousands of times all over Wisconsin, as people chose to stay home and

sacrifice their vote rather than run the risk of in-person voting during America's worst infectious disease outbreak in more than a century.

101. The actions described above placed disproportionate burdens on African American and Latino voters in particular during the Spring Election, resulting in unequal access to the polls and less opportunity than other voters to participate in the political process, weigh in on referenda, and elect their representatives.

102. The outright denial of the right to vote is unquestionably the most egregious possible infringement of that right. With the likelihood of this state still confronting the public health effects of COVID-19 in August and November, Defendants should not be allowed to act as they did in the Spring Election by imposing an in-person vote in the Future 2020 Elections. Rather, Defendants should be obligated to abide by court-ordered changes in election procedures that will allow each such election to proceed in a reasonable manner that preserves the constitutional rights of Plaintiffs and the Wisconsin voters they seek to represent.

103. Plaintiffs, who chose to stay home and preserve their lives and health, may well have made the wise choice. Lines to vote at many polling places in the Spring Election stretched for blocks, and in Milwaukee and Green Bay some voters waited more than two hours before they cast their ballots. Many voters did not wear masks or gloves to minimize the chances that they would transmit the virus if they were unaware they were contagious. At some polling places, there were not enough election workers to sanitize the ballot-marking tables regularly, let alone between each voter's use. This is no criticism of the limited number of poll-workers, who did the best they could in a near-impossible situation. Instead, the fault lies entirely with the Defendants, who acted without regard for the health and safety of the poll-workers or the citizens who voted, or for the voting rights of the citizens who chose instead to preserve their health and safety in lieu of voting.

104. When Defendants Fitzgerald and Vos ended the special session on April 4, 2020, it was well known that approximately 18 other states had already postponed their primaries because the responsible decision-makers in those states were exactly that – responsible, recognizing that there was no need to cling to scheduled election dates in what were likely the early stages of America's worst pandemic since the influenza pandemic of 1918.

105. Likewise, it is a matter of historical record that responsible, prudent governments have postponed elections that were scheduled to take place when emergencies struck. Residents of New York City were just starting to vote in the city's mayoral primary when the Twin Towers of the World Trade Center were attacked by terrorists on September 11, 2001. New York City stopped the election in progress and held the primary two weeks later.

106. Hurricane Katrina destroyed much of New Orleans in late August 2005, and more than five months later, the city postponed its first round of mayoral voting, originally scheduled for February 4, 2006, so it could continue to deal with the devastation left in Katrina's wake. New Orleans ultimately held the mayoral primary on April 22, 2006.

107. The United States Supreme Court has established a test, called "*Anderson/Burdick* Balancing," to guide lower federal courts' decision making in challenges to state election law, regardless of the underlying legal theory used to support the challenge. This Court must weigh the character and magnitude of the injury to the plaintiffs' First and Fourteenth Amendment rights against the precise interests put forward by the state as justifications for restricting the right to vote, in light of the extent to which those state interests make it necessary to impair the plaintiffs' right to vote.

108. In this case, this Court must strike the balance in favor of Plaintiffs.

109. Plaintiffs' right to vote in the Spring Election was not merely impaired or burdened. It was utterly destroyed. Defendants' refusal to postpone the election completely deprived Plaintiffs of their most fundamental right. With sufficient planning, there is no basis for Defendants to argue that any burdens on the State outweigh Plaintiffs' constitutional rights to vote safely in the Future 2020 Elections.

110. The impact of COVID-19 on the Spring Election captured mass and social media attention in Wisconsin, across America, and around the world. Many of the stories dealt with the fundamental injustice done by Wisconsin to its voters who feared for their health and lives if they exercised the only option that the State made available to them. An order by this Court mandating that the Future 2020 Elections be held in a manner that preserves Plaintiffs' rights to vote will surely get as much attention as the initial controversy, attracting the attention of the Wisconsin citizens who want to vote.

111. The failure of the Legislative Defendants to postpone the Spring Election violated the Plaintiffs' right to vote under the First and Fourteenth Amendments and should be remedied by an order of this Court awarding Plaintiffs and the Class damages. All members of the Class who the Plaintiffs seek to represent were injured similarly.

112. The Defendants should be compelled by prospective injunctive and declaratory relief to establish procedures for the Future 2020 Elections, including but not limited to making vote by mail available to all Wisconsin eligible voters who wish to use it, that recognize the extraordinary conditions of a deadly pandemic and the actions that must be taken to preserve the health and safety of voters.

113. The Defendants acted under color of law to deprive the Plaintiffs and those they represent of their right to vote that is guaranteed under the U.S. Constitution. Defendants actions

are not objectively reasonable, violated clearly established statutory and constitutional law, and were done in bad faith with knowledge of the illegality of their actions. Accordingly, Plaintiffs are entitled to a declaration of their rights, damages, and attorneys' fees and costs pursuant to 42 U.S.C. § 1983.

Second Claim for Relief
Violation of the Americans with Disabilities Act
42 U.S.C. § 12131 *et seq*.

114. Plaintiffs reallege Paragraphs 1 through 113 as if set forth in full.

115. Voting is one of our nation's most fundamental rights and a hallmark of our democracy. Yet for too long, people with disabilities have been excluded from this core aspect of citizenship. People with intellectual or mental health disabilities have been prevented from voting because of prejudicial assumptions about their capabilities. People who use wheelchairs or other mobility aids, such as walkers, have been unable to enter the polling place to cast their ballot because there was no ramp. People who are blind or have low vision could not cast their vote because the ballot was completely inaccessible to them.

116. Invaluable federal civil rights laws have been enacted to combat such forms of discrimination against those with disabilities and to protect the fundamental right to vote for all Americans. These laws include: The Americans with Disabilities Act (the "ADA"); The Rehabilitation Act of 1973 (the "Rehabilitation Act"); the VRA; the Voting Accessibility for the Elderly and Handicapped Act of 1984 (the "VAEHA"); the National Voter Registration Act of 1993 ("NVRA"); and the Help America Vote Act of 2002 (the "HAVA").

117. This action is brought by Plaintiffs and the Class to enforce Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35.

118. Defendants are responsible for overseeing the State's voting program. In failing to protect Wisconsin residents with disabilities covered by the ADA during the Spring Election at the time of the COVID-19 pandemic, Defendants violated the ADA.

119. At all relevant times hereto, the State and the Commission violated the ADA because singularly or collectively they are a "public entity" pursuant to 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104 , such that they are (A) any State or local government and/or (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government. As such, Defendants State of Wisconsin and the Commission are subject to the requirements of the ADA, specifically 42 U.S.C. §§ 12131-12134.

120. Certain of the Plaintiffs identified in this Amended Complaint were individuals with disabilities, as defined by the ADA and the Rehabilitation Act, on and before April 7, 2020, the date of the Spring Election and remain such today. Disabled individuals have been hit hard by COVID-19 and in certain instances have faced harm disproportionate to that faced by the general population from the pandemic. By insisting on allowing the Spring Election to proceed without consideration of that decision's impact on individuals with disabilities, the State and the Commission violated the ADA and caused Plaintiffs and the ADA class harm. Defendants should further be enjoined from again victimizing those protected by the ADA such that the Court should establish statutorily-acceptable, reasonable accommodations to allow the ADA Class to meaningfully vote in the Future 2020 Elections.

121. In communities large and small, people in Wisconsin cast their ballots in the Spring Election in a variety of facilities that temporarily serve as polling places, such as libraries, schools, and fire stations, or churches, stores, and other private buildings. The ADA requires that public entities ensure that people with disabilities can access and use their voting facilities.

122. In some circumstances, when a public entity is unable to identify or create an accessible polling place for a particular voting precinct or ward, election administrators may instead use an alternative method of voting at the polling place. While absentee balloting can be offered to voters with disabilities, it cannot take the place of in-person voting for those who prefer to vote at the polls or those who, due to disability, must be allowed to participate in-person.

123. Any alternative method of voting must offer voters with disabilities an equally effective opportunity to cast their votes in person.

124. One of the fundamental underpinnings and policy behind the above laws is **ensuring policies and procedures do not discriminate against people with disabilities.**

125. Public entities must ensure that they do not have policies, procedures, or practices in place that interfere with or prohibit persons with certain disabilities from registering to vote or voting based on their disability. For example, an election official cannot refuse to provide an absentee ballot or voter registration form to a person with a disability because the official knows the voter resides in a nursing home.

126. In addition, the laws require public entities to modify their voting policies, practices, and procedures when such modifications are necessary to avoid discrimination on the basis of a voter's disability.

127. One of the fundamental underpinnings and policies behind the above laws is **providing accessible voting systems and effective communication.**

128. Federal elections are required to have a voting system that is accessible at each polling place. The accessible voting system must provide the same opportunity for access and participation, including privacy and independence, that other voters enjoy.

129. Members of the ADA Class would have voted in the Spring Election if they had been afforded reasonable accommodations due to the COVID-19 pandemic. Unless this Court requires Defendants to provide such accommodations to the ADA Class for the Future 2020 Elections, Defendants will again violate the ADA.

130. At all relevant times hereto, upon information and belief, Defendants intentionally, with malice and reckless indifference of the Plaintiffs seeking protection of the ADA, violated the ADA and Rehabilitation Act by refusing to accommodate their disabilities to allow them to vote, despite knowing that the ADA and Rehabilitation Act required such accommodations. Defendants' actions in relation to the Spring Election caused injury to Plaintiffs and violated the ADA and Plaintiffs' constitutional rights. Plaintiffs and the Class are entitled to compensatory damages as afforded by law.

131. At all relevant times hereto, upon information and belief Defendants' discriminatory conduct toward the ADA Class caused Plaintiffs to not be able to vote in the Spring Election. Unless remedied by this Court, such harms will repeat themselves in the Future 2020 Elections such that the Court should enter an injunction requiring Defendants to comply with the ADA in a manner consistent with the concerns that arise out of the COVID-19 pandemic.

132. At all relevant times hereto, upon information and belief, Plaintiffs had to retain legal counsel to bring this action and as such according to the ADA and the Rehabilitation Act the below identified attorneys shall be entitled to fair and reasonable attorneys' fees and costs incurred in bringing this action under the ADA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that this Court order relief as follows:

a. Awarding compensatory, consequential, and all other damages to Plaintiffs and all members of Class I in relation to the injuries stemming from the Spring Election as provided in the Americans with Disabilities Act;

b. Ordering fair, reasonable, and constitutionally sufficient procedures governing the Future 2020 Elections so as to allow Plaintiffs and all members of Class II to safely participate in those elections without concerns over COVID-19;

c. Enjoining the Defendants, their agents and successors in office, and all persons acting in concert with them from failing or refusing promptly to comply with the requirements of the ADA, and their implementing regulations;

d. Imposing all other preliminary, permanent, declaratory, ancillary, and supplemental relief as alleged herein or otherwise pursued in this action;

e. Certifying each and every Class and Sub-Class as defined this this Amended Complaint or hereafter established pursuant to Fed. R. Civ. P. 23;

f. Appointing the undersigned as Class counsel under Fed. R. Civ. P. 24(g);

g. Awarding attorneys' fees and costs to Plaintiffs pursuant to the statutory enactments alleged in this Amended Complaint; and

h. Ordering such other appropriate relief as the interests of justice or this Court may require.

Dated this 4th day of May 2020.

LAFFEY, LEITNER & GOODE LLC
Attorneys for Plaintiffs

By: s/ Joseph S. Goode
Joseph S. Goode
State Bar No. 1020886
Mark M. Leitner
State Bar No. 1009459
John J. Laffey
State Bar No. 1010885
Sarah E. Thomas Pagels
State Bar No. 1062162
Jessica L. Farley
State Bar No. 1065839
325 E. Chicago Street
Suite 200
Milwaukee, WI 53202
(414) 312-7003
(414) 755-7089 (facsimile)
jgoode@llgmke.com
mleitner@llgmke.com
jlaffey@llgmke.com
stpagels@llgmke.com
jfarley@llgmke.com

URBAN & TAYLOR, S.C.
Jay A. Urban
State Bar No. 1018098
Urban Taylor Law Building
4701 N. Port Washington Road
Milwaukee, WI 53212
(414) 906-1700
(414) 704-7207 (facsimile)
jurban@wisconsinjury.com

HALLING & CAYO, S.C.
Stacie H. Rosenzweig
State Bar No. 1062123
320 East Buffalo Street
Suite 700
Milwaukee, WI 53202
(414) 238-0197
(414) 271-3841 (facsimile)
shr@hallingcayo.com

SALAWDEH LAW OFFICE, LLC
Rebecca L. Salawdeh
State Bar No. 1027066
7119 W. North Avenue
Wauwatosa, WI 53213
(414) 455-0117
(414) 918-4517
rebecca@salawdehlaw.com