

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

Lena Taylor and
Tory Lowe and
Justice Wisconsin, Inc. and

-Plaintiff(s)

Case No:

vs.

**Complaint under the 1st, 14th, 15th and 26th
Amendments by 42 U.S.C. 1983, 28 U.S.C. 2201, 28
U.S.C. 2202 and Section 2 of the Voting Rights Act,
52 U.S.C. § 10301 For Voter Disenfranchisement
and
Motion and Motion for Preliminary Injunction,
Permanent Injunction and Declaratory Relief**

The Milwaukee Election Commission and
(in their official capacity only)
Neil Albrecht and
Theresa R. Gabriel and
Stephanie D. Findly and
Carmen C. Cabrera and
Jess Ripp and

The Wisconsin Election Commission and
(in their official capacity only)
Marge Bostelmann and
Julie M. Glancey and
Ann S. Jacobs and
Dean Knudson and
Robert F. Spindell, Jr. and
Mark L. Thomsen

-Defendant(s)

Verified Complaint for Declaratory Relief and Injunctive Relief

Plaintiffs Lena Taylor, Tory Lowe and Justice Wisconsin by their attorneys, Paul A. Strouse of Strouse Law Offices and Thomas Napierala of Napierala Law Offices bring this emergency motion for a temporary restraining order and preliminary injunction on behalf of Lena Taylor, Tory Lowe and Justice Wisconsin Inc., against the above named defendant Commissions and their officials in their official capacities only, to address voter disenfranchisement, particularly of African American voters in the 53206 U.S. Postal Service zip code, for the April 7, 2020 election given the current state of affairs. The State of Wisconsin, along with the rest of the world, is in the midst of a public health crisis as a result of the rapid spread of COVID-19 through its communities causing Milwaukee to be the epicenter of the State of Wisconsin.

“No right is more precious in a free country than having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Reynolds v. Sims*, 377 U.S. 533, 560 (1964). “Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

On March 31, 2020 the *Wisconsin Legislative Reference Bureau* issued a memorandum. It is attached hereto as Exhibit 1. It states in part,

“While the statutes do not mandate specific times or a minimum number of hours where in-person absentee voting must take place, the clear intent is that electors have reasonable opportunities to exercise those rights and that clerks must offer in-person absentee voting”.

The Myth of Low African American Voter Turnout:

“Some city and state elections further debunk the stereotype that Blacks don’t vote. Cities electing their first Black mayors, such as Little Rock’s Frank Scott and Birmingham’s Randall Woodfin, had high voter turnouts, particularly among Blacks. In fact, Brookings’s Andre Perry reported that the high turnout of Black voters, especially Black women, in [Birmingham](#) actually propelled Doug Jones to the Senate. In the governor races in Georgia and Florida, involving candidates

Stacey Abrams and Andrew Gillum, respectively, voter turnout among Blacks was also [high](#). Noting this in Florida is particularly relevant since [an amendment](#) restored voting rights to over 1 million state residents. Nearly one-quarter of Blacks in Florida could not vote before the November 2018 midterm elections. Research notes that [incarceration](#) for Blacks has also been used as a form of voter disenfranchisement.”

Rashawn Ray and Mark Whitlock *Brookings* 9/12/2019 (See Ex. 2)

Parties

1. Senator Lena Taylor is a mayoral candidate for the City of Milwaukee, which is currently scheduled for April 7, 2020. Currently Lena Taylor is the Wisconsin Senator for the 4th District. The 4th District of the Wisconsin Senate is located in Southern Wisconsin and is composed of parts of Milwaukee County.
2. The 4th Wisconsin Senate District encompasses the 53206 United States Mail zip code (“zip code”).
3. That the residents of the 53206-zip code are 94% African American by race.
4. That Senator Lena Taylor is African American by race and a resident of the City of Milwaukee.
5. That Senator Lena Taylor relies and has relied on significant voter turnout from the 53206-zip code.
6. Tory Lowe is a candidate for the City of Milwaukee’s 6th Aldermanic District, currently scheduled for April 7, 2020.
7. That the 6th Aldermanic District of Milwaukee encompasses the 53206-zip code.
8. That Tory Lowe is African American by race and a resident of the City of Milwaukee.

9. That Tory Lowe is prominent civil rights activist who has spent over 10 years dealing with the issues of poverty, police brutality and crime and other issues within the 6th Aldermanic District and the 53206-zip code (“6th District/53206”).
10. That Tory Lowe relies and has relied on significant voter turnout from the 53206-zip code because of his civil rights activism.
11. That Justice Wisconsin is a non-for-profit organized under the laws of the State of Wisconsin with a primary office in Milwaukee and whose primary purpose is to better the lives of residents in the inner city and elsewhere and it has a significant interest as a civil rights organization in a free and unrestricted election.
12. That Justice Wisconsin was founded by Tory Lowe.
13. The Milwaukee Election Commission is the government entity which oversees and administers elections within the City of Milwaukee.
14. Neil Albrecht (in his official capacity) is the Executive Director of the Milwaukee Election Commission.
15. Theresa R. Gabriel (in her official capacity) is the Deputy Director of the Milwaukee Election Commission.
16. Stephanie D. Findly (in her official capacity) is a Commissioner of the Milwaukee Election Commission.
17. Carmen C. Cabrera (in her official capacity) is a Commissioner of the Milwaukee Election Commission.
18. Jess Ripp (in his official capacity) is a Commissioner of the Milwaukee Election Commission.
19. The Wisconsin Election Commission is the government entity which oversees and administers elections within the State of Wisconsin.
20. Marge Bostelmann (in her official capacity) is a Commissioner of the Wisconsin Election Commission.

21. Julie M. Glancey (in her official capacity) is a Secretary of the Wisconsin Election Commission.
22. Ann S. Jacobs (in her official capacity) is a Commissioner of the Wisconsin Election Commission.
23. Dean Knudson (in his official capacity) is the Chair of the Wisconsin Election Commission.
24. Robert F. Spindell, Jr. (in his official capacity) is a Commissioner of the Wisconsin Election Commission.
25. Mark L. Thomsen (in his official capacity) is a Commissioner of the Wisconsin Election Commission.

Background

“WEC staff has advised that the agency does not have the authority to change these statutory deadlines or cancel or postpone the election, and that any change may require court intervention...”

Wisconsin Elections Commission 3/18/2020 (Ex. 4, p.1)

The Milwaukee Election Commission suspended early voting on March 22, 2020 in response to safety concerns regarding election workers exposure to COVID-19, disfranchising and restricting voters who are overwhelmingly African American. Actions taken by the Milwaukee Election Commission amount to an abridgement of the right of African Americans to cast their vote, or to be registered to vote in the April 7, 2020 City of Milwaukee Election. The closing early voting and voter registration, creation of an internet vote, while at the same time all libraries are closed barring more than half of 6th District/53206

voters who have no internet access from voting. Further “drive-thru drop-off voting” is not an option for 6th District/53206 since most rely on public transportation. The Milwaukee Election Commission violated and continues to violate Federal and State law because; under “the totality of the circumstances” 6th District/53206 voters, who are 94% African American have less opportunity to participate in the political process. This complaint requests that this Court issue an injunction against the pending April 7, 2020 City of Milwaukee Election for the reasons set out herein.

COVID-19:

COVID-19 is a pandemic of epic proportions medically and economically ravaging The Earth’s population. Currently the United States is the epicenter of the COVID-19 outbreak. Milwaukee is the epicenter of the COVID-19 outbreak in the State of Wisconsin and African American voters who reside in the 53206- zip code and are primarily located within the 6th Aldermanic District of The City of Milwaukee, have experienced the highest rate of deaths and infections as of the date of this filing. Governor Evers called the situation, “a crisis within a crisis” Wisconsin Public Radio 3/27/2020 by Corrinne Hess (*See Exhibit 3*). To underscore the gravity of the situation Major League Baseball (“MLB”) and every other sporting league of a national, regional and local level have postponed their seasons. The Democratic National Convention, scheduled this summer in

Milwaukee, has also been postponed. Schools across the country are shut down. American business has ground to a devastating halt. Currently, the American healthcare infrastructure is beginning to buckle under the onslaught in New York, Chicago, New Orleans and Seattle which are anticipating being overwhelmed by sick patients.

Despite the pandemic The Wisconsin Elections Commission has not sought to postpone the election. Without authority to do so, The Milwaukee Election Commission made unlawful changes to the election rules which disproportionately restrict African American voters who reside in the 53206-zip code. The 53206-zip code is primarily located within the 6th Aldermanic District of The City of Milwaukee. The Milwaukee Election Commission cancelled early voting for weeks, despite higher than expected voter turnout as reported by WTMJ and FOX6 News (*See Exhibits 5 and 6*). Weeks later, having stymied early voting, The Milwaukee Election Commission essentially moved the April 7, 2020 election on-line. 94% of the residents in the 53206-zip code are African American according to the Census, (*See Census Reporter, Ex. 7*). Most residents do not have home internet service and Milwaukee has closed its public library system (*See Lowe Declaration at 5 and Exhibit 8, listing of all libraries closed in Milwaukee*). These restrictions encourage voters from the highest infection rate for COVID-19 in the city to use public transportation, during a statewide

lockdown, cast their vote in a “drive-by” polling place, apparently from a bus, and then return home by public transportation.

The Milwaukee Election Commission has/had no authority to freeze early voting.

“The election laws do not provide local elected officials the authority to place limits on or eliminate registration or voting options established by the statutes absent directives from state or local health officials...”

Wisconsin Elections Commission 3/18/2020 (Ex. 4A, p. 2)

The Milwaukee Election Commission canceled in-person early voting for the April 7th Spring Election 2020. Early voting was scheduled to run every day, including the weekends, from Monday, March 23rd through April 5th. Unlike on election day, the city uses a touch screen voting machine that prints a paper ballot to conduct early voting. The Milwaukee Election Commission has encouraged voters to request an absentee ballot for the spring election, a measure suggested repeatedly by Mayor Tom Barrett and Governor Tony Evers.

A. The Milwaukee Election Commission Has Primarily Moved the Election Online

“Milwaukee County Clerk George Christenson wrote in a letter posted to Facebook Wednesday that he had informed municipal clerks in the county that this is an appropriate course of action during the coronavirus outbreak and given Gov. Tony Evers’ stay-at-home order and guidance from the Wisconsin Elections Commission.

“I urge all voters who request a ballot and do not have the ability or equipment to upload a valid ID to indicate that they are indefinitely confined,” he wrote. “Voters should not be reluctant to check the box that says they are indefinitely confined because this is a pandemic and this option exists in state law to help preserve everyone’s right to vote.”

Milwaukee Journal Sentinel March 25, 2020 (See Exhibit 9)

B. The “Internet Election” is Constitutionally Prohibited Because it Abridges the African American Vote in the 6th District/53206

“53206 is Milwaukee’s archetypical concentrated poverty neighborhood”

Milwaukee 53206: The Anatomy of Concentrated Disadvantage in an Inner City Neighborhood 2000-2017 (p. 28) Marc V. Levine, University of Wisconsin-Milwaukee March 2019. (See Exhibit 10)

“Milwaukee 53206 is a neighborhood of low employment rates, low wages, shrinking income, high poverty, poor housing, and mass incarceration.” *Id.*

1. The totality of circumstances demonstrates that voters in 6th District/53206 have “less opportunity than other members of the electorate to participate in the political process” than others *See* 52 U.S.C. § 10301(b).
2. The largest 53206 racial/ethnic groups are Black (94.3%) followed by Hispanic (1.6%) and Two or More (1.6%).
3. The Milwaukee Election Commission has established that the primary method to vote in City’s April election is by requesting a ballot on-line, or to have scrambled to obtain one by mail-last minute after early voting was shut down.

4. The U.S. Census Bureau found that 93 percent of Wisconsin households with at least \$75,000 in annual income had access to broadband from 2013 to 2017. *But only half of those households with less than \$20,000 in annual income had access. Appleton Post-Crescent (See Ex. 11, Keegan, Kyle Dec. 6, 2018).*
5. “Joblessness is pervasive in 53206; but even for those residents who have secured employment, working poverty is omnipresent. Median annual earnings for 53206 working in 2017 were \$18,541. *Milwaukee 53206: The Anatomy of Concentrated Disadvantage in an Inner City Neighborhood 2000-2017 (See Exhibit 12 Executive Summary Marc V. Levine, University of Wisconsin-Milwaukee March 2019).*
6. That it is not realistic to think that the even has 46.5% internet access (*See Also Declaration of Tory Lowe at 7).*
7. That one source of internet access for the more than 50% of 6th District/53206 voters could ordinarily receive internet access by using computers at the Milwaukee Public Library, which would have served as “government service centers” for the election.
8. All of the Milwaukee Public Library branches are closed due to the COVID-19 pandemic (*See Ex. 8).*

9. The Milwaukee Election Commission did not provide any reasonable alternative for the voters of 6th District/53206 in light of the closed the Milwaukee Public Library System. The result and context in view of the totality of the circumstances is that African American voters of 6th District/53206 are being unfairly denied access to the April 7, 2020 election:

“The order does, however, exempt some facilities which could impact the conduct of elections. The order specifically exempts, “state and local government facilities, including **government service centers...**”

Wisconsin Elections Commission 3/18/2020 (Ex. 4, p.7)

10. That since more than 50% 6th District/53206 voters were barred by the Milwaukee Election Commission in casting their early vote, have no internet access at home or at their library (the government service center) these voters are forced to scramble to mail off a request for a absentee ballot in an ever narrowing amount of time before April 7, 2020.

“While clerks have attempted to place emergency orders of these envelopes with their usual printers to meet demand, there is a statewide shortage of the envelope material that is normally used.” *Id.* at 4.

C. Since COVID-19 is Most Concentrated The 6th District/53206 African American Vote is a Damned if you do – Damned if you don’t Proposition

“As Wisconsin’s COVID-19 death toll continues to rise, Milwaukee’s African American Community has been hit particularly hard. Of the state’s 14 people who have died after contracting coronavirus, eight of them were African

Americans living on the city's northwest side, and Milwaukee appears to be the only in the country where this is happening"

Ex. 3 *Wisconsin Public Radio* Corinne Hess, March 27, 2020.

"Milwaukee 53206, which is 95 percent African American, is a quintessential example of the concentrated and cumulative disadvantages that overwhelm impoverished, segregated, predominantly African American Neighborhoods"

Milwaukee 53206: The Anatomy of Concentrated Disadvantage in an Inner City Neighborhood 2000-2017 (p. 28) Marc V. Levine, University of Wisconsin-Milwaukee March 2019. (See Exhibit 10)

11. The Milwaukee Election Commission has also encouraged drive-by drop off voting but made no equal provision for those who use public transport.

12. People who cannot afford internet typically can't afford a personal vehicle.

13. The Milwaukee Election Commission's actions ensure that 6th District/53206 voters, which are suffering the highest COVID-19 infections and death rates in the city are encouraged to take public transportation, during a pandemic lock down to vote. It is difficult to imagine how the Milwaukee Election Commission could have encouraged a more reckless solution to voting than to encourage travel during a time of crisis.

D. Special Voting Deputies Have Been Discontinued in Care Facilities

“Municipalities shall not use the Special Voting Deputy Process to serve residents in care facilities for these two elections....”

Wisconsin Elections Commission 3/18/2020 (Ex. 4B, p.2)

14. In addition to suspension of early voting by the Milwaukee Election Commission, the Wisconsin Election Commission also suspended the use of Special Voting Deputies for residents in Care Facilities, many of which are left to scramble for ballots by mail, *if available*, or access ballots by internet.

“In the 10 years I have worked in the 53206 as Civil Rights Advocate and through expanded outreach by Justice Wisconsin it has been my experience that the majority of nursing home and retirement community residents who are over 55 years old, either have no internet service or are not knowledgeable enough to use the internet if they do have access and cannot access the internet on government cell phones which the majority of the seniors use in the 6th District and/or the 53206 area code. In short, these seniors will be disenfranchised by the absence of a Special Voting Deputy Process”

Tory Lowe Declaration at 9

15. That Carolyn Carrol is one of the voters in 6th District/53206 who is affected by the actions of both the Milwaukee Election Commission and the Wisconsin Election Commission.



Carolyn Carroll

I live in a senior citizen building and there's a lot of we all go in the group to go vote.. but I don't know how we're going to do this because some of them don't even have internet or cell phone so I don't know how they going to this.. this is unfair to the voters.. it might be like at least two or three people from my building going out to vote with me



16. In addition to suspension of early voting by the Milwaukee Election Commission, the Wisconsin Election Commission also suspended the use of Special Voting Deputies for residents in Care Facilities, many of which are left to scramble for ballots by mail, *if available*, or access ballots by internet.

17. The residents of Care Facilities are the most vulnerable voters to COVID-19 and cannot be rationally expected to travel thereby the African American resident in 6th District/53206 is being denied equal access to vote, since they cannot access the internet by way of comparison to a non-6th District/53206 voter and because the Wisconsin Election Commission also suspended the use of Special Voting Deputies.

E. **Same Day Registration is Equally Denied for the Voters in the 6th District/53206**

18. Historically, Wisconsin voters rely heavily on same-day voter registration. Since 2008, ten to fifteen percent of all registrations have occurred at a polling place on election day. Wis. Elections Comm'n, *General Election Voter Registration and Absentee Statistics 1984-2016*, available at <https://elections.wi.gov/elections-voting/statistics?q=elections-voting/statistics&page=2> (last visited March 30, 2020).
19. Under the totality of the circumstances the Wisconsin Election Commission placed an undue burden on voting access on the 6th District/53206 voters, who are overwhelmingly poor and African American.
20. As noted above these voters have restricted internet access by income and the "business service center" for internet access, the Milwaukee Public Library, is closed with no alternative access made available.
21. Furthermore, Care Centers will no longer host Special Voting Deputies for a population who either lacks the technical knowledge of navigating the internet or has no access to it or both.
22. In short, both Milwaukee Election Commission and the Wisconsin Election Commission will force the 6th District/53206 voters, young and

old, to take public transportation to and from the most COVID-19 infested district (both ways) to cast a ballot at a “drive-by” location during a statewide pandemic driven lockdown order.

Jurisdiction and Venue

23. This is a civil rights action arising under the First, Fourteenth, Fifteenth, and Twenty-Sixth Amendments to the Constitution, and Section 2 of the Voting Rights Act. 42 U.S.C. §§ 1983, 1988; 52 U.S.C. § 10301.
24. This Court has jurisdiction under 28 U.S.C. § 1331.
25. Venue is proper in this District under 28 U.S.C § 1391 because the events giving rise to Plaintiffs’ claims arose, and Defendants are located, in this District and Division.
26. This Court has personal jurisdiction over the Defendants, the Commissioners of both the Milwaukee Election Commission and the Wisconsin Elections Commission, Secretary-Designee of the Wisconsin Department of Health Services, and the Governor of the State of Wisconsin, who are sued in their official capacity only.
27. Venue is proper in this District under 28 U.S.C. § 1391(b) because Plaintiffs and Defendants are residents of Wisconsin, and Plaintiffs reside in this District.

Standing

28. Plaintiffs have a “legally protectable interest in this litigation.” *Lopez-Aguilar*, 924 F.3d at 391. The Seventh Circuit has embraced the Supreme Court’s approach of “encouraging liberality in the definition of an interest.” *Id.* at 392 (quoting *Meridian Homes Corp. v. Nicholas W. Prassas & Co.*, 683 F.2d 201, 204 (7th Cir. 1982).). Plaintiffs satisfy this liberal standard.

- a. Lena Taylor is a candidate for Mayor and represents voters in the 6th District/53206.
- b. Tory Lowe is a candidate for Milwaukee’s 6th Aldermanic District. Which encompasses 6th District/53206.
- c. Justice Wisconsin is a not for profit civil rights organization which devotes itself to the greater civic good of inner-city life in 6th District/53206 and elsewhere.
- d. Finally, Carolyn Carroll is a voter who is denied equal access to the vote by way of comparison to white or other voters within the City of Milwaukee.

29. Plaintiffs have “direct” and “significant” interests in the continued enforcement of state laws, governing early voting and registration, absentee ballots, and equal access to vote , “as those laws are designed to

serve “the integrity of [the] election process,” *Eu v. San Fran. Cty. Democratic Cent.Comm.*, 489 U.S. 214, 231 (1989), and the “orderly administration” of elections, *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008) (op. of Stevens, J.).

COUNT 1

First Amendment and Equal Protection

**U.S. Const. Amend. I, XIV, XV, XVI and XXVI and by 42 U.S.C. § 1983,
28 U.S.C. § 2201, 28 U.S.C. § 2202**

Undue Burden on the African American Right to Vote

30. Plaintiffs reallege and incorporate by reference all data from above and paragraphs 1 through 29 as though fully set forth herein.
31. Under the Equal Protection Clause, a state cannot utilize election practices that unduly burden the right to vote.
32. As set out above both Milwaukee Election Commission and the Wisconsin Elections Commission are currently utilizing election practices which unduly burden the vote for voters of the 6th District/53206.
33. The Milwaukee Election Commission does not have a constitutional obligation to provide early voting, having adopted early voting, The City may not “by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Obama For Am. v. Husted*, 888 F. Supp. 2d 897, 910 (S.D. Ohio 2012), *aff’d*, 697 F.3d 423 (6th Cir. 2012) (citing *Bush v. Gore*, 531 U.S. 98, 104-05 (2000)).
34. The Milwaukee Election Commission further discontinued early voting sites based on community geography and population, limiting their ability to ensure that all voters in a county have an equal opportunity to cast an early ballot, then confining the election to the internet and/or a drive-by/drop-off procedure, when most people in 6th District/53206 don’t have internet access and cannot go to the Milwaukee Public Library as their “government service station” for access.

35. By way of comparison voters who are white or other races who live in more affluent areas of the city, have a far higher incidence of internet access and are far less likely to rely on public transportation to vote.
36. The Wisconsin election Commission discontinued the Special Voting Deputy process for care facilities and the most vulnerable voters qualified to vote in the 6th Aldermanic District 6th District/53206, will have no access for reasons stated above, or will be far more likely to rely on public transportation to vote, which under COVID-19, may be a death sentence.
- a. “Municipalities shall not use the Special Voting Deputy Process to serve residents in care facilities for these two elections....”*Wisconsin Elections Commission 3/18/2020* (Ex. 4B, p.2)
37. Absent relief from this Court, Plaintiffs, many of their constituents and/or members and those among their constituency, have been and continue to be denied this opportunity to have an equal opportunity to cast an early vote.
38. The burden of the current restrictive application of early voting in the City, further, falls heaviest on African American residents of the 6th District/53206.
39. In this case, the Court must carefully balance the character and magnitude of injury to the First and Fourteenth Amendment rights that the plaintiffs seek to vindicate against the justifications put forward by the State for the burdens imposed by the rule. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). “However slight th[e] burden may appear, . . . it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (Stevens, J., controlling op.) (quotation marks omitted).
40. The Milwaukee Election Commission has a legitimate interest in protecting the public health, safety, and welfare from the continued spread of COVID-19.

41. The Milwaukee Election Commission also has a constitutional and democratic obligation to administer a free and fair election that protects the voting rights of all its constituents.
42. The Milwaukee Election Commission has instituted policies which abridge and make it more difficult for African Americans to vote in the April 7, 2020 election in 6th District/53206 than it does for non-African Americans.
43. In viewing the effect on the April 7, 2020 from a totality of the circumstances the Milwaukee Election Commission has failed to institute an election process to ensure a free and fair election that protects the voting rights of 6th District/53206 who have been and continue to be denied equal access to the political process.
44. Because of these failures, Milwaukee Election Commission is not able to adequately meet its obligation to protect the public health, safety, and welfare, or administer a free and fair election that protects the voting rights of all its constituents.
45. Here, the Milwaukee Election Commission application of the Early Vote Statute clearly burdens the Plaintiffs' (and in the case of the Justice Wisconsin, their mission, as well as their members' and constituencies') right to vote. *See Husted*, 888 F. Supp. 2d at 907 (holding restrictions on times of early voting violated voters' right to vote), *aff'd*, 697 F.3d 423 (6th Cir. 2012); *see also Sanchez v. Cegavske*, 214 F. Supp. 3d 961, 974 (D. Nev. 2016) (holding "distance Plaintiffs must travel and the associated costs [to vote early at certain locations] are a material limitation" on voting); *Florida*, 885 F. Supp. 2d at 329 - recognizing that restrictions on early voting in Florida "would impose a sufficiently material burden to cause some reasonable . . . voters not to vote" in Voting Rights Act context.
46. In viewing the effect on the April 7, 2020 from a totality of the circumstances the Wisconsin Election Commission has failed to institute an election process to ensure a free and fair election that protects the voting rights of all its constituents in light of the COVID-19 Pandemic.
47. The Wisconsin Election Commission discontinued the Special Voting Deputy process for care facilities and the most vulnerable voters qualified to vote in the 6th District/53206, will have no access for reasons stated

above, or will be far more likely to rely on public transportation to vote, which under COVID-19, may be a death sentence.

a. “Municipalities shall not use the Special Voting Deputy Process to serve residents in care facilities for these two elections....” *Wisconsin Elections Commission 3/18/2020* (Ex. 4B, p.2).

48. The Wisconsin Election Commission has a legitimate interest in protecting the public health, safety, and welfare from the continued spread of COVID-19.
49. The Wisconsin Election Commission also has a constitutional and democratic obligation to administer a free and fair election that protects the voting rights of all its constituents.
50. Wisconsin Election Commission have failed and continue to fail to implement any changes to the election process to ensure a free and fair election that protects the voting rights of all its constituents in light of the COVID-19 Pandemic.
51. Because of these failures, of both The Milwaukee Election Commission and the Wisconsin Election Commission is not able to adequately meet its obligation to protect the public health, safety, and welfare, or administer a free and fair election that protects the voting rights of the District 6th District/53206, who are 94% African American.
52. With the United States increasingly in “stay at home” mode, the only reasonable alternative it to postpone this election until September 8, 2020.
53. Injunctive and declaratory relief is needed to resolve this existing dispute, which presents an actual controversy between the The Milwaukee Election Commission and the Wisconsin Election Commission and Plaintiffs, who have adverse legal interests, because of the reasons stated above and to pray for remedy from this Court to serious and concrete injuries to their fundamental right to vote in the City of Milwaukee General Election.

COUNT 2

52 U.S.C. § 10301

§10301. Denial or Abridgement of Right to Vote on Account of Race or Color through Voting Qualifications or Prerequisites, Establishment of Violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner **which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color**, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b) .

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

54. Plaintiffs reallege and incorporate by reference all data from above and paragraphs 1 through 53 as though fully set forth herein.

55. For the reasons set forth above the Defendants have each individually instituted a process which results in a denial or abridgement of the right of the 6th District/53206 citizen of the United States to vote on account of race or color, for the reasons set forth above.

Declaratory and Injunctive Relief

Section 2 of the Voting Rights Act

52 U.S.C. § 10301

To establish its entitlement to preliminary relief, the Plaintiffs must demonstrate that "(1) without such relief, [it] will suffer irreparable harm before [its] claim is finally resolved; (2) [it] has no adequate remedy at law; and (3) [it] has some

likelihood of success on the merits." *Harlan v. Scholz*, [866 F.3d 754](#), 758 (7th Cir. 2017). If that burden is met, the court must weigh the harm that the plaintiff will suffer absent an injunction against the harm to the defendant from an injunction and consider whether an injunction is in the public interest.

Id.; *Higher Soc’y of Indiana v. Tippecanoe Cty., Indiana*, [858 F.3d 1113](#), 1116 (7th Cir. 2017).

“Beyond that, Plaintiffs must show they face irreparable harm absent injunctive relief. This hurdle too has been cleared. First, the Attorney General has imposed August deadlines by which Plaintiffs must either accept the grant and its Conditions or else decline the funds outright. Because this Court has already found that the Attorney General lacks the authority to impose any of these Conditions, however, the choice Plaintiffs face—to decline funds or accept them upon pain of sacrificing their sovereign powers—is no choice at all and is itself sufficient to establish irreparable harm.”

Cty. of Santa Clara v. Trump, 250 F. Supp. 3d 497, 537-38 (N.D. Cal. 2017) (citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 380-81 (1992))

56. Plaintiffs reallege and incorporate by reference paragraphs 1 through 78 as though fully set forth herein.

57. Plaintiffs filed this verified complaint for relief.

58. Plaintiffs Face Irreparable Injury for the reasons set forth above in that the 6th District/53206 voter must either must lose their vote or proceed in the COVID-19 environment, by public transportation to vote in the face of unprecedented government restriction(s) on travel. Accordingly, the candidates will suffer disenfranchisement of their base support because of these restrictions.

“This means that "there must be a threat which is present now, although the impact of the threat may not be felt until later." *Browning v. Flexsteel* 959 F. Supp. 2d 1134 at 1151

59. That injury to Plaintiffs *is imminent, not speculative*:

- a. On April 7, 2020 the Candidates the candidates will suffer disenfranchisement of their base support because of these restrictions.
- b. On April 7, 2020 the voters of 6th District/53206 have a “damned if you do, damned if you don’t choice” imposed by the defendants, forego the right to vote or risk contracting or spreading COVID-19.

“It is well established that injunctive relief is not available for purely monetary injuries because monetary injuries are fully compensable by an award of damages after trial” *Great Lakes Higher Education Corp. v. Cazavos* 698 F. Supp 1464 at 1472

60. That the injury to the Plaintiffs would constitute *more than a monetary injury* in that once the election proceeds there is no reasonable way to undo the results, which will be because of voter disenfranchisement in the 6th District/53206.

“When a party is seeking temporary relief, it must prove that absent such relief, it will suffer irreparable harm in the interim period prior to final resolution of its claims,” and that traditional legal remedies would be inadequate.” (noting the overlap between no adequate remedy at law and “irreparable harm” in the preliminary injunction setting); Irreparable harm is harm that cannot be prevented or fully rectified by the final judgment after trial. An adequate remedy at law is whether interim harm caused by the activity to be enjoined can be completely offset by a subsequent award of damages or other legal relief.”

Bader v. Wernert 178 F. Supp. 3rd 703 at 727 (internal citations omitted)

61. That had given Plaintiffs *no adequate remedy at law*: Had the Defendants taken the reasonable route of postponing the elections, this lawsuit would never have been filed. Unfortunately, once the April 7, 2020 election passes the disenfranchised voters of 6th District/53206 will have no remedy for either having foregone their vote, or for a cause of action for contracting COVID-19.

62. That the Plaintiffs lawsuit has a *substantial likelihood of success on the merits*.

63. The likelihood of success on the merits is an early measurement of the quality of the underlying lawsuit, while the likelihood of irreparable harm takes into account how urgent the need for equitable relief really is.

64. Plaintiffs Face Irreparable Injury for the reasons set forth above in that the 6th District/53206 voter must either lose their vote or proceed in the COVID-19 environment, by public transportation to vote in the face of unprecedented government restriction(s) on travel. Accordingly, the candidates will suffer disenfranchisement of their base support because of these restrictions.

“Where plaintiff and defendant present competing claims of injury, the traditional function of equity has been to arrive at a “nice adjustment and reconciliation” between the competing claims. In such cases, the court “balances the conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction.”

Weinberger v. Romero-Barcelo 465 U.S. 305 at 312 (1982)

65. In the *balance of hardships* on the one hand there is a scheduled election, however there is on the other hand a pandemic. Postponing the April 7, 2020 City of Milwaukee election will ensure for a safer, better organized election process which can include rather than exclude the African American vote from 6th District/53206.

Prayers for Relief

Specifically, Plaintiffs respectfully move this Court pursuant to Rule 65 of the Federal Rules of Civil Procedure for a temporary restraining order and preliminary injunction restraining Defendants from violating Plaintiffs’ equal protection rights and ordering Defendants:

(1) to postpone the April 7, 2020 in-person election until September 8, 2020.

(2) to permit early voting to continue, which will allow for an orderly ability of the 6th District/53206 voter to access the election on-line or permit sufficient time for ballots to be provided by mailing ballots to all registered voters.

(3) to extend the deadline for registering to vote electronically or by mail until September 8, 2020.

(4) to cancel in-person registration and in-person absentee voting; and

(5) For such relief is necessary to protect both the public health and the sanctity of the upcoming election.

(6) If this Court is not inclined to extend injunctive and declaratory relief, then for leave to file an Amended Complaint and the case to move forward for the reasons stated above.

(7) For damages where proved and for attorney's fees under 42 U.S.C. 1988.

Dated this 2nd of April 2020

Attorneys for Plaintiffs

/s/ Thomas Napierala

Paul Strouse- *Attorney At Law*

SBN: 1017891

Thomas Napierala- *Attorney at Law*

SBN: 1011811

Plaintiff's Verification Filed in conjunction

The Law Offices of Paul Strouse
413 North 2nd Street Suite #150
Milwaukee WI 53203

The Law Offices of Thomas Napierala
413 North 2nd Street Suite #150
Milwaukee WI 53203