

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE

**SUPERIOR COURT DEPT.
CIVIL ACTION NO.**

JANICE LOUX,

Plaintiff

v.

**ADAM FILSON, Williamstown Town
Manager; NICOLE BEVERLY,
Williamstown Town Clerk; CHARLES
BLANCHARD, Williamstown Interim
Town Manager; JEFFREY KENNEDY,
Health Inspector; ANDREW
HOGELAND, Chair of the Select Board;
HUGH DALEY, WADE HASTY, JEFF
JOHNSON, JANE PATTON, Members
of the Williamstown Select Board, and
the TOWN OF WILLIAMSTOWN,
MASSACHUSETTS**

Defendants.

COMPLAINT

This is a complaint for equitable relief brought by Plaintiff Janice Loux, through her attorney, C. Stephen Dew. She alleges as follows:

INTRODUCTION

Ms. Loux is a longtime resident of Williamstown, Massachusetts and has spent much of her adult life involved in politics at the state and local levels. She is a past Executive Vice President of UNITE HERE, the hospitality workers' union, and was elected President of that union's Local 26 in Boston in 1997. During the height of the AIDS crisis, Ms. Loux worked with local leaders of ACT-UP, the AIDS activist organization, to start a medical case management program for Boston's hotel workers as part of their collectively bargained health care benefits. In addition to

her work for UNITE HERE, Ms. Loux worked closely with former Mayor of Boston Thomas Menino on a variety of city and state campaigns and initiatives over a period of approximately 15 years.

More recently, Ms. Loux has been active in town politics. In April 2021, she filed a FOIA request seeking public documents and other information regarding an incident of sexual harassment at the Williamstown Water Department, and she has attended every Williamstown Select Board meeting for the past two years.

Ms. Loux is a politically engaged citizen of Williamstown who was looking forward to this year's annual town meeting, where residents will have the opportunity to vote on a total of 49 warrant articles. Among them are a number of controversial proposals to amend Williamstown's zoning bylaws. Because Ms. Loux lives in an area of town that would be affected by the proposed zoning changes, she was planning to speak publicly at the meeting and share her views on these proposed changes with her fellow citizens.

Ms. Loux was diagnosed with diabetes in 2008, and when the COVID-19 virus arrived in Massachusetts, her doctor warned her that, due to her disease, she is at elevated risk of severe illness or mortality should she become infected. As a result, Ms. Loux has been careful to avoid spending time in the kinds of crowded and poorly ventilated indoor spaces associated with so-called super spreader events.

Defendants' actions in this case are a departure from their past practice with regard to holding large municipal meetings. In both 2020 and 2021, the Select Board and the other Williamstown officials named above chose to hold the town meeting outdoors at Farley-Lamb Field at Williams College. They did this with the intended purpose of avoiding the kinds of conditions that increase the risk of catching COVID-19.

Unfortunately, this year, Defendants have abandoned their past practice and scheduled the town meeting at 7:00 p.m. on Tuesday, May 17, in the gym at the Williamstown Elementary School. This facility is relatively small and does not possess a modern ventilation system. Alternate venues are available, including Farley-Lamb Field and the gymnasium at Mount Greylock Regional High School, which is larger and has a state-of-the-art ventilation system. Despite hearing concerns from Miss Loux and other similarly situated residents of Williamstown, Defendants on Friday, May 13, announced that they would not change location of the meeting to one of the less risky venues. The result is that citizens of Williamstown with disabilities, like Plaintiff, have been forced to choose between exposing themselves to a deadly virus and exercising their right to debate and vote on important town matters.

PARTIES

1. Plaintiff Janice Loux is an individual residing in Williamstown, Massachusetts.
2. Defendant Adam Filson is an individual residing in Williamstown, Massachusetts, and is the Town Moderator for the Town of Williamstown.
3. Defendant Nicole Beverly is an individual residing in Williamstown, Massachusetts and is the Town Clerk for the Town of Williamstown.
4. Defendant Charles Blanchard is an individual residing in Williamstown, Massachusetts, and is the Interim Town Manager of the Town of Williamstown.
5. Defendant Jeffrey Kennedy is an individual residing in the Town of Williamstown, Massachusetts, and is the Health Inspector for the Town of Williamstown.
6. Defendant Andrew Hogeland is an individual residing in Williamstown, Massachusetts, and is the Chair of the Williamstown Select Board.

7. Defendant Hugh Daley is an individual residing in Williamstown, Massachusetts, and is a member of the Williamstown Select Board.

8. Defendant Wade Hasty is an individual residing in Williamstown, Massachusetts, and is a member of the Williamstown Select Board.

9. Defendant Jeff Johnson is an individual residing in Williamstown, Massachusetts, and is a member of the Williamstown Select Board.

10. Defendant Jane Patton is an individual residing in Williamstown, Massachusetts, and is a member of the Williamstown Select Board.

11. The Town of Williamstown is a municipality in Berkshire County, Massachusetts.

JURISDICTION AND VENUE

12. Jurisdiction over Defendants is proper pursuant to Mass. Gen. L. c. 223A § 3.

13. Venue in this Court is proper pursuant to Mass. Gen. L. c. 233 § 1.

FACTUAL BACKGROUND

14. Plaintiff in this case was diagnosed with diabetes in 2008 and manages her condition with a number of medications, including Metformin and Trulicity.

15. As the COVID-19 virus took hold in Massachusetts, Plaintiff's doctor, Emily Fuester M.D. of the Fenway Health Center in Boston, informed her that due to her diabetes she was at high risk for severe illness or mortality if she were to become infected.

16. As a result, Plaintiff has gone to great lengths since the start of the pandemic to avoid exposure to COVID-19, by masking indoors and avoiding large, prolonged gatherings of people in poorly ventilated indoor spaces.

17. In addition, Plaintiff has been vaccinated and has received a booster dose of a vaccine for COVID-19.

18. Earlier this spring, the Williamstown Select Board and the Town Moderator announced that the annual town meeting would be held at 7:00 p.m. in the gymnasium of the Williamstown Elementary School on May 17, 2022.

19. A total of 49 warrant articles are set to be voted on at this year's town meeting, including a handful of significant changes to Williamstown's zoning by-laws, which have generated controversy among residents and owners of real estate in town.

20. As of Monday, May 16, the Centers for Disease Control listed Berkshire County in the highest transmission category on its COVID-19 Integrated County View Map, which is updated daily at 8:00 p.m. EDT. The CDC's "High" transmission rating applies to counties with more than 100 new cases of COVID-19 over the previous seven days and a positive nucleic acid amplification test (NAAT) rate of greater than 10% over the previous seven days. Every single county in Massachusetts, New York, and Vermont was rated in the High transmission category on this map.

21. Concerned about the upcoming town meeting in the Williamstown Elementary School gym—precisely the kind of poorly ventilated, crowded indoor space Plaintiff has carefully avoided over the course of the pandemic—Plaintiff e-mailed Williamstown's Health Inspector, Jeffrey Kennedy, on Monday, May 9, asking if the Health Department had any special recommendations for residents like herself who were at high risk for severe illness or mortality if they were to become infected with the COVID-19 virus but still wanted to attend the town meeting.

22. In his reply, Mr. Kennedy informed Plaintiff that there is currently no masking requirement at the state or local level in Massachusetts but that she was free to wear a mask if that was her personal preference. Mr. Kennedy also informed Plaintiff that he had encouraged the Town Moderator, Adam Filson, "to ensure that the meeting area has as much ventilation as feasible for

that location.” This additional ventilation would be accomplished by keeping the doors and windows to the gym open where possible.

23. Subsequent to Plaintiff’s e-mail exchange with Mr. Kennedy on Monday, May 9, a number of people raised concerns similar to Plaintiff’s with the Defendants in this case. While some residents like Plaintiff contacted town officials directly, many also posted their concerns to a Facebook group called Williamstown Info and Issues, where local politics are frequently discussed.

24. In response to the concerns voiced by many town residents, a number of Defendants, including the Interim Town Manager, the Select Board Chair, and the Town Moderator informed the members of the Williamstown Info and Issues Facebook Group that they were planning to meet on Friday, May 13, to discuss the possibility of moving the town meeting to a new location, possibly to the gym at Mount Greylock Regional High School, which is larger and has a modernized ventilation system, or to Farley-Lamb Field at Williams College, where the town meeting has been held for the past two years.

25. At this meeting, which was not open to the public, the attendees concluded that they could not move the venue and informed the Williamstown Info and Issues Facebook group that the meeting would go ahead as planned at the Williamstown Elementary School gym.

26. Plaintiff is a politically engaged citizen of Williamstown who was looking forward to this year’s town meeting. Because Ms. Loux lives in an area of town that would be affected by the proposed zoning changes, she was planning to speak publicly at the meeting and share her views on these proposed changes with her fellow citizens.

27. Thus, when Plaintiff learned that the decision to hold the town meeting in the relatively small and poorly ventilated gym at the Williamstown Elementary School was final, she

realized that she had been put in an untenable position: either participate in the town meeting and risk exposure to a potentially deadly virus or forgo an opportunity to speak on a number of important warrant articles and cast her votes. Ultimately, she decided that she cannot not safely attend the meeting given the high risk of severe illness or mortality the COVID-19 virus posed to her because of her diabetes.

Count 1 – Violation of Title II of the Americans With Disabilities Act

28. Plaintiff hereby repeats and realleges each allegation set forth herein.

29. Title II of the ADA applies to public entities, which the statute defines as any state or local government; and any department, agency, special purpose district, or other instrumentality of a state or local government. 42 U.S.C. § 12131(1).

30. The Defendants in this case, the Town of Williamstown, the Select Board, the Town Moderator, and the Health Inspector are public entities within the meaning of Title II of the ADA.

31. The ADA defines disability as “a physical or mental impairment that substantially limits one of more major life activities of [an] individual.” 42 U.S.C. § 12102(2).

32. Plaintiff has a disease, diabetes, which constitutes a physical impairment within the meaning of the ADA and renders her a “qualified individual with a disability” who is protected from discrimination by the statute.

33. The right to participate in government and cast one’s vote in town meetings is one of the fundamental rights possessed by the citizens of the Commonwealth and constitutes a major life activity of Plaintiff. Ms. Loux is a politically engaged person whose interests—including her interests as a property owner in Williamstown—could be directly affected by the warrant articles that will be voted on at the town meeting scheduled for the evening of Tuesday, May 17.

34. Title II of the ADA prohibits discrimination against any qualified individual with a disability, a category that includes Plaintiff. Such discrimination may take the form of outright exclusion from, participation in, or denial of the benefits of, the services, programs, or activities of a public entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).

35. Such discrimination also includes affording aids, benefits, or services to people with disabilities that are not equal to those afforded to others or that are not effective in affording people with disabilities an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as that provided to others. 28 C.F.R. § 35.130(b)(1)(ii), (iii). This provision thus prohibits precisely the action Defendants have taken by scheduling the town meeting in a poorly ventilated, relatively small indoor venue that poses heightened risks to Plaintiff and others so situated.

36. Selecting a site or location for a facility that has the effect of excluding qualified persons with disabilities—as Defendants have done by selecting the Williamstown Elementary School’s gymnasium as the venue for the town meeting—is also prohibited by Title II of the ADA. 28 C.F.R. § 35.130(b)(4).

37. Defendants have therefore violated Title II of the ADA by failing to provide a reasonable accommodation for Plaintiff at the Williamstown town meeting scheduled for Tuesday, May 17.

WHEREFORE, Plaintiff prays this Court enter judgment as follows:

1. Judgment in favor of Plaintiff as to Count 1;
2. Direct Defendants to relocate the town meeting to a venue that provides reasonable accommodation for Plaintiff, e.g., Farley-Lamb Field at Williams College, or the gym at Mount Greylock Regional High School;
3. Grant such further relief as the Court finds equitable and just.

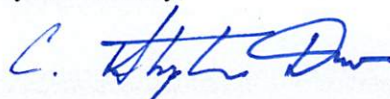
PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated May 16, 2022

Respectfully submitted,

JANICE LOUX,

By her attorney,

A handwritten signature in blue ink, appearing to read "C. Stephen Dew", is written over a horizontal line.

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