FILED
08-04-2026
CIRCUIT COURT
DANE COUNTY, WI
2024CV001141

BY THE COURT:

DATE SIGNED: August 4, 2026

Electronically signed by Judge Everett D. Mitchell
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 4

DISABILITY RIGHTS WISCONSIN,
ET AL.,

Plaintiffs,

v. Case No. 2024CV001141

WISCONSIN ELECTIONS COMMISSION,
ET AL.,

Defendants.

DECISION AND ORDER
ON MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs Disability Rights Wisconsin ("Disability Rights"), League of Women Voters of Wisconsin ("League of Women Voters"), Michael R. Christopher, Stacy L. Ellingen, Tyler D. Engel, and Donald Natzke seek emergent declaratory relief from the application of Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1). To summarize, these statutes provide a structure for absentee voting which requires voters to obtain a paper ballot from the municipal clerk, mark the ballot by hand, enclose the marked ballot in an envelope, and return the ballot to the municipal clerk. Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1). Plaintiffs now seek summary judgment on their claims that this process violates both the Americans with Disabilities Act ("ADA") and the Rehabilitation Act ("RA"). In doing so, they specifically ask that the Court order Wisconsin Elections Commission ("WEC") to instruct every Wisconsin municipality to make available to voters with disabilities an electronic

means for requesting, receiving, voting, and returning an absentee ballot. Defendants WEC, WEC Administrator Meagan Wolfe, and WEC Commissioners Don Millis, Robert Spindell, Marge Bostelmann, Ann Jacobs, Mark Thomsen, and Carrie Riepl oppose Plaintiffs' motion, and counter-move for summary judgment dismissing Plaintiffs' claims under the ADA and RA, and their additional claims under Wis. Const. art. I, § 1; *id*. art. III. For the reasons set forth below, Plaintiffs' motion for summary judgment is granted in part.

BACKGROUND

Each of the Individual Plaintiffs—Christopher, Ellingen, Engel, and Natzke—are qualified Wisconsin voters who suffer from print disabilities that affect their ability to vote in Wisconsin elections: Christopher is legally blind in both eyes; Ellingen has athetoid spastic quadriplegic cerebral palsy, a neurological condition that affects her movement and coordination; Engel has spinal muscular atrophy, a condition which has rendered him unable to hold a pen or pencil or make marks with his hands; and Natzke is completely blind. Organizational Plaintiffs Disability Rights and League of Women Voters are organizations that represent Wisconsin voters with print disabilities.

WEC its commissioners, and its administrators (together, "WEC" or "Defendants") are charged with administering Wisconsin's election laws, including its absentee voting program. Wis. Stat. § 5.05. As part of that program, all Wisconsin voters may vote absentee. Wis. Stat. § 6.85(1). The general procedure for absentee voting is codified under Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1), and contemplates a structure under which the absentee voter obtains a paper ballot from the municipal clerk, marks the ballot by hand, encloses the marked ballot in an envelope, and returns the ballot to the municipal clerk. Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1). Plaintiffs now challenge these statutes on the grounds that they are discriminatory towards voters with print disabilities.

On April 16, 2024, Plaintiffs commenced this action seeking emergent declaratory relief from the application of Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1). At that time, they asserted four claims against Defendants failing under the ADA, the RA, Wis. Const. art. I, § 1; id. art. III, and U.S. Const. amend. I, XIV, respectively. Now, two years later, Plaintiffs move for summary judgment on their claims under the ADA and RA. In doing so, they specifically ask that the Court order WEC to instruct every Wisconsin municipality to make available to voters with disabilities an electronic means for requesting, receiving, voting, and returning an absentee ballot. Defendants now oppose Plaintiffs' motion, and move for summary judgment dismissing its claims for violation of the ADA, RA, and Wisconsin Constitution. Both motions are fully briefed.

LEGAL STANDARD

A party moving for summary judgment must "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2). "A factual issue is genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Baxter v. DNR*, 165 Wis. 2d 298, 312, 477 N.W.2d 658 (Ct. App. 1991) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)). A "material fact is one that is of consequence to the merits of litigation." *Sherry v. Salvo*, 205 Wis. 2d 14, 31, 555 N.W.2d 402 (Ct. App. 1994). If any disputes exist, "we draw all reasonable inferences in favor of the nonmoving party." *Strasser v. Transtech Mobile Fleet Serv., Inc.*, 2000 WI 87, ¶32, 236 Wis. 2d 435, 613 N.W.2d 142.

The summary judgment process has three steps. First, a court "examines the pleadings to determine whether claims have been stated and material factual issues presented." *Tews v. NHI, LLC*, 2010 WI 137, ¶41, 330 Wis. 2d 389, 793 N.W.2d 860. Second, a court determines whether "the moving party has made a prima facie case for summary judgment." *Id.* Finally, "the court

must examine the affidavits and other proof of the opposing party to determine whether a genuine issue exists as to any material fact or whether reasonable conflicting inferences may be drawn from undisputed facts." *Id.*

DISCUSSION

At present, there are two primary issues before the Court: (1) whether Plaintiffs are entitled to relief from the application of Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1); and, if so, (2) whether the Court can order WEC to implement a specific procedure for absentee voting. The Court addresses each question in turn.

I. Plaintiffs are entitled to relief from the application of Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1).

Wis. Stat. § 6.87—aptly titled "Absent voting procedure"—provides the mechanism for absentee voting in the state of Wisconsin. As relevant to the present dispute, that section provides:

> (3)
>
> (a) Except as authorized under par. (d) and as otherwise provided in s. 6.875, the municipal clerk shall mail the absentee ballot to the elector's residence unless otherwise directed by the elector, or shall deliver it to the elector personally at the clerk's office or at an alternate site under s. 6.855. … If the ballot is delivered to the elector at the clerk's office, or an alternate site under s. 6.855, the ballot shall be voted at the office or alternate site and may not be removed by the elector therefrom.
>
> (4)
>
> …
>
> (b)
>
> 1. Except as otherwise provided in s. 6.875, an elector voting absentee, other than a military elector or an overseas elector, shall make and subscribe to the certification before one witness who is an adult U.S. citizen. … The absent elector, in the presence of the witness, shall mark the ballot in a manner that will not disclose how the elector's vote is cast. The elector shall then, still in the presence of the witness, fold the ballots so each is separate and so that the elector conceals the markings thereon and deposit them in the proper envelope. … If the elector requested a ballot by means of facsimile transmission or electronic mail under s. 6.86 (1) (ac), the elector

> shall enclose in the envelope a copy of the request which bears an original signature of the elector. The elector may receive assistance under sub. (5). The return envelope shall then be sealed. The witness may not be a candidate. The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots. …
>
> (5) If the absent elector declares that he or she is unable to read, has difficulty in reading, writing or understanding English or due to disability is unable to mark his or her ballot, the elector may select any individual, except the elector's employer or an agent of that employer or an officer or agent of a labor organization which represents the elector, to assist in marking the ballot, and the assistant shall then sign his or her name to a certification on the back of the ballot …

Wis. Stat. §§ 6.87(3)(a), (4)(b)(1), and (5). Put differently, these statutes generally require Wisconsin absentee voters to: (1) obtain a paper ballot from the municipal clerk, (2) mark the ballot by hand, (3) enclose the marked ballot in an envelope, and (4) return the ballot to the municipal clerk, unless one of the enumerated exceptions apply. *Id*. These exceptions apply to: military and overseas voters, *see* Wis. Stat. § 6.87(3)(d), voters in certain residential care facilities and retirement homes, *see* Wis. Stat. § 6.875, and voters who have difficulties reading, writing on, or understanding their ballots, Wis. Stat. § 6.87(5). Voters falling into this third category are subject to the same absentee voting process as non-disabled voters—that is, obtaining, marking, and returning their ballots—but may rely upon a another individual to mark the ballot on their behalf. Wis. Stat. § 6.87(5).

Plaintiffs now challenge the validity of these statutes, arguing that the absentee voting process unlawfully discriminates against voters with print disabilities. More specifically, they claim that: (1) the absentee voting program violates the ADA; (2) the absentee voting program violates the RA; and (3) the absentee voting program violates Wis. Const. art. I, § 1; id. art. III, and U.S. Const. amend. I, XIV alike. Both parties now move for summary judgement on Plaintiffs'

claims.[1] Because the Court determines that summary judgment is appropriate with respect to plaintiffs claim under the ADA, the Court declines to address their remaining claims. *See Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008) ("Article VI, cl. 2, of the Constitution provides that the laws of the United States 'shall be the supreme Law of the Land; ... any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."); *Lamar Cent. Outdoor, LLC v. Div. of Hearings* & Appeals, 2019 WI 109, ¶41, 389 Wis. 2d 486, 936 N.W.2d 573 (citing *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) ("As one sufficient ground for support of the judgment has been declared, there is no need to discuss the others urged.").

a. Wisconsin's absentee voting program discriminates against voters with print disabilities and therefore violates the ADA.

Title II of the ADA, which applies to public entities, provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. To establish a prima facie case of discrimination under the ADA, a plaintiff must show: "(1) 'that he is a 'qualified individual with a disability''; (2) 'that he was denied 'the benefits of the services, programs, or activities of a public entity' or otherwise subjected to discrimination by such an entity'; and (3) 'that the denial or discrimination was 'by reason of' his disability.'" *Lacy v. Cook Cnty.*, Illinois, 897 F.3d 847, 853 (7th Cir. 2018) (internal quotations omitted). "It is well established that a failure to make "reasonable modifications in policies, practices, or procedures" can constitute discrimination under [the ADA]." *Id*.

In opposing Plaintiff's motion for summary judgment with respect to their ADA claim,

[1] The Court pauses to acknowledge that neither party has requested summary judgment with respect to Plaintiffs' claims under the U. S. Constitution.

Defendants advance three arguments. First, they assert that Plaintiffs have failed to demonstrate that the ADA preempts Wisconsin's election law. Second, they argue Plaintiffs have failed establish a prima facie case of discrimination. Third, they challenge Plaintiffs' assertion that they have failed to implement reasonably accommodate voters with disabilities. These arguments are unpersuasive.

i. The ADA may preempt contrary state voting laws.

"Article VI, cl. 2, of the Constitution provides that the laws of the United States 'shall be the supreme Law of the Land; ... any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.'" *Altria Grp., Inc.*, 555 U.S. at 76 (quoting U.S. Const., Art. VI, cl. 2). "Consistent with that command, we have long recognized that state laws that conflict with federal law are 'without effect.'" *Id*. The question of whether federal law pre-empts state law is one of congressional intent. *Miller Brewing Co. v. Dep't of Indus., Lab. & Hum. Rels., Equal Rts. Div.*, 210 Wis. 2d 26, 34, 563 N.W.2d 460 (1997).

There are three situations in which federal law may pre-empt state law: "(1) where Congress explicitly mandates pre-emption of state law; (2) where Congress implicitly indicates an intent to occupy an entire field of regulation to the exclusion of state law; or, (3) where state law actually conflicts with federal law." *Miller Brewing Co.* 210 Wis. 2d at 34; *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76-77. Importantly, "the starting point for determining whether a state law is pre-empted is a presumption against pre-emption," and "the burden of establishing pre-emption rests with the party seeking the benefit of pre-emption." *Aurora Med. Grp. v. Dep't of Workforce Dev., Equal Rts. Div.*, 2000 WI 70, ¶¶13, 15, 236 Wis. 2d 1, 612 N.W.2d 646.

Here, the Court need not guess whether Congress intended for the ADA to preempt state election laws. Rather, it need only look to the plain language of 42 U.S.C. § 12101 which provides:

> (a) Findings
>
> The Congress finds that—
>
> (1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;
>
> …
>
> (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, *voting*, and access to public services;
>
> (b) Purpose
>
> It is the purpose of this chapter—
>
> (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
>
> …

42 U.S.C. §§ 12101(a)(3), (b)(1) (emphasis added). Stated otherwise, this section makes apparent that Congress intended for the ADA to protect disabled individuals' rights to vote, and to more generally participate in society. Because Congress clearly intended to protect the rights of voters with disabilities, state laws which conflict with the rights of voters with disabilities are necessarily "without effect." *Altria Grp., Inc.*, 555 U.S. at 76 (quoting U.S. Const., Art. VI, cl. 2).

This conclusion is further supported by the text of 42 U.S.C. § 12132 itself: "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in … the … activities of a public entity." Indeed, as Plaintiffs point out, this language plainly deems it unlawful for public entities to exclude individuals with disabilities from activities that they

would otherwise be qualified to participate in. Because elections are necessarily an activity of a public entity, *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 507 (4th Cir. 2016) ("Voting is a quintessential public activity."), it follows that the ADA may preempt state elections laws which discriminate against qualified voters with disabilities.

ii. There is no genuine dispute of fact as to any element of Plaintiffs prima facie case for discrimination under the ADA.

1. Plaintiffs are qualified individuals with disabilities.

To establish a prima facie case of discrimination under the ADA, a plaintiff must first demonstrate that he is a "qualified individual with a disability" 42 U.S.C. § 12132; *Lacy*, 897 F.3d at 853. Because, here, Defendants do not dispute that Plaintiffs are individuals who are both disabled, and qualified to participate in Wisconsin's absentee voting program, the Court proceeds immediately to the second element of Plaintiff's claim. *SEIU v. Vos*, 2020 WI 67, ¶24, 393 Wis. 2d 38, 946 N.W.2d 35 ("We do not step out of our neutral role to develop or construct arguments for parties; it is up to them to make their case.")

2. Wisconsin's absentee voting procedure unlawfully discriminates against Plaintiffs.

To satisfy the second and third elements of a prima facie case for discrimination under the ADA, a plaintiff must demonstrate that he was "denied the benefits of the services, programs, or activities of a public entity, and that "that the denial or discrimination was by reason of his disability." 42 U.S.C. § 12132; *Lacy*, 897 F.3d at 853.

Here, Plaintiffs argue that summary judgment is appropriate because: (1) WEC is a public entity; (2) Wisconsin's absentee ballot program is a program, service, or activity subject to the ADA; (3) Wisconsin's absentee ballot program allows non-disabled voters to vote privately and independently, but does not allow voters with print disabilities to do the same. The Court agrees.

First, as Plaintiffs correctly contend, Defendants are a public entity under the ADA. This is because a "public entity" includes "(A) any State or local government; [or] (B) any department, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(1). WEC, its administrator, and its commissioners, clearly fall into this category. Wis. Stat. § 5.05(1) ("The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns"); Wis. Stat. §§ (2m), (2w), (3d); see also *Braun v. Vote.org*, 2024 WI App 42, ¶60, 413 Wis. 2d 88, 11 N.W.3d 106 (Neubauer, J., dissenting) (explaining that, under Wis. Stat. § 5.05(1), "WEC is a government entity charged with administering Wisconsin's elections laws.").

Moreover, there is no genuine dispute that Wisconsin's absentee voting program is a program, service, or activity, that is both unique from Wisconsin's in person voting program, and subject to the ADA's protection. Indeed, as the Fourth Circuit Court of Appeals explained in *Lamone*:

> The Supreme Court has cautioned against defining the scope of a public benefit so as to avoid questions of discriminatory effects. In *Alexander v. Choate*, 469 U.S. 287, 301, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985), a Rehabilitation Act case, a unanimous Court counseled that in assessing whether a disabled individual had been provided with meaningful access to a benefit, "[t]he benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled." The logic of Alexander further suggests that we should proceed cautiously to avoid defining a public program so generally that we overlook real difficulties in accessing government services.
>
> Also significant for our analysis of the proper scope of review here is the fact that Maryland allows any voter to vote by absentee ballot. Absentee ballots are not provided only to a limited set of voters with a demonstrated need to vote absentee; they are instead provided to the entire Maryland electorate at the option of each individual voter. On the whole, then, we think it is far more natural to view absentee voting—rather than the entire voting program—as the appropriate object of scrutiny for compliance with the ADA and the Rehabilitation Act.

813 F.3d at 504 (internal citations omitted). Because Wisconsin, like Maryland, allows any

qualified voter to choose between voting by absentee ballot or voting in-person, Wis. Stat. § 6.85, it follows that Wisconsin's absentee voting program must comply with the ADA.

Finally, the Court agrees that Wisconsin's absentee voting program denies Plaintiffs the equal opportunity to vote absentee privately and independently. Under the ADA, public entities like WEC may not "[d]eny a qualified individual with a disability the opportunity to participate in or benefit from [a public] aid, benefit, or service" or "[o]therwise limit a qualified individual with a disability," like Plaintiffs, "in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service." 28 C.F.R. §§ 35.130(b)(i)-(ii), (vii); see also 42 U.S.C. §§ 12132-12134. In keeping with these principles, public entities may not "[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded [to] others," nor can they provide "an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result … as that provided to others." 28 C.F.R. §§ 35.130(b)(1)(ii)-(iii).

To avoid violating the ADA, public entities must instead provide "appropriate auxiliary aids and services where necessary to afford individuals with disabilities ... equal opportunity to participate in, and enjoy the benefits of, a [public] service, program, or activity." 28 C.F.R. § 35.160(b)(1). Such aids and services "must be provided in accessible formats ... and in such a way as to protect the privacy and independence" of people with disabilities. 28 C.F.R. § 35.160(b)(2).

As described above, the structure for absentee voting as prescribed by Wis. Stat. §§ 6.87(3)(a), and (4)(b)(1) requires the average absentee voter to: (1) obtain a paper ballot from the municipal clerk, (2) mark the ballot by hand, (3) enclose the marked ballot in an envelope, and (4) return the ballot to the municipal clerk. This process allows the voter to mark their ballot without disclosing their vote to any other person, and to ensure proper delivery of their ballot for tabulation.

For voters with print disabilities, however, this process looks very different. Whereas the votes of their non-disabled peers remain confidential, the accommodation for voters with print disabilities under Wis. Stat. § 6.87(5) requires the voter not only to disclose their vote, but also to trust that the third party will not tamper with the ballot, or otherwise interfere with the voter's wishes. As the Fourth Circuit Court of Appeals noted in *Lamone,* "[t]his sharp disparity makes obvious that defendants have provided 'an aid, benefit, or service [to disabled individuals] that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.'" 813 F.3d at 506 (alterations in original); *see also Cal. Council of the Blind v. Cty. of Alameda*, 985 F.Supp.2d 1229, 1239 (N.D.Cal.2013) ("[R]equiring blind and visually impaired individuals to vote with the assistance of a third party, if they are to vote at all, at best provides these individuals with an inferior voting experience 'not equal to that afforded others.'" (quoting 28 C.F.R. § 35.130(b)(1)(ii))). Because there is no genuine dispute that Wisconsin's program of physical absentee ballot delivery denies voters with print disabilities an equal opportunity to vote privately and independently, it follows that Defendants have failed to implement "reasonable modifications in policies, practices, or procedures" with respect to their can constitute discrimination under [the ADA]."

Having concluded that there is no genuine dispute of fact as to any element of Plaintiffs prima facie case for discrimination under the ADA. The Court grants Plaintiffs' motion for summary judgment, and declares Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1) invalid to the extent that they preclude WEC from providing voters with disabilities an opportunity to cast an absentee ballot independently.

II. There remains a genuine dispute of material fact regarding the reasonableness of Plaintiffs' requested accommodations.

"Determining that plaintiffs have been denied meaningful access to absentee voting does not

end our analysis." *Lamone*, 813 F.3d at 507. Indeed:

> Not all public services, programs, or activities can be made meaningfully accessible to all citizens, or at least they cannot be made so without a prohibitive cost or unreasonable effort on the part of the public entity. For this reason, to prevail on their ADA claim, plaintiffs must propose a reasonable modification to the challenged public program that will allow them the meaningful access they seek.

Id. A defendant in violation of the ADA is required to make a reasonable modification unless it "can demonstrate that making the modification[] would fundamentally alter the nature of the service, program, or activity" at issue. 28 C.F.R. § 35.130(b)(7)(i). The reasonableness of a requested accommodation is a question of fact. *Haschmann v. Time Warner Ent. Co.*, 151 F.3d 591, 601 (7th Cir. 1998); *Lamone*, 813 F.3d at 508 ("Determination of the reasonableness of a proposed modification is generally fact-specific.")

Here, Plaintiffs request that WEC implement electronic ballots as an alternative to the paper ballot system program contemplated by Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1). More specifically, they propose that voters with print disabilities be allowed to receive, mark, and return accessible electronic absentee ballots. According to Plaintiffs, this accommodation is neither unreasonable in nature, nor constitutes a fundamental alteration of the absentee ballot program because, among other things: (1) WEC already implements elements of electronic voting in Wisconsin; (2) the cost would not be overly burdensome; and (3) there has been no evidence of security breaches associated with electronic voting.

While Plaintiffs have indeed made a compelling case for the use of electronic ballots, the Court determines that there remains a genuine dispute of material fact with respect to whether their proposed accommodation is reasonable. Indeed, as Defendants point out, there exists ample evidence to rebut Plaintiffs' assertions regarding the relative burden of implementing this program, and to counter their assessment of the risks involved. Because of these factual disputes, summary

judgment is therefore inappropriate on this issue.

ORDER

For the reasons stated,

IT IS ORDERED that Disability Rights Wisconsin, League of Women Voters of Wisconsin, Michael R. Christopher, Stacy L. Ellingen, Tyler D. Engel, and Donald Natzke's motion for summary judgment is granted.

IT IS FURTHER ORDERED that Wisconsin Elections Commission, Meagan Wolfe, Don Millis, Robert Spindell, Marge Bostelmann, Ann Jacobs, Mark Thomsen, and Carrie Riepl's motion for summary judgment is denied.

This is not a final order for purpose of appeal.