FILED
11-18-2026
CIRCUIT COURT
DANE COUNTY, WI
2024CV001141

BY THE COURT:

DATE SIGNED: November 18, 2026

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 4

Electronically signed by Judge Everett D. Mitchell
Circuit Court Judge

DISABILITY RIGHTS WISCONSIN, et al.,

Plaintiffs,

v. Case No. 2024CV001141

WISCONSIN ELECTIONS COMMISSION, et al.,

Defendants.

DECISION AND ORDER ON DEFENDANTS' MOTION FOR RECONSIDERATION

Before the Court is the motion of Defendants Wisconsin Elections Commission, et al. ("WEC") for reconsideration of the Court's August 4, 2026 Decision and Order on the parties' motions for summary judgment. (Dkt. 340, the "Decision"; Dkt. 341, the "Motion".) Plaintiffs filed a response in opposition (Dkt. 343), and WEC filed a reply (Dkt. 344). The Court heard oral argument by video conference on October 14, 2026. (Hr'g Tr. Oct. 14, 2026 ("Tr.").) For the reasons that follow, the Motion is **DENIED**. Consistent with Plaintiffs' request at the hearing, the Court also orders the parties to mediation.

RETRIEVED FROM DEMOCRACYDOCKET.COM

BACKGROUND

In the Decision, the Court concluded that there is no genuine dispute of material fact as to any element of Plaintiffs' prima facie case for discrimination under Title II of the Americans with Disabilities Act ("ADA"). The Court found that Wisconsin's absentee voting program, as structured by Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1), denies voters with print disabilities the opportunity to cast an absentee ballot privately and independently, and that this denial occurs by reason of their disabilities. On that basis, the Court granted summary judgment to Plaintiffs and declared Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1) "invalid to the extent they preclude WEC from providing voters with disabilities an opportunity to cast a ballot independently." (Dkt. 340:12, 14.)

The Court then turned to Plaintiffs' proposed modification, under which voters with print disabilities would receive, mark, and return accessible electronic absentee ballots. The Court observed that Plaintiffs "have indeed made a compelling case for the use of electronic ballots," but

that WEC had come forward with evidence to rebut Plaintiffs' assertions regarding the relative burden of implementing that program and to counter Plaintiffs' assessment of the risks involved. (Dkt. 340:13.) The Court therefore held that a genuine dispute of material fact remains as to whether the proposed accommodation is reasonable and that summary judgment was inappropriate on that issue. (Dkt. 340:13-14.)

WEC does not ask the Court to revisit its determination that Plaintiffs lack meaningful access to absentee voting by reason of their disabilities. (Dkt. 341:3-4.) WEC instead argues that the reasonableness of a proposed modification is an element of Plaintiffs' prima facie case, that liability under Title II cannot be found until that element and WEC's defenses are resolved, and that the Court therefore committed a manifest error of law by granting summary judgment and declaring the statutes invalid. WEC asks the Court to vacate that portion of the Decision. (Dkt. 341:12; Dkt. 344:9.) WEC repeated those arguments at the hearing. (Tr. 4:10 to 8:8.)

Plaintiffs respond that their motion sought two distinct forms of relief: a declaration that the absentee voting statutes are invalid to the extent they preclude WEC from providing voters with disabilities an opportunity to vote privately and independently, and a separate reasonable modification consisting of electronic delivery, marking, and return of an accessible ballot. (Tr. 8:13 to 9:4.) Plaintiffs contend that the Court granted the first and reserved the second, and that WEC's Motion conflates the two. (Tr. 9:5-9; 14:9-12.)

RETRIEVED FROM DEMOCRACYDOCKET.COM

LEGAL STANDARD

A circuit court has inherent authority to reconsider a nonfinal order. *Bauer v. Wis. Energy Corp.*, 2022 WI 11, ¶¶ 13-14, 400 Wis. 2d 592, 970 N.W.2d 243. To prevail on a motion for reconsideration, the movant must present newly discovered evidence or establish a manifest error of law or fact. *Id.*; *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶ 44, 275 Wis. 2d 397, 685 N.W.2d 853. A manifest error "is not demonstrated by the disappointment of the losing party." *Koepsell's*, 2004 WI App 129, ¶ 44 (citation omitted). It is "the wholesale disregard, misapplication, or failure to recognize controlling precedent." *Id.* (citation omitted). WEC does not offer newly discovered evidence. It relies solely on an asserted manifest error of law.

DISCUSSION

A. The Decision Applied the Correct Title II Framework.

Title II 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. The implementing regulations separately prohibit a public entity from affording a qualified individual with a disability an opportunity to participate in or benefit from a service "that is not equal to that afforded others," 28 C.F.R. § 35.130(b)(1)(ii), and separately impose the duty to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7)(i).

The meaningful access standard originates in *Alexander v. Choate*, 469 U.S. 287 (1985), a Rehabilitation Act case whose standard applies equally to Title II claims. *See Lacy v. Cook Cnty., Ill.*, 897 F.3d 847, 852 n.1 (7th Cir. 2018). In *Choate*, the Supreme Court held that a qualified individual with a disability "must be provided with meaningful access to the benefit that the grantee offers," and that "to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made." *Id.* at 301. Under that standard, the denial of meaningful access is the discrimination the statute forbids, and an accommodation is the means of curing it.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Seventh Circuit describes the prima facie case under Title II in the same terms. 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*, 897 F.3d at 853. Once that showing is made, the burden shifts to the public entity to prove that the requested accommodation would impose an undue hardship. *McDaniel v. Syed*, 115 F.4th 805, 822 (7th Cir. 2024).

The authorities WEC relies upon describe the plaintiff's burden on reasonableness as a modest, facial one. In *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775 (7th Cir. 2002), the court explained that once the plaintiffs make their prima facie showing that the accommodation sought is reasonable on its face, "the defendant must come forward to demonstrate unreasonableness or undue hardship in the particular circumstances." *Id.* at 783.

Ellison v. United States Postal Service, 84 F.4th 750 (7th Cir. 2023), is to the same effect. There the plaintiff, to meet her initial burden, "needed only to suggest an accommodation that seemed reasonable on its face," which the court called a "low bar"; the defendant "then had to show that, in reality, the proposed accommodation is not reasonable." *Id.* at 760.

That is the framework the Court applied. The Court found that Plaintiffs established, without genuine dispute, each element of the prima facie case: that they are qualified individuals with disabilities, that they are denied the benefit of private and independent absentee voting, and that the denial occurs by reason of their disabilities. WEC does not challenge any of those findings on this Motion.

B. The Factual Dispute the Court Identified Concerns WEC's Rebuttal, Not Plaintiffs' Facial Showing.

WEC's argument depends on reading the Decision as having found that Plaintiffs failed to make their own showing of reasonableness. The Decision does not say that. The Court found that Plaintiffs had made "a compelling case for the use of electronic ballots." (Dkt. 340:13.) That finding satisfies the facial showing that *Oconomowoc* and *Ellison* place on a plaintiff. The genuine dispute the Court identified arose from the evidence WEC submitted to rebut Plaintiffs' assertions regarding the burden of implementation and the risks involved. (*Id.*) Those are precisely the matters of "unreasonableness or undue hardship in the particular circumstances" that the defendant must come forward to prove once the plaintiff's prima facie showing is made. *Oconomowoc*, 300 F.3d at 783; *see also Ellison*, 84 F.4th at 760; 28 C.F.R. § 35.130(b)(7)(i).

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Court's statement that a genuine dispute remains as to whether the proposed accommodation is reasonable must be read in that light. It refers to whether the specific modification Plaintiffs propose is reasonable in the particular circumstances of Wisconsin's absentee voting program, which is the question on which WEC carries the burden at trial. It does not reflect a finding that Plaintiffs failed to carry their own burden. Accordingly, even under the framework WEC advances, the Decision does not rest on a manifest error of law.

C. The Declaration Is Limited and Leaves WEC's Defenses for Trial.

WEC contends that if it ultimately proves that Plaintiffs' proposed modification would fundamentally alter the absentee voting program or impose an undue burden, the statutes could not be invalid. That argument misreads the scope of the declaration. The Court did not order WEC to

implement electronic ballot delivery, marking, or return. The Court declared Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1) invalid only "to the extent they preclude WEC from providing voters with disabilities an opportunity to cast a ballot independently." (Dkt. 340:12, 14.) That declaration follows from the uncontested finding that the statutes, as presently applied, deny Plaintiffs meaningful access to absentee voting by reason of their disabilities. It addresses the statutes as a categorical barrier to WEC's compliance with its federal obligation; it does not resolve which modification Title II requires.

The record confirms that the statutes operate as exactly that kind of barrier. At the hearing, WEC acknowledged: "We agree that the statute currently forbids electronic absentee voting." (Tr. 15:22-23.) WEC has also admitted that Plaintiffs seek declaratory relief from the application of the statutes (Dkt. 204 ¶ 1), and reaffirmed that admission at the hearing. (Tr. 17:6-17.) Plaintiffs further directed the Court to deposition testimony of WEC officials attributing WEC's failure to pursue accessible absentee voting options, at least in part, to the limits of Wisconsin law. (Tr. 10:5 to 11:13 (citing Wolfe Dep. 22-23, Dkt. 93; Kehoe Dep. 106, Dkt. 279).)

Whether a state statute must yield to federal law to the extent it stands in the way of compliance with the ADA is a question of law for the Court. *See Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 318 (2019) (holding that the pre-emption question presented there was "a legal one for the judge, not a jury"). WEC's own authority recognizes as much. In *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494 (4th Cir. 2016), the Fourth Circuit addressed at the outset "the strong form of defendants' argument," namely that "the mere fact of a state statutory requirement insulates public entities from making otherwise reasonable modifications to prevent disability discrimination," and held that it "cannot be correct," because "[t]he Constitution's Supremacy Clause establishes that valid federal legislation can pre-empt state laws." 813 F.3d at 508. That legal question was properly resolved on summary judgment, and its resolution does not depend on the outcome of the fact intensive inquiry into whether a particular modification is reasonable in the particular circumstances.

Whether the electronic ballot system Plaintiffs propose is required, and whether WEC can establish that it would fundamentally alter the nature of the program or impose an undue burden, remain open questions for trial. The Decision said so expressly. (Dkt. 340:13-14.) Reserving those questions while resolving the elements on which no genuine dispute exists is not a disregard of

RETRIEVED FROM DEMOCRACYDOCKET.COM

controlling precedent. It is the ordinary function of summary judgment to narrow the issues that must be tried.

D. WEC Has Not Identified Controlling Precedent the Court Disregarded.

The manifest error standard requires the wholesale disregard, misapplication, or failure to recognize *controlling* precedent. *Koepsell's*, 2004 WI App 129, ¶ 44. WEC has not identified any decision of the Wisconsin Supreme Court or the United States Supreme Court that the Decision disregarded or misapplied. The Supreme Court decisions WEC cites do not address the question presented here. *Tennessee v. Lane*, 541 U.S. 509 (2004), concerned whether Title II validly abrogates state sovereign immunity in cases implicating access to the courts. *US Airways, Inc. v. Barnett*, 535 U.S. 391 (2002), concerned the interaction between a requested accommodation and a seniority system under Title I. *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001), concerned Title III. None holds that a trial court may not resolve the meaningful access elements of a Title II claim on summary judgment while reserving the public entity's rebuttal and defenses for trial. To the extent any controlling authority speaks to the issue, *Albrecht* supports the Court's approach by treating the pre-emption question before it as one of law for the judge. 587 U.S. at 318.

Nor do the persuasive authorities WEC cites compel that result. *Ellison* reviewed a grant of summary judgment to the defendant; the Seventh Circuit vacated that judgment and remanded for further proceedings on reasonableness. 84 F.4th at 760. It did not hold that a court errs by entering judgment on the elements the plaintiff has established while the defendant's rebuttal remains for trial. *Lamone* reviewed a judgment entered after the district court had resolved every issue, so the order in which the Fourth Circuit discussed those issues says nothing about whether a trial court may resolve some of them earlier than others. *Johnson v. Callanen*, 610 F. Supp. 3d 907 (W.D. Tex. 2022), applied the preliminary injunction standard, which required a clear showing of likely success on the merits; it, too, found a denial of access by reason of disability before turning to the reasonableness of the proposed modification. *Id.* at 916-18. And *Wisconsin Community Services, Inc. v. City of Milwaukee*, 465 F.3d 737 (7th Cir. 2006) (en banc), and *A.H. ex rel. Holzmueller v. Illinois High School Ass'n*, 881 F.3d 587 (7th Cir. 2018), turned on causation, an element the Court resolved in Plaintiffs' favor and that WEC does not challenge here. Although *A.H.* also rested on an alternative fundamental alteration holding, that holding was

RETRIEVED FROM DEMOCRACYDOCKET.COM

reached on undisputed facts. 881 F.3d at 594-96. Here, by contrast, the Court found that the facts bearing on WEC's defenses are disputed.

At most, WEC disagrees with the sequence in which the Court resolved the issues before it. Disagreement with the Court's reasoning is not a manifest error of law. *Koepsell's*, 2004 WI App 129, ¶ 44. WEC has preserved its position for appeal, as it acknowledges. (Dkt. 341:4 n.1.)

E. Plaintiffs' Alternative Requests.

In their response, Plaintiffs ask that, if the Court revisits the Decision, it clarify that summary judgment is also granted under the Rehabilitation Act, that electronic ballot delivery and marking are reasonable as a matter of law, that the only issue remaining for trial is WEC's defense to electronic ballot return, and that the Court state its reasons for denying WEC's motion on Plaintiffs' constitutional claims. (Dkt. 343:6-7.) Because the Court denies the Motion and does not revisit the Decision, it does not reach those requests. They were raised in a response brief rather than by motion, and the Court declines to address them on this record without prejudice to any party's ability to raise them by a properly noticed motion. At the hearing, Plaintiffs suggested that the Court could award summary judgment on electronic delivery and marking under Wis. Stat. § 802.08(6) (Tr. 14:13 to 15:2), and WEC objected that Plaintiffs had consistently presented full electronic delivery, marking, and return as a single accommodation. (Tr. 16:15 to 17:5.) The Court declines to reach that question on this Motion.

RETRIEVED FROM DEMOCRACYDOCKET.COM

WEC also asked at the hearing that the Court address its motion for summary judgment on Plaintiffs' federal and state constitutional claims, contending that the Decision incorrectly stated that WEC had not moved on the federal claims. (Tr. 7:12 to 8:8; *see also* Dkt. 341:4 n.1.) WEC's request was premised on the Court vacating summary judgment on the ADA claim. (Tr. 7:12-22.) Because the ADA ruling stands, the Court adheres to its determination that the ADA ruling is a sufficient ground for judgment and that it need not reach the remaining claims at this time. (Dkt. 340:5-6.) This ruling is without prejudice to any party raising the constitutional claims by a properly noticed motion should they become necessary to the resolution of this case.

F. Mediation.

At the close of the hearing, Plaintiffs requested that the Court order mediation, stating their position that a final resolution of this dispute could be accomplished through mediation following

the issuance of this decision. (Tr. 18:3-9.) WEC did not object. (Tr. 18:12-13.) The issues that remain, including which modification or modifications will provide voters with print disabilities the opportunity to cast an absentee ballot privately and independently, and how such a modification may be implemented consistent with the security and administrative concerns WEC has raised, are well suited to negotiated resolution. The Court therefore orders the parties to mediation as set forth below.

ORDER

For the reasons stated above, **IT IS HEREBY ORDERED** that:

1. Defendants' Motion for Reconsideration to Amend and Correct the Summary Judgment Decision (Dkt. 341) is **DENIED**.
2. The Court's August 4, 2026 Decision and Order (Dkt. 340) remains in full force and effect.
3. Plaintiffs' alternative requests for clarification (Dkt. 343:6-7) are not reached and are denied without prejudice.
4. The parties shall participate in good faith mediation of all remaining issues in this case, including the modification or modifications necessary to provide voters with print disabilities an opportunity to cast an absentee ballot privately and independently and the implementation of any such modification.
5. Within fourteen (14) days of the date of this Order, the parties shall jointly file a notice identifying an agreed mediator. If the parties cannot agree, each party shall, within the same period, submit the names of two proposed mediators, and the Court will select the mediator.
6. Mediation shall be completed within ninety (90) days of the date of this Order unless extended by the Court for good cause. The costs of the mediator shall be divided equally between Plaintiffs and Defendants.
7. Within seven (7) days after the conclusion of mediation, the parties shall file a joint status report advising the Court whether the case has been resolved in whole or in part and identifying any issues that remain for trial. The Court will then schedule a status

RETRIEVED FROM DEMOCRACYDOCKET.COM

conference to set further proceedings, including trial on any unresolved issues, which include whether Plaintiffs' proposed modification is reasonable in the particular circumstances and whether WEC can establish that it would fundamentally alter the nature of the absentee voting program or impose an undue burden.

This is a final order for purposes of appeal.

Dated this ____ day of _____, 2026.

RETRIEVED FROM DEMOCRACYDOCKET.COM