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CIRCUIT COURT
DANE COUNTY, WI
2024CV001141
Honorable Everett Mitchell
Branch 4

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH __

DISABILITY RIGHTS WISCONSIN
131 West Wilson Street, Suite 700
Madison, Wisconsin 53703;

LEAGUE OF WOMEN VOTERS OF
WISCONSIN
612 West Main Street, Suite 200
Madison, Wisconsin 53703;

MICHAEL R. CHRISTOPHER
47 Pond View Way
Fitchburg, Wisconsin 53711;

STACY L. ELLINGEN
210 East Tennessee Avenue
Oshkosh, Wisconsin 54901;

TYLER D. ENGEL
107 Sutherland Court, Unit 306
Madison, Wisconsin 53704;

DONALD (DON) NATZKE
1909 East Beverly Road
Shorewood, Wisconsin 53211,

Plaintiffs,

v.

WISCONSIN ELECTIONS COMMISSION
(WEC); MEAGAN WOLFE, in her official
capacity as Administrator of WEC;
DON MILLIS, ROBERT SPINDELL, JR.,
MARGE BOSTELMANN, ANN JACOBS,
MARK THOMSEN, and CARRIE RIEPL, in their
official capacities as Commissioners of WEC;
201 West Washington Avenue, Second Floor,
Madison, Wisconsin 53703,

Defendants.

Case No. 24-CV-_____

Case Code: 30701
Declaratory Judgment

COMPLAINT

NOW COME Plaintiffs Disability Rights Wisconsin, League of Women Voters of Wisconsin, Michael R. Christopher, Stacy L. Ellingen, Tyler D. Engel, and Donald (Don) Natzke, (“Plaintiffs”) by and through their attorneys, Stafford Rosenbaum LLP and Wilmer Cutler Pickering Hale and Dorr LLP, and for their claims against the Wisconsin Elections Commission, its Administrator, and appointed Commissioners, state as follows:

I. INTRODUCTION

1. Plaintiffs seek emergent declaratory relief from the application of Wis. Stat. §§ 6.87(3)(a) and (4)(b)(1) that deny voters with disabilities the ability to receive, mark, and return their absentee ballot electronically. Wisconsin must provide an option for voters with disabilities to receive, mark, and return their absentee ballot electronically. This is required for Wisconsin to comply with myriad accommodation and equal-access requirements under state and federal law, and to ensure that voters with disabilities receive the equal protection guaranteed under the Wisconsin Constitution to cast their votes in secret, like Wisconsin voters without disabilities.

2. The right to vote is expressly protected by the Wisconsin Constitution. “*Every* United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district.” Wis. Const., art. III, § 1 (emphasis added).

3. Ballot secrecy is enshrined in the Wisconsin Constitution: “*All* votes shall be by *secret* ballot.” Wis. Const., art. III, § 3 (emphases added).

4. To fulfill these constitutional mandates, Wisconsin law requires the Wisconsin Elections Commission (WEC or the Commission), acting through its Administrator and appointed Commissioners—and as carried out by each of Wisconsin’s municipal clerks—to ensure ballot secrecy for all voters.

5. Indeed, voters who submit absentee ballots are required to certify that their ballot was marked “in such a manner that *no one* but [the voter] ... could know how [the ballot was] voted.” Wis. Stat. § 6.87(2) (emphasis added). But the Wisconsin legislature’s attempt to fully achieve the constitutional guarantee of a secret ballot falls short: many absentee voters with disabilities—unlike voters *without* a disability—are unable to independently cast their votes and must share each of their selections with an assistant.

6. In Wisconsin, the only option for most voters to participate in absentee voting is by paper ballot; the provision of electronic absentee ballot options are reserved solely for military and overseas electors. *See, e.g.*, Wis. Stat. § 6.87(3)(a). Accordingly, Wisconsin voters with disabilities (who do not fall within the category of military and overseas electors) are prohibited from receiving an electronic absentee ballot. Those same voters with disabilities are not given an opportunity to use common, at-home electronic accessibility devices to read and mark their ballots. Those voters therefore face disenfranchisement.

7. Instead, because these voters can vote absentee only by using a paper ballot, they must select an assistant to read and mark their ballot for them. Doing so forces voters with disabilities to surrender their independence and privacy, share their vote, and trust that

their ballot was marked accurately—a surrender of the constitutional right to a secret ballot not demanded of voters without disabilities.

8. This unconstitutional defect in Wisconsin’s absentee ballot system is well-known yet remains unaddressed. WEC has acknowledged that there currently exist no “options for a voter [with a disability] to fill out a[n] [absentee] ballot *independently*.”¹ And WEC’s Accessibility Advisory Committee has “raised concerns about the accessibility of absentee voting.”² WEC also knows that the result of this unconstitutional defect is that, currently, “[v]oters with blindness or low vision still do not have an accessible absentee ballot or certificate envelope that can be marked *independently*.”³ That also means, for voters with such disabilities, that there is no option for them to *privately* mark their ballot.

9. Voters whose disabilities prevent them from voting absentee without an accessibility device are therefore presented with a choice that individuals without disabilities are not: forgo voting by absentee ballot, or relinquish their constitutional right to vote privately.

¹ Wisconsin Elections Comm’n, Barriers Faced by Elderly Voters and Voters with Disabilities 6 (June 2023), https://docs.legis.wisconsin.gov/misc/mandatedreports/2023/wisconsin_elections_commission/barriers_faced_by_elderly_voters_and_voters_with_disabilities_s_5_25_4_received_6_29_2023.pdf (hereinafter, “Voting Barriers Report”) (emphasis added).

² *Id.* at 20.

³ *Id.* (emphasis added).

10. Without the ability to cast an absentee ballot in secret, some Wisconsin voters with disabilities may opt to forgo voting altogether, particularly those whose disability creates barriers to in-person voting.

11. These obstacles are not mere oversights. They are the products of a legislative choice: a choice that unjustifiably protects the rights of voters without disabilities to cast their absentee ballot in secret while requiring some voters with disabilities to surrender that same constitutional right, or forgo the absentee-ballot right altogether.

12. Municipalities in Wisconsin previously distributed electronic absentee ballots by email to any absentee voter upon request. But the adoption of 2011 Wisconsin Act 75 extinguished that option. Act 75 “prohibit[ed] election officials from sending [electronic] absentee ballots via email ... to all but a few categories of voters,” namely deployed military members and permanent overseas voters. *Luft v. Evers*, 963 F.3d 665, 676-77 (7th Cir. 2020).

13. Wisconsin voters challenged the federal constitutionality⁴ of Act 75’s so-called “no electronic ballot” provision, but to no avail. In 2016, challengers to the “no electronic ballot” provision argued that it unconstitutionally burdened “students or researchers who are abroad” and “domestic travelers.” *Thomsen*, 198 F. Supp. 3d at 946-

⁴ The 2016 challenge to Act 75 was brought under the First, Fourteenth, Fifteenth, and Twenty-Sixth Amendments to the United States Constitution. *See One Wis. Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 902 (W.D. Wis. 2016), *aff’d in part, vacated in part, rev’d in part sub nom. Luft v. Evers*, 963 F.3d 665 (7th Cir. 2020). Whether Act 75 violates Wisconsin’s voting rights—and in particular, those with disabilities—under the Wisconsin Constitution has not been adjudicated.

47. While the district court found that Act 75's "no electronic ballot" provision violated the First and Fourteenth Amendments, *id.* at 948, the Seventh Circuit later reversed. *See generally Luft*, 963 F.3d 665.

14. In *Luft* (the decision resulting from appellate review of the *Thomsen* orders), the Seventh Circuit trivialized the "inconvenience[]" experienced by "road warriors who may be out of state, or leisure travelers who don't plan ahead[.]" 963 F.3d at 676-77. Following the Seventh Circuit's reversal, Wisconsin municipalities could no longer provide electronic ballots to in-state voters. *See generally* Wis. Stat. § 6.87(3)(a) (providing that absentee ballots must be either "mail[ed] ... to the elector's residence unless otherwise directed by the elector, or ... deliver[ed] ... to the elector personally").

15. However, *Luft* did not specifically address the unequal treatment and burdens faced by Wisconsin voters with disabilities.

16. Wisconsin law currently provides no exception for voters with disabilities, who are treated unequally and face real and considerable hurdles to participating in absentee voting. Instead, Wisconsin law requires that all non-military, non-overseas mail-in absentee voters receive a paper ballot by mail, mark that ballot by hand, and send it back by mail or deliver it in person. *See* Wis. Stat. § 6.87(4)(b)(1).

17. Any one of those steps can render a paper ballot inaccessible to voters with disabilities, and in particular those with print disabilities, a general category of disabilities

encompassing those who have difficulty with either reading or writing.⁵ While some voters, like Plaintiffs Ellingen and Engel, can read a ballot, they do not have sufficient control of their hands to mark it. Other voters, like Plaintiffs Natzke and Christopher, could use an at-home accessibility device to have the paper ballot read to them, but they are unable to see the ballot to accurately mark it.

18. Some voters with disabilities, like Plaintiff Ellingen, who has athetoid spastic quadriplegic cerebral palsy,⁶ cannot reliably vote in person on election day because of their disability. For voters like Plaintiff Ellingen, voting by absentee ballot is the **only** way they can reliably access the franchise.

19. An electronic ballot, however, **can** be marked by most at-home accessibility devices, such as commercially available electronic screen readers commonly used by individuals with print disabilities. An electronic ballot would allow such voters the ability to vote both **privately** and **independently**.

20. Accordingly, Wisconsin's election system is unlawful. Defendants must provide an accessible mechanism for private and independent absentee voting. Wisconsin and federal law guarantee that voters with disabilities enjoy the same full and equal access

⁵ A "print disability" is commonly defined as including "A person who is unable to read or use regular print materials as a result of temporary or permanent visual or physical limitations [T]his includes those who are blind or have a visual or physical disability that prevents them from reading or handling print materials," as well as those "who cannot effectively read print because of a visual, physical, perceptual, developmental, cognitive, or learning disability." See Nat'l Inst. of Standards & Tech., U.S. Dep't of Commerce, *Promoting Access to Voting: Recommendations for Addressing Barriers to Private and Independent Voting for People with Disabilities*, NIST SP 1273, 81 (2022).

⁶ Athetoid cerebral palsy is the "second most common type of cerebral palsy" and is "usually more severe than other types of cerebral palsy." *Athetoid Cerebral Palsy*, Cleveland Clinic, <https://my.clevelandclinic.org/health/diseases/25198-athetoid-cerebral-palsy>. It is a "movement condition that causes involuntary and uncontrollable muscle movements." *Id.*

to all state voting programs as all other voters and, like all other voters, are entitled to vote privately and independently through the methods the State makes available. When the State makes it impossible for voters with disabilities to vote absentee privately and independently by failing to provide the mechanisms necessary for those voters to exercise their constitutional right to cast their ballot on equal terms with other voters, it violates the Wisconsin and the United States Constitutions and federal disability rights laws.

21. Wisconsin's partisan primary election takes place on August 13, 2024.

22. The next general election, in which the next President of the United States will be elected, takes place on November 5, 2024.

23. Wisconsin voters with disabilities face imminent discrimination at these and future elections, and some voters, like Plaintiff Ellingen, who faces substantial burdens to physically travel to the polls or access her polling location, faces threats of complete disenfranchisement. Wisconsin and federal law require relief from those threats.

24. This civil action seeks declaratory and other relief to ensure that Plaintiffs and other similarly situated Wisconsin voters with disabilities have access to the franchise on terms equal to those available to all other Wisconsin voters; to ensure that Plaintiffs and other similarly situated voters with disabilities, and especially print disabilities, may vote by absentee ballot *privately* and *independently*, as other Wisconsin voters can; and to prevent Plaintiff Ellingen and other Wisconsin voters with disabilities from being unduly burdened in exercising their right to vote.

25. Specifically, this lawsuit seeks a declaratory judgment that Wisconsin's prohibition on allowing absentee ballots to be privately and independently sent, marked,

and returned by electronic means by voters with disabilities, *see, e.g.*, Wis. Stat. §§ 6.87(3)(a) and (b)(4)(1), violates the Wisconsin Constitution, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, the Rehabilitation Act, 29 U.S.C. § 701, *et seq.*, and the First and Fourteenth Amendments to the United States Constitution.

26. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *accord State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 613, 37 N.W.2d 473 (1949) (“The right of a qualified elector to cast a ballot for the election of a public officer, which shall be free and equal, is one of the most important of the rights guaranteed ... by the constitution.”).

27. All Americans, including those with disabilities, are entitled to enjoy the same precious right to vote. As President Ronald Reagan said in his remarks upon signing into law a congressional reauthorization and expansion of the Voting Rights Act, “[t]he right to vote is the crown jewel of American liberties, and we will not see its luster diminished.”⁷ Indeed, “the right to vote freely for the candidate of one’s choice is of the essence of a democratic society.” *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (citing *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). “Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry*, 376 U.S. at 17.

⁷ Remarks on Signing the Voting Rights Act Amendments of 1982, Reagan Library (June 29, 1982), (transcript available at <https://www.reaganlibrary.gov/archives/speech/remarks-signing-voting-rights-act-amendments-1982#:~:text=%20Well%2C%20with%20this%20law,bipartisan%20legislation%20to%20my%20desk.>).

II. PARTIES

A. *The Individual Plaintiffs*

28. All named individual Plaintiffs are United States citizens, residents of the State of Wisconsin, and are duly qualified and registered as electors in local, state, and federal elections in Wisconsin.

29. All named individual Plaintiffs reside in their homes, and all are registered to vote in Wisconsin.

30. Each individual Plaintiff, due to their disabilities, is coerced into choosing an assistant to help them vote. Each wishes to keep their votes secret. Each cannot do so. Each must choose between revealing their vote to an assistant, including one who they may not trust to accurately vote their ballot, or forgoing absentee ballot voting altogether.

1. Donald Natzke

31. Plaintiff Donald Natzke is an adult resident of Shorewood, Wisconsin.

32. Plaintiff Natzke is completely blind due to a heredity condition. He lost vision when he was approximately 12 years old.

33. Plaintiff Natzke resides at home with his partner, who is also completely blind. Their son, who is sighted, resides nearly 90 miles away—in Dane County.

34. Because of his disability, Plaintiff Natzke is not able to read and mark a paper absentee ballot privately and independently. If he were to vote a paper absentee ballot, Plaintiff Natzke would need to rely on an assistant to reliably read the ballot, mark his selections, act as a witness, and reliably fill out the absentee ballot certification. This means

Plaintiff Natzke must tell the person assisting him who he is voting for and rely on them to mark his ballot without any means to independently verify its accuracy.

35. Because his partner is also blind, she is not able to serve as his chosen assistant. As such, Plaintiff Natzke would need to rely on non-household members, including friends, neighbors, or acquaintances, to participate in the paper absentee-ballot process, and he would be required to tell his chosen assistant his preferred candidate(s), a burden that voters without disabilities do not have to face.

36. Plaintiff Natzke would strongly prefer to vote absentee, but due to his inability to cast an absentee ballot privately and independently, he generally goes to the polls. This is discrimination based on his disability. And on occasions that he cannot access the polls in person, he has been completely disenfranchised.

37. For example, during the April 2020 elections, Plaintiff Natzke was recovering from surgery and could not physically travel to the polls. Additionally, due to the COVID-19 pandemic, he was considered a high-risk individual and cautioned not to vote in person. He requested an absentee ballot, but was unable to fill it out due to his print disability. Plaintiff Natzke was therefore completely disenfranchised during that election.

38. Plaintiff Natzke would not have been disenfranchised in 2020 had Defendants permitted him to vote by an electronic absentee ballot. Plaintiff Natzke has accessibility devices in his home, like a speech synthesizer, that would allow him to read and mark an electronic absentee ballot. Plaintiff Natzke would also be able to use his computer and accessibility devices to return an electronic ballot. This technology cannot be used to read, complete, or return Wisconsin's paper absentee ballot under current law.

39. Plaintiff Natzke, if given the opportunity to vote absentee from home by electronic absentee ballot, would be able to vote on terms equal to those available to other Wisconsin voters without disabilities—casting an absentee ballot *privately* and *independently*.

40. Plaintiff Natzke, if given the opportunity, would use at-home accessibility technology to read and complete his ballot in a manner that does not require him to disclose who he votes for.

2. Michael Christopher

41. Plaintiff Michael Christopher is a 76-year-old man who has lived in the Madison, Wisconsin area since 1969.

42. Plaintiff Christopher was diagnosed at the age of 19 with a benign brain tumor. Surgery to remove Plaintiff Christopher's brain tumor left him blind in his right eye. While he maintained vision in his left eye for several years post-operation, Plaintiff Christopher is now nearly completely blind, following a traumatic injury to his left eye seven years ago.

43. While Plaintiff Christopher is still able to see light and dark and can make out some shapes, he is print disabled. Because of his disability he cannot privately and independently read or mark a paper absentee ballot. To vote a paper absentee ballot, Plaintiff Christopher needs to rely on an assistant to reliably read the ballot, mark his selections, act as a witness, and reliably fill out the absentee ballot certification. This means Plaintiff Christopher must tell the person assisting him who he is voting for and rely on them to mark his ballot without any means to independently verify its accuracy.

44. Because of his disability, Plaintiff Christopher uses an absentee ballot to vote in local, state, and federal elections. Plaintiff Christopher is forced to ask for assistance—typically from his partner, who lives with him—to read his ballot and mark his selections; he has no other options for completing his paper absentee ballot. Plaintiff Christopher is thus forced to share his voting preferences with his partner, forgoing his constitutional right to vote by secret ballot. If Plaintiff Christopher’s partner did not live with him, in order to vote by absentee paper ballot, he would have to share his vote with another person of his choice to assist him to read and mark his ballot, a burden that voters without disabilities do not have to face.

45. Plaintiff Christopher has accessibility devices in his home, like the Job Access With Speech screen reader, that would allow him to read and mark an electronic ballot. Plaintiff Christopher would also be able to use his computer and accessibility devices to complete and return an electronic absentee ballot. This technology cannot be used to read, complete, or return Wisconsin’s paper absentee ballot under current law.

46. Plaintiff Christopher, if given the opportunity to vote absentee from home by electronic ballot, would be able to vote on terms equal to those available to Wisconsin voters without disabilities—casting a ballot *privately* and *independently*.

47. Plaintiff Christopher, if given the opportunity, would use at-home accessibility technology to read and complete his ballot in a manner that does not require him to disclose who he votes for.

3. Stacy Ellingen

48. Plaintiff Stacy Ellingen is a 38-year-old woman who has lived in Wisconsin her entire life.

49. Plaintiff Ellingen has cerebral palsy, which affects every part of her body. She lives alone and relies on assistance from caregivers for all her basic needs.

50. Due to Plaintiff Ellingen's disabilities, it is extremely difficult for her to travel to a physical polling location. She cannot drive. She cannot independently use accessible public transportation, which is infrequent and unpredictable in her area, or independently use a car service to go to her polling location without a caregiver's help. Due to the caregiver shortage, Plaintiff Ellingen struggles to hire enough caregiver support, and often can have a caregiver come for only a short period of time. Given the limited number of care hours available to her and the many essential personal care needs at her house, Plaintiff Ellingen cannot use the care time available to her to have a caregiver drive her to the polls. She therefore must use an absentee ballot to reliably vote in local, state, and federal elections.

51. Plaintiff Ellingen cannot vote a paper absentee ballot independently because she does not possess the necessary fine motor skills to hold a pen and accurately mark a ballot. She must rely on an assistant to mark her ballot for her, which necessarily requires telling the assistant—be it her parents, her caregiver, or someone else—who she wishes to vote for. She cannot leave her house or travel to and use a mailbox on her own, so she also needs to use an assistant to return her ballot.

52. Plaintiff Ellingen has relied on her parents for assistance in the past, but they live an hour away; she is not always able to see them during the necessary time frame for absentee voting. Plaintiff Ellingen does not feel comfortable sharing her political preferences with her caregivers.

53. Due to the caregiver shortage, Plaintiff Ellingen often does not know the caregiver well. Because she needs a caregiver for her basic needs, she cannot risk making a caregiver upset or uncomfortable if they disagree with her political views. Therefore, if Plaintiff Ellingen cannot see her parents within the necessary time frame for absentee voting, she is completely unable to vote.

54. Plaintiff Ellingen has a computer system at her home that would allow her to vote an electronic absentee ballot privately and independently. She uses two monitors, an enlarged adapted keyboard, and an eye gaze system, which allows her to type and control the mouse just through moving her eyes. These devices would allow her to vote electronically. But this technology cannot be used to read, complete, and return Wisconsin's paper absentee ballot under current law. Current law creates undue burdens on Plaintiff Ellingen's right to vote.

55. Plaintiff Ellingen, if given the opportunity to vote absentee from home by electronic ballot, would be able to vote on terms equal to those available to other Wisconsin voters without disabilities—casting a ballot *privately* and *independently*.

56. Plaintiff Ellingen, if given the opportunity, would use at-home accessibility technology to read and complete her ballot in a manner that does not require her to disclose who she votes for.

4. Tyler Engel

57. Plaintiff Tyler Engel is a 35-year-old man who has lived in Wisconsin his entire life.

58. Plaintiff Engel has spinal muscular atrophy,⁸ which affects his ability control his body's movement. Due to his disability, Plaintiff Engel votes by absentee ballot.

59. Plaintiff Engel does not have sufficient strength in his arms to mark his ballot by hand or return a ballot independently. He therefore must rely on an assistant to mark his ballot for him, which necessarily requires telling the assistant who he wishes to vote for. Plaintiff Engel is thus forced to share his voting preferences with his assistant, forgoing his constitutional right to vote by secret ballot.

60. Plaintiff Engel can use his computer without any additional accessibility devices. Using his computer to complete an electronic ballot would allow him to mark his ballot privately and independently. But this technology cannot be used to complete and return Wisconsin's paper absentee ballot under current law.

61. Plaintiff Engel, if given the opportunity to vote absentee from home by electronic ballot, would be able to vote on terms equal to those available to other Wisconsin voters without disabilities—casting a ballot *privately* and *independently*.

⁸ “Spinal muscular atrophy (SMA) is a genetic (inherited) neuromuscular disease that causes muscles to become weak and waste away. People with SMA lose a specific type of nerve cell in the spinal cord (called motor neurons) that control muscle movement. Without these motor neurons, muscles don't receive nerve signals that make muscles move.... [and] certain muscles become smaller and weaker due to lack of use.” *Spinal Muscular Atrophy*, Cleveland Clinic, <https://my.clevelandclinic.org/health/diseases/14505-spinal-muscular-atrophy-sma>.

62. Plaintiff Engel, if given the opportunity, would use at-home accessibility technology to read and complete his ballot in a manner that does not require him to disclose who he votes for.

B. The Organizational Plaintiffs

1. Disability Rights of Wisconsin

63. Organizational Plaintiff Disability Rights of Wisconsin (DRW) is a private non-profit organization that protects the rights of people with disabilities statewide. Its mission is to advance the dignity, equality, and self-determination of people with disabilities. It maintains offices across the state of Wisconsin, with its principal office located at 1502 West Broadway, Suite 201, Madison, Dane County, Wisconsin.

64. DRW advocates on behalf of people with all disabilities to ensure they can exercise the voting rights to which they are entitled, advocates on behalf of those who believe their right to vote has been infringed, provides resources on how to vote with a disability, and seeks to advance legislation that makes it easier for people with disabilities to vote in elections.

65. As Wisconsin's recognized Protection & Advocacy Organization, DRW is legislatively mandated to provide services to voters with disabilities and ensure that individuals with disabilities can participate in every step of the voting process.⁹

66. The voters for whom DRW advocates and provides services include print-disabled voters and other voters with disabilities who, if given access to an electronic

⁹ *Protection & Advocacy Systems*, Administration for Community Living, <https://acl.gov/programs/pa-programs> (last updated July 6, 2023).

absentee ballot, would be able to vote absentee fully privately and independently. If given the opportunity, these voters would use their personal computer devices along with at-home accessibility technology to read and complete their ballots in a manner that does not require them to disclose who they vote for.

2. League of Women Voters of Wisconsin

67. Organizational Plaintiff League of Women Voters of Wisconsin (LWVWI) is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin. Its principal office is at 612 West Main Street, Suite 200, Madison, Dane County, Wisconsin. LWVWI's mission is to empower voters and defend democracy. LWVWI does this by promoting political responsibility through informed and active participation in government, including by removing unnecessary barriers to full participation in the electoral process.

68. LWVWI has 22 local leagues and approximately 2,500 members, the vast majority of which are registered to vote in Wisconsin, including voters with print and other disabilities.

69. If given access to an electronic absentee ballot, many of LWVWI's member-voters with a print disability would be able to vote fully privately and independently. These member-voters, if given the opportunity, would use at-home accessibility technology to read and complete their ballots in a manner that does not require them to disclose who they vote for.

C. The WEC Defendants

70. Defendant Wisconsin Elections Commission (WEC) is the agency in charge of administering elections in Wisconsin. The Commission's office, and the place in which it primarily conducts business, is located in Dane County.

71. WEC is an administrative body created under the laws of Wisconsin that administers and enforces Wisconsin elections law and is made up of six appointed members.

72. Defendant Meagan Wolfe is sued in her official capacity as WEC Administrator. She is the chief election officer of the State of Wisconsin. Wis. Stat. § 5.05(3g). She plays a key role in enforcing state election laws. *Id.* § 5.05(2m)(c).

73. Defendants Don Millis, Robert Spindell, Jr., Marge Bostelmann, Ann Jacobs, Mark Thomsen, and Carrie Riepl are sued in their official capacities as WEC Commissioners. WEC's commissioners have key roles in enforcing state election laws. Wis. Stat. § 5.05(2m).

74. WEC has "the responsibility for the administration of chs. 5 to 10 and 12 [of the Wisconsin statutes] and other laws relating to elections and election campaigns[.]" Wis. Stat. § 5.05(1).

III. JURISDICTION AND VENUE

75. This Court has jurisdiction over the subject matter of this action pursuant to Article VII § 8 of the Wisconsin Constitution, which vests the circuit courts with "original jurisdiction in all matters civil ... within this state[.]"

76. This Court has personal jurisdiction over Defendants pursuant to Wis. Stat. § 801.05(1)(a), (b), and (d).

77. Venue is proper in this Court because Dane County is where the claim primarily arose, Wis. Stat. § 801.50(2)(a), and because each Defendant resides or does substantial business in Dane County, Wis. Stat. § 801.50(2)(c).

IV. FACTS

A. Voters with Disabilities Are Frequently Disenfranchised by Unequal Voting Systems.

78. Voters with disabilities have long struggled to access the right to vote on the same terms as individuals without disabilities. And even with protections in place, too many individuals continue to face substantial obstacles to voting.

79. Voters with disabilities make up a substantial portion of the voting population in the United States and Wisconsin.¹⁰ Over 35 million American voters—approximately one-sixth of the United States' total electorate—live with disabilities. The Centers for Disease Control and Prevention (CDC) estimates that over 25% of adults in the United States live with a disability.¹¹ A 2021 study estimated that more than 1 million Americans live with blindness.¹²

¹⁰ EAC FACT SHEET: How the U.S. Election Assistance Commission empowers Voters with disabilities and the election officials who serve them, Elections Assistance Commission, https://www.eac.gov/sites/default/files/eac_assets/1/6/EAC_FACT_SHEET_Voters_with_Disabilities11.pdf.

¹¹ *Disability Impacts All of Us*, Centers for Disease Control and Prevention (May 15, 2023), <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>.

¹² Abraham D. Flaxman et al., *Prevalence of Visual Acuity Loss or Blindness in the US: A Bayesian Meta-analysis*, 139 JAMA OPHTHALMOLOGY 7, 717 (May 13, 2021), <https://jamanetwork.com/journals/jamaophthal-mology/fullarticle/2779910>.

80. The CDC estimates that approximately 23% of adults in Wisconsin have a disability. Two percent of Wisconsin adults are blind or have “serious difficulty seeing, even when wearing glasses.”¹³ And 21% of Wisconsinites with disabilities have disabilities that impact their mobility or cognition.¹⁴ As of 2016, 110,300 Wisconsinites live with a visual disability.¹⁵ Each of these categories may qualify as a print disability that creates substantial barriers to voting paper ballots.

81. Voters with disabilities consistently face heavier burdens on their right to vote than voters without disabilities, and, consequently, struggle to vote at the same rate as voters without disabilities. The data prove this. Even with increasing protections under the law, voters with disabilities nationwide vote at lower rates than those without disabilities. This is particularly true for those with print disabilities, like Plaintiffs Natzke, Christopher, Ellingen, and Engel. A study sponsored by the U.S. Election Assistance Commission (EAC) found that voters with disabilities, generally, vote at such a lower rate than voters without disabilities that, if voters with disabilities were to vote at the same rate as those without, the United States would see 2 million more votes.¹⁶

¹³ *Disability & Health U.S. State Profile Data for Wisconsin (Adults 18+ years of age)*, Centers for Disease Control and Prevention (May 12, 2023), <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/wisconsin.html>.

¹⁴ *Id.*

¹⁵ *Blindness Statistics*, National Federation of the Blind (Jan. 2019), <https://nfb.org/resources/blindness-statistics>.

¹⁶ Lisa Schur et al., *Disability and Voter Turnout in the 2022 Elections* 1 (July 2023), https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Fact_Sheet_Disability_Voter_Turnout_2022_Elections.pdf.

82. The disenfranchising effects of Wisconsin's election system make this phenomenon even more prominent in Wisconsin. A 2023 study performed by Rutgers University found that Wisconsin's disability gap—the turnout of people without disabilities compared to those with disabilities—was 11.7% in the 2022 elections, one of the worst in the nation, and worse than in previous years. Voters without disabilities voted at a rate of 62.6%, while voters with a disability voted at a rate of only 50.9%.¹⁷

83. The disability gap is readily explained by the many difficulties voters with disabilities face when attempting to vote. The EAC found that the most common difficulties voters with disabilities face include “reading or seeing the ballot; difficulty using the voting equipment; writing on ballots; or communicating with poll workers or other officials.”¹⁸ An extraordinary 14% of voters with disabilities experienced some difficulty in voting in the 2022 elections, compared to only 4% of voters without disabilities.¹⁹

84. Such difficulties are even more common for voters with certain print disabilities: 24% of visually impaired voters reported difficulty at the polling place, and 22.1% of those with vision impairments experienced difficulty participating in absentee voting.

¹⁷ *Id.* at 10.

¹⁸ Katherine Gilyard, *Report finds people with disabilities continue to face outsized barriers to voting*, PBS News Hour (Nov. 11, 2023), <https://www.pbs.org/newshour/politics/report-finds-people-with-disabilities-continue-to-face-outsized-barriers-to-voting>.

¹⁹ Lisa Schur et al., *Disability and Voting Accessibility in the 2022 Elections: Final Report on Survey Results Submitted to the Election Assistance Commission, Election Assistance (July 2023)*, https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Disability_Voting_Accessibility_2022_Elections_Report.pdf.

85. And according to the 2020 Election Disability and Voting Accessibility Survey, “[p]eople with low vision had the most difficulty completing and returning mail ballots in 2020; they comprised a quarter of disabled voters who needed help.”²⁰

86. The data make clear the reality of the situation—many voters with disabilities are treated unequally and disenfranchised. And this disenfranchising effect reaches across the partisan political divide. The Pew Research Center explains that “Americans with disabilities look similar to those without disabilities both in terms of party affiliation and their distribution across the ideological spectrum” and are “little different than those of the public as a whole.”²¹

B. Federal and State Law Provide an Incomplete Framework for Protecting Voters with Disabilities.

87. Federal and state legislation over the past 60 years has sought to secure equal access to the polls for voters with disabilities by guaranteeing the right to assistance with casting a ballot. But these efforts often come at the expense of providing voters with disabilities meaningful ways to cast their ballots *privately* and *independently*, as voters without disabilities are able to do under the current system. And in Wisconsin, the right to a secret ballot is enshrined in the Constitution. In other words, assistance is an insufficient

²⁰ Danielle Root & Mia Ives-Rublee, *Enhancing Accessibility in U.S. Elections*, American Progress (July 8, 2021), <https://americanprogress.org/article/enhancing-accessibility-u-s-elections> (citing Lisa Schur & Douglas Kruse, *Disability and Voting Accessibility in the 2020 Elections*, Rutgers School of Management and Labor Relations 1 (Feb. 16, 2021), https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Disability_and_voting_accessibility_2020_election_Final_Report_survey_results.pdf).

²¹ Ruth Igielnik, *A political profile of disabled Americans*, Pew Research Center (Sept. 22, 2016), <https://www.pewresearch.org/short-reads/2016/09/22/a-political-profile-of-disabled-americans/>.

accommodation because it forces voters to give up their constitutional right to a secret ballot.

88. The focus on *assistance* to the detriment of *independence* originates in the Voting Rights Act of 1965's guarantees of the right to un-coerced assistance for "any voter who requires assistance to vote by reason of blindness [or] disability." 52 U.S.C. § 10508.

89. Congress's 1982 amendments to the Voting Rights Act provided even greater access to the polls, ensuring that all voters with disabilities could opt to have "a person of the voter's choice" assist at every stage of the voting process. 52 U.S.C. § 10508; *see also Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020, 1033 (W.D. Wis. 2022).

90. Congress also sought to ensure that public accommodations and programs do not discriminate against Americans with disabilities. Building on the momentum of the Civil Rights Movement, the Rehabilitation Act of 1973 prohibits all organizations that receive federal financial assistance from discriminating on the basis of disability. 29 U.S.C. § 794. And, in a monumental leap forward, Congress's passage of the Americans with Disabilities Act (ADA) in 1990 granted "civil rights protections to individuals with disabilities [and] guarantee[d] equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications."²² The guarantees of both the Rehabilitation Act and the ADA extend to all aspects of the voting process, ensuring reasonable accommodation to allow voters with disabilities who need them to vote privately and independently.

²² *What is the Americans with Disabilities Act (ADA)?*, ADA National Network, <https://adata.org/learn-about-ada>.

91. Congress has continued to pass legislation attempting to help guarantee equal access for voters with disabilities. Congress amended the ADA in 2008 to expand the definition of “disability.”²³ And, to help modernize states’ voting systems following the crises of the 2000 election, Congress passed the Help America Vote Act (HAVA) in 2002.²⁴

92. HAVA caused many states to recognize the significant challenges that voters with disabilities face in accessing the ballot privately and independently. HAVA sets forth stringent requirements for polling place accessibility, laying out minimum standards that states must follow in federal elections. HAVA guarantees that a state’s “voting system[s] shall ... be accessible [to] individuals with disabilities.” 52 U.S.C. § 21081. To achieve that guarantee, HAVA requires that each polling place on election day have at least one accessible voting machine for federal elections.²⁵

93. Critical to HAVA’s mandate is ensuring that state voting systems not only are accessible but also allow for privacy and independence in voting. HAVA requires that voting systems “permit the voter to verify (*in a private and independent manner*) the votes selected by the voter on the ballot before the ballot is cast and counted” and “provide the voter with the opportunity (*in a private and independent manner*) to change the ballot or

²³ *ADA Amendments Act of 2008*, U.S. Equal Employment Opportunity Commission (Sept. 25, 2008), <https://www.eeoc.gov/statutes/ada-amendments-act-2008>.

²⁴ Help America Vote Act of 2002, Pub. L. No. 107-252 (2002), <https://www.govinfo.gov/app/details/PLAW-107publ252>.

²⁵ *Voting, Accessibility, and the Law*, National Federation of the Blind, <https://nfb.org/programs-services/center-excellence-nonvisual-access/national-center-nonvisual-election-3>.

correct any error before the ballot is cast and counted.” 52 U.S.C. § 21081(a)(1)(A)(i)-(ii) (emphases added).

94. Wisconsin has codified the various guarantees that federal law secures. For example, the VRA’s authorizations of assistance in voting are codified at the state level. *See* Wis. Stat. § 6.82 (“Assisting electors”).

C. *The Wisconsin Constitution Guarantees the Right to a Secret Ballot.*

95. This framework of legislation is buttressed by the overarching constitutional guarantee that voters be able to cast their votes privately. The Wisconsin Constitution guarantees that “[a]ll votes shall be by secret ballot.” Wis. Const., art. III, § 3. The secret ballot is designed “to limit voter intimidation during elections.” *Madison Tchrs., Inc. v. Scott*, 2018 WI 11, ¶122, 379 Wis. 2d 439, 906 N.W.2d 436.

96. Wisconsin was not alone in moving to the secret ballot. It was part of a nationwide movement away from voice voting or other informal voting methods towards standardized, state-provided ballots.

97. Since its adoption, the secret ballot has become essential to citizens’ free and independent exercise of their franchise. For example, the “constitutional requirement that elections be by secret ballot is violated by a statute permitting husband and wife to enter a voting booth together.”²⁶ Thus, one state’s high court has struck down a statute allowing “husbands and wives to vote together” reasoning “that the overriding purpose of the secrecy provision is to ensure the integrity of the voting process.” *State ex rel. Edwards v.*

²⁶ 29 C.J.S. Elections § 335 (August 2023 Update).

Abrams, 270 S.C. 87, 92 (1978). “It is calculated to secure privacy, personal independence and freedom from party or individual surveillance. It tends to promote an independent and free exercise of the elective franchise.” *Id.*

98. Enforcing the secret ballot likewise ensures that voters enjoy their constitutional right to “privacy, personal independence, and freedom from [...] surveillance.”²⁷ “Where a voter is able to cast a secret and independent ballot, the likelihood of undue influence is significantly diminished.”²⁸

99. The Voting Rights Act and Wisconsin Statutes make exception to the secret ballot to allow assistance by allowing a voter “who requires assistance to vote by reason of blindness, disability, or inability to read or write” to choose an assistant. 52 U.S.C. § 10508; *see also* Wis. Stat. § 6.82(2).

100. Plaintiffs do not challenge the constitutionality of those provisions, but the availability of assistance is not sufficient. For many voters, like Plaintiffs Natzke and Ellingen, assistance of their choice does not always exist. But even if the option for assistance was available for certain voters, such as for Plaintiff Christopher or Plaintiff Engel, none wishes to share their vote with others. The concern of not having a trusted assistant to mark a ballot is particularly acute for voters like Plaintiff Natzke, who has no family at home to assist him with reading and marking his ballot, or like Plaintiff Ellingen,

²⁷ *Id.*

²⁸ Daniel P. Tokaji & Ruth Colker, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 38 MCGEORGE L. REV. 1015, 1047 (2007).

who lives alone and who fears the repercussions of sharing her vote with a caregiver who may abandon her due to political differences.

101. In other words, voters like Individual Plaintiffs are coerced into choosing an assistant to help them vote. Voters who wish to keep their vote secret cannot do so: they must choose between revealing their vote to an assistant, including one who they may not trust to accurately vote their ballot, or forgoing absentee ballot voting altogether, a choice voters without disabilities do not have to make. “To force such a Hobson’s choice is inconsistent with [Wisconsin’s] understanding of the right to vote as a ‘sacred right of the highest character.’” *Jefferson v. Dane Cnty.*, 2020 WI 90, ¶ 51, 394 Wis. 2d 602, 626, 951 N.W.2d 556, 567 (Walsh Bradley, J., concurring in part).

102. Plaintiffs are not alone in their experience. For example, Jim Dickson of the American Association of People with Disabilities, who is blind, testified to the intimidation and uncertainty that voters with print disabilities face each time they vote without adequate assistive technology:

Twice in Massachusetts and once in California, while relying on a poll worker to cast my ballot, the poll worker attempted to change my mind about whom I was voting for. I held firm, but to this day I really do not know if they cast my ballot according to my wishes. To voters with disabilities, there is always some level of uncertainty when another person marks your ballot for you.²⁹

103. Individual Plaintiffs and other similarly situated voters with disabilities face the same uncertainty as Mr. Dickson.

²⁹ *Id.* at 1032–33 (internal citations omitted).

D. These Accessibility Problems Highlight the Need for Accessible Mail-In Absentee Voting in Wisconsin.

104. The challenges posed by access to in-person, election-day voting for people with disabilities amplify the critical need for accessible absentee-voting programs, including the availability of electronic ballots. Voters with disabilities, like Plaintiff Ellingen, must vote by absentee ballot because they face obstacles to voting in-person.

105. That in-person polling places are inaccessible to many voters with disabilities is unremarkable and readily recognized by Defendants.

106. In June 2023, WEC published a report, in compliance with Wis. Stat. § 5.25(4)(d), on impediments elderly voters and voters with disabilities face (the “Voting Barriers Report” or the “2023 Report”). The Voting Barriers Report’s conclusions reveal shocking deficiencies and obstacles to voting for Wisconsinites with disabilities.

107. WEC’s revelation of these obstacles is not surprising. WEC previously published versions of the Voting Barriers Report in 2019 and 2022 that found similar trends. Comparing those reports to the 2023 Report highlights many municipalities’ failures to ensure that voters with disabilities can vote on election day. WEC’s 2019 report identified 2,851 total problems at 335 polling places for an average of 6.42 problems per polling place. Of the 421 polling places reviewed between the Spring 2022 Primary and the November 2022 General Election, again WEC identified 2,495 total problems—an average of 5.9 problems per polling place. Each of those problems is a violation of a voter’s fundamental right to vote.

108. WEC identified no notable improvements in its 2023 Report, explaining that “[t]he data collected mirrors many of the same trends from data collected in previous election cycles.”³⁰ Between 2022 and 2023, WEC visited 551 polling places across 379 municipalities in 47 counties. It found 3,062 instances of non-compliance for an average of 5.6 problems per polling place.

109. Even more concerning is that of the 3,062 non-compliant findings, nearly half (44%) were identified as *high severity*, which WEC defines as having a disenfranchising effect. WEC defines a high severity finding as “a barrier that, in and of itself, would be likely to prevent a voter with a disability from entering a polling place and casting a ballot privately and independently.”³¹ Wisconsin’s polling locations continue to be plagued by inaccessibility: lack of accessible entrances and interior routes to voting areas vastly constituted high severity issues, meaning that voters with disabilities who could make it to the polls in-person may be deterred from voting even once there.³²

110. Plaintiff Ellingen faces these barriers to in-person voting and thus must vote absentee to reliably cast her ballot. Plaintiff Ellingen cannot access the polls by herself. Her cerebral palsy leaves her unable to control her physical movements, and she cannot leave her house on her own. Accessible public transport in her area is infrequent and unpredictable and she lives alone, without consistent or reliable availability to someone to drive her or assist her with using a car service. Therefore, on the occasions that Plaintiff

³⁰ Voting Barriers Report at 10.

³¹ *Id.* at 8.

³² *Id.* at 12-13.

Ellingen has not been able to secure an assistant to help her vote absentee, she has been completely disenfranchised.

111. Thus, voters with disabilities, like Plaintiff Ellingen, are unduly burdened in their right to vote, making their need for equal access to an electronic absentee ballot even more pressing.

E. The Lack of an Accessible Mail-In Absentee Voting Process in Wisconsin has a Disenfranchising Effect on Voters with Disabilities, a Deficiency this Case Seeks to Remedy.

112. Many Wisconsin voters depend on the availability of accessible absentee ballots to cast their votes.³³ But WEC concedes that it treats such voters unequally: no independent means to vote absentee privately and independently exist for voters with disabilities who are unable to read or mark a ballot, especially print disabled voters, on a state-wide basis.³⁴

113. Wisconsin voters need no excuse to vote absentee. Absentee ballots are offered to qualified voters (“electors”) who “***for any reason*** [are] unable or unwilling to appear at the polling place.” Wis Stat. § 6.85(1) (emphasis added). Therefore, WEC has not provided the privilege of absentee voting on an equal basis to voters with and without disabilities.

³³ *Absentee Voting in Wisconsin—2022 Elections*, Wisconsin Disability Vote Coalition (Feb. 25, 2022), <https://disabilityvote.org/wp-content/uploads/2022/02/DVC-Absentee-Fact-Sheet-rev-06-2022-acc.pdf>); *Our Voices, Our Votes*, Disability Rights Wisconsin (April 2022), <https://disabilityrightswi.org/wp-content/uploads/2022/04/DRW-Our-Voices-Our-Votes-4-2022-acc.pdf>.

³⁴ Voting Barriers Report at 20.

114. Wisconsin law expressly provides voters with disabilities mechanisms to choose to receive assistance in requesting, marking, and returning their absentee ballots. *See Wis. Stat. §§ 6.86(1)(ag), (2), 6.87(5)*. But such assistance in marking their ballot does not allow Wisconsin voters with disabilities to vote privately and independently. That defect would be remedied by providing an electronic absentee ballot.

115. Until 2011, Wisconsin allowed municipalities to provide an electronic ballot to any absentee voter who requested one. By providing an electronic ballot, municipalities could give absentee voters with disabilities the opportunity to use at-home accessibility devices of their choice to help them read and mark their ballots privately and independently. Many individuals in the disabled community, including Plaintiffs Natzke, Christopher, and Ellingen, already have at-home accessibility devices specialized to their individual needs. As an example, an at-home accessibility device for a voter with print disability might be a plug-in application that reads the words on the screen to the voter and provides guidance regarding where the cursor is placed. For a voter without full use of their hands, an at-home accessibility device might look like a keyboard and mouse set-up designed to be used without hands, such as the TetraMouse Model TMXA2, which can be operated by lips, chin, tongue, or fingers.³⁵ These accessibility devices are generally designed to work with electronic materials only.

116. Other individuals with print disabilities, like Plaintiff Engel, cannot mark a paper ballot without assistance but can use a laptop computer independently.

³⁵ *Tetra mouse*, TetraLite Products, <https://tetramouse.com/>.

117. In 2011, the Wisconsin Legislature passed Act 75. Following passage of Act 75, municipal clerks were required to deny requests for electronic ballots to all but military voters and overseas voters. Absentee voters with disabilities were denied the ability to receive an electronic ballot and use their computers and at-home accessibility devices to read and mark that ballot privately and independently.

118. In fact, WEC acknowledges that before Act 75's passage, emailed ballots "allowed a voter to use a screen reader to mark their ballot."³⁶ And while voters were still required to print and return their ballot by mail or in person, "the emailed ballot allowed voters to independently fill out their absentee ballot."³⁷

119. However, in *Luft v. Evers*, the Seventh Circuit found that Act 75's limitation on sending electronic ballots was firm as a matter of federal constitutional law, but that case did not involve voters with disabilities and there has been no adjudication as a matter of state constitutional law or federal statutory law. *Luft* does not foreclose the relief Plaintiffs seek. Without the ability to send electronic ballots, WEC explicitly acknowledges that there currently exists no way for Wisconsin voters with disabilities, especially the print disabled, to participate as absentee voters privately and independently.³⁸

120. This impediment to voting is alarming. Absentee voting by mail has become extremely popular in Wisconsin. For the 2018 general election, fewer than 170,000 mail-

³⁶ Voting Barriers Report at 6.

³⁷ *Id.*

³⁸ *Id.*

in ballots were cast in Wisconsin, as compared to the nearly 426,000 cast in 2022, an approximately 150% increase.³⁹

121. Wisconsin's lack of an electronic or other accessible program for absentee voting has a disenfranchising effect. Under Wisconsin's current regime, the voter must, "in the presence of a witness who is an adult U.S. citizen, ... mark the [physical] ballot; fold the ballot and deposit it into the ballot envelope; and make and subscribe to the certificate ... mail, or deliver in person, the envelope to the municipal clerk who issued the ballot ... no later than 8:00 p.m. on Election Day."⁴⁰

122. If an elector is "unable to mark his or her ballot" due to disability, the only remaining option is for the elector to "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." Wis. Stat. § 6.87(5).⁴¹

123. For many voters, this solution is untenable. Some voters may not have anyone willing to act as their agent and fill out the ballot for them. Others do not trust those who are willing to fill out their ballot for them: Rhonda Staats, a visually disabled Wisconsin voter, felt that she could not trust anyone in her family to fill out an absentee

³⁹ See U.S. Election Admin. Comm'n, *Election Administration and Voting Survey 2022 Comprehensive Report*, at 34 (June 2023); U.S. Election Admin. Comm'n, *Election Administration and Voting Survey 2018 Comprehensive Report* at 30 (June 2019).

⁴⁰ *Voting at a Polling Place or by Absentee Ballot*, Wisconsin Legislative Council Information Memorandum 7, https://docs.legis.wisconsin.gov/misc/lc/information_memos/2018/im_2018_10.

⁴¹ Because of Wisconsin's highly decentralized voting administration, see *State ex rel. Zignego v. Wis. Elections Comm'n*, 2021 WI 32, ¶13, 396 Wis. 2d 391, 957 N.W.2d 208, a select few Wisconsin municipalities have chosen to provide, upon request, braille ballots. These municipalities, those in Milwaukee County and the City of Madison, are the exception, not the rule. Few voters with print disabilities are braille literate, so this accommodation has limited recourse.

ballot for her because they “held different political views than she does, and she felt they would almost certainly change her vote.”⁴² Individual Plaintiffs, like Plaintiff Ellingen, face the same concerns as Ms. Staats, while voters without disabilities do not face these circumstances. For a voter like Plaintiff Ellingen, an inability to find an assistant she trusts, coupled with her inability to access the polls, renders her disenfranchised.

124. Even if a print disabled voter can find an agent that they trust to mark their ballot, they still must forfeit their constitutional right to privately cast their vote, which, again, is a choice that voters without disabilities do not face, and therefore, constitutes discrimination on the basis of their disability.

125. Many voters with disabilities also struggle to return their ballot by mail. Due to his spinal muscular atrophy, Plaintiff Engel is unable to hold a ballot up to the mailbox to return it. And Plaintiff Ellingen is completely unable to leave her house without assistance. Electronic ballot return would allow them to vote privately and independently throughout the entirety of the voting process.

F. Wisconsin Already Employs Many of the Tools It Needs to Make Absentee Voting Accessible.

126. Wisconsin is not without options to allow voters with disabilities to return their absentee ballots electronically—many voters in other states across the country already have access to electronic ballots. WEC could easily adopt any of the existing models and, indeed, it already has the foundational elements of such a program in place.

⁴² Nora Eckert, ‘We’re not going to be quiet’: Disability community in Wisconsin demands better access to voting, Wisconsin Watch (Jan. 12, 2021), <https://wisconsinwatch.org/2021/01/wisconsin-disability-community-voting-access>.

127. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires states and territories to provide easier absentee-voting processes for certain groups of citizens (generally members of the United States Uniformed Services and merchant marine, their family members, and United States citizens residing outside the United States),⁴³ and Wisconsin already sends ballots to those voters electronically.

128. Many states have taken the elements of UOCAVA and broadened their electronic absentee ballot programs to encompass absentee voters with disabilities. Those expanded electronic absentee ballot programs allow those voters with disabilities to receive their ballots electronically, use accessibility devices to read and mark their ballots, and, in many states—25 and counting—return them electronically. For states who do not have electronic absentee ballot options, the National Institute of Standards and Technology (NIST) recommends that they could “increas[e] the accessibility and usability” of absentee voting by through, for example, “Remote Accessible Vote by Mail,” a “method of vote-by-mail in which voters electronically receive, download, and mark their vote-by-mail ballot at home using their own assistive technology [] or other technologies.”⁴⁴ NIST also recommends that states that do not currently permit electronic ballot return expand their existing programs to allow for it, because, as one voter commented, despite being able to

⁴³ *The Uniformed and Overseas Citizens Absentee Voting Act*, Civil Rights Division, <https://www.justice.gov/crt/uniformed-and-overseas-citizens-absentee-voting-act> (last updated Apr. 5, 2023).

⁴⁴ Nat’l Inst. Standards & Tech, *supra* note 5 at 4, 42.

fill out the ballot electronically, “the ballot had to then be printed, signed, and an envelope filled out by hand for it to be returned,” which that voter could not do.⁴⁵

129. The remedies Plaintiffs seek would allow Wisconsin voters with disabilities to cast their electronic absentee ballots privately and independently. These remedies would allow the individual Plaintiffs and members of the organizational Plaintiffs to vote privately and independently.

130. Under the Military and Overseas Voters Empowerment (MOVE) Act, a 2009 amendment to UOCAVA, states are mandated to enable the electronic delivery of blank absentee ballots to eligible UOCAVA voters. A majority of jurisdictions—twenty-five states, Washington D.C., and the Virgin Islands—allow military voters’ electronically transmitted absentee ballots to also be returned electronically.⁴⁶ And thirteen states have expanded their electronic absentee ballot programs to allow voters with disabilities to return their voted absentee ballots by email or through an online portal.⁴⁷

131. While Wisconsin satisfies UOCAVA by maintaining a system that allows eligible military and overseas voters to receive their absentee ballots electronically,⁴⁸ it does not go as far as other states in protecting the rights, guaranteed by the Wisconsin Constitution and by other provisions of federal law, of voters with disabilities, especially

⁴⁵ *Id.* at 42-44.

⁴⁶ *Electronic Ballot Return*, National Conference of State Legislatures, <https://www.ncsl.org/elections-and-campaigns/electronic-ballot-return-internet-voting> (last updated Jan. 12, 2024).

⁴⁷ *See infra* at ¶¶ 135-48.

⁴⁸ *Military & Overseas Voters*, MyVote Wisconsin, <https://myvote.wi.gov/en-us/Military-Overseas-Voters>.

print disabilities like the individual Plaintiffs, because it does not allow voters to receive, mark, and return their absentee ballot electronically.

G. Wisconsin Can Easily Adopt Other States' Accessible Absentee Programs.

132. The groundwork to extend accessible absentee ballots to Wisconsin voters already exists. Many states allow voters with print disabilities, like the individual Plaintiffs, to use electronic methods to receive, read, and mark their ballot. Transmission occurs via state-run websites. Voters can mark a ballot on their personal and accessible electronic device at home, either with their own private assistive technology or technology built into the electronic ballot. Voters can then return the ballot via email or submit it online. Such assistive technology allows voters with disabilities to vote privately and independently and would allow the individual Plaintiffs and the organizational Plaintiffs' members to vote privately and independently.

133. Other states meet voters in the middle: Voters can receive their ballot electronically and mark it electronically so that they are able to privately use assistive technology, but they must then print the ballot and return it either in person or by mail.

134. Many states leverage existing technology created for UOCAVA to ensure their state's voters can vote on equal terms. Examples are abundant across the nation.

135. Colorado’s online system allows voters to receive and mark their ballots electronically. Voters with disabilities that would make marking a ballot difficult may then submit their ballots electronically via the same online system.⁴⁹

136. Delaware allows all disabled voters to receive, vote, and return their ballots electronically. Voters visit an online voter portal to request their ballots, and as part of that process they can specify that they require electronic delivery of a ballot compatible with accessibility software. Voters with disabilities may then return their absentee ballots electronically.⁵⁰

137. The District of Columbia allows all “eligible” voters to use an Accessible Remote Ballot, an electronic ballot marking ballot system that is compatible with “all major screen readers, tactile switches, closed captioning, and audio-enabled systems.” Voters can also receive and return their ballots electronically.⁵¹

138. Hawaii allows all voters with disabilities to request an Alternate Format Ballot. Such ballots are then electronically transmitted to voters, who can download and mark their ballots privately and independently using their own assistive technology. Voters can then return the ballots electronically or by mail.⁵²

⁴⁹ *Accessible Voting*, Col. Sec’y of State Jena Griswold, <https://www.sos.state.co.us/pubs/elections/accessibleVoting.html>; *see also* Colorado Senate Bill 21-188, Concerning Allowing a Voter with a Disability Who Receives a Ballot Through an Electronic Voting Device to Return the Ballot Electronically (2021).

⁵⁰ *Absentee Voting in Delaware*, Del. Elections, <https://elections.delaware.gov/voter/absentee/index.shtml>.

⁵¹ *District of Columbia Resources for Voters with Disabilities*, U.S. Vote Found., <https://www.usvotefoundation.org/disabled-voter-guide/district-of-columbia>.

⁵² *Voters Requiring Assistance*, State of Hawaii Off. of Elections, <https://elections.hawaii.gov/voting/voters-requiring-assistance/>.

139. Indiana allows voters who are “unable to independently mark a paper or ballot card due to blindness, low vision, or a physical disability that impairs manual dexterity” to request an electronic ballot that is received, voted, and returned via an electronic link allowing voters to privately and independently mark their ballots.⁵³

140. Maine allows voters who self-certify that they have a disability to receive their electronic ballots via email, download those ballots, vote electronically using “any standard screen reader software,” and return the ballots via email.⁵⁴

141. Massachusetts allows voters who are “blind or have a vision impairment, have a mobility or dexterity disability, or have another disability that makes it difficult to mark a paper ballot,” to receive, vote, and return their ballots electronically.⁵⁵ The voter receives the ballot via email and can use their own screen reading technology to privately and independently fill out the accessible ballot at home. According to the Watertown town clerk, the electronic option “couldn’t be easier” for town election workers to implement.⁵⁶

⁵³ *Ways to Vote*, Ind. Disability Rights, <https://www.in.gov/idr/hoosiers-vote/ways-to-vote/>; Valerie Warycha, *Voters with Print Disabilities*, Election Administrators’ Conference (Dec. 11-13, 2023), <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.in.gov%2Fsos%2Felections%2Ffiles%2FVoters-with-Print-Disabilities.pptx&wdOrigin=BROWSELINK>.

⁵⁴ *Accessible Voting*, Dep’t of the Sec’y of State, <https://www.maine.gov/sos/cec/elec/voter-info/accessiblevoting.html>.

⁵⁵ *Voters with Disabilities*, Sec’y of the Commonwealth of Mass., <https://www.sec.state.ma.us/divisions/elections/voting-information/voters-with-disabilities.htm>.

⁵⁶ Meghan Smith, *Blind and low-vision voters hail Massachusetts’ new statewide online voting option*, GBH (Oct. 28, 2022), <https://www.wgbh.org/news/politics/2022-10-28/blind-and-low-vision-voters-hail-massachusetts-new-statewide-online-voting-option>.

142. Maryland allows voters with disabilities to receive their ballots via email and vote independently and electronically using an accessible online ballot marking tool. Voters return their printed ballots via mail, via secure drop box, or in person.⁵⁷

143. Michigan allows voters with print disabilities to use an “accessible electronic absent voter ballot.” The ballot is received via email and can be completed electronically, but then must be printed out, signed, and returned via mail.⁵⁸

144. Nevada implemented the Nevada Effective Absentee System for Elections. Using technology designed for military and overseas voters, qualified voters with disabilities, can independently receive, vote, and return their ballots electronically.⁵⁹

145. North Carolina allows “blind or visually impaired voter[s]” to “request, mark, and return” their ballots electronically. Each voter who applies receives an email link to an online portal that houses their ballot and allows the voter to electronically submit the marked ballot independently.⁶⁰

146. West Virginia allows voters with a disability to receive, vote, and return their ballots electronically.⁶¹ Voters receive an email with instructions to access a web portal.

⁵⁷ *Access by Voters with Disabilities*, Md. State Board of Elections, <https://elections.maryland.gov/voting/accessibility.html>.

⁵⁸ *Accessible Ballot for Voters with Disabilities*, Off. of Sec’y of State Jocelyn Benson, <https://sites.omniballot.us/26/absentee/app/home>; *see also Accessible Voting*, Mich. Voter Info. Ctr., <https://mvc.sos.state.mi.us/Home/AccessibleVoting>.

⁵⁹ *Voters with Disabilities*, Nev. Sec’y of State, <https://www.nvsos.gov/sos/elections/voters/voters-with-disabilities>.

⁶⁰ *Accessible Absentee Voting*, N.C. State Bd. of Elections, <https://www.ncsbe.gov/voting/help-voters-disabilities/accessible-absentee-voting>.

⁶¹ *Voters with Physical Disabilities Absentee Voting Information*, Sec’y of State Mac Warner, <https://sos.wv.gov/elections/Pages/DisabledVotersEVoting.aspx>.

The portal contains the ballot itself and allows the voter to either print and mail the completed ballot or submit the ballot electronically.

147. Vermont allows voters to use assistive technologies to vote online for an absentee ballot. Voters then print and return the ballots via mail or in person.⁶²

148. Each of the above states provides a process for voters with print disabilities to vote absentee using their preferred accessibility devices, in a way that allows them to vote privately and independently. Providing such a program to individual Plaintiffs and the organizational Plaintiffs' members would allow them to vote privately and independently.

149. Many of the states above use the same program for voters with disabilities that they use for UOCAVA voters: a secure voting program called OmniBallot online.⁶³ This system is hosted on the same infrastructure used by several federal agencies for secure document storage.⁶⁴ OmniBallot is “fully ADA Section 508 compliant” and “has been

⁶² *2022 Voter's Guide for People with Disabilities*, Disability Rights Vermont 7, <https://outside.vermont.gov/dept/sos/Elections%20Division/voters/accessible%20voting/drvt-voter-guide.pdf>.

⁶³ Such as Indiana; *Ways to Vote*, Indiana Disability Rights, <https://www.in.gov/idr/hoosiers-vote/ways-to-vote/>; Meghan Smith, *Blind and low-vision voters hail Massachusetts' new statewide online voting option*, GBH (Oct. 28, 2022), <https://www.wgbh.org/news/politics/2022-10-28/blind-and-low-vision-voters-hail-massachusetts-new-statewide-online-voting-option>; *Accessible Ballot for Voters with Disabilities*, Off. of Sec'y of State Jocelyn Benson, <https://sites.omniballot.us/26/absentee/app/home>; West Virginia; Steven A. Adams, *Military, Overseas, Disabled Voters Have Electronic Absentee Voting Option*, *The Weirton Daily Times* (Sept. 30, 2020), <https://www.weirtondailytimes.com/news/local-news/2020/09/military-overseas-disabled-voters-have-electronic-absentee-voting-option/>; and Vermont, *2022 Voter's Guide for People with Disabilities*, Disability Rights Vermont 7, <https://outside.vermont.gov/dept/sos/Elections%20Division/voters/accessible%20voting/drvt-voter-guide.pdf>.

⁶⁴ Adams, *Military, Overseas, Disabled Voters Have Electronic Absentee Voting Option*, *supra* note 63.

tested and reviewed by members of most every leading disability organization in the nation.”⁶⁵

150. Plaintiffs are not requesting the Court to order the State of Wisconsin to develop and engineer a revolutionary method of accessible absentee voting. The path already exists for Wisconsin: OmniBallot is just one of several extant electronic-ballot options that are secure and fully accessible.⁶⁶ Enfranchising Wisconsin’s print disabled voters, like the individual Plaintiffs, is simply a question of implementing existing solutions.

151. Wisconsin’s self-imposed obstacles to electronic absentee voting unduly burden many voters with disabilities, including Plaintiff Ellingen, who cannot vote absentee privately and independently, and treat all Plaintiffs and similarly situated voters unequally. Wisconsin law’s failure to provide accessible, private, and independent voting options strips these voters, like Plaintiffs Natzke, Christopher, Ellingen, and Engel, of their constitutionally guaranteed and statutorily protected rights by denying them an equal opportunity to cast their absentee ballot in secret, a right available to voters without disabilities. Further, it runs contrary to WEC’s responsibility, under Wisconsin and federal law, to ensure that such voters are provided reasonable accommodations to allow them to cast ballots privately and independently on equal terms with other Wisconsin voters. Wisconsin’s municipal clerks must be authorized to send electronic absentee ballots to

⁶⁵ *OmniBallot Fact Sheet*, Democracy Live, https://democracylive.com/wp-content/uploads/2020/04/OmniBallot-Fact-Sheet-Democracy-Live-AWS_3.30.20.pdf.

⁶⁶ See, e.g., *Secure Online Voting Designed for You*, Scytl, www.scytl.com.

Wisconsin voters with disabilities upon request and Wisconsin voters with disabilities must be authorized to return their ballot electronically. Wisconsin law's failure to do so is discriminatory. And it unduly burdens certain voters with disabilities, including the individual Plaintiffs and organizational Plaintiffs' members. These failures must be redressed.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF ON BEHALF OF ALL PLAINTIFFS

Title II of the Americans with Disabilities Act
42 U.S.C. §§ 12131, *et seq.*
(Discrimination on the Basis of Disability)

152. Plaintiffs reallege and reincorporate by reference all preceding paragraphs as though fully set forth herein.

153. Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101–12213, prohibits state and local government entities from denying qualified individuals with disabilities an equal opportunity to benefit from the entity's services, programs, or activities. 42 U.S.C. § 12132.

154. The ADA mandates 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.” *Id.*

155. In providing aids, benefits, or services, a public entity may not “deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service,” 28 C.F.R. § 130(b)(1)(i) or “afford 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 others,” 28 C.F.R. § 130(b)(1)(ii). Further, the public entity may not “provide a qualified individual with a disability with an aid, benefit, or service 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.” 28 C.F.R. § 35.130(b)(1)(iii).

156. Public entities are required 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). To accomplish this, public entities must “furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities ... an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.” 28 C.F.R. § 35.160(b)(1). Further, “In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.” 28 C.F.R. § 35.160(b)(2).

157. Finally, the ADA mandates that “a public entity shall not require an individual with a disability to bring another individual to interpret for him or her.” 28 C.F.R. § 35.160(c)(1).

158. Defendant WEC, as an agency of the State of Wisconsin, is a public entity as defined by Title II of the ADA. 42 U.S.C. § 12131(1).

159. Voting, including absentee voting, is a service, program, or activity provided by Defendant WEC and subject to the ADA.

160. The ADA's protections extend to all aspects of voting in Wisconsin, including absentee voting.

161. Plaintiffs are qualified individuals with disabilities within the meaning of the ADA. These individuals have physical impairments that substantially limit one or more of their major life activities, including, but not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(2)(A).

162. Plaintiffs are registered voters otherwise eligible to request and cast a ballot, including an absentee ballot, in Wisconsin elections, and are qualified to participate in Defendants' programs and activities related to voting, including absentee voting. 42 U.S.C. § 12131(2).

163. The ADA's implementing regulations provide that public entities must not "impose or apply eligibility criteria that screen out or tend to screen out" people with disabilities from "fully and equally enjoying any service, program, or activity" offered by a state or local government. 28 C.F.R. § 35.130(b)(8).

164. The ADA's implementing regulations also provide that public entities may not provide aids, benefits, or services in such a way that qualified individuals are denied opportunities to participate or benefit, are not afforded "equal opportunity to obtain the same result ... as that provided to others," or are "[o]therwise limit[ed] ... 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)(1).

165. Further, the ADA’s implementing regulations prohibit “methods of administration ... [t]hat have the purpose or effect of defeating or substantially impairing accomplishment” of the program’s objectives. 28 C.F.R. § 35.130(b)(3).

166. Wisconsin’s current election system discriminates against people with disabilities, including Plaintiffs, in exercising the right to vote by failing to provide reasonable accommodations to allow for voters with disabilities to cast their absentee ballot privately and independently.

167. Wisconsin law’s failure to provide accessible options for absentee voting, such as an electronic ballot, bars Plaintiffs and other similarly situated voters from accessing absentee ballots on the same terms as other Wisconsin voters. In failing to provide an accessible absentee option, Wisconsin’s election system discriminates against people with disabilities, including Plaintiffs, in exercising the right to vote and the right to keep the content of one’s vote private.

168. Therefore, these failures discriminate against Plaintiffs and other qualified Wisconsin voters with disabilities a full and equal opportunity to participate in Wisconsin’s absentee ballot system due to their disability status. Wisconsin’s current absentee ballot system has an illegal and discriminatory effect that violates the ADA.

SECOND CLAIM FOR RELIEF ON BEHALF OF ALL PLAINTIFFS

Section 504 of the Rehabilitation Act

29 U.S.C. § 794

(Discrimination on the Basis of Disability by Recipients of Federal Financial Assistance)

169. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though fully set forth herein.

170. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination against people with disabilities by any program or activity receiving federal financial assistance. Under Section 504, “[n]o otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance ...” 29 U.S.C. § 794(a).

171. A program or activity includes “all of the operations of ... a department, agency, special purpose district, or other instrumentality of a State or of a local government.” 29 U.S.C. § 794(b)(1).

172. Defendant WEC, as an agency of the State of Wisconsin, receives federal grants and other financial assistance, within the meaning of 29 U.S.C. § 794(a) and is therefore subject to the requirements of Section 504.⁶⁷ WEC relies on federal funding for its basic operations, including elections security and to improve the accessibility of polling places.

⁶⁷ See generally, *State of Wisconsin Elections Commission Agency Budget Request 2023-2025 Biennium* (Sept. 15, 2020); see also Voting Barriers Report at 5 (WEC “was awarded a yearly HAVA grant for accessibility programming at roughly \$200,000 for several years.”).

173. Plaintiffs are qualified individuals with disabilities within the meaning of Section 504. 29 U.S.C. § 705(20). These individuals have impairments that substantially limit one or more of their major life activities, including but not limited to “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” 29 U.S.C. § 705(20)(B); 42 U.S.C. § 12102(A).

174. These individuals are registered voters otherwise eligible to request and cast a ballot, including an absentee ballot, in Wisconsin elections, and are thus qualified to participate in voting, including by submitting an absentee ballot. 29 U.S.C. § 794(a).

175. Section 504 prohibits covered entities from imposing or applying eligibility criteria that screen out or tend to screen out people with disabilities from fully and equally enjoying the benefits of the programs or activities of a covered entity.

176. Section 504 also prohibits covered entities from providing aids, benefits, or services in such a way that qualified individuals are denied opportunities to participate or benefit, are not afforded equal opportunity to obtain the same result as that provided to others, or are otherwise limited in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

177. Further, Section 504 prohibits methods of administration that defeat or substantially impair accomplishment of the program’s objectives.

178. Finally, under Section 504, a covered entity must make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

179. Further, Wisconsin law's failure to provide accessible absentee ballots that allow voters with disabilities to vote privately and independently, discriminates against people with disabilities, including Plaintiffs, in exercising their right to vote.

180. Wisconsin law disenfranchises absentee voters with disabilities who require accessible electronic absentee ballots that allow them to vote privately and independently.

181. These failures prohibit Plaintiffs from fully participating in Wisconsin's absentee voting program due to their disability status, an illegal act under Section 504.

182. Therefore, these failures discriminate against and deny Plaintiffs and other qualified Wisconsin voters with disabilities a full and equal opportunity to participate in Wisconsin's absentee ballot system due to their disability status. Wisconsin's current absentee ballot system has an illegal and discriminatory effect that violates the Rehabilitation Act.

THIRD CLAIM FOR RELIEF ON BEHALF OF ALL PLAINTIFFS

Wisconsin Guarantee of Right to Vote by Secret Ballot
Wis. Const. Art. 3
(Abridgement of Right to Vote by Secret Ballot)

183. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

184. The Wisconsin Constitution explicitly demands that "All votes shall be by secret ballot." Wis. Const. Art. III, § 3.

185. This mandate creates a right: Wisconsin voters have the right to vote by secret ballot.

186. Under Wisconsin’s current election system, voters with disabilities, especially print disabilities, have no actual means to vote by secret ballot when voting absentee.

187. Wisconsin absentee voters with disabilities must either accept assistance—and forfeit their right to vote by secret ballot—or not vote at all.

188. Wisconsin’s current election system does not allow for the provision of electronic absentee ballots to voters with disabilities. Therefore, as WEC has conceded, certain voters must accept assistance—and forfeit their right to vote by secret ballot—to vote as absentee voters. WEC has unequivocally stated that “Voters with blindness or low vision *still* do not have an accessible absentee ballot or certificate envelope that can be marked *independently*.”⁶⁸

189. Wisconsin’s current election system is plainly unconstitutional, and directly at odds with the Wisconsin Constitution, insofar as it leaves Wisconsin voters with disabilities without an option to vote an absentee ballot *privately* and *independently*.

***FOURTH CLAIM FOR RELIEF ON BEHALF OF PLAINTIFFS ELLINGEN,
DISABILITY RIGHTS WISCONSIN, AND THE LEAGUE OF WOMEN VOTERS
OF WISCONSIN***

Wisconsin Guarantee of Equal Protection Under Law
Wis. Const. Art. 1, § 1
(Undue Burden on the Right to Vote)

190. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

⁶⁸ Voting Barriers Report at 20 (emphasis added).

191. The Wisconsin Constitution, in Article 1, Section 1, states that “All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness.” This provision guarantees that equal treatment under the law extends to all Wisconsinites, and it is at least coextensive with federal protections under the Fourteenth Amendment, if not more expansive.

192. To the extent that Wisconsin’s equal protection jurisprudence mirrors that under the Fourteenth Amendment, the Seventh Circuit’s decision in *Luft* did not address the specific special interests of, and harms to, Wisconsin voters with disabilities, and is therefore inapplicable and does not foreclose the relief sought here.

193. Moreover, the Seventh Circuit in *Luft* did not address Wisconsin voters’ rights under the Wisconsin Constitution. Plaintiffs’ claims are therefore ripe for adjudication.

194. State election administration practices may not burden a qualified voter’s rights to vote unless relevant and legitimate state interests of sufficient weight necessarily justify the magnitude and character of the burdens imposed.

195. The more a challenged law burdens the right to vote, the more strictly it must be scrutinized. Even slight burdens must be justified by valid state interests of sufficient weight.

196. Wisconsin’s current election system, insofar as it denies qualified Wisconsin voters with disabilities accessible absentee voting options that allow them to vote privately and independently, imposes undue burden on the right to vote. Those burdens range from significant to severe and extend to entirely prohibitive.

197. Voters like Plaintiff Ellingen are unable to travel to in-person polling places and thus must vote by absentee ballot. However, to vote by absentee ballot, voters like Plaintiff Ellingen require assistance in marking their choices and so must share their preferred candidates with an assistant of their choice. This means that they must either forfeit their right to a secret ballot or not vote at all. This burden on the right to vote would be remedied for voters like Plaintiff Ellingen through Wisconsin's provision of an electronic absentee ballot.

198. Defendants must ensure that Wisconsin municipalities provide qualified Wisconsin voters with disabilities, like Plaintiff Ellingen, access to the franchise with the same degree of privacy and independence as voters without disabilities. The burdens imposed by the challenged aspects of Defendants' administration of Wisconsin elections lack any constitutionally adequate justification, are unconnected to any sufficiently weighty legitimate state interest, and must be enjoined.

***FIFTH CLAIM FOR RELIEF ON BEHALF OF PLAINTIFFS ELLINGEN,
DISABILITY RIGHTS WISCONSIN, AND THE LEAGUE OF WOMEN VOTERS
OF WISCONSIN***

First and Fourteenth Amendments
U.S. Const. amend I, XIV
(Undue Burden on the Right to Vote)

199. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

200. State election administration practices may not burden a qualified voter's First and Fourteenth Amendment rights to vote unless relevant and legitimate state interests of sufficient weight necessarily justify the magnitude and character of the burdens imposed.

201. The more a challenged law burdens the right to vote, the more strictly it must be scrutinized. Even slight burdens must be justified by valid state interests of sufficient weight.

202. Wisconsin's election system, insofar as it denies qualified Wisconsin voters with disabilities accessible voting options that allow them to vote privately and independently, imposes undue burden on the right to vote. Those burdens range from significant to severe and, for certain voters, are entirely prohibitive.

203. Voters like Plaintiff Ellingen are unable to access in-person polling places and thus must vote by absentee ballot. However, to vote by absentee ballot, voters like Plaintiff Ellingen require assistance in marking their choices and so must forfeit their right to a secret ballot and share their preferred candidates with an assistant of their choice in order to cast a ballot; or not vote at all. This burden on the right to vote would be remedied

for voters like Plaintiff Ellingen through Wisconsin's provision of an electronic absentee ballot.

204. The Seventh Circuit's decision in *Luft* failed to consider the specific interests of, and harms to, Wisconsin voters with disabilities, especially print disabilities, and is therefore not dispositive of Plaintiffs' claims under the United States Constitution.

205. Defendants must ensure that Wisconsin municipalities provide qualified Wisconsin voters with disabilities, like Plaintiff Ellingen, access to the franchise with the same degree of privacy and independence as voters without disabilities. The burdens imposed by the challenged aspects of Defendants' administration of Wisconsin elections lack any constitutionally adequate justification, are unconnected to any sufficiently weighty legitimate state interest, and must be enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that Wisconsin's limitation on sending electronic absentee ballots to Wisconsin voters, Wis. Stat. § 6.87(3)(a), is discriminatory and under the Wisconsin and federal constitutions, unconstitutionally burdens the right to vote.

2. Declare that Wisconsin's limitation on marking absentee ballots electronically, Wis. Stat. § 6.87(3)(a), is discriminatory and unconstitutionally burdens the right to vote.

3. Declare that Wisconsin's limitation on receiving marked electronic absentee ballots electronically from Wisconsin voters, Wis. Stat. § 6.87(3)(a), is discriminatory and unconstitutionally burdens the right to vote.

4. Preliminarily and permanently enjoin Wis. Stat. § 6.87(3)(a), to the extent it precludes clerks from sending absentee ballots through electronic means to Wisconsinites with disabilities that inhibit their ability to vote without an assistant.

5. Preliminarily and permanently enjoin Wis. Stat. § 6.87(3)(a), to the extent that it precludes clerks from accepting absentee ballots through electronic means from Wisconsinites with disabilities that inhibit their ability to vote without an assistant.

6. Require the Wisconsin Elections Commission to instruct every Wisconsin municipality that municipal clerks must make available to voters with disabilities an electronic means for requesting, receiving, voting, and returning an absentee ballot.

7. Grant such other and further relief as this Court finds to be just, equitable, and appropriate under the circumstances.

Dated: April 16, 2024.

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Respectfully submitted,

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**Pro Hac Vice applications forthcoming*