

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TIMOTHY CAREY, MARTHA
CHAMBERS, SCOTT LUBER,
MICHAEL REECE,

Plaintiffs,

v.

WISCONSIN ELECTIONS
COMMISSION, MEAGAN WOLFE, in
her official capacity as Administrator of
WEC

Defendants.

No. 3:22-cv-00402

Judge _____

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND
EMERGENCY DECLARATORY RELIEF**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs Timothy Carey, Martha Chambers, Scott Luber, and Michael Reece (collectively "Plaintiffs"), respectfully move the Court (1) for preliminary injunctive relief restraining Defendants Wisconsin Election Commission (WEC) and WEC Administrator Megan Wolfe from administering elections in a manner that prohibits qualified Wisconsin voters with disabilities from receiving assistance returning their completed ballots and (2) for emergency declaratory relief confirming that qualified Wisconsin voters with disabilities, such as Plaintiffs, may have a person of their choice assist with returning their absentee ballots, by mail or in-person, for the upcoming November 2022 general election in Wisconsin.

Due to physical disability, Plaintiffs and many other Wisconsinites with disabilities depend on a third-party to return their executed absentee ballots. This third-party assistance is protected by federal law. Section 2 of the Voting Rights Act (VRA) unambiguously provides voters with disabilities, like Plaintiffs, an expansive right to “be given assistance by a person of the voter’s choice” in casting their ballot. 52 U.S.C. § 10508. The Americans with Disabilities Act (ADA) and the Rehabilitation Act prohibit discrimination against persons with disabilities, and place affirmative obligations on states and municipalities to ensure that voters with disabilities have equal access to the voting services provided by the state, including absentee balloting. 42 U.S.C. § 12101(a)(3); 42 U.S.C. §§ 12131–12134; 28 C.F.R. §§ 35.101–35.190. And the First and Fourteenth Amendments prohibit states from placing severe burdens on a disabled voter’s ability to cast their ballot absent a sufficiently compelling interest in the regulation.

Although disabled voters are expressly permitted under federal law to receive assistance in returning their absentee ballots and under Wisconsin law to receive assistance in receiving and completing their ballots, WEC’s Administrator, Defendant Meagan Wolfe, has stated that absentee voters may not receive any help submitting their ballot. Because of their disabilities, Plaintiffs Timothy Carey, Martha Chambers, Scott Lubber, and Michael Reece all require assistance to vote absentee. And absentee voting is the only way that Mr. Reece and Mr. Carey can vote. Absent intervention by this Court, Plaintiffs face severe and even insurmountable burdens on their right to vote in violation of their rights under Section 105 of the

Voting Rights Act, the Americans with Disabilities Act, and the First and Fourteenth Amendments of the United States Constitution.

Plaintiffs are entitled to a preliminary injunction because they are substantially likely to succeed on the merits of their claims that WEC's insistence that voters personally return their ballots violates the Voting Rights Act, 52 U.S.C. § 10508, the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131, *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 794. Plaintiffs Carey and Reece are substantially likely to succeed on the of their claim that WEC has violated the First and Fourteenth Amendments to the United States Constitution. An injunction is further warranted because traditional legal remedies do not adequately protect the Plaintiffs' right to vote; the State suffers no hardship in allowing Plaintiffs to have a person of their choice return their absentee ballot; and there is immense public interest in granting Plaintiffs' motion and ensuring that Plaintiffs and other persons with severely restrictive physical disabilities have equal, non-discriminatory access to the franchise.

For the foregoing reasons, and as more fully set forth in Plaintiffs' accompanying Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction And Emergency Declaratory Relief, statement of proposed facts, and declarations, this Court should enjoin, for the November 2022 election, the administration of elections in such a way which prohibits qualified Wisconsin voters with disabilities from receiving assistance returning their completed ballots and

declare that qualified Wisconsin voters with disabilities may have a person of their choice assist with returning their absentee ballots, by mail or in-person.

Dated: July 27, 2022.

Respectfully submitted

/s/ Scott B. Thompson

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