

Case Caption (Case Name)

Disability Rights Wisconsin, et al. v.  
Wisconsin Elections Commission, et al.

**DOCKETING STATEMENT**

Circuit Court Case No. 2024CV001141

Case Number Issued by Court of Appeals

Appellant(s) (Cross-Applicant)

Intervenor-Defendant Wisconsin State Legislature

Attorney's Name and Address

Misha Tseytlin  
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Attorney's Telephone Number

608-999-1240

Respondent(s) (Cross-Respondent)

Disability Rights Wisconsin; League of Women  
Voters of Wisconsin; Michael R. Christopher; Stacy  
L. Ellingen; Tyler D. Engel; Donale Natzke

Attorney's Name and Address

Please see attached addendum.

Attorney's Telephone Number

Please see attached addendum.

**CRITERIA FOR EXPEDITED APPEALS**

- This Docketing Statement is used solely to determine whether an appeal should be placed on the expedited appeal calendar. The respondent is not required to respond to the Docketing Statement. Generally, an appeal is appropriate for the expedited appeal calendar if:
  1. no more than 3 issues are raised;
  2. the parties' briefs will not exceed 15 pages in length; and
  3. the briefs can be filed in a shorter time than normally allowed.
 These requirements can be modified somewhat in appropriate cases.
- Parties should assume that the appeal will proceed under regular appellate procedure unless the court notifies them that the appeal is being considered for placement on the expedited appeals calendar.

**JURISDICTION**

Has judgment or order appealed from been "entered" (filed with the clerk of circuit court)?

Yes     No    If yes, date of entry June 25, 2024.

Is appeal timely? (See §808.04, Wisconsin Statutes)

Yes     No

Is judgment or order final (does it dispose of the entire matter in litigation as to one or more of the parties)?

Yes     No    (If "no", explain jurisdiction basis for appeal on separate sheet.)

**NATURE OF ACTION** – Briefly describe the nature of action and the result in circuit court:

Plaintiffs' lawsuit challenges Wisconsin statutory provisions, including Wis. Stat. § 6.87(3)(a), prohibiting municipal clerks from distributing absentee ballots by email, alleging that these provisions are unlawful as applied to print-disabled electors. Plaintiffs sought a temporary injunction, which the Circuit Court granted. The Circuit Court ordered: that (1) Wisconsin's prohibition on the electronic distribution of ballots is unenforceable as applied to print-disabled voters; (2) the Wisconsin Elections Commission must facilitate availability of electronic ballots for absentee electors who self-certify to having a print disability for the November 2024 general election; and (3) electronically delivered absentee ballots must be capable of being read and interacted with, including marked, by a voter with a print disability using digital assistive technology.

**ISSUES** – Specify the issues to be raised on appeal: *(Attach separate sheet if necessary.)*

(Failure to include any matter in the docketing statement does not constitute waiver of that issue on appeal. The court may impose sanctions if it appears available information was withheld. Court of Appeals Internal Operating Procedures, sec. VII(2)(b).)

1. Whether the Circuit Court erred in granting temporary injunctive relief, where Plaintiffs are unlikely to succeed on the merits of their claims.
2. Whether the Circuit Court erred in granting temporary injunctive relief, where Plaintiffs failed to demonstrate that they are likely to suffer irreparable harm absent relief.
3. Whether the Circuit Court erred in granting temporary injunctive relief, where the balance of the equities weighed in favor of denying such relief.
4. Whether the Circuit Court erred in disrupting the State's status quo election procedures mere months before the November 2024 general election.

**STANDARD OF REVIEW** – Specify the proper standard of review for each issue to be raised, citing relevant authority: The Court of Appeals reviews an order granting a temporary injunction for an erroneous exercise of discretion. The Circuit Court must "examine[ ] the relevant facts, appl[y] a proper standard of law, and us[e] a demonstrative rational process" to "reach[ ] a conclusion that a reasonable judge could reach." *Gahl on behalf of Zingsheim v. Aurora Health Care, Inc.*, 2022 WI App. 29, ¶ 29, 403 Wis. 2d 539, 977 N.W.2d 756 (citation omitted). "When the contention is that the circuit court erroneously exercised its discretion because it applied an incorrect legal standard, [the Court] review[s] that issue of law de novo." *Id.* (citation omitted).

Do you wish to have this appeal placed on the expedited appeals calendar? *(See Criteria For Expedited Appeals.)*

Yes     No    If "no", explain :

Will a decision in this appeal meet the criteria for publication in Rule 809.23(1)?

Yes     No

Will you request oral argument?

Yes     No

List all parties in trial court action who will not participate in this appeal:

<u>Party</u>	<u>Attorney's Name and Telephone Number</u>	<u>Reason for not Participating</u>
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Are you aware of any pending or completed appeal arising out of the same or a companion trial court case that involves the same facts and the same or related issue?

Yes     No    Name of Case \_\_\_\_\_

Appeal Number \_\_\_\_\_

Electronically signed by Misha Tseytlin

Signature of Person Preparing Docketing Statement

Misha Tseytlin

Name Printed or Typed

misha.tseytlin@troutman.com

June 28, 2024

Date

**Appellant Note:**

**You MUST** file this form and attachments with the Clerk of the Circuit Court.

**You MUST** attach a copy of the following trial court documents to this form:

1. Trial court's judgment or order and findings of fact.
2. Conclusions of law.
3. Memorandum decision or opinion upon which the judgment or order is based.

**You MUST** also serve all parties with a copy of this completed Docketing Statement and attached trial court documents.

The clerk of circuit court shall forward this form to the Court of Appeals.

Addendum to Intervenor-Defendant The Wisconsin State Legislature's Docketing Statement

**1. Jurisdictional Basis for Appeal**

Per the Docketing Statement's requirement that Intervenor-Defendant provide a separate statement on the jurisdictional basis for its appeal of the Dane County Circuit Court's June 25, 2024 nonfinal order, Dkt.104, Intervenor-Defendant states as follows: the Wisconsin Court of Appeals has jurisdiction over Intervenor-Defendant's appeal of the Dane County Circuit Court's June 25, 2024 temporary-injunction order under Wis. Stat. § 813.025(3). Section 813.025(3) provides, in relevant part, that "[i]f a circuit court . . . enters an injunction . . . or interlocutory order suspending or restraining the enforcement of any statute of this state, the injunction . . . or interlocutory order is immediately appealable as a matter of right." Wis. Stat. § 813.025(3). The Dane County Circuit Court's June 25, 2024 nonfinal order is "an injunction . . . or interlocutory order suspending or restraining the enforcement of any statute of this state," *id.*, because it declares "[p]rovisions [of the Wisconsin Statutes] prohibiting municipal clerks from distributing absentee ballots by email, including Wis. Stat § 6.87(3)(a), are unenforceable as applied to absent electors, as defined by Wis. Stat. § 6.20, who self-certify to having a print disability" and enjoins enforcement of these provisions as to such self-certifying absent electors, Dkt.104 at 1–2.

District II is a proper appellate venue for this appeal under Wis. Stat. § 752.21(2).

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DATE SIGNED: June 25, 2024

Electronically signed by Judge Everett D. Mitchell  
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 4

DANE COUNTY

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DISABILITY RIGHTS WISCONSIN, et al,

*Plaintiffs,*

v.

Case No. 2024CV1141  
Case Code: 30701  
Declaratory Judgment

WISCONSIN ELECTIONS COMMISSION, et al,

*Defendants.*

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### TEMPORARY INJUNCTION

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The Court held a hearing on June 24, 2024 on Plaintiffs' Motion for Emergency Declaratory Relief and Temporary Injunction. For the reasons stated on the record, and until the Court has an opportunity to rule on the merits of Plaintiffs' complaint, pursuant to Wis. Stat. § 813.02 and the Court's equitable powers, IT IS ORDERED AND ADJUDGED that:

1. Provisions prohibiting municipal clerks from distributing absentee ballots by email, including Wis. Stat § 6.87(3)(a), are unenforceable as applied to absent electors, as defined by Wis. Stat. § 6.20, who self-certify to having a print disability. For purposes of this order, a "print disability" is a disability that prevents the certifying absent elector from being able to

independently read and/or mark a paper absentee ballot, including blindness or a physical disability that impairs manual dexterity.

2. Defendant Wisconsin Elections Commission shall facilitate the availability of electronically delivered (*i.e.*, emailed) accessible absentee ballots for the November 2024 general election for absent electors who self-certify to having a print disability and who request from their municipal clerk an electronically delivered absentee ballot in lieu of mailing under Wis. Stat. § 6.87(3)(a).

3. This order shall not be construed to permit electronic return of a marked absentee ballot.

4. To be accessible, an electronically delivered accessible absentee ballot must be capable of being read and interacted with, including marked, by a voter with a print disability using digital assistive technology such as a screen reader.