No. 25-1594

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff-Appellant,

v.

WAL-MART STORES EAST, L.P.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Wisconsin
No. 1:17-cv-00070-WCG
Hon. William C. Griesbach

OPENING BRIEF FOR PLAINTIFF-APPELLANT EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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INTRODUCTION

Wal-Mart fired Marlo Spaeth, an employee with Down syndrome, rather than provide her with a simple schedule accommodation that would have allowed her to continue working successfully with the company as she had for the preceding fifteen years. At trial, senior Wal-Mart managers—and Wal-Mart's own counsel—defended Wal-Mart's actions on the grounds that the company's policies did not allow for long-term schedule accommodations. A jury found that Wal-Mart's actions violated the Americans with Disabilities Act (ADA) and were severe enough to warrant an award of punitive damages. But the district court initially concluded that no injunctive relief was necessary to prevent future violations, even though the same managers responsible for Spaeth's treatment remain employed by Wal-Mart and convinced that long-term schedule accommodations are impermissible.

This Court vacated and remanded the district court's denial of injunctive relief, identifying several flaws in the court's analysis and emphasizing that Wal-Mart's position regarding the impermissibility of long-term schedule accommodations certainly presents the possibility that future accommodation denials will occur. But on remand, the district court

again refused to grant any injunctive relief, ignoring this Court's analysis, disregarding key record evidence this Court highlighted, and repeating much of the reasoning this Court already rejected. In doing so, the district court abused its discretion. This Court should accordingly reverse and remand with instructions for entry of an appropriate injunction.

STATEMENT OF JURISDICTION

The Equal Employment Opportunity Commission (EEOC) brought this suit alleging that Wal-Mart violated the Americans with Disabilities Act, as amended, 42 U.S.C. §§ 12101 *et seq.* (ADA), by denying Spaeth a reasonable accommodation and wrongfully discharging and failing to reinstate her. R.1.[1] The district court had jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 12117(a) (incorporating 42 U.S.C. § 2000e-5(f)(1), (3)).

After EEOC prevailed at trial, the district court granted in part and denied in part EEOC's motion for injunctive relief on February 22, 2022. R.266. The court entered judgment on March 22, 2022. R.274. On April 19, 2022, Wal-Mart filed a timely motion for judgment as a matter of law, for a

[1] Citations to "R._" refer to entries on the district court's docket. Citations to "EEOC.App._" refer to EEOC's separate appendix. Citations to "SA._" refer to the short appendix attached to this brief.

new trial, and to remit damages under Federal Rules of Civil Procedure 50 and 59. R.277. On November 7, 2022, the district court denied this motion. R.283. Wal-Mart timely filed a notice of appeal on December 7, 2022, and EEOC timely filed its notice of cross-appeal on January 5, 2023. R.289, R.295.

On August 7, 2024, this Court affirmed the jury's finding of liability and award of compensatory and punitive damages and vacated and remanded for reconsideration as to EEOC's requests for injunctive relief. *EEOC v. Wal-Mart Stores E., L.P.*, 113 F.4th 777 (7th Cir. 2024). On November 19, 2024, EEOC filed a renewed motion for entry of an injunction. R.302. On February 7, 2025, the district court denied this motion. R.310. On April 7, 2025, EEOC timely filed its notice of appeal. R.311; *see* Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. Did the district court abuse its discretion by relying on nearly identical reasoning that this Court already rejected to conclude that injunctive relief was not necessary to prevent future violations?

2. Did the district court abuse its discretion by dismissing each of EEOC's individual injunctive requests—even those this Court said were tailored to the precise violations here and aimed at preventing recurrence—as unnecessary, overly broad, or burdensome?

STATEMENT OF THE CASE

A. Factual Background

1. Spaeth's Down syndrome and fifteen-year employment history with Wal-Mart.

Marlo Spaeth was born with Down syndrome, EEOC.App.4, a "genetic disorder which varies in severity, but causes lifelong intellectual disability and developmental delays," *Reeves ex rel. Reeves v. Jewel Food Stores, Inc.*, 759 F.3d 698, 700 (7th Cir. 2014) (citation omitted). Individuals with Down syndrome "have cognitive delays" and are typically in the developmental range of a four- to eleven-year-old. EEOC.App.54. Spaeth's sister and legal guardian, Amy Jo Stevenson, explained that because of her Down syndrome, Spaeth "doesn't have the mental faculties to process change. So it's extremely difficult to change [her] habits and routines." EEOC.App.9. When confronted with change, Spaeth "will shut down and try to ignore that we're trying to change something" or will "get[]

frustrated, stressed" and say she's "too hot." EEOC.App.9-10. Spaeth is also unable to drive because of her Down syndrome. EEOC.App.8.

In 1999, Spaeth began working at a Wal-Mart store in Manitowoc, Wisconsin, as a sales associate, completing tasks like folding towels and tidying items in the aisles. EEOC.App.5, 18, 22. Because of her Down syndrome, Spaeth needed a consistent schedule that allowed her to use public transportation, and she generally worked a 12:00 to 4:00 p.m. schedule four days a week. EEOC.App.7-8, 19-20. This schedule worked "[p]erfectly" for Spaeth's routine: she "[w]orked her shift. Caught the bus at the same time to come home, ate dinner, watched the same shows at night every day." EEOC.App.8-9. With this set schedule, Spaeth worked successfully at Wal-Mart for over fifteen years, earning positive annual performance evaluations and steady raises. EEOC.App.21-30.

2. Wal-Mart changes Spaeth's shift schedule and she and her sister request a schedule accommodation.

In 2014, however, Wal-Mart changed Spaeth's schedule following a company-wide directive to adhere to computer-generated schedules. EEOC.App.58-59. While Wal-Mart had always used a computerized scheduling system to generate shift schedules, managers had been able to

manually adjust these computerized schedules to allow Spaeth to work her regular schedule. EEOC.App.31-32, 57. Wal-Mart's company-wide directive in 2014 removed this discretion by informing managers that they "were to allow the schedules to be generated and run them as they were generated and not make adjustments to them unless it was a specific business need." EEOC.App.58. The computer assigned Spaeth a 1:00 to 5:30 p.m. shift, and Wal-Mart directed her to work this shift instead of her prior 12:00 to 4:00 p.m. shift. EEOC.App.59, 115-16.

Spaeth struggled to adjust to this new schedule because of her Down syndrome. She complained to Stevenson that "her hours on her time slip weren't noon to 4:00 so they were wrong" and worried "she was going to miss her bus if she stayed at work that late." EEOC.App.11-12. Stevenson called Spaeth's personnel coordinator at Wal-Mart, Karen Becker, to request that Wal-Mart restore Spaeth's prior schedule. EEOC.App.12-13. Stevenson explained that "[b]ecause Marlo has Down syndrome she just … couldn't physically handle working that late" and "was getting too hot, she wasn't able to eat, and she was missing her bus to get home." EEOC.App.12-13. Stevenson believed Becker had restored Spaeth's prior

schedule following this call, but instead Spaeth incurred a series of attendance infractions due to leaving her shift early. EEOC.App.13, 115-16.

Wal-Mart began disciplinary procedures to address Spaeth's attendance. During the meetings Wal-Mart managers held with Spaeth, she repeatedly expressed confusion about the hours she was supposed to work; told her managers she wanted to work her old schedule; and voiced concerns about getting sick, missing her bus, and not eating dinner on time. EEOC.App.115-16. Spaeth's supervisor, Julia Stern, testified that each time she spoke with Spaeth about her attendance, Spaeth said she wanted to work noon to 4:00 like she used to. EEOC.App.69.

Stern documented these conversations in emails to more senior Wal-Mart managers, EEOC.App.115-16, but neither Stern nor any other manager took any steps to consider a potential accommodation for Spaeth after she repeatedly asked to return to her prior schedule. EEOC.App.40-41, 43-44, 72-73. Wal-Mart's policies dictate that an accommodation request cannot be denied at the store level but instead must be forwarded to the Accommodations Service Center—a nationwide center operating out of Wal-Mart's headquarters—before denial can be authorized. EEOC.App.39-40, 80, 102-03. However, Wal-Mart managers testified that no one took

steps to escalate Spaeth's accommodation request to the Accommodations Service Center before rejecting it. EEOC.App.40-41, 47-48, 79.

3. Wal-Mart fires Spaeth and upholds the termination after investigation.

On July 10, 2015, Wal-Mart terminated Spaeth based on attendance infractions. EEOC.App.13. After Stevenson learned of the termination, she called Wal-Mart to request a meeting. EEOC.App.15. On July 16, Stevenson, Spaeth, Spaeth's mother, and several Wal-Mart managers met to discuss the termination. EEOC.App.17, 42. Stevenson invoked Spaeth's right to a reasonable accommodation under the ADA and asked for Spaeth to be reinstated under her prior schedule. EEOC.App.17.

Wal-Mart, however, took no steps to consider a reasonable accommodation following this meeting. Instead, Lee Spude, who at the time was the HR manager for multiple Wal-Mart stores, directed that the company cease further communication with Spaeth's family. EEOC.App.87-88, 129. Manitowoc Store Manager Kent Abitz conducted an investigation into allegations of disability discrimination and recommended upholding Spaeth's termination, finding it consistent with the company's policies. EEOC.App.87, 120, 124. Spude oversaw Abitz's

investigation and also upheld the decision to terminate Spaeth. EEOC.App.96, 100. And an even higher-level manager—Denise Morgan, an ethics manager at Wal-Mart's national headquarters—also signed off on this investigation and upheld the termination, deeming Wal-Mart's conduct consistent with company policies. EEOC.App.52-53, 121 (Executive Summary). Morgan determined that Wal-Mart had been too lenient in its treatment of Spaeth and in fact should have terminated her sooner because of her absences. EEOC.App.121 (Executive Summary). The only remedial action Morgan deemed appropriate was to counsel certain Wal-Mart managers on the need to be even stricter in applying the company's attendance policy. EEOC.App.121 (Executive Summary). In September, Wal-Mart informed Spaeth that it would not reinstate her. EEOC.App.45.

4. The responsible managers remain employed by Wal-Mart and testify at trial that the company has no obligation to grant long-term schedule accommodations.

Following Spaeth's termination, Wal-Mart promoted Spude to Regional People Director of Wal-Mart's Region 53, where he oversees 114 stores (including the Manitowoc store) and approximately 30,000 associates. EEOC.App.88, 92, 97. As of the time of trial, Spude remained employed as Regional People Director, Morgan remained ethics manager

at Wal-Mart's national headquarters, and Abitz remained manager of the Manitowoc store. EEOC.App.52, 81, 88. Stern and other managers from the Manitowoc store continued in managerial roles at different Wal-Mart stores in Wisconsin. EEOC.App.46, 55-56, 74.

At trial, many of these managers expressed their understanding that Wal-Mart's policies forbade long-term schedule modifications like the one Spaeth requested or that Wal-Mart never granted such accommodations in practice. EEOC.App.56, 75, 86, 89, 101. These managers also expressed their belief that Wal-Mart's company-wide directive regarding computer-generated shift scheduling required them to adhere to those schedules without exception. EEOC.App.58, 76-77. Spude, in particular, insisted that while Wal-Mart's policies "contemplate offering short-term minor [scheduling] changes or adjustments," the company was "in no way … obligated in any way to offer permanent long-term scheduling changes." EEOC.App.101.

B. Procedural History

1. Jury verdict

EEOC brought this case alleging that Wal-Mart violated the ADA by denying Spaeth the reasonable accommodation of a schedule change and

by subsequently terminating her and refusing to reinstate her. R.1 at ¶ 22. After a trial, the jury found for EEOC, concluding that Wal-Mart (1) was aware that Spaeth needed an accommodation due to her disability; (2) could have accommodated her without undue hardship; and yet (3) failed to provide her with a reasonable accommodation, discharged her, and declined to reinstate her, all in violation of the ADA. EEOC.App.140-41. The jury also found that Wal-Mart acted with reckless disregard of Spaeth's rights so as to justify punitive damages and awarded $125 million in punitive damages, as well as $150,000 in compensatory damages. EEOC.App.140-41. The district court reduced the punitive damages award to $150,000 to comply with the relevant statutory caps. R.244 at 1.

2. EEOC's first motion for injunctive relief

EEOC filed a motion for injunctive relief, seeking certain relief related specifically to Spaeth and certain measures related to Wal-Mart's disability-related policies and procedures. EEOC.App.143-46. As to this latter category, EEOC sought the following measures for a five-year period:

> Applicable to Wal-Mart as a whole:
>
> (1) Enjoin Wal-Mart from denying reasonable accommodations to Wal-Mart employees with disabilities within the United States in the absence of undue hardship on the ground that the accommodations

and/or the need for accommodations are indefinite, long-term, or permanent; and

(2) Require Wal-Mart to modify its accommodation policies to clarify that indefinite, long-term, or permanent disability accommodations are available to Wal-Mart employees in the absence of undue hardship.

Applicable to Wal-Mart's Region 53:

(3) Enjoin Wal-Mart from failing to provide reasonable accommodations to employees with disabilities in violation of the ADA;

(4) Require Wal-Mart to provide notice to all of its employees informing them of the verdict and injunction and to specifically inform them of their right to contact EEOC without fear of retaliation;

(5) Require Wal-Mart to notify EEOC within ninety days of any request for accommodation of an employee's disability and provide certain information about the request and the steps Wal-Mart took to address the request;

(6) Require Wal-Mart to provide training to its managers and supervisors regarding the obligation to grant schedule accommodations under the ADA in the absence of undue hardship and to remind them that a request for a schedule accommodation from a person with a disability cannot be denied at the store level; and

(7) Require Wal-Mart to document and evaluate adherence to Wal-Mart's Equal Employment Opportunity (EEO) policies during the annual review process for certain managers.

EEOC.App.143-44.[2]

The district court denied all the requested relief except certain relief applicable to Spaeth. EEOC.App.147-58. First, the district court reasoned that EEOC's injunctive requests were "for the most part, directives that Walmart obey the law," which the court deemed "inappropriate." EEOC.App.150. Second, the court concluded that the requested relief was unnecessary because it was "redundant to Walmart's existing policies" concerning discrimination and disability accommodations. EEOC.App.151. Third, the court concluded that the violations were unlikely to recur because Wal-Mart did not "exhibit[] animus or ill will against Spaeth individually or individuals with cognitive disabilities more generally." EEOC.App.152. Fourth, while acknowledging that the burden fell on Wal-Mart to show that the violations were unlikely to continue, the court emphasized that "*the EEOC* has not shown that the proven illegal conduct may be resumed." EEOC.App.151 (emphasis added) (internal quotation marks omitted). And, finally, the court reasoned that "[t]he substantial

[2] EEOC also sought initially to enjoin Wal-Mart from retaliating against employees who request schedule accommodations, EEOC.App.144, but did not challenge the denial of that injunctive request on appeal.

verdict against Walmart and the publicity it generated serve as strong deterrents against any repeat of the conduct at issue in this case." EEOC.App.152.

3. First appeal to this Court

Wal-Mart appealed the jury's adverse liability finding and the damages awards. R.289. EEOC cross-appealed the denial of injunctive relief. R.295. This Court affirmed the liability finding and damages awards, concluding that "ample evidence" supported the jury's findings that: (1) Wal-Mart was aware of Spaeth's need for accommodation and yet denied that accommodation, terminated her, and refused to reinstate her, all in violation of the ADA; (2) Wal-Mart had been recklessly indifferent to Spaeth's statutory rights so as to justify the punitive-damages award; and (3) Spaeth had suffered emotional and mental distress supporting the compensatory-damages award. *EEOC v. Wal-Mart Stores E., L.P.*, 113 F.4th 777, 786-91 (7th Cir. 2024).

This Court also vacated the judgment denying EEOC's requests for injunctive relief and remanded for reconsideration, highlighting several flaws in the district court's reasoning. *Id.* at 791-93. First, this Court disagreed with the district court's conclusion that EEOC's injunctive

requests for the most part amounted to inappropriate obey-the-law relief. *Id.* at 792. This Court agreed that EEOC's request that "Wal-Mart be enjoined from denying reasonable accommodations to employees with disabilities in Region 53" (Request 3) was obey-the-law in nature, and that "a more focused variant of that relief—the request that Wal-Mart as a whole be enjoined from denying a reasonable accommodation on the ground that the accommodation at issue is indefinite, long-term, or permanent" (Request 1) was "arguably" so. *Id.* But this Court said that "it was incorrect to write off all seven of the [requested] injunctions … as 'obey the law' injunctions, particularly where some of them … relate specifically to the type of misconduct that Wal-Mart committed in this case and are aimed at preventing a recurrence." *Id.*

Second, this Court criticized the district court's reasoning that "the relief requested [was] redundant to Wal-Mart's existing policies." *Id.* (quoting EEOC.App.151). While Wal-Mart had policies addressing disability accommodations, Spaeth's case "illuminated at least two shortcomings" in how Wal-Mart managers understood and implemented these policies in practice. *Id.* First, "store personnel utterly failed to treat [Spaeth's] request as a request for an accommodation and initiate the

constructive, give-and-take process that the ADA, the case law, *and* Wal-Mart's own policies require." *Id.* Second, despite these policies, Wal-Mart managers "were evidently under the impression that long-term schedule modifications could not be granted to an employee." *Id.* These "shortcomings," this Court said, undermined the district court's reliance on Wal-Mart's policies as a safeguard against future violations. *Id.*

Third, this Court explained that the district court, in concluding that Wal-Mart's violations were not likely to recur, had committed the "oversight" of failing to "take into account the totality of the trial evidence bearing on why Spaeth was denied an accommodation in her work schedule." *Id.* In particular, this Court noted that Wal-Mart managers "took the position" at trial "that the company's policies did not permit long-term schedule modifications and that the company did not grant such accommodations in practice." *Id.* at 785; *see id.* at 792. This evidence, this Court concluded, "certainly presents the possibility that other employees might be denied such an accommodation if sought." *Id.* at 792-93.

Fourth, this Court rejected the district court's reasoning that Wal-Mart's lack of animus towards Spaeth and other employees with intellectual disabilities meant that the violations here were "an isolated

incident." *Id.* at 793. This Court agreed that "[s]ome of the circumstances in this case were unique to Spaeth, including the difficulties she had complying with the new work schedule as a result of her Down syndrome." *Id.* at 792. But this Court emphasized that "others—including the company's unwillingness to entertain the possibility of a long-term schedule accommodation—were not," thus suggesting "this may have been more than an isolated incident," even accepting the district court's finding that animus was absent. *Id.* at 792-93.

Finally, this Court noted that because EEOC established intentional discrimination, "it was Wal-Mart's burden to establish that its discriminatory conduct is unlikely to recur, rather than the EEOC's burden to show the opposite." *Id.* at 793. Observing that the district court had "remarked that '*the EEOC* has not shown that the proven illegal [conduct] may be resumed,'" this Court instructed the district court "to reconsider whether Wal-Mart has carried its burden on this point." *Id.* (emphasis added) (quoting EEOC.App.151).

4. EEOC's renewed motion for injunctive relief

EEOC again moved for injunctive relief on remand, renewing the seven requests at issue in the prior appeal[3] and adding a request to enjoin Wal-Mart from retaliating against those who exercise rights protected by the injunction. EEOC.App.160-65.

The district court again denied all of the requested relief. SA.1-11. The court did not acknowledge or address this Court's reasoning, and much of its analysis was unchanged from its prior decision. The court again concluded that the violations were unlikely to recur because Wal-Mart had existing policies addressing disability accommodations and because the company had exhibited no animus towards Spaeth or other employees with intellectual disabilities. SA.5-7. The court also suggested that, because EEOC had not adduced evidence of a pattern or practice of discrimination, Wal-Mart had met its burden to show the violations here were unlikely to recur. SA.5, 7. And the court further reasoned that Wal-Mart's unlawful conduct was unlikely to persist because Spaeth no longer

[3] Though substantively identical to EEOC's prior requests, the updated requests contained several minor stylistic revisions. *Compare* EEOC.App.143-44 *with* EEOC.App.160-61.

worked at Wal-Mart, because Abitz testified he had not fired other associates with disabilities, and because the $125 million punitive-damages award and purported adverse publicity stemming from this case would serve as deterrents. SA.5, 7, 11. The district court also dismissed each of EEOC's individual injunctive requests as unnecessary, overly broad, or otherwise inappropriate. SA.7-10.

STANDARD OF REVIEW

This Court reviews the district court's denial of injunctive relief for abuse of discretion. *EEOC v. Gurnee Inn Corp.*, 914 F.2d 815, 817 (7th Cir. 1990). "Although abuse of discretion is a deferential standard, it is, nonetheless, a meaningful one." *Kruger v. Apfel*, 214 F.3d 784, 786 (7th Cir. 2000) (per curiam). This standard requires reversal where the district court applies the wrong legal standard or clearly errs in assessing the evidence. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 n.2 (2014) ("A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." (citation omitted)). Disregarding remand instructions from a court of appeals or relevant record evidence amounts to an abuse of discretion. *See Horne v. Flores*, 557 U.S. 443, 456 (2009) (district court abused

its discretion by "disregard[ing] the remand instructions" from court of appeals); *Jardien v. Winston Network, Inc.*, 888 F.2d 1151, 1159 (7th Cir. 1989) (district court abuses its discretion "when it overlooks essential evidence").

SUMMARY OF ARGUMENT

In vacating and remanding the district court's denial of injunctive relief, this Court highlighted several flaws in the district court's analysis. On remand, the district court abused its discretion by repeating nearly all these errors and reasserting reasoning this Court rejected.

First, despite this Court's admonition to the district court to consider the totality of the trial evidence bearing on likelihood of recurrence—particularly the testimony of Wal-Mart managers that the company's policies forbade long-term schedule accommodations—the district court again ignored this evidence on remand. Second, although this Court criticized the district court for relying on Wal-Mart's formal accommodation policies as a sufficient safeguard against future violations given the shortcomings in its implementation of these policies, the district court again ignored these shortcomings and concluded that the presence of the policies rendered injunctive relief unnecessary. Third, even though this Court rejected the district court's reasoning that Wal-Mart's purported lack

of animus towards Spaeth and other employees with intellectual disabilities meant that the violations here were isolated, the district court repeated this precise reasoning on remand without acknowledging this Court's discussion. Fourth, despite this Court's instruction to reconsider whether Wal-Mart carried its burden to show its illegal conduct was unlikely to recur, the district court on remand did not hold Wal-Mart to its burden in any meaningful way but instead suggested, wrongly, that EEOC bore the burden to adduce pattern-or-practice evidence to obtain injunctive relief. And the district court's reasoning contained several independent flaws, including its reliance on the fact that Spaeth no longer worked at Wal-Mart, Abitz's testimony that he had not fired other disabled employees, and the unsubstantiated claim that Wal-Mart had experienced negative publicity and financial injury stemming from the verdict.

The district court also abused its discretion in rejecting each of EEOC's individual injunctive requests. First, the court dismissed EEOC's requests to enjoin similar future violations as "disfavored" obey-the-law injunctions without explaining why the circumstances this Court has said warrant obey-the-law relief were absent here. Second, the court deemed EEOC's request to clarify the permissibility of long-term schedule

accommodations under Wal-Mart's policies unnecessary, even though Wal-Mart senior managers testified they understood the company's policies to forbid these precise accommodations. Third, although this Court specifically observed that EEOC's requests to have Wal-Mart provide notice of the verdict and train its managers regarding schedule accommodations were tailored to the specific misconduct here and aimed at preventing a recurrence, the district court rejected these requests as redundant and unnecessary. Finally, in rejecting the remainder of EEOC's requests, the court improperly imported the more stringent standards applicable to obey-the-law relief and cited vague and conclusory concerns about breadth and burden. For these reasons, this Court should reverse the denial of injunctive relief and should remand with instructions to enter an appropriate injunction.

ARGUMENT

I. The district court abused its discretion by relying on reasoning this Court already rejected to conclude that Wal-Mart's violations were unlikely to recur.

The district court abused its discretion in concluding that Wal-Mart's violations were unlikely to recur because it ignored this Court's analysis and remand instructions, reasserted reasoning this Court already rejected,

and disregarded key evidence. *See Horne*, 557 U.S. at 456; *Jardien*, 888 F.2d at 1159.

A. The district court again failed to consider the totality of the trial evidence bearing on likelihood of recurrence.

In vacating the denial of injunctive relief, this Court highlighted the "oversight in the district court's analysis" of failing to "take into account the totality of the trial evidence bearing on why Spaeth was denied an accommodation in her work schedule." 113 F.4th at 792. In particular, this Court explained, the district court had overlooked the "position that Wal-Mart witnesses took at trial" that the company's "disability policies [do not] allow for long-term schedule accommodations," which "certainly presents the possibility that other employees might be denied such an accommodation if sought." *Id.* at 792-93.

The district court, however, repeated this error on remand by again ignoring this evidence. As this Court noted, the trial record contained ample evidence that Wal-Mart was "unwilling[] to entertain the possibility of a long-term schedule accommodation." *Id.* at 792. Specifically, the testimony of senior Wal-Mart managers displayed a pervasive belief that the company's policies forbade such accommodations. Spude insisted that

the company's policies "contemplate offering short-term minor [scheduling] changes …, *but in no way are we obligated in any way to offer permanent long-term scheduling changes*." EEOC.App.101 (emphasis added). Spude reiterated this view multiple times at trial, insisting that "providing accommodations or anything that would be on a permanent basis" is "against our normal processes" and maintaining that Wal-Mart's accommodation guidelines do not permit "approvals of set schedules, guaranteed hours, or creating special schedules." EEOC.App.89, 102. Spude and other managers also emphasized that they had never seen Wal-Mart grant a long-term schedule accommodation during their tenures with the company. EEOC.App.56, 75, 86, 89, 101.

This "impression that long-term schedule modifications could not be granted" was, as this Court observed, "arguably … consistent with the company-wide directive … that the computer-generated schedules not be modified except for business reasons." 113 F.4th at 792. Indeed, several Wal-Mart managers expressed their understanding that this directive precluded them from making *any* long-term modifications to employees' schedules. EEOC.App.58 (Assistant Manager Julia Stern testifying that the "directive … from the home office" meant that "we were to allow the

schedules to be generated and run them as they were generated and not make adjustments to them unless it was a specific business need"); EEOC.App.76 (co-manager Bonnie Ohlsen testifying that because of the directive "[w]e would not edit the schedules" generated by the system).

Nor can the testimony of these managers be dismissed as that of minor functionaries unaware of the relevant rules. Spude, for example, had by the time of trial been promoted to serve as Wal-Mart's top HR official for Region 53, leading a team of eleven or twelve other high-level managers and overseeing more than a hundred stores and 30,000 employees in a dozen territories. EEOC.App.88, 92, 97. And Wal-Mart's counsel endorsed the position of these witnesses, stating during closing argument that: "The idea that Walmart is going to give somebody a permanent fixed schedule is not something that they do." EEOC.App.113. The fact that Wal-Mart's counsel and witnesses continued to take this position at trial—even with the benefit of six years of reflection after the relevant violations—strongly indicates that the violations here are likely to recur.

Although this Court specifically observed that the district court's prior decision "did not take into account the totality of th[is] trial evidence"—evidence that "certainly presents the possibility" of

recurrence—the district court again completely failed to consider this evidence on remand. 113 F.4th at 792-93. The district court did not acknowledge the testimony of Spude or other Wal-Mart managers, the company-wide directive to adhere to computer-generated schedules, or any other aspect of this Court's reasoning. This is not a case where the district court *weighed* relevant evidence against other considerations and determined that injunctive relief was nonetheless unnecessary; instead, the court *ignored* this evidence entirely, stating that there was "*no evidence* suggesting that the proven illegal conduct might be resumed in the future." SA.8 (emphasis added); *see also* SA.6 ("no evidence" to suggest unlawful conduct was more than isolated); SA.7 ("no evidence" that illegal conduct might be resumed). The district court's failure to heed this Court's instructions and consider the relevant trial evidence amounts to an abuse of discretion. *See Horne*, 557 U.S. at 456; *Jardien*, 888 F.2d at 1159.

B. The district court repeated reasoning that this Court explicitly rejected by again ignoring shortcomings in Wal-Mart's formal accommodation policies.

The district court also ignored this Court's analysis by deeming Wal-Mart's formal policies a sufficient safeguard against future violations. In its prior decision, the district court had reasoned that EEOC's requested relief

was "redundant to Walmart's existing policies" and thus unnecessary. EEOC.App.151. This Court rejected that reasoning, explaining that while Wal-Mart did have formal policies addressing accommodations, its treatment of Spaeth "illuminated at least two shortcomings in the way Wal-Mart managers" understood and implemented these policies. 113 F.4th at 792. First, these managers "utterly failed to treat [Spaeth's] request as a request for an accommodation and initiate the constructive, give-and-take process that the ADA, the case law, *and* Wal-Mart's own policies require." *Id.* And, second, these managers "were evidently under the impression that long-term schedule modifications could not be granted to an employee," as reflected by their testimony at trial that the company's policies forbade such accommodations. *Id.*; *supra* pp. 23-25. On remand, however, the district court did not consider any of these "shortcomings," 113 F.4th at 792, or acknowledge this Court's reasoning at all. Instead, the court simply said again that the requested relief was unnecessary because "Walmart has antidiscrimination and accommodation policies … that include provisions addressing accommodations for employees with disabilities." SA.6. By simply reasserting reasoning this Court already explicitly rejected, the district court abused its discretion. *See Horne*, 557 U.S. at 456.

Indeed, the trial record contained ample evidence that Wal-Mart's formal policies were insufficient to guard against future violations. As an initial matter, most of the policies the district court relied upon have no relation to the violations established in this case and thus could not prevent their recurrence. Of the three policies the district court cited, SA.6 (citing EEOC.App.130-32, 133-34, 135-39), only one touches upon the ADA's reasonable-accommodation mandate at all. First, Wal-Mart's "Discrimination & Harassment Prevention Policy" broadly prohibits discrimination or harassment based on disability and other protected characteristics but does not include failure to accommodate as a form of discrimination or otherwise specify any obligation to provide reasonable accommodations. EEOC.App.130-32. Second, as the district court itself recognized, Wal-Mart's "Open Door Communications Policy" simply "encourage[s] employees to bring concerns to their supervisor or manager." SA.6; *see* EEOC.App.133-34. But the failure here was one by management, not by an employee failing to raise relevant concerns. Spaeth and Stevenson *did* repeatedly raise concerns with supervisors and managers and yet were unable to obtain an accommodation for Spaeth, prevent her termination, or effectuate her reinstatement. Finally, while the

third policy the district court cited—Wal-Mart's "Accommodation in Employment" policy—does mention modified work schedules, it does not specify that such modifications can be long-term or permanent in nature. EEOC.App.136. And Wal-Mart managers read this silence as forbidding long-term schedule accommodations. Indeed, when presented at trial with this precise policy, Spude rejected the suggestion that it allowed for long-term schedule accommodations. EEOC.App.104-05 (rejecting the premise that "nothing in [this] policy … says that long-term modified schedules will not be provided"). Because these policies do not address the violations committed here—namely, Wal-Mart's blanket refusal to consider long-term schedule accommodations—they cannot serve as an effective safeguard against recurrence.

Moreover, even if these policies could somehow be deemed relevant on paper, they did Spaeth no good in practice. The policies were not simply insufficient to prevent the violations in the first instance: even after careful investigation and review, senior managers at every level of the corporate hierarchy determined that these policies authorized Wal-Mart's conduct here. At the store level, Abitz upheld Spaeth's termination after investigation, EEOC.App.87, deeming it not "inconsistent with" the very

"Discrimination and Harassment Prevention Policy" the district court cited. EEOC.App.120. At the regional level, Spude similarly upheld Spaeth's termination after review. EEOC.App.100. And at the national headquarters level, Morgan—who was specifically tasked with ensuring compliance with anti-discrimination policies across the entire company—deemed Spaeth's termination to be consistent with these policies. EEOC.App.52-53, 121. Indeed, Morgan's only takeaway from Spaeth's experience was that managers needed to be *more* stringent in enforcing Wal-Mart's attendance policies. EEOC.App.121; *see* 113 F.4th at 789 (noting that jury could have construed Morgan's response "as reflecting a callous indifference to Spaeth's situation"). Nor did Wal-Mart ever correct these managers' understanding of company policy. There is no evidence that Wal-Mart disciplined or criticized these managers, and the company in fact promoted Spude. EEOC.App.100. Because Wal-Mart has done nothing to correct "the impression that long-term schedule accommodations [can]not be granted" under the company's policies, 113 F.4th at 792, these policies are of no utility in preventing further violations.

This Court has long recognized that the relevant inquiry in assessing the need for injunctive relief is not whether the employer has good policies

on paper but instead whether the employer effectively implements them in practice. In *Bruso v. United Airlines*, 239 F.3d 848 (7th Cir. 2001), this Court reversed the district court's denial of injunctive relief that had rested on the premise that the employer's "formal policies for reporting and addressing harassment" were sufficient to prevent future violations even though they were "not 100% effective." *Id.* at 864. This Court found such reasoning to be an abuse of discretion, explaining, "Contrary to what the district court thought, it is of every moment that United's reporting policies are not 100% effective: if United's upper echelon of management felt free to ignore United's policies in the past, there is no reason to believe that those same members of management will abide by them in the future." *Id.*; *see also EEOC v. AutoZone, Inc.*, 707 F.3d 824, 844 (7th Cir. 2013) (existence of formal ADA policy would not insulate employer from injunction given "systemic failure to properly implement AutoZone's established procedures"). By relying on Wal-Mart's formal policies without considering evidence of their ineffectiveness in practice, the district court here similarly abused its discretion.

C. The district court repeated reasoning that this Court explicitly rejected by again concluding that Wal-Mart's purported lack of animus meant the violations here were isolated.

The district court also abused its discretion by relying on Wal-Mart's purported lack of "animus or ill will" towards Spaeth and other employees with intellectual disabilities to conclude that the violations here were nothing "more than an isolated incident." SA.5-6. The district court had relied on the same reasoning in its prior decision, EEOC.App.152-53, and this Court criticized that logic, stating that even "accept[ing] the … observation that the trial evidence did not disclose any animus or ill will on Wal-Mart's part," the "shortcomings in [Wal-Mart's] response to Spaeth's request for a schedule accommodation raise the possibility that this may have been more than an isolated incident." 113 F.4th at 793. But the district court again ignored this Court's analysis on remand and repeated—in nearly identical language—the rejected reasoning in its second opinion. SA.5-6.

In doing so, the district court failed to explain why it believed that a lack of evidence that Wal-Mart harbored animus towards Spaeth or others with intellectual disabilities meant that its violations were isolated and

unlikely to recur.[4] To be sure, "the presence of discriminatory animus" can "make[] future bad conduct more likely to occur." *EEOC v. Wal-Mart Stores, Inc.*, 38 F.4th 651, 661-62 (7th Cir. 2022). But not all failures to accommodate are based on antipathy towards the employee's disability, and animus is not required for an ADA violation to be found or for injunctive relief to be warranted. *Id.* (animus not prerequisite for injunctive relief); *Exby-Stolley v. Bd. of Cnty. Comm'rs*, 979 F.3d 784, 797 (10th Cir. 2020) (en banc) (animus not prerequisite for failure-to-accommodate claim) (collecting cases).

The evidence here suggests that Wal-Mart's refusal to accommodate Spaeth stemmed from a blanket "unwillingness to entertain the possibility of a long-term scheduling accommodation" for any employee rather than a particular dislike of Spaeth. 113 F.4th at 792. This across-the-board refusal to consider long-term schedule accommodations was, as this Court recognized, not "unique to Spaeth" but instead "present[ed] the possibility that other employees might be denied such an accommodation if sought." *Id.* at 792-93. Thus, under the facts of this case, the absence of animus in no

[4] In fact, evidence that Wal-Mart's actions were based on a particular personal animosity towards Spaeth herself might arguably suggest that the violations were less likely to extend to other employees in the future.

way suggests that the violations here were a mere "isolated incident." *Id.* at 793.

Indeed, neither the district court nor Wal-Mart offered an alternative factual account of what motivated the company's conduct that would suggest this conduct was unique to Spaeth in some way. To be sure, Wal-Mart continued to insist on remand that it simply "did not understand Ms. Spaeth to be requesting an accommodation under the ADA." EEOC.App.182. But that claim flatly contradicts the jury's finding that Wal-Mart knew Spaeth needed an accommodation due to her disability, EEOC.App.140, a finding this Court upheld as supported by "ample evidence," 113 F.4th at 788-89. In light of the jury's finding, Wal-Mart was not free to insist again that "it simply committed an honest mistake," *id.* at 789, nor was the district court free to accept that theory, *see Avitia v. Metro. Club of Chi., Inc.*, 49 F.3d 1219, 1231 (7th Cir. 1995) (trial court is "bound by [the jury's] factual findings" in making equitable determinations). The district court's conclusion that Wal-Mart's violations were unique to Spaeth lacks explanation and contravenes this Court's analysis.

D. The district court improperly suggested that EEOC must adduce pattern-or-practice evidence to obtain injunctive relief.

The district court also abused its discretion by tacitly shifting the burden to EEOC to show that Wal-Mart's violations were likely to recur. As this Court explained, because "[i]ntentional discrimination against Spaeth was established in this case, … it was Wal-Mart's burden to establish that its discriminatory conduct is unlikely to recur, rather than the EEOC's burden to show the opposite." 113 F.4th at 793 (citing *AutoZone*, 707 F.3d at 840). This Court observed that although the district court's prior decision "acknowledged the burden," it "also remarked that '*the EEOC* has not shown that the proven illegal [conduct] may be resumed.'" *Id.* (emphasis added) (quoting EEOC.App.151). This Court thus directed the district court on remand to "reconsider whether Wal-Mart has carried its burden on this point." *Id.*

On remand, the district court again *acknowledged* the burden, SA.4, 7, but it did not hold Wal-Mart to it in any meaningful way. The court did not explain how Wal-Mart had "prove[n] that the discrimination [was] unlikely to continue," 113 F.4th at 791 (quoting *AutoZone*, 707 F.3d at 840), or identify any "evidence" Wal-Mart "offered" to that effect, *Bruso*, 239

F.3d at 864. Indeed, Wal-Mart submitted no affirmative evidence at all to sustain its burden. It did not, for example, provide an affidavit from an HR official documenting a lack of internal complaints or lawsuits related to schedule-accommodation denials. Nor did it provide testimony or data suggesting the company regularly grants long-term schedule accommodations in practice. Wal-Mart has the burden of proof on this issue and easy access to the relevant evidence. In fact, because Title VII precludes EEOC from disclosing the existence of charges or information obtained in connection with any charge, 42 U.S.C. §§ 2000e-5(b), 2000e-8(e), Wal-Mart is in a far better position to introduce any evidence about the existence *vel non* of allegations that Wal-Mart improperly denied long-term schedule accommodations to other employees. Yet Wal-Mart offered nothing to suggest Spaeth's case was isolated or at all "different from the norm." *AutoZone*, 707 F.3d at 840 (citation omitted).

To be sure, Wal-Mart did make—and the district court did rely upon—the unsupported claims that "there is no evidence of other ADA complaints against Walmart similar to the violation at issue here" and that "it has been three years since the jury's verdict and there has been no recurrence of the conduct at issue since that time." SA.5; EEOC.App.178-79.

But Wal-Mart's assertions lacked any citation to the record, EEOC.App.178-79, and thus do not constitute evidence on which the district court could properly have relied.[5] *E.g.*, *United States v. Stevens*, 500 F.3d 625, 628 (7th Cir. 2007) ("[A]rguments in a … brief, unsupported by documentary evidence, are *not* evidence."). And, again, Wal-Mart produced no affidavits, testimony, or data to support its position, though if Wal-Mart's position were accurate such material would presumably have been readily available.

Instead of pointing to any *affirmative* showing by Wal-Mart, the district court seemed to suggest that the *absence* of evidence of a "pattern or practice of discrimination" could sustain Wal-Mart's burden. SA.5 (internal quotation marks omitted); *see also* SA.7 (pointing to lack of "evidence of any incidents of similar discrimination"). But suggesting that the employer can meet its burden (and thus defeat injunctive relief) merely by pointing

[5] Nor is it correct to conclude that no case has raised "ADA complaints against Walmart similar to the violation at issue here." SA.5. Just prior to the trial in this case, EEOC prevailed in another ADA lawsuit against Wal-Mart that also involved the company's failure to provide a reasonable accommodation to an employee with an intellectual disability, also led to the employee's discharge in lieu of accommodation, and was also found by a jury to be in violation of the ADA's reasonable-accommodation mandate. *See EEOC v. Wal-Mart Stores, Inc.*, 503 F. Supp. 3d 801 (W.D. Wis. 2020), *aff'd*, 38 F.4th 651 (7th Cir. 2022).

to a lack of pattern-or-practice evidence is tantamount to holding that *the plaintiff* must show pattern-or-practice evidence to obtain injunctive relief. And that proposition is contrary to this Court's case law in two critical respects. First, suggesting that the plaintiff must prove *anything* contradicts the requisite burden of proof, which, as noted, "falls on the employer to prove that the discrimination is unlikely to continue." *AutoZone*, 707 F.3d at 840; *see also* 113 F.4th at 793. And, second, suggesting that the plaintiff must adduce pattern-or-practice evidence contravenes the well-established principle that a plaintiff "need not demonstrate that his employer engages in a pattern or practice of discrimination in order to receive injunctive relief." *Bruso*, 239 F.3d at 864 (collecting cases). As this Court recognized here, "[p]roof that the employer had previously engaged in widespread discrimination or has engaged in any documented discrimination beyond the case at hand is not a prerequisite to injunctive relief." 113 F.4th at 791; *see also EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1578 (7th Cir. 1997) ("[I]njunctive relief is appropriate even where the Commission has produced no evidence of discrimination going beyond the particular claimant's case."). While the absence of pattern-or-practice evidence can be a *factor* in determining whether injunctive relief is warranted, *see Wal-Mart*

Stores, Inc., 38 F.4th at 661-62, it cannot *alone* be sufficient to sustain the employer's burden: otherwise, the requisite burden of proof would be reversed.

This approach is logical because evidence that future violations are likely to occur need not be based on a pattern or practice of discrimination. *See AutoZone*, 707 F.3d at 840 ("Because the determinative judgment is about the employer's potential *future* actions, the EEOC need not prove that the employer *previously* engaged in widespread discrimination …." (emphases added)). Pattern-or-practice evidence may well suggest a likelihood of recurrence by indicating a problem high up the employer's chain of command or a widespread misunderstanding of the relevant legal obligations. But here, the record evidence already makes that showing. It is plain that Wal-Mart's upper echelon of management—at every level of the corporate hierarchy ranging from the store level to the national level—participated in and endorsed the relevant violations. *Supra* pp. 29-30. And even absent pattern-or-practice evidence, it is clear that senior managers like Spude held the erroneous belief they had no obligation to even consider the possibility of long-term schedule accommodations. *Supra* pp. 23-25. Yet the district court appeared to find the absence of pattern-or-

practice evidence fatal to EEOC's request for injunctive relief. This legal error amounts to an abuse of discretion. *See Highmark*, 572 U.S. at 563 n.2.

E. The district court relied on several other inapposite considerations in denying injunctive relief.

In addition to failing to follow this Court's analysis and remand instructions, the district court's reasoning contains several other independent flaws.

First, the district court concluded that "[t]here is little risk that similar violations will occur in the future because Spaeth did not accept reinstatement and is therefore no longer with Walmart." SA.5. But it is incorrect to focus only on whether *Spaeth* is likely to experience future violations. Because "[t]he EEOC represents the public interest when litigating claims," it seeks through injunctive relief "to protect not only the rights of the individual claimant, but those of similarly-situated employees by deterring the employer from future discrimination." *EEOC v. Massey Yardley Chrysler Plymouth, Inc.*, 117 F.3d 1244, 1253 (11th Cir. 1997); *see also EEOC v. Harris Chernin, Inc.*, 10 F.3d 1286, 1291 (7th Cir. 1993) (EEOC's "interests are broader than those of the individuals injured by discrimination"). Thus, the relevant question, as this Court noted here, is

whether "*other* employees might be denied [a long-term schedule] accommodation if sought." 113 F.4th at 792-93 (emphasis added). Spaeth's absence from the workplace has no bearing on that inquiry.

Second, the district court relied on Abitz's testimony that he "never terminated any other associate with disabilities for any reason" as evidence that the violations were unlikely to recur. SA.5 (citing EEOC.App.82-83). But this misunderstands the nature of the violations here. As noted above, *supra* pp. 33-34, EEOC did not contend that Wal-Mart terminated Spaeth (or was likely to terminate other associates) based on animus due to their disabilities. Instead, EEOC argued, and this Court agreed, that Wal-Mart was "unwilling[] to entertain the possibility of a long-term schedule accommodation," thus "present[ing] the possibility that other employees might be denied such an accommodation if sought." 113 F.4th at 792-93. The cited testimony from Abitz is not to the contrary; indeed, he elsewhere testified that he was unaware of Wal-Mart ever providing a permanent schedule modification to any part-time associate at the Manitowoc store. EEOC.App.86. And the fact that Abitz himself deemed Spaeth's termination to be consistent with company policy, EEOC.App.120, suggests

that he is likely to deny schedule accommodations for other employees in the future.

Third, the district court was "satisfied" that Wal-Mart "has taken and will continue to take every reasonable measure" to prevent future violations in light of "the adverse publicity [it] suffered as a result of the jury's verdict" and "especially the $125 million award in punitive damages." SA.11; *see also* SA.7 (deeming "[t]he substantial verdict against Walmart and the publicity it generated" to be "strong deterrents against any repeat of the conduct at issue"). But the court identified no negative publicity stemming from the jury verdict, apart from a single EEOC press release. SA.7. Wal-Mart did not argue that it suffered any injury to its public image, much less one with a deterrent effect. And to the extent the court assumed that Wal-Mart suffered a significant financial injury because of the $125 million punitive-damages award, that assumption overlooks the award's reduction to $150,000, a sum unlikely to be meaningful to a multi-billion-dollar corporation like Wal-Mart.

Nor is there any evidence that Wal-Mart "has taken and will continue to take" *any*—much less "every"—reasonable measure to guard against future violations. SA.11. Wal-Mart did not even assert that it had

undertaken any remedial measures, much less provide record evidence that it had done so. Instead, Wal-Mart has continued to reject the jury's factual findings, insist that it engaged in no wrongdoing, and resist even the simplest remedial measures sought by EEOC. This is hardly the picture of a company working diligently to adopt "every reasonable measure to ensure no similar incident occurs in the future." SA.11; *see Ilona of Hungary*, 108 F.3d at 1579 (injunction warranted where defendants "insisted throughout th[e] litigation" that they did nothing wrong); *Massey Yardley*, 117 F.3d at 1254 (fact that "no one at the company seems to have admitted to any wrongdoing" was suggestive of likelihood of recurrence); *EEOC v. Dolgencorp, LLC*, 277 F. Supp. 3d 932, 957 (E.D. Tenn. 2017) (absence of evidence that employer "implemented any additional policies or procedures to prevent future ADA violations" supported injunction), *aff'd on other grounds*, 899 F.3d 428 (6th Cir. 2018).

II. The district court abused its discretion in concluding that each of EEOC's individual injunctive requests was unnecessary, overly broad, or otherwise inappropriate.

A. Requests 1 and 3: Enjoining Wal-Mart from committing similar ADA violations in the future.

Requests 1 and 3 sought, for a five-year period, to enjoin Wal-Mart from engaging in violations of the ADA similar to those the jury found Wal-Mart committed here. EEOC.App.160-61. Request 3 sought to bar Wal-Mart, within Region 53, from failing to provide reasonable accommodations to employees with disabilities in violation of the ADA. EEOC.App.161. Request 1, as this Court noted, is "a more focused variant of that relief," seeking to enjoin Wal-Mart from denying reasonable accommodations, absent undue hardship, on the specific "ground that the accommodation at issue is indefinite, long-term, or permanent." 113 F.4th at 792; *see* EEOC.App.160. The district court dismissed these requests as "merely directives to have Walmart obey the law" and deemed them "disfavored" and inappropriate. SA.7-8. This conclusion is flawed for several reasons.

1. Obey-the-law relief is not inherently disfavored.

First, while the district court cited this Court's decision in *AutoZone* for the conclusion that obey-the-law relief is "disfavored," SA.8, *AutoZone*

does not stand for that proposition. Instead, *AutoZone* in fact upheld (subject to imposition of a time limit) a region-wide obey-the-law injunction nearly identical to Request 3 here. *See* 707 F.3d at 841 (injunction requiring AutoZone to "make reasonable accommodations to the known physical limitations of any qualified employee with a disability" working in the Central District of Illinois). Indeed, this Court has long recognized that obey-the-law injunctions constitute "proper relief" that "prevent[s] the defendant from repeating his violation in slightly different form." *Power v. Summers*, 226 F.3d 815, 819 (7th Cir. 2000) (observing that "[i]t is not uncommon for an injunction to repeat a statutory or equivalent prohibition").

The district court characterized *AutoZone* as having said that obey-the-law injunctions "raise[] concerns of overbreadth and vagueness." SA.8. But *AutoZone* did not say that obey-the-law injunctions *inherently* raise such concerns. Instead, *AutoZone* explained that these concerns only arise where the injunction seeks to "prohibit … more than the violation established in the litigation or similar conduct reasonably related to the violation" (making it overly broad) or where the injunction does not "describe in reasonable detail the act or acts restrained or required" (making it

impermissibly vague). 707 F.3d at 841-42 (citation modified). And *AutoZone* did not suggest that either concern was applicable to the obey-the-law injunction it approved, which was nearly identical to Request 3 here.

Requests 1 and 3 do not implicate the overbreadth or vagueness concerns this Court identified in *AutoZone*. First, these requests are not overbroad because they hew closely to the violation established in the litigation rather than seeking to enjoin unrelated "violations of all the [ADA's] provisions." *NLRB v. Express Publ'g Co.*, 312 U.S. 426, 437 (1941). Request 3 is limited to the precise ADA violation found by the jury—denial of a reasonable accommodation—rather than seeking to enjoin other ADA violations like discriminatory hiring, firing, or pay. *See NLRB v. Neises Constr. Corp.*, 62 F.4th 1040, 1053-54 (7th Cir. 2023) (enforcing obey-the-law injunction requiring employer to bargain in good faith because that violation was fairly related to initial violation of failing to recognize the relevant union); *cf. Express Publ'g Co.*, 312 U.S. at 432-33 (rejecting as overbroad an injunction directing respondent "not to violate 'in any manner' the duties imposed on the employer by the statute" where the only violation related to a refusal to bargain). And Request 1 is even more narrowly tailored, as it focuses on the precise obligation to provide

permanent or long-term accommodations that Wal-Mart's own senior managers disavowed. These injunctive requests plainly seek to enjoin violations that "bear some resemblance to [those] which [Wal-Mart] has committed." *Express Publ'g Co.*, 312 U.S. at 437.

Nor do the injunctive requests here present vagueness concerns. "[T]he mere fact that [an] injunction is framed in language almost identical to [a] statutory mandate does not make the language vague so long as the statutory terms adequately describe the impermissible conduct." *SEC v. Murphy*, 50 F.4th 832, 852 n.9 (9th Cir. 2022) (internal quotation marks omitted); *see In re Rodriguez*, 695 F.3d 360, 368-69 (5th Cir. 2012) (obey-the-law injunctions are not inherently vague but are only "problematic when they order a defendant to obey the law but do not simultaneously indicate what law the defendant needs to obey"). "The specificity requirement is not unwieldy …. An injunction must simply be framed so that those enjoined will know what conduct the court has prohibited." *Meyer v. Brown & Root Constr. Co.*, 661 F.2d 369, 373 (5th Cir. Nov. 1981). The injunctive requests here meet that standard. They do not amount to a vague directive to comply with the entirety of the ADA; instead, Request 3 specifically prohibits failure to provide reasonable accommodations in the absence of

undue hardship and Request 1 adds further detail by prohibiting Wal-Mart from relying on the indefinite, long-term, or permanent nature of the accommodation as a basis for denial. EEOC.App.160-61. These requests make clear what law Wal-Mart must obey and do not leave the company to guess at what conduct the injunction prohibits. *See Power*, 226 F.3d at 819 (an injunction forbidding retaliation would be sufficiently specific because "[t]he term 'retaliation' is not so vague that a defendant enjoined from retaliating against a person for exercising his right of free speech would not know what he could and could not do with reference to that person"); *SEC v. Life Partners Holdings, Inc.*, 854 F.3d 765, 785 (5th Cir. 2017) (injunctions that "order a defendant to obey a specific law" are not overly vague). Thus, contrary to the district court's analysis, the concerns that would "disfavor" granting obey-the-law relief are not applicable here. SA.8.

2. The district court failed to explain why obey-the-law relief was not warranted here.

The district court also failed to explain why the circumstances this Court has said warrant obey-the-law relief were absent here. As *AutoZone* noted, obey-the-law measures "will be an appropriate form of equitable relief … where the evidence suggests that the proven illegal conduct may

be resumed," such as "where the particular employees or supervisors responsible for the illegal conduct remain at the company" or "where the employer has taken some particular action … that convinces the court that voluntary compliance with the law will not be forthcoming." 707 F.3d at 842-43 (internal quotation marks omitted). Here, those managers responsible for the violations continue to occupy senior positions in Wal-Mart's corporate hierarchy. And the fact that these managers continued to insist at trial—six years after the violations occurred—that the company had no obligation to even entertain the possibility of long-term schedule accommodations as required by the ADA suggests that Wal-Mart's "voluntary compliance with the law will not be forthcoming." *Id.* at 843. This sort of "intransigence at quite senior levels of management" and refusal to "com[e] to grips with [the company's] ADA obligations" is precisely what this Court found justified obey-the-law relief in *AutoZone*. *Id.* at 843-44; *see also Ilona of Hungary*, 108 F.3d at 1579 (upholding obey-the-law injunction where the responsible individuals "remain[ed] the defendant's primary decision-makers" and where defendants "insisted throughout th[e] litigation" that their conduct was proper).

The district court, however, did not meaningfully grapple with these considerations. It recognized that "the supervisors involved in the unlawful conduct at issue remain employed by Walmart" but nonetheless stated without explanation that "there is no evidence suggesting that the proven illegal conduct might be resumed in the future." SA.8. This conclusory statement fails to acknowledge the trial evidence described above or otherwise explain why the circumstances justifying obey-the-law relief are absent.

3. The district court failed to explain why these requests would require burdensome supervision and monitoring.

The district court also said that Requests 1 and 3 "would require the court to engage in continuous supervision and monitoring of Walmart's nationwide compliance with the ADA's reasonable accommodation provisions." SA.8. But EEOC did not request that the district court engage in any ongoing supervision or monitoring at all. EEOC did not, for example, ask the court to review reports, data, or other metrics regarding Wal-Mart's compliance with the ADA's reasonable-accommodation mandate. Instead, the proposed injunction contemplates that *EEOC* would monitor Wal-Mart's compliance through reports from Wal-Mart about its

handling of other employees' accommodation requests. EEOC.App.161 (Request 5). The injunction would thus not demand that the district court engage in any "continuous supervision and monitoring" likely to be burdensome. SA.8.

B. Request 2: Clarification of company policies regarding recurring, long-term, or permanent accommodations.

Request 2 sought to require Wal-Mart to "modify its accommodation policies to clarify that recurring, long-term, or permanent disability accommodations are available to Walmart employees, in the absence of undue hardship." EEOC.App.161.

The district court reasoned that it was "not necessary to explicitly highlight that modified work schedules … may be recurring, long-term, or permanent" because Wal-Mart's policies already "identify modified work schedules as a reasonable accommodation." SA.9. The district court cited Trial Exhibit 1061 for this proposition but, as discussed above, this policy nowhere specifies that such modifications can be long-term in nature.[6]

[6] The district court cited only Trial Exhibit 1061 for the proposition that Wal-Mart's policies already contemplate modified work schedules, but the court also referred generally to Wal-Mart's Discrimination & Harassment Prevention Policy and Open Door Communications Policy. SA.9 (citing EEOC.App.130-32, 133-34). As noted above, *supra* p. 28, these policies do not touch at all upon reasonable accommodations, much less make clear that long-term schedule accommodations are permissible.

EEOC.App.135-39; *supra* pp. 28-29. And Spude insisted that this very policy *foreclosed* long-term schedule accommodations. EEOC.App.104-05. Given this testimony, the district court's conclusion that "[i]t is not necessary to explicitly highlight" the permissibility of long-term schedule accommodations is confounding. SA.9. Because Request 2 is targeted specifically at the misconception held by senior Wal-Mart managers that long-term schedule accommodations were impermissible, it is "tailored to address deficiencies in [Wal-Mart's] policies" and to "prevent similar conduct from recurring." *EEOC v. Boh Bros. Constr. Co., L.L.C.*, 731 F.3d 444, 470 (5th Cir. 2013) (en banc); *see also EEOC v. KarenKim, Inc.*, 698 F.3d 92, 101 & n.3 (2d Cir. 2012) (suggesting that district court consider ordering revision of company policies to prevent recurrence of violations).

C. Request 4: Providing notice of verdict and injunction.

Request 4 sought to require Wal-Mart's Region 53 to provide notice to its employees of the verdict and injunction and the right to contact EEOC without fear of retaliation. EEOC.App.161. The district court found this request unnecessary because Wal-Mart "already posts its antidiscrimination and accommodation policies." SA.9. But EEOC did not seek a posting of Wal-Mart's general anti-discrimination and

accommodation policies. Instead, EEOC sought a posting specifically about the verdict and injunction and the right to contact EEOC without retaliation. This request, as this Court observed, "relate[s] specifically to the type of misconduct that Wal-Mart committed in this case and [is] aimed at preventing a recurrence." 113 F.4th at 792. Indeed, similar provisions are a standard component of many injunctions approved by this and other courts. *E.g.*, *Gurnee Inn Corp.*, 914 F.2d at 817, *aff'g*, 1988 WL 129329, at *1 (N.D. Ill. Nov. 28, 1988) (requiring employer to post notice of judgment); *Boh Bros. Constr. Co.*, 731 F.3d at 470, *aff'g in relevant part*, 2011 WL 3648483, at *5 (E.D. La. Aug. 18, 2011) (requiring employer to post notice of verdict).

D. Request 5: Reporting to EEOC on reasonable-accommodation requests and Wal-Mart's response.

Request 5 sought to require Wal-Mart's Region 53 to notify EEOC of any request for accommodation of an employee's disability and provide certain information about the request and the steps Wal-Mart took in response. EEOC.App.161. The district court stated that "because nothing in the record convinces the court that voluntary compliance with the law will not be forthcoming, the court finds that th[is] request[] [is] overly broad,

unduly burdensome, and unnecessary." SA.10 (internal quotation marks omitted).

As an initial matter, the notion that the court must be "convinced" that "voluntary compliance with the law will not be forthcoming" imports the more stringent standard applicable to obey-the-law injunctions rather than ordinary injunctive relief like the reporting provision at issue here. *Compare AutoZone*, 707 F.3d at 842-43 (obey-the-law injunction warranted only if court is "convince[d] … that voluntary compliance with the law will not be forthcoming"), *with id.* at 840 (ordinary injunctive relief warranted unless employer meets burden to show illegal conduct "could [not] possibly persist in the future" (citation omitted)). And, regardless of how the standard is phrased, the district court's conclusion that Wal-Mart's violations are unlikely to recur suffers from the same flaws discussed above. *Supra* pp. 22-43.

The district court also failed to explain why it believed Request 5 to be "overly broad" and "unduly burdensome." SA.10. This Court has approved nearly identical reporting provisions, viewing them as straightforward measures designed to "ensure[] that [the employer] will implement the anti-discrimination procedure it purports to follow."

AutoZone, 707 F.3d at 844 (requiring AutoZone "to notify EEOC of employees seeking accommodations and to record its responses to these requests in writing"); *Ilona of Hungary*, 108 F.3d at 1578-79 (approving similar reporting provision regarding religious-accommodation requests). These unspecified concerns about breadth and burden do not warrant denial of injunctive relief. *See Boh Bros. Constr. Co.*, 731 F.3d at 470 (rejecting employer's vague and unsubstantiated complaints of overbreadth and burden).

E. Request 6: Training regarding schedule accommodations.

This request sought to require Wal-Mart's Region 53 to "provide training to its managers and supervisors regarding the obligation to grant scheduling accommodations under the ADA in the absence of undue hardship and to remind them that a request for a scheduling accommodation from a person with a disability cannot be denied at the store level." EEOC.App.161.

The district court deemed this training unnecessary because "Walmart provides annual training on discrimination and prevention as well as accommodation training at least once a year at all levels of the organization." SA.10 (citing EEOC.App.91). To support this assertion, the

district court cited Spude's testimony, which referred vaguely to yearly training on "[d]iscrimination prevention and accommodations." EEOC.App.91. But EEOC did not seek generalized ADA or anti-discrimination training. Instead, it requested training directed specifically at the obligation to provide schedule accommodations and to refrain from denying accommodations at the store level. Spude's testimony nowhere suggested that Wal-Mart's training addressed these specific topics.

Moreover, as Spaeth's experience demonstrated, any existing training was plainly insufficient to prevent the violations here and thus cannot be expected to prevent future violations. Rather than grasping the full scope of an employer's "obligation to grant scheduling accommodations under the ADA," EEOC.App.161, Spude insisted that the company was "in no way … obligated in any way to offer permanent long-term scheduling changes," EEOC.App.101. And rather than recognizing that "a request for a scheduling accommodation … cannot be denied at the store level," EEOC.App.161, no Wal-Mart manager escalated Spaeth's accommodation request to the Accommodations Service Center before rejecting it. EEOC.App.41, 47-48, 79. As this Court observed, EEOC's request for training covering these precise obligations "relate[s] specifically to the type

of misconduct that Wal-Mart committed in this case and [is] aimed at preventing a recurrence." 113 F.4th at 792; *see also Dolgencorp*, 277 F. Supp. 3d at 963 (approving injunction requiring additional training because, despite existing training, several "employees at various levels of the corporate structure" had "little understanding … of their obligation to fulfill the ADA's requirements").

F. Request 7: Accountability for non-compliance with Wal-Mart's EEO policies.

Request 7 sought to require Wal-Mart's Region 53 to document and evaluate adherence to Wal-Mart's EEO policies during the annual review process for certain supervisors and managers. EEOC.App.161. The district court lumped this request together with Request 5 and rejected it "because nothing in the record convinces the court that voluntary compliance with the law will not be forthcoming." SA.10 (internal quotation marks omitted). As explained above with respect to Request 5, this reasoning incorrectly imports the more stringent standard for obey-the-law relief and overlooks the ample evidence suggesting that Wal-Mart's violations are likely to recur. *Supra* pp. 53-54.

G. Request 8: Non-interference with the injunction.

Request 8 sought to enjoin Wal-Mart from interfering with the injunction by retaliating against those who exercise rights protected by the injunction, oppose a practice that violates the injunction, or participate in any investigation of compliance with the injunction. EEOC.App.161-62. The district court did not consider the substantive propriety of this provision, instead deeming it "unnecessary" because the court was "not granting any of the injunctive relief the EEOC seeks." SA.10. As explained above, injunctive relief is warranted in this case. This provision would function in aid of any injunction by ensuring Wal-Mart does not frustrate the injunction's provisions.

III. This Court should remand with instructions to enter injunctive relief.

This Court should remand with instructions to enter injunctive relief rather than simply instructing the district court to consider for a third time whether such relief is appropriate. First, this Court has already found that the necessary prerequisite for injunctive relief—that "the employer's discriminatory conduct could possibly persist in the future" without such relief—is present by observing that Wal-Mart's position regarding the

impermissibility of long-term schedule accommodations "certainly presents the possibility that other employees might be denied such an accommodation if sought." 113 F.4th at 791-93 (internal quotation marks omitted). Second, this Court has already once remanded for the district court to reconsider the propriety of injunctive relief. But on remand the district court ignored this Court's analysis and instead reiterated reasoning that this Court already explicitly rejected. Under these circumstances, a remand with instructions to enter injunctive relief is appropriate. *See Delgado v. U.S. Dep't of Just.*, 979 F.3d 550, 557, 561-62 (7th Cir. 2020) (holding that a remand for reconsideration would waste judicial and party resources where court of appeals had previously remanded case but judge "repeated her earlier and erroneous analysis, as if we had not ruled"); *Bruso*, 239 F.3d at 864-65 (remanding with instructions for district court "to enter an appropriate injunction" after concluding that illegal conduct could persist in future); *KarenKim, Inc.*, 698 F.3d at 101 (specifying certain minimum injunctive measures necessary to prevent future violations for the district court to order on remand).

CONCLUSION

For the foregoing reasons, this Court should reverse the denial of injunctive relief and remand with instructions to enter an appropriate injunction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) and Seventh Circuit Rule 32(c) because it contains 11,267 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) and Seventh Circuit Rule 32(b) because it was prepared using Microsoft Word for Office 365 ProPlus in Book Antiqua, a proportionally spaced typeface, in 14-point font in the body of the brief and 12-point font in the footnotes.

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Dated: July 7, 2025

CERTIFICATE OF SERVICE

On July 7, 2025, I filed the foregoing brief with the Clerk of the Court by using the CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

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STATEMENT REGARDING SHORT APPENDIX

Pursuant to Circuit Rule 30(d), I certify that all the materials required by Circuit Rules 30(a) and (b) are included. The materials required by Circuit Rule 30(a) are bound with this brief in the section labeled "SHORT APPENDIX." The materials required by Circuit Rule 30(b) are included in the Separate Appendix that is being filed concurrently with this brief.

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SHORT APPENDIX

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v. Case No. 17-C-70

WAL-MART STORES EAST LP,

Defendant.

DECISION AND ORDER DENYING RENEWED MOTION FOR ENTRY OF INJUNCTION

Plaintiff Equal Employment Opportunity Commission (EEOC) brought this action against Defendant Wal-Mart Stores East LP on behalf of a former employee with Down Syndrome, Marlo Spaeth, alleging discrimination under Title I of the Americans with Disabilities Act of 1990 (ADA) and Title I of the Civil Rights Act of 1991. The EEOC alleged, among other things, that Walmart failed to accommodate Spaeth's disability by refusing to provide her with a permanent, modified fixed schedule of 12:00 p.m. to 4:00 p.m. after Walmart adopted a new customer-demand centric, automatic scheduling system that scheduled Spaeth to work from 1:00 p.m. to 5:30 p.m.

After a four-day jury trial, the jury returned a verdict in favor of the EEOC and awarded $150,000 in compensatory damages and $125,000,000 in punitive damages. After the verdict was returned, the court granted Walmart's oral motion to reduce the award of compensatory and punitive damages to the statutory maximum of $300,000. *See* 42 U.S.C. § 1981(a). The court withheld the entry of judgment until it determined the issues of equitable relief.

On February 22, 2022, the court partially granted the EEOC's motion for equitable relief. The court ordered Walmart to immediately reinstate Spaeth as a Walmart employee, at a rate of

pay of $14.90 per hour, and to consult with Spaeth's guardian regarding any need for discipline or accommodations while she continues her employment. The court also found that Spaeth was entitled to backpay, prejudgment interest, and a tax-component award. But the court denied the EEOC's request for other injunctive relief.

Judgment was entered in favor of the EEOC and against Walmart, awarding Spaeth $150,000.00 in compensatory damages, $150,000.00 in punitive damages, $44,757.80 in backpay, $5,978.63 in prejudgment interest, and $68,926.16 for tax consequences, for a total award in the amount of $419,662.59. Walmart appealed the jury's adverse finding on liability along with the awards of compensatory and punitive damages and the EEOC cross-appealed the denial of injunctive relief. The Seventh Circuit affirmed as to the jury's finding of liability and the awards of compensatory and punitive damages but vacated the judgment as to the denial of injunctive relief and remanded the matter to this court for further consideration of that issue.

This matter comes before the court on the EEOC's renewed motion for entry of an injunction. The EEOC requests that the court grant the following injunctive measures for a period of five years:

Equitable Relief Generally Applicable to Walmart

1. Enjoin Walmart from denying a reasonable accommodation to any Walmart employee with a disability within the United States, in the absence of undue hardship, on the ground that the accommodation and/or the need for accommodation is recurring, long-term, or permanent in nature.

2. Require Walmart to modify its accommodation policies to clarify that recurring, long-term, or permanent disability accommodations are available to Walmart employees, in the absence of undue hardship.

Equitable Relief Applicable Within Walmart's Region 53

3. Enjoin Walmart from failing to provide reasonable accommodations to employees with disabilities, in violation of the ADA.

4. Require Walmart to provide notice to all of its employees informing them of the verdict and injunction in this suit and to specifically inform employees of their right to contact the EEOC without fear of retaliation.

5. Require Walmart to notify the EEOC within ninety days of any request for accommodation of an employee's disability, and to provide the EEOC with a description of the request, the name, title, phone number, e-mail address, and mailing address of the requestor, the steps taken by Walmart to accommodate the request, and the result of the request.

6. Require Walmart to provide training to its managers and supervisors regarding the obligation to grant scheduling accommodations under the ADA in the absence of undue hardship and to remind them that a request for a scheduling accommodation from a person with a disability cannot be denied at the store level.

7. Require Walmart to document and evaluate adherence to Walmart's Equal Employment Opportunity policies during the annual review process for its supervisors, managers, market people operation leads, and regional people directors.

Non-Interference With This Injunction

8. Enjoin Walmart from interfering with the implementation of these injunctive provisions by retaliating against any person who requests an accommodation within the scope of this injunction, who opposes a practice that is a violation of this injunction, or who provides testimony or other assistance to the EEOC in investigating compliance with or enforcing this injunction.

Dkt. No. 302. For the following reasons, the motion will be denied.

Under the ADA, if an employer has "intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint," a district court "*may* enjoin [the employer] from engaging in such unlawful employment practice." 42 U.S.C. § 2000e-5(g)(1) (emphasis added); 42 U.S.C. § 12117(a). "District courts have wide discretion 'to fashion a complete remedy, which may include injunctive relief, in order to make whole victims of employment discrimination.'" *EEOC v. AutoZone, Inc.*, 707 F.3d 824, 840 (7th Cir. 2013) (quoting *EEOC v. Gurnee Inn Corp.*, 941 F.2d 815, 817 (7th Cir. 1990)).

In deciding whether to grant injunctive relief, the court's "central task is to consider whether the employer's discriminatory conduct could possibly persist into the future." *EEOC v. Wal-Mart Stores*, 38 F.4th 651, 661 (7th Cir. 2022) (citing *AutoZone*, 707 F.3d at 840). "Because the determinative judgment is about the employer's potential future actions, the EEOC need not prove that the employer previously engaged in widespread discrimination, and 'injunctive relief is appropriate even where the EEOC has produced no evidence of discrimination going beyond the particular claimant's case.'" *AutoZone*, 707 F.3d at 840 (alterations omitted) (quoting *EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1578 (7th Cir. 1997)). The employer has the "burden to establish that its discriminatory conduct is unlikely to recur." *EEOC v. Wal-Mart Stores*, 113 F.4th 777, 793 (7th Cir. 2024) (citing *AutoZone*, 707 F.3d at 840).

The conclusion that an employer "was intentionally engaging in an unlawful employment practice does not necessarily warrant the awarding of injunctive relief," however. *Williams v. Gen. Foods Corp.*, 492 F.2d 399, 407 (7th Cir. 1974). In determining whether to grant injunctive relief, the court must "balance the various equities between the parties and decide upon a result which is consistent with the purposes of" the ADA and the "fundamental concepts of fairness." *Id.* (internal quotation marks and citation omitted). The court may consider a number of factors, including whether the employer has "engaged in a pattern or practice of discrimination and whether current employees harbor discriminatory animus," *Wal-Mart Stores*, 38 F.4th at 661, and whether the relief requested is redundant to the employer's existing policies and procedures, *Miles v. Indiana*, 387 F.3d 591, 602 (7th Cir. 2004).

Walmart asserts that the injunctive relief requested is not appropriate because the conduct that the jury found actionable is unlikely to recur. It contends that this unique incident involved only one associate at one store and one kind of reasonable accommodation. Dkt. No. 305 at 25.

The EEOC argues that this case involved failures at "every level of the company" to recognize that a request for a long-term schedule modification is a reasonable accommodation under the ADA. Dkt. No. 307 at 11. It contends that the store's managers and supervisors denied Spaeth's request for a reasonable accommodation, that the regional human resources manager rejected her request for a schedule accommodation because Walmart had no obligation to make long-term or permanent schedule modifications as a reasonable accommodation, that this determination was consistent with company headquarters' directive not to alter the new computer-generated employee schedules, and that the Global Ethics department reviewed the company's treatment of Spaeth and concluded there was no violation of company policy.

Although many of the supervisors and managers involved in the decision-making process are still employed by Walmart, the continued employment of these supervisors and managers is not, by itself, a sufficient reason to grant the injunctive relief requested. There is little risk that similar violations will occur in the future because Spaeth did not accept reinstatement and is therefore no longer with Walmart. In addition, nothing in the record suggests that a "pattern or practice of discrimination" exists. *Wal-Mart Stores*, 38 F.4th at 661. Walmart asserts that there is no evidence of other ADA complaints against Walmart similar to the violation at issue here. Manitowoc Store Manager Kent Abitz testified at trial that he never terminated any other associate with disabilities for any reason. Trial Tr. Day 3 at 125–26, Dkt. No. 247. Walmart notes that it has been three years since the jury's verdict and there has been no recurrence of the conduct at issue since that time. *See* Dkt. No. 305 at 14.

This is not a case where Walmart employees exhibited animus or ill will against Spaeth individually or individuals with cognitive disabilities more generally. The record reflects that, for over 15 years, Walmart's management staff and associates took steps to help Spaeth succeed as an

associate. For instance, management staff reminded Spaeth of her schedule. Trial Tr. Day 1 at 140, Dkt. No. 245; Trial Tr. Day 3 at 7–9. Personnel Coordinator Karen Becker would personally handwrite Spaeth's schedule every week and had Spaeth read the schedule back to her, to ensure Spaeth knew the hours and days she was supposed to work. Trial Tr. Day 1 at 175. Management also encouraged Spaeth to finish her scheduled shifts. *Id.* at 171; Tr. Day 3 at 66, 113–14. During her tenure, other associates helped Spaeth by teaching her new job skills and devoting extra time to Spaeth's training. Trial Tr. Day 2 at 73–74, Dkt. No. 246. No one wanted to see Spaeth lose her job. After Spaeth was terminated, Training Coordinator Debbie Moss cried as she walked Spaeth to the front of the store and gave Spaeth a hug as she left. Trial Tr. Day 3 at 116–17. Spaeth testified that she liked her job at Walmart, that she wanted her job back, and that she missed the job and the people at Walmart. Trial Tr. Day 2 at 121–22. While the jury found that Walmart violated the ADA, Walmart management's actions were not taken with animosity toward this individual. Instead, the history with this employee shows a positive attitude toward people with disabilities and Down Syndrome in particular. "Where the presence of discriminatory animus or pattern makes future bad conduct more likely to occur, the absence of those factors makes future bad conduct less likely to occur." *Wal-Mart Stores*, 38 F.4th at 661–62. There is no evidence to suggest this is more than an isolated incident.

Moreover, Walmart has antidiscrimination and accommodation policies, such as an "Accommodation in Employment" policy, a "Discrimination & Harassment Prevention Policy," and an "Open Door Communications Policy," that include provisions addressing accommodations for employees with disabilities, prohibit discrimination or harassment based on disability, and encourage employees to bring concerns to their supervisor or manager. Trial Exs. 1061, 1055–56. Walmart also has an Accommodation Service Center department that assists managers and stores

with navigating accommodation requests. Trial Tr. Day 3 at 659–60. Walmart provides training on these policies to managers and employees. The EEOC argues that Walmart's policies and trainings are not effective because the regional and national Walmart officials believed their unlawful actions in this case were consistent with those policies. But, again, there is no evidence of any incidents of similar discrimination or that "the proven illegal conduct may be resumed." *AutoZone*, 707 F.3d at 842–43.

Nothing in the record suggests that Walmart is a corporation that "flouts its obligations or is unconcerned about complying with laws prohibiting discrimination." *EEOC v. CEC Entm't, Inc.*, No. 98-C-698, 2000 WL 1339288, at *27 (W.D. Wis. Mar. 14, 2000). The substantial verdict against Walmart and the publicity it generated serve as strong deterrents against any repeat of the conduct at issue in this case and create a strong incentive for Walmart to ensure that requests for reasonable accommodations are adequately addressed without court oversight of Walmart's administration and enforcement of its policies and procedures. *See* EEOC Press Release, *Jury Awards of $125 Million in EEOC Disability Discrimination Case Against Walmart*, EEOC (July 16, 2021), https://www.eeoc.gov/newsroom/jury-awards-over-125-million-eeoc-disability-discrimination-case-against-walmart; *see also EEOC v. Costco Wholesale Corp.*, No. 14-C-6553, 2017 WL 4570840, at *9 (N.D. Ill. May 15, 2017). Based on the record before the court, Walmart has established that discriminatory conduct is unlikely to persist in the future. *AutoZone*, 707 F.3d at 840. As a result, the court declines to enter injunctive relief.

In addition, the court finds that each of the eight requests for injunctive relief are unnecessary. The EEOC's first and third requests ask the court to enjoin Walmart generally from denying a reasonable accommodation to any Walmart employee with a disability within the United States, in the absence of undue hardship, on the ground that the accommodation and/or the need

for accommodation is recurring, long-term, or permanent in nature and to enjoin Walmart with respect to Region 53 from failing to provide reasonable accommodations to employees with disabilities in violation of the ADA. These requests are merely directives to have Walmart obey the law. "An injunction that does no more than order a defeated litigant to obey the law" is generally disfavored, as it raises concerns of overbreadth and vagueness. *AutoZone*, 707 F.3d at 841 ("An obey-the-law injunction departs from the traditional equitable principle that injunctions should prohibit no more than the violation established in the litigation or similar conduct reasonably related to the violation."). Obey the law injunctions may be "appropriate in situations 'when the victorious employee remains at the company or has been reinstated; where the particular employees or supervisors responsible for the illegal conduct remain at the company; and/or where the employer has taken some particular action—like withdrawing an accommodation policy—that convinces the court that voluntary compliance with the law will not be forthcoming.'" *Wal-Mart Stores*, 38 F.4th at 662 (quoting *AutoZone*, 707 F.3d at 842–43).

Spaeth no longer works at Walmart and, although the supervisors involved in the unlawful conduct at issue remain employed by Walmart, there is no evidence suggesting that the proven illegal conduct might be resumed in the future. The EEOC's request would require the court to engage in continuous supervision and monitoring of Walmart's nationwide compliance with the ADA's reasonable accommodation provisions for its 1.6 million associates. *See How many people work at Walmart?*, WALMART, https://corporate.walmart.com/askwalmart/how-many-people-work-at-walmart (last visited Feb. 7, 2025). The more limited relief requested with respect to Region 53 requires supervision and monitoring of 114 stores and 30,000 associates. Trial Tr. Day 3 at 197, 220. Because nothing in the record "convinces the court that voluntary compliance with the law will not be forthcoming," the burdensome, expansive, and wide-reaching relief against

Walmart generally and Region 53 in particular is not warranted here. *Wal-Mart Stores*, 38 F.4th at 662 (quoting *AutoZone*, 707 F.3d at 842–43).

The EEOC characterizes its next set of requests for injunctive relief (Nos. 2, 4–7) as "supplemental provisions that are designed to further promote Walmart's compliance with the law and with the injunction." Dkt. No. 303 at 17. But requiring Walmart to modify its policies and training regarding the ADA's requirements are overly broad and appear to be redundant to the systems that Walmart has in place.

More specifically, the EEOC asks that the court require Walmart generally to modify its accommodation policies to clarify that recurring, long-term, or permanent disability accommodations are available to employees, in the absence of undue hardship. Walmart has an "Accommodation in Employment" policy, a "Discrimination & Harassment Prevention Policy," and an "Open Door Communications Policy." Trial Exs. 1061, 1055–56. Its policies identify modified work schedules as a reasonable accommodation. Trial Ex. 1061. It is not necessary to explicitly highlight that modified work schedules or *any* other reasonable accommodation may be recurring, long-term, or permanent.

The EEOC also seeks injunctive relief requiring that Region 53 "provide notice to all of its employees informing them of the verdict and injunction in this suit and to specifically inform employees of their right to contact the EEOC without fear of retaliation." Dkt. No. 302 at 1–2. But Walmart already posts its antidiscrimination and accommodation policies, which include anti-retaliation provisions, in its breakrooms and on its intranet for associates to view, Trial Tr. Day 3 at 152–56, and the court does not find it necessary to post notice of the verdict of this isolated incident in all the stores located in Region 53.

In addition, the EEOC asks that the court order Region 53 to provide training to managers and supervisors regarding the obligation to grant schedule accommodations under the ADA in the absence of undue hardship and to remind them that requests for a scheduling accommodation made by a person with a disability cannot be denied at the store level. Walmart provides annual training on discrimination and prevention as well as accommodation training at least once a year at all levels of the organization. *Id.* at 160. Therefore, the specific training requested by the EEOC is not necessary here.

The EEOC next asks that the court require Region 53 to notify the EEOC within 90 days of any request for accommodation of an employee's disability and provide the EEOC with detailed information about the accommodation request and its outcome made in all 114 stores located in Region 53. The EEOC further requests that the court require Region 53 to document and evaluate adherence to Walmart's Equal Employment Opportunity policies during the annual review process for all of its management associates, including supervisors, managers, market people operation leads, and regional people directors. Again, because nothing in the record "convinces the court that voluntary compliance with the law will not be forthcoming," the court finds that these requests are overly broad, unduly burdensome, and unnecessary. *See Wal-Mart Stores*, 38 F.4th at 662 (quoting *AutoZone*, 707 F.3d at 842–43).

Finally, the EEOC asks the court to enjoin Walmart from interfering with the implementation of these injunctive provisions by retaliating against any person who requests an accommodation within the scope of this injunction, who opposes a practice that is a violation of this injunction, or who provides testimony or other assistance to the EEOC in investigating compliance with or enforcing this injunction. Because the court is not granting any of the injunctive relief the EEOC seeks, this request is unnecessary.

While the Manitowoc store's response to Spaeth's accommodation request violated the ADA, the incident at this one store involved unique circumstances that do not justify the far-reaching and burdensome injunctive relief the EEOC seeks. The court notes that it is, of course, free to revise the EEOC's request for injunctive relief as appropriate. *See Wal-Mart Stores*, 113 F.4th at 793. But the court concludes that even modified injunctive relief is not warranted here. Given the adverse publicity Walmart suffered as a result of the jury's verdict, especially the $125 million award in punitive damages, and in the absence of any evidence of animus toward individuals with cognitive disabilities, the court is satisfied that Walmart, a nationwide retail store whose success is in no small measure dependent upon its public image, has taken and will continue to take every reasonable measure to ensure no similar incident occurs in the future.

IT IS THEREFORE ORDERED that the EEOC's renewed motion for entry of an injunction (Dkt. No. 302) is **DENIED**.

Dated at Green Bay, Wisconsin this 7th day of February, 2025.

William C. Griesbach
United States District Judge