

WISCONSIN ELECTIONS COMMISSION

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DISABILITY RIGHTS WISCONSIN,

Complainant,

v.

Case No. \_\_\_\_\_

SUZANNE PINNOW  
TOWN CLERK, TOWN OF THORNAPPLE,

and

TOWN OF THORNAPPLE,

Respondents.

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**COMPLAINT  
EXPEDITED CONSIDERATION REQUESTED**

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Pursuant to Wis. Stat. § 5.061, Disability Rights Wisconsin alleges under oath as follows:

1. Under state and federal law, Wisconsin municipalities must provide voting systems that make voting accessible to voters with disabilities. Wis. Stat. § 5.25(4)(a); 52 U.S.C.A. § 21081(a)(3).

2. In addition, federal law requires that voting systems be capable of alerting voters when they have selected more than one candidate for a single office and the effect of such an overvote, along with an opportunity to address the issue. 52 U.S.C.A. § 21081(a)(1)(A).

3. Despite these requirements, Respondents Respondent Suzanne Pinnow, Town Clerk of the Town of Thornapple, and the Town of Thornapple, have ceased using any form of electronic voting equipment, and have made no provision for

compliance with their obligations under either state or federal law. Thornapple did not provide any accessible voting systems for voters during either the April 2 or August 13, 2024 elections.

4. Complainant Disability Rights Wisconsin (“DRW”) therefore brings this complaint under Wis. Stat. § 5.061 and requests that the Wisconsin Elections Commission (“WEC”) issue an appropriate order to Respondents Pinnow and the Town of Thornapple, requiring them to resume the use of accessible voting equipment which complies with the requirements of the Help America Vote Act.

**5. Due to the imminence of the November 2024 General Election, DRW respectfully requests that WEC treat this matter on an expedited basis and issue an order in sufficient time to ensure that all voters in the Town of Thornapple can vote in accordance with law.**

#### **PARTIES**

6. Complainant DRW is a nonpartisan, nonprofit, non-stock corporation organized under the laws of the State of Wisconsin. DRW maintains offices across the state of Wisconsin, including in Madison, Green Bay, and Milwaukee, with its principal office located at 1502 West Broadway, Suite 201, Madison, Wisconsin.

7. DRW is a member of the National Disability Rights Network and is designated by the Governor of the State of Wisconsin to act as the congressionally mandated Protection and Advocacy system for Wisconsin citizens. The Protection and Advocacy system is a combination of federally funded programs that serve people across the spectrum of disabilities pursuant to Wis. Stat. § 51.62, 29 U.S.C. § 794e, 42 U.S.C. §§ 15041, *et. seq.*, and 42 U.S.C. §§ 10801, *et. seq.*

8. DRW is a “person” within the meaning of Wis. Stat. § 5.061. Wis. Stat. 990.01(26).

9. Respondent Suzanne Pinnow is the Town Clerk for the Town of Thornapple, Wisconsin.<sup>1</sup> Clerk Pinnow’s mailing address is P.O. Box 83, Ladysmith, Wisconsin 54848. Under Wis. Stat. § 7.15(1), Respondent Pinnow has “has charge and supervision of elections and registration” within the Town of Thornapple, including the duty to equip polling places. Wis. Stat. § 7.15(1)(a).

10. Respondent Town of Thornapple is a body corporate and politic, organized under Chapter 60 of the Wisconsin Statutes.

### **BACKGROUND**

11. Signed into law over 20 years ago, Section 301 of the Help America Vote Act (“HAVA”), imposed requirements for voting systems used in federal elections. Two such requirements are relevant here.

12. *First*, Section 301 requires that each voting system “(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters” and “(B) satisfy the requirement of subparagraph (A) through the use of at least one direct

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<sup>1</sup> The Rusk County website currently lists Angela Johnson as the Town Clerk for the Town of Thornapple, and indicates that Pinnow is the Treasurer. <https://ruskcounty.org/index.asp?SEC=98F9F8DC-169A-4A83-9DD6-1D6729044A1A&DE=700C788A-6C10-4786-9CA5-11A66C06766B>. Pinnow, however, told a representative of DRW that she is the clerk, so Pinnow is the proper Respondent. In the event that Pinnow is not, or ceases to be, the clerk in the Town of Thornapple, her successor would automatically become the proper respondent. Wis. Stat. § 803.10(4)(a).

recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.”

13. *Second*, Section 301 also requires that each voting system meet the following requirements regarding overvoting:

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office—

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

52 U.S.C.A. § 21081(a)(1)(A).

14. WEC may hear and decide complaints regarding violations of HAVA and, where merited, order appropriate relief. Wis. Stat. § 5.061(3)–(4); *see also* 52 U.S.C.A. § 21112.

### **STATEMENT OF FACTS**

15. Prior to the April 2, 2024 Spring Election, the Town of Thornapple used voting systems that complied with Section 301 of HAVA.

16. On April 2, 2024, a voter in the Town of Thornapple observed there was not an accessible voting system in use for the Spring Election and Presidential Preference and reported the same to the DRW Voter Hotline.

17. Town of Thornapple supervisor Tom Zelm confirmed that Thornapple had decided to cease using electronic voting equipment in a May 13, 2024 article

published in the Milwaukee Journal Sentinel.<sup>2</sup> The article states: “Zelm said Thornapple carried out the April presidential primary election without electronic voting machines.”

18. According to the May 13, 2024, Milwaukee Journal Sentinel article, the United State Department of Justice (“USDOJ”) had previously “sent a letter to Suzanne Pinnow, Thornapple's chief election official, seeking information about the decision to remove electronic voting machines and information on how the township is accommodating voters with disabilities.”

19. On July 8, 2024, USDOJ sent a letter to Respondent Pinnow and others, stating that after their investigation, “...we have concluded that the State of Wisconsin and the Towns of Thornapple and Lawrence, located in Rusk County, Wisconsin, failed to make at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities available at each polling place, including during the April 2, 2024, federal primary election, in violation of Section 301(a)(3)(A) of HAVA.” A true and correct copy of the July 8, 2024 letter is attached as Exhibit A.

20. In its letter, USDOJ noted Section 301’s accessibility requirement. The letter also referenced Thornapple’s failure to “make at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities available at each polling place.”

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<sup>2</sup> Molly Beck, *A small Wisconsin town eliminated its electronic voting machines, leading to a federal review*, Milwaukee Journal Sentinel (May 13, 2024), <https://www.jsonline.com/story/news/politics/2024/05/13/wisconsin-town-under-federal-review-after-eliminating-voting-machines/73615195007//>

21. According to an August 7, 2024 article in the Ladysmith News, Thornapple planned not to use electronic voting equipment for the August 13, 2024 election. A true and correct copy of this article is attached as Exhibit B.

22. On August 13, 2024, the DRW Voter Hotline received another call with a report from the same individual that Thornapple did not provide an accessible voting system for voters for the August 13, 2024 fall partisan primary election.

23. On August 20, 2024, Rusk County Chief Deputy Clerk, Jill Buchholz-Jones stated in a call with DRW Voting Rights Coordinator Anna Anderson that Thornapple did not collect (and therefore did not possess) the necessary equipment to operate an electronic voting system for the August 13, 2024 election.

24. Both the April 2, 2024 and August 13, 2024 elections included elections for federal office.

## **COUNT I**

### **VIOLATION OF SECTION 301(a)(3)**

#### **52 U.S.C.A. § 21081(a)(3)**

25. All preceding paragraphs are incorporated by reference.

26. Section 301(a)(3) of HAVA, 52 U.S.C.A. § 21081(a)(3), requires that each voting system “(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters” and “(B) satisfy the requirement of subparagraph (A) through the use

of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.”

27. By ceasing to use electronic voting equipment and, instead, exclusively using paper ballots completed and tabulated by hand, Respondents are no longer using voting systems that are accessible for individuals with disabilities in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

28. For example, a voter without a disability that prevented them from seeing the ballot, or using their hands to complete it, would require some other form of assistance that would not afford them the opportunity to vote privately or independently.

29. Furthermore, by failing to use any electronic voting equipment or equivalent, Respondents are failing to comply with Section 301(a)(3)(B) by using “at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.”<sup>3</sup>

## **COUNT I**

### **VIOLATION OF SECTION 301(a)(1)(A)**

#### **52 U.S.C.A. § 21081(a)(1)(A)**

30. All preceding paragraphs are incorporated by reference.

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<sup>3</sup> Respondents also appear to be violating Section 301(a)(4), which requires a voting system to “provide alternative language accessibility pursuant to the requirements of section 10503 of this title.” 52 U.S.C.A. § 21081.

31. In addition to the accessibility requirements described in Count I, Section 301(a)(1)(A) of HAVA, 52 U.S.C.A. § 21081(a)(1)(A), contains requirements regarding how a voting system must alert voters when they have selected more than one voter for an office.

32. Specifically, the law requires that the voting system:

**(ii)** provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

**(iii)** if the voter selects votes for more than one candidate for a single office—

**(I)** notify the voter that the voter has selected more than one candidate for a single office on the ballot;

**(II)** notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

**(III)** provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

52 U.S.C.A. § 21081(a)(1)(A).

33. By ceasing to use electronic voting equipment and, instead, exclusively using paper ballots completed and tabulated by hand, Respondents are no longer using voting systems that comply with Section 301(a)(1)(A)'s requirements regarding overvoting.

34. By exclusively using paper ballots completed and tabulated by hand, there is no way for Respondents to (1) check for overvoting and (2) alert the voter in such a way that would permit the voter to address the error without reviewing the completed ballot in such a way that would deprive the voter of the privacy of their votes. *See* Wis. Const. art. III, § 3.



WHEREFORE, Complainant requests relief pursuant to Wis. Stat. § 5.061 as follows:

- A. Issue an order requiring Respondents to use a voting system complying with the requirements of Section 301 of HAVA, 52 U.S.C. § 21081, for all future elections which include selections for federal office.
- B. Take any other action that has the effect of restraining Respondents from acting contrary to law as described in this Complaint.

Dated August \_\_, 2024

Complaint prepared by:

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**VERIFICATION**

I, \_\_\_\_\_, being first duly sworn, depose and states as follows:

- 1. I am authorized to execute this verification on behalf of Disability Rights Wisconsin.
- 2. I have read the foregoing complaint and verify that the facts alleged herein are true and correct to the best of my knowledge.

Signed in \_\_\_\_\_, Wisconsin this \_\_ day of August, 2024

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Subscribed and sworn to before me  
this \_\_ day of August, 2024

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