



Wisconsin Elections Commission

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November 5, 2024

Disability Rights Wisconsin
c/o Scott B. Thompson & Jeff Mandell
222 W. Washington Ave., Suite 250
Madison, WI 53703

Suzanne Pinnow
Clerk for the Town of Thornapple
P.O. Box 83
Ladysmith, WI 54848

Town of Thornapple
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Bruce, WI 54819

Sent via email to: Anna.Anderson@drwi.org, lisah@drwi.org, sthompson@lawforward.org
jmandell@lawforward.org, thornappleclerk@mail.com; suzannep_townoft@yahoo.com

Re: In the Matter of: **Disability Rights Wisconsin v. Suzanne Pinnow and Town of Thornapple**
EL 24-85

Dear Disability Rights Wisconsin, Clerk Pinnow, and Town of Thornapple:

This letter is in response to the verified complaint submitted by Disability Rights Wisconsin (“the Complainant”) to the Wisconsin Elections Commission (“Commission”), which was filed in reply to actions taken by Clerk Pinnow and the Town of Thornapple (“the Respondents”) concerning alleged past and continuing violations of Section 301 the Help America Vote Act of 2002 (“HAVA”), 52 U.S.C. § 21081. The complaint alleges that for the April 2, 2024, and August 13, 2024, elections, which included federal elections, the Town of Thornapple violated federal law by exclusively using paper ballots completed and tabulated by hand and ceasing to provide HAVA-compliant accessible voting systems at each polling place, and that these alleged violations are expected to continue for the November 5, 2024 election, which also includes federal elections.

The Commission has reviewed the complaint. The Respondents did not submit a response.

The Commission provides the following analysis and decision. In short, and as detailed further in the analysis below, the Commission finds that the Complaint did show probable cause to believe that a violation of law occurred with relation to Clerk Pinnow and the Town of Thornapple’s actions. Clerk Pinnow and the Town of Thornapple are ordered to conform their conduct to the law by providing a HAVA-compliant accessible voting system in all future elections.

Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Don M. Millis | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Clerk Pinnow and the Town of Thornapple are further ordered to certify to the Commission, no later than 24 hours after the transmission of this letter ahead of the November 5, 2024 election, **Thursday, February 13, 2025, Thursday, March 27, 2025, Thursday, February 12, 2026, Thursday, April 2, 2026, Thursday, August 6, 2026 and Thursday, October 29, 2026** that the HAVA-compliant electronic voting systems the Town of Thornapple will use for the respective November 5, 2024, February 18, 2025, April 1, 2025, February 17, 2026, April 6, 2026, August 11, 2026 and November 3, 2026 elections have been publicly tested with at least 48 hours' public notice in accordance with Wis. Stat. § 5.84(1) and the Commission guidelines, and that the systems will be available and ready for use on Election Day.

The Commission takes notice of the United States District Court for the Western District of Wisconsin order granting a preliminary injunction against the Town of Thornapple with similar relief granted for the November 5, 2024, election. Order Granting Prelim. Inj., *United States v. Town of Thornapple*, No. 3:24-cv-664-jdp, 2024 WL ___, at *2-3 (W.D. Wis. Oct. 4, 2024) (“(5) Thornapple Defendants shall certify to this Court by filing, no later than close of business on October 31, 2024, a statement that the HAVA-Compliant voting system Thornapple will use for the November 5, 2024 Election has undergone all pre-election testing required by state law, *see* Wisc. [sic] Stat. § 5.84(1), and is otherwise fully prepared for use on Election Day . . . (7) Thornapple Defendants shall cooperate fully with the State of Wisconsin and any State agency’s efforts to enforce federal law regarding the provision of accessible voting systems for use in elections . . .”).

Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.061

Under Wis. Stat. §§ 5.061(3) and (4), the Commission is provided with the authority to consider the submissions of the parties to a complaint and to issue findings. If the Commission finds the complaint to be without merit, it shall issue a decision dismissing the complaint. In instances where the Commission finds that the violation alleged in the complaint has occurred, is occurring, or is proposed to occur, the Commission shall order appropriate relief, except that the commission shall not issue any order affecting the right of any person to hold an elective office or affecting the canvass of an election on or after the date of that election. This letter serves as the Commission's final decision regarding the issues raised in this complaint.

The Commission’s role in resolving verified complaints filed under Wis. Stat. § 5.061, which allege violations of Title III of P.L 107-252 (HAVA), is to determine whether the alleged violations have occurred, are occurring, or are proposed to occur with respect to an election for federal office, and to order appropriate relief. *See* 52 U.S.C. § 21112(a).

Unlike complaints filed under Wis. Stat. § 5.05, which allege violation of Chapters 5 through 10 and 12 of the Wisconsin Statutes, and complaints filed under Wis. Stat. § 5.06, challenging the decisions or actions of local election officials, the text of Wis. Stat. § 5.061 does not specify what legal standard should be applied for determining whether the alleged violations have occurred, are occurring, or are proposed to occur. Both Wis. Stat. §§ 5.05 and 5.06 complaints are governed by a probable cause standard. Wis. Stat. §§ 5.05(2m)(c), 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.” It is the Commission’s belief that the probable cause standard is

appropriate for determining whether the alleged violations in a Wis. Stat. § 5.061 “HAVA complaint” have occurred, are occurring, or are proposed to occur.

Complaint Allegations

The Complainant alleges that by ceasing to use electronic voting equipment and, instead, exclusively using paper ballots completed and tabulated by hand for the April 2, 2024, and August 13, 2024, elections, Clerk Pinnow and the Town of Thornapple failed to make HAVA-compliant voting systems accessible to voters with disabilities in violation of both state and federal law.

The Complainant alleges that Wisconsin municipalities must provide voting systems that make voting accessible to voters with disabilities under both state and federal law. Wis. Stat. § 5.25(4)(a); 52 U.S.C. § 21081(a)(3). The Complainant alleges that Section 301(a)(3) of HAVA, 52 U.S.C. § 21081(a)(3), requires that each voting system used in an election for federal office shall “(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.” The Complainant alleges that HAVA further 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. § 21081(a)(1)(A).

The Complainant alleges that, prior to the April 2, 2024, election, the Town of Thornapple used HAVA-compliant voting systems.

The Complainant alleges that on April 2, 2024, a voter in the Town of Thornapple observed that there was not an accessible voting system available at their polling place and reported this information to the Disability Rights Wisconsin Voter Hotline. The Complainant alleges that, as reported by the Milwaukee Journal Sentinel in a May 13, 2024, article, Town of Thornapple supervisor Tom Zelm confirmed that Thornapple decided to cease using electronic voting equipment for the April 2, 2024, election.

The Complaint alleges that the May 13, 2023, Milwaukee Journal Sentinel article further states that the United States Department of Justice had previously sent a letter to Clerk 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.” The Complainant alleges that on July 8, 2024, the United States Department of Justice sent a subsequent letter to Clerk Pinnow and others, stating that after their investigation, the United States Department of Justice has concluded that the Town of Thornapple “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.”

The Complainant alleges that, as reported in an August 7, 2024, Ladysmith News article, the town of Thornapple planned not to use electronic voting equipment for the August 13, 2024, election. The

Complainant alleges that on August 13, 2024, the Disability Rights Wisconsin Voter Hotline received a report from the same individual that called on April 2, 2024, that the Town of Thornapple again did not provide an accessible voting system at their polling place. The Complainant alleges that during an August 20, 2024, call with Disability Rights Wisconsin Voting Rights Coordinator Anna Anderson, Rusk County Chief Deputy Clerk Jill Buchholz-Jones stated 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.

The Complainant alleges that both the April 2, 2024, and August 13, 2024, elections included elections for federal office.

The Complainant alleges two counts of violation of Section 301 of HAVA. First, the Complainant alleges that Respondents' failure to provide electronic voting equipment violated HAVA's accessibility requirements that voting systems used in federal elections (A) provide voters with disabilities "the same opportunity for access and participation (including privacy and independence) as for other voters," and (B), that subsection (A) be satisfied by using "at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place." 52 U.S.C. § 21081(a)(3). The Complainant alleges that for voters with disabilities who cannot see a paper ballot, or use their hands to complete a paper ballot, that the failure to provide HAVA-compliant electronic voting systems would require these voters to receive some other form of assistance to vote that would not afford them the opportunity to vote privately or independently.

Second, the Complainant alleges that Respondents' exclusive use of paper ballots and failure to provide electronic voting equipment violated HAVA's "overvoting" notification requirement, that voting systems used in federal elections:

- (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. § 21081(a)(1)(A). The Complainant alleges that the exclusive use of paper ballots prevented Respondents from being able 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."

The Complainant further alleges that "Respondents also appear to be violating Section 301(a)(4) [of HAVA], 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."

The Complainant alleges that the Commission may hear and decide complaints regarding violations of HAVA and, where merited, order appropriate relief, pursuant to Wis. Stat. § 5.061(3)–(4) and 52 U.S.C. § 21112.

The Complainant requested as relief that the Commission issue an order requiring Respondents to use a voting system complying with the requirements of Section 301 of HAVA for all future elections which include selections for federal office and that the Commission take any other action that has the effect of restraining Respondents from acting contrary to law.

The Response

The Respondents did not submit a response.

Discussion

The § 5.061 “HAVA complaint” process may be initiated whenever any person believes that a violation of HAVA “has occurred, is occurring, or is proposed to occur with respect to an election for national office in this state.” Wis. Stat. § 5.061(1). Disability Rights Wisconsin is a “person” within the meaning of Wis. Stat. § 5.061(1). Wis. Stat. § 990.01(26). The Complaint correctly states that both the April 2, 2024, and August 13, 2024, elections in the Town of Thornapple included federal elections (presidential preference primary and congressional primaries respectively). Accordingly, the Complaint satisfies the requirement that the alleged violations of HAVA have occurred with respect to an election for national office.

As elaborated below, the federal standards set forth in HAVA, 52 U.S.C. § 21081(a)(3)(A), have been adopted into Wis. Stat. § 5.25(4)(a) and are mandatory regardless of whether or not an election includes elections for federal office. While not required to resolve this complaint, a person who believes that a violation of § 5.25(4)(a) has occurred or is occurring *with respect to an election without federal offices* may still file a § 5.061 complaint *if they believe such violations are proposed to continue occurring for a future election for federal office*.

Wisconsin and federal law require accessible electronic voting equipment to be tested and made available at every polling place for every election.

Prior to either election where the alleged HAVA violations occurred, on March 19, 2024, the Commission sent an accessibility reminder memorandum¹ to clerks, including the clerk for the Town of Thornapple. The memorandum stated that “[a]ll polling places must be accessible to voters with disabilities” and encouraged clerks to consult the Commission’s Polling Place Accessibility page.² The Polling Place Accessibility page begins with an explanation that “the Help America Vote Act (HAVA) requires that every polling place in the State of Wisconsin meet Americans with Disabilities Act (ADA) standards and that all voters are provided with an equal opportunity to cast a ballot.” The Polling Place Accessibility page then provides several checklists and toolkits for clerks to use to ensure that they are complying with HAVA, the ADA, and state

¹ Available at: <https://elections.wi.gov/memo/422024-accessibility-reminders>.

² Available at: <https://elections.wi.gov/clerks/election-topics-z/polling-place-accessibility>.

law. These resources include the New Polling Place Accessibility Self-Assessment,³ the Polling Place Accessibility Toolkit,⁴ and the Election Day Accessibility Checklist⁵ created by Disability Rights Wisconsin. All three resources ask clerks to verify that they have accessible voting equipment available, turned on, tested, and in proper working order.

The Commission restated its position regarding the use of electronic voting equipment in Wisconsin elections in a June 14, 2024, memorandum⁶ to clerks, including the clerk for the Town of Thornapple.

Wisconsin's statutes implementing HAVA's standards were enacted through 2003 Act 265 ("Act 265"). Among other changes, Act 265 created the § 5.061 complaint process and amended Wis. Stat. § 5.25(4) to comply with HAVA's accessible polling place requirements. Wis. Stat. § 5.25(4)(a) states, in part:

Each polling place shall be accessible to all individuals with disabilities. The commission shall ensure that the voting system used at each polling place will permit all individuals with disabilities to vote without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place.

The language of § 5.25(4)(a) closely mirrors that found in HAVA, 52 U.S.C. § 21081(a)(3)(A) (The voting system shall "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[.]"). Both statutes require each polling place to be accessible to all individuals with disabilities, allow individuals with disabilities to vote independently or without assistance, and allow individuals with disabilities to vote with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place. Additionally, the plain language of § 5.25(4)(a) does not distinguish between federal and non-federal elections. Accordingly, Wis. Stat. § 5.25(4)(a) adopts the federal standards set forth in HAVA, 52 U.S.C. § 21081(a)(3)(A) for all elections in Wisconsin.

While 52 U.S.C. § 21081(a)(3)(B) separately requires that subparagraph (A) be satisfied "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," Wis. Stat. § 5.25(4)(a) itself incorporates the requirement that accessible voting systems must be included at every polling place, stating: "the voting system used at each polling place will permit all individuals with disabilities to vote without the need for assistance[.]"

The Commission interprets § 5.25(4)(a) to require the use of at least one accessible electronic voting system at each polling place because some voters have disabilities that prevent them from voting by paper ballot or mechanical voting machine, and their right to vote independently, "without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place," can only be satisfied through the provision of accessible electronic voting equipment.

³ Available at: <https://elections.wi.gov/wec-form/new-polling-place-accessibility-self-assessment>.

⁴ Available at: <https://elections.wi.gov/resources/quick-reference-topics/polling-place-accessibility-toolkit>.

⁵ Available at: <https://elections.wi.gov/resources/quick-reference-topics/election-day-accessibility-checklist>.

⁶ Available at: <https://elections.wi.gov/memo/frequently-asked-questions-regarding-use-electronic-voting-equipment-wisconsin-elections>.

HAVA, 52 U.S.C. § 21081(a)(1)(A) imposes additional, specific requirements on voting systems used in federal elections to notify and allow voters to correct “overvotes,” when a voter impermissibly selects more than one candidate for a single office on the ballot. Under § 21081(a)(1)(A), voting systems used in federal elections must:

- (i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;
- (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. § 21081(a)(1)(B) provides an exemption from the requirements of § 21081(a)(1)(A)(iii) for jurisdictions using paper ballot voting systems, if they:

- (i) establish[] a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and
- (ii) provid[e] the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how 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).

Nothing in the record indicates that Respondents have met the requirements of § 21081(a)(1)(B) to be exempted from the requirements of § 21081(a)(1)(A)(iii).

The Respondents did not respond to the allegations contained in the Complaint. The Complaint correctly states that prior to the April 2, 2024, election, the Town of Thornapple used HAVA-compliant voting systems, specifically, the Dominion ImageCast Evolution. The voter’s reports to the Disability Rights Wisconsin hotline, Town of Thornapple supervisor Tom Zelm’s statements to the Milwaukee Journal Sentinel, and Rusk County Chief Deputy Clerk Jill Buchholz-Jones’s statements to Disability Rights Wisconsin all substantiate the fact that Respondents failed to provide accessible electronic voting equipment at each polling place for both the April 2, 2024, and August 13, 2024, elections. Therefore, the Commission finds probable cause that the Respondents violated the requirements of Wis. Stat. § 5.25(4)(1), and HAVA by failing to ensure that the voting system used at each of their polling places permitted all individuals with disabilities to vote without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place.

The lack of accessible voting equipment in the Town of Thornapple the April 2, 2024 and August 13, 2024 elections also means that no voting system was in place that could notify a voter that they have selected more

than one candidate for a single office on the ballot, notify a voter before their ballot is cast and counted of the effect of casting multiple votes for an office, or provide a voter with the opportunity to correct their ballot before it is cast and counted without intruding into the voter's privacy and independence, thus amounting to a separate violation of 52 U.S.C. § 21081(a)(1)(A)(iii).

Commission's Findings

Pursuant to the analysis above, the Commission hereby issues this order restraining Clerk Pinnow and the Town of Thornapple from taking any action inconsistent with the analysis in this decision. Wis. Stat. § 5.061(4).

Clerk Pinnow and the Town of Thornapple are ordered to take affirmative steps to comply with Wis. Stat. § 5.25(4)(a) and employ accessible electronic voting equipment in Wisconsin elections as described in this decision. The Respondents are further ordered to certify to the Commission that they have complied with HAVA and the relief ordered above for future elections.

Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of these complaints. Wis. Stat. § 5.061(4). Pursuant to Wis. Stats. §§ 227.52, 227.53(1)(a)(2m), any aggrieved party may appeal this decision to circuit court no later than 30 days after personal service or mailing of this decision by the Commission.

It is also the Commission's belief that Wis. Stat. § 5.06(8) appellate rights may be applied to Wis. Stat. § 5.061 "HAVA Complaints." Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties should have questions about this letter or the Commission's decision, please feel free to contact the Commission at 608-266-8005 or elections@wi.gov.

Sincerely,

WISCONSIN ELECTIONS COMMISSION