

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 26, 2024

Complaint prepared by:


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**VERIFICATION**

I, Kristin Kerschensteiner, 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 Dane Co, Wisconsin this 26 day of August, 2024



Subscribed and sworn to before me  
this 26 day of August, 2024

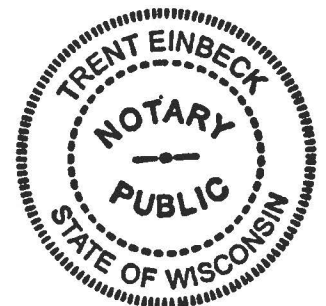


This signature was  
acknowledged before me

on (date) Aug. 26, 2024

by (name) Trent Einbeck

Exp: 10/30/26





**U.S. Department of Justice**  
**Civil Rights Division**

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July 8, 2024

Attorney General Josh Kaul  
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Charidy Ludescher  
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Town of Lawrence  
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Dear Attorney General Kaul, Administrator Wolfe, Ms. Johnson, and Ms. Ludescher:

This is to notify you that I have authorized the filing of a lawsuit on behalf of the United States against the State of Wisconsin, the Wisconsin Elections Commission, the Commission Administrator, the Town of Thornapple, the Town of Lawrence, and the Town Clerks and Town Board Supervisors of Thornapple and Lawrence, pursuant to Section 301 of the Help America Vote Act of 2002 ("HAVA"), 52 U.S.C. § 21081. HAVA authorizes the Attorney General to bring an action in federal district court for such declaratory and injunctive relief as is necessary to carry out the requirements of Title III of HAVA. 52 U.S.C. § 21111.

Section 301 of HAVA sets forth standards for all states for each voting system used in an election for federal office. Among other things, Section 301 requires that each voting system "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

EXHIBIT A

(including privacy and independence) as for other voters.” 52 U.S.C. § 21081(a)(3)(A). To satisfy this requirement, any voting system currently in use for federal elections must include “at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.” *Id.* § 21081(a)(3)(B). States and their subjurisdictions are required to comply with Section 301 of HAVA. *Id.* § 21081(d).

Based on our 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.

We hope to resolve this matter amicably and to avoid protracted litigation. Accordingly, we are prepared to delay filing the complaint briefly to permit us time to negotiate a consent decree to be filed with the complaint. Margaret Turner, an attorney with the Civil Rights Division’s Voting Section, will call your offices to discuss your interest in settlement. Ms. Turner may be reached at (771) 217-6882 or by email at [margaret.m.turner@usdoj.gov](mailto:margaret.m.turner@usdoj.gov).

We look forward to working with you to resolve this matter promptly.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Clarke". The signature is fluid and cursive, with the first name "Kristen" and last name "Clarke" clearly distinguishable.

Kristen Clarke  
Assistant Attorney General  
Civil Rights Division

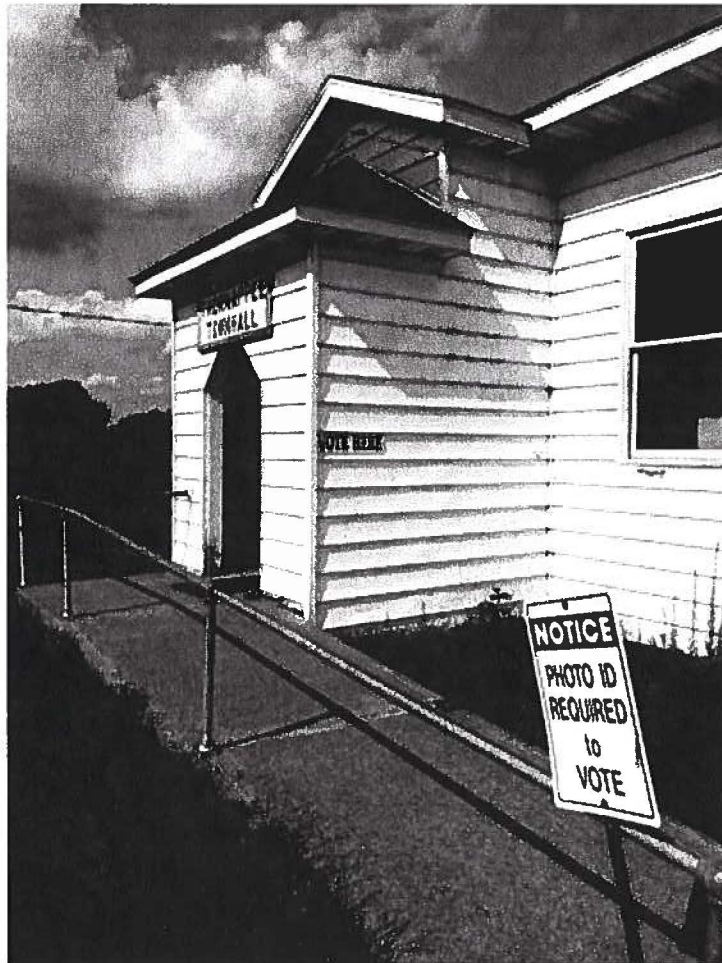
cc: Chairman Ralph C. Kenyon, Town of Thornapple, WI  
Supervisor Tom Zelm, Town of Thornapple, WI  
Supervisor Jack Zupan, Town of Thornapple, WI  
Chairman Bob Nawrocki, Town of Lawrence, WI  
Supervisor Stacy Zimmer, Town of Lawrence, WI  
Supervisor Duane Biller, Town of Lawrence, WI

TOP STORY

## Thornapple town board sticks with paper ballots

Laura Jennerman

Aug 7, 2024



When it comes to the 2020 elections, there are two worlds of belief about what really happened. Did President Biden win the election fair and square? Or, was Donald Trump really the winner and the Democrats organized the theft of an election? The issue has become contentious right here in Rusk County. On the day of the spring election this year, April 2, the Township of Thornapple did not use electronic voting machines to record votes at its town hall. Instead, they had their constituents vote using paper ballots. And according to a board spokesperson, voting will again be by paper ballot in The Tuesday, Aug. 13, primary election.

EXHIBIT B



Erin Webster, the Chair of the Rusk County Democrats, lives in the Thornapple Township. She is known in local government circles for her efforts to make the County government more transparent, and has been video recording most Rusk County Board meetings since late 2022. On April 2, after she saw that the Thornapple polling place did not have voting machines available, Webster called Jack Zupan, a supervisor on the Thornapple Township Board, who agreed with the board's decision against the use of voting machines, and instead opted to count the votes by hand—due in part to the board's belief the 2020 election was stolen. According to Zupan, the voting machines are “full of error.”

In the ten-minute audio recording of the conversation between Webster and Zupan, which may be viewed on YouTube, Webster expressed frustration about the lack of voting machines in her polling place and accused Zupan of being a conspiracy theorist. She claimed her right to vote using a machine—which she trusts more than a paper ballot—was denied and that her paper ballot somehow would not get counted. Webster stated dropping a paper ballot in a box was “1980.”

When Webster accused the board of breaking Federal election laws, Zupan denied it and defended the board's decision. “There are court cases right now that show that anybody can hack and manipulate that machine within a couple minutes.” Zupan assured her that they do want her vote to count. The Ladysmith News contacted several officials from the Town of Thornapple, who did not respond.

On May 13, 2024, the Milwaukee Journal-Sentinel ran an article titled “A small Wisconsin town eliminated its electronic voting machines, leading to a federal review” about the Town of Thornapple election issue. The article describes the situation as potentially violating federal election law, and says that federal officials are looking into the matter. The Towns of Thornapple and Lawrence have both reportedly received the same letter from the U.S. Department of Justice about the matter, asking for information about how the April 2 election was conducted.

Jefferson Davis is the Spokesperson for the Statewide Election Integrity for Wisconsin Ad Hoc committee formed three years ago to investigate alleged election fraud that may have affected the outcome of the 2020 election. Davis pointed to a number of different legal documents that spell out voting law in regards to voting machines, including Wisconsin State Statutes 5.40 and 7.15., the U.S. Constitution, and the Help America Vote Act (HAVA).

Wisconsin State Statute 5.40 states that only municipalities with populations over 7,500 are required to use an electronic voting system. In Wisconsin there are a total of 1,852 municipalities. Of that number, only 126 communities have populations larger than 7,500. That means that 1728 Wisconsin municipalities (93%) are not required to use voting machines. Under this law, even the City of Ladysmith is not required to use electronic voting equipment.

It also states in sub (4) of statute 5.40 that "Notwithstanding sub. (1), a municipality which utilizes voting machines. . . shall not utilize a voting machine to receive the ballot of an elector who receives assistance under WI Statute 6.82", which addresses voting by disabled persons. And in sub. (5), it states; "A municipality which utilizes voting machines at a polling place shall not utilize the machines to receive the vote of an elector who declares to the chief inspector that, due to physical disability, the elector is unable to depress a button or lever on a machine"..

In Wisconsin State Statute 7.15, subheading (14) is about voting accommodations for individuals with disabilities. It states that "Each municipal clerk shall make reasonable efforts to comply with requests for voting accommodations made by individuals with disabilities whenever feasible".

Article 1, Section 4, Clause 1 of the United States Constitution is called the "States and Elections Clause". It lays out that state legislatures establish the times, places and manner of holding elections for the U.S. House of Representatives, subject to Congress making changes to those state regulations. Supreme Court interpretations of the Elections Clause have given the authority to the states to "provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns", according to the Constitution Annotated website.

The Help America Vote Act (HAVA) was passed in 2002 in response to the problems that were identified in the 2000 national elections. HAVA states: "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." And in order to satisfy that, HAVA requires "the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place".

It is clear that municipalities with populations under 7,500 are not required to use electronic voting systems; they are allowed to count paper ballots by hand. What is unclear is whether every municipality is required to have at least one voting machine set up for disabled voters. The sentence about the voting machine requirement for disabled persons in HAVA seems to allow for non-electronic systems when it says "or other voting system equipped for individuals with disabilities."

Because of this evidence, it doesn't appear that the use of voting machines is required in townships with fewer than 7,500 people. The laws surrounding the need for having machines available for the disabled are complicated, and without a fair judgement on the matter from the court, it is hard to know what the requirement is. With the next Presidential Election coming up in just a few short months, the public is bracing itself for the results. Will all of our votes be counted accurately?

On July 26, there was a presentation on voting security at the Worden Avenue Exchange in Ladysmith. Mark Cook of Hand Count Road Show ([handcountroadshow.org](http://handcountroadshow.org)) is a subject matter expert on election vulnerabilities who has traveled the country in his camper trailer, educating folks about elections systems and how they can go wrong. A number of local governmental officials were in the audience and saw how Cook showed exactly how voting machines can be easily manipulated. Cook addressed the entire ecosystem of voting, which includes the voter rolls, verification of absentee ballots, tabulation and recording of votes. His conclusion is that there is too much room for fraud when using machines.

The mission of Hand Count Road Show is to ensure that our elections accurately and verifiably represent the will of the people. Cook has been making personal visits to counties all over the U.S. to educate and offer advice on how to fortify the security, accuracy, and verifiability of each county's upcoming elections. In addition to the Friday night presentation, on Saturday Cook met with representatives from both sides of the local political aisle, and showed them the data that he says proves the machines can be hacked. Cook also discussed additional forms of election fraud. The main goal is to get local municipalities to discontinue the use of the electronic voting machines, and count all ballots by hand. Hand Count Road Show's work is non-partisan, because they say fair, accurate, and transparent elections will benefit all Americans.