

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into between the United States of America, through the Civil Rights Division of the United States Department of Justice (the "Department"), and the Palm Beach County Supervisor of Elections (the "Supervisor") (collectively, the "Parties").

By entering into this Agreement, the Supervisor neither admits nor denies the findings of the Department in Paragraphs 10 through 22. The Supervisor is entering into this Agreement in her official capacity solely to reaffirm her obligation to provide programs, services, and activities accessible to qualified individuals with disabilities as required by Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134, as amended ("ADA"), and its implementing regulation and Section 301 of the Help America Vote Act of 2002, 52 U.S.C. §§ 20901-21145 ("HAVA").

### **BACKGROUND AND JURISDICTION**

1. Title II of the ADA and its implementing regulation require public entities to make their programs, services, and activities accessible to qualified individuals with disabilities. See 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130, 35.160.
2. Under Title II and its implementing regulation, a public entity, in providing any aid, benefit, or service, may not: afford qualified individuals with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others; provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; or otherwise limit such individuals in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service. *See* 28 C.F.R. § 35.130(b)(1).
3. Under Title II and its implementing regulation, a public entity shall maintain in operable working condition those features of facilities and equipment that are required by the ADA to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 35.133.
4. Under Title II and its implementing regulation, a public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. In order to be effective, auxiliary aids and services must be provided in accessible formats in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. 28 C.F.R. § 35.160.
5. The Supervisor is a "public entity" within the meaning of the ADA, 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35.

6. The Supervisor operates services, programs, and activities within the meaning of Title II, including maintaining and operating a voting system and voting program for federal, state, and select local elections. This agreement does not include municipal and local elections where the Supervisor serves only as a contractor for a local government and does not serve as the Supervisor of Elections.
7. The Attorney General is responsible for administering and enforcing Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35. The Department is authorized, under 28 C.F.R. Part 35, Subpart F, to investigate the allegations in this matter, to issue findings, and, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action to enforce Title II of the ADA.
8. Section 301(a)(3) of HAVA requires jurisdictions to ensure that their voting system is accessible to individuals with disabilities, including nonvisual accessibility for persons who are blind or visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters. This requirement can be met with the use of at least one direct recording electronic voting system providing the mandated opportunity per polling place in elections for federal office. 52 U.S.C. § 21081(a)(3)(B). As the County's chief elections officer, the Supervisor is obligated to comply with HAVA's requirements during federal elections. *Id.* § 21081(d).
9. The Department is authorized to enforce Section 301 of HAVA, 52 U.S.C. § 21081(a)(3), by bringing a civil action against any jurisdiction in an appropriate United States district court for declaratory and injunctive relief. 52 U.S.C. § 21111.

### **THE UNITED STATES' INVESTIGATION AND FINDINGS**

10. On May 15, 2015, the United States notified the Supervisor by letter that it had opened a compliance review in response to a complaint filed with the Department alleging that the Supervisor failed to make an ADA and HAVA-compliant voting system ("accessible voting system") available to voters. In particular, complainants alleged that the Supervisor failed to provide a functioning, accessible voting system during the November 2014 general election. The purpose of the investigation was to determine whether violations of federal civil rights laws, including Title II of the ADA, 42 U.S.C. §§ 12131-12134, its implementing regulation, 28 C.F.R. Part 35, and HAVA, 52 U.S.C. §§ 20901-21145, had occurred.
11. Since 2008, the Supervisor has used the Sequoia Edge DRE voting machine ("Edge machine") in all of its elections.
12. The Supervisor asserts that the Edge machine that it provides at each polling place fulfills its responsibilities under 42 U.S.C. § 12132 and 52 U.S.C. § 21081(a)(3).
13. In 2012, the Edge machine's vendor updated the firmware for the Edge machines. Following State of Florida certification of the firmware update and its implementation, the Supervisor recognized that a firmware malfunction affected the operation of the Edge

machines, wherein the Edge machines became inoperable if poll workers cancelled test ballots and turned the machines off.

14. In June 2012, the Supervisor notified the vendor and the Florida Department of State, Division of Elections of the 2012 firmware update malfunction and requested a solution to correct the malfunction of the Edge machines.
15. Between 2012 and 2014, the Supervisor worked with the voting system vendor and the State of Florida to correct the firmware update malfunction, but the vendor was unable to correct the firmware malfunction before the November 2014 election. The vendor identified an interim operating procedure to avoid the malfunction, and the Supervisor incorporated this procedure into the training manual.
16. During the November 2014 election, the unresolved firmware malfunction rendered the Edge machines inoperable when the poll workers cancelled the test ballots and turned the machines off, contrary to the guidance in the Supervisor's training manual.
17. Complainant 1, who is blind, arrived at his polling place early in the morning of Election Day to vote in the November 4, 2014 federal general election. Complainant 1 requested to vote using the Edge machine but the poll worker failed to follow the correct procedures in the training manual and disabled the Edge machine located at Complainant 1's polling place. The poll workers called the office of the Supervisor to request delivery of a replacement Edge machine. The poll workers advised Complainant 1 to return to the polling place later in the day. Complainant 1 returned to the polling place mid-day, after the second machine arrived, but the poll workers did not follow the correct procedures in the training manual and disabled the replacement Edge machine. A paper vote with assistance was offered but Complainant 1 preferred to vote independently on the Edge machine. The poll workers advised Complainant 1 to return later in the day following the delivery of the third Edge machine. The third Edge machine was not delivered and installed until late afternoon. Complainant 1 was unable to return to the polling place and did not vote in the November 2014 federal election.
18. In another polling place, Complainant 2, who is blind, also requested to use the Edge machine to vote in the November 2014 election. The poll worker advised Complainant 2 that the Edge machine was inoperable during the time she was at the polling place and offered assistance with a paper ballot. Complainant 2 voted with assistance using a paper ballot in that election.
19. In August 2015, the State of Florida, Division of Elections, certified a firmware upgrade to the Supervisor's accessible voting system, which the Supervisor purchased and implemented shortly thereafter. The Supervisor advised the Department that the Supervisor's tests of the accessible voting machines confirm that the firmware upgrade has corrected the malfunction.
20. The Supervisor also has advised the Department that the Edge machines have operated without incident in the March, August, and November 2016 elections.

21. The Supervisor's failure to provide an accessible voting system at all polling places denies qualified individuals with disabilities equal access to the County's voting program and services, in violation of Title II of the ADA and its implementing regulation. 42 U.S.C. 12132; 28 C.F.R. §§ 35.130, 35.133, 35.160.
22. The Supervisor's failure to provide an accessible voting system at all of its polling places in elections for federal office denies individuals with disabilities, including individuals who are blind or visually impaired, access to a voting system that provides an equal opportunity for access and participation (including privacy and independence) as for other voters, in violation of Section 301(a)(3)(A) of HAVA.
23. The Supervisor denies that she failed to provide an accessible voting system and specifically denies that she violated the ADA or HAVA.
24. The United States and the Supervisor, through counsel, have conferred and agree that any dispute concerning the Supervisor's compliance with Title II of the ADA, its implementing regulation, and Section 301(a)(3)(A) of HAVA should be settled without the delay and expense of protracted litigation.
25. The United States and the Supervisor share the goal of ensuring that the requirements of Title II of the ADA, its implementing regulation, and Section 301(a)(3)(A) of HAVA are met with respect to the voting system provided at every polling place.
26. The United States and the Supervisor have negotiated in good faith and hereby agree to this Agreement as an appropriate means to ensure compliance with Title II of the ADA, its implementing regulation, and Section 301(a)(3)(A) of HAVA.

### **TERMS OF AGREEMENT**

NOW, THEREFORE, for full and adequate consideration given and received, the United States, through the Civil Rights Division of the U.S. Department of Justice, and the Supervisor of Elections, agree as follows:

#### **General Provisions**

27. For the purposes of this Agreement, the term Election shall mean any federal, state, or local election for which the Supervisor serves by law as the Supervisor of Elections. The term shall not include those local, municipal, special district or other elections for which another entity is charged by law to serve as the Supervisor of Elections and for which the Supervisor is only acting pursuant to a contract with another authority.
28. The Supervisor shall not exclude qualified individuals with disabilities from participation in or deny them the benefits of the voting program or services, or subject them to discrimination, on the basis of disability, consistent with Title II of the ADA and its implementing regulation.
29. The Supervisor shall not implement a voting system which, directly or indirectly, has the purpose or effect of denying voters with disabilities the same opportunity for voting

privately and independently as other voters, consistent with Title II of the ADA and its implementing regulation.

30. The Supervisor shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including voters, an equal opportunity to participate in, and enjoy the benefits of the Supervisor's voting program, consistent with Title II of the ADA and its implementing regulation. Such auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.
31. The Supervisor shall maintain in operable working condition those features of their voting system which enable voters with a disability to participate in private and independent voting, consistent with Title II of the ADA and its implementing regulation.
32. The Supervisor shall provide a voting system which is accessible for voters with disabilities, including nonvisual accessibility for individuals who are blind or visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters, consistent with Section 301(a)(3)(A) of HAVA.

### **Poll Worker Training**

33. The Supervisor shall ensure that all poll worker training materials emphasize that by law, individuals with disabilities, including individuals who are blind or visually impaired, must have access to a private and independent voting system. The materials must clarify that the Edge machines are the method of private and independent voting chosen by the Supervisor. Within ninety (90) days of the effective date of the Agreement, the Supervisor shall submit training materials for review and approval by the United States; the Supervisor shall adopt and implement the training materials within ten (10) days of the United States' approval.
34. Prior to each Election, the Supervisor shall provide, to each clerk and field clerk, hands-on training regarding operation of the Edge machine. The mandatory training shall include a demonstration of how to independently turn on, test, and operate an Edge machine.
35. In addition to the mandatory clerk and field clerk hands-on training referenced in Paragraph 34, above, the Supervisor shall make online training materials available to poll workers. These training materials shall include procedures for setting up, operating, and troubleshooting the Edge machines. The online materials will also include instructions for reporting Edge machine malfunctions to the office of the Supervisor of Elections.
36. Poll worker training shall also include sensitivity training that includes appropriate methods of assisting voters with disabilities.

### **Election Day Response Team**

37. Within ninety (90) days of the effective date of the Agreement, the Supervisor shall ensure that an Election Day Response Team ("Team") exists within the office of the Supervisor of Elections and that for each Election will concentrate on operation of the Edge machines. This Team shall include employees who have specific expertise and training in operating and troubleshooting Edge machines.
38. The Supervisor shall maintain and provide a direct dial phone number for the Team. The Supervisor shall specifically educate and instruct poll workers on the procedure to call the Team at the dedicated number for assistance with the Edge machines. Team members must be trained to provide assistance to poll workers through Edge machine operation and troubleshooting. Team members will travel to polling places to provide in-person direct assistance, as necessary.
39. Each polling place must have an Edge machine which is powered on, ready to use, and fully functioning, at all times when the polls are open. If at any time the machine becomes inoperable or problems arise with its operation, poll workers shall immediately report these issues to the Team. The Team will immediately respond to any reported issues with the Edge machines.
40. The field clerks shall visit each of the polling places to which they are assigned at least once during an Election. Field clerks shall verify that each polling place they visit has an Edge machine which is powered on, ready to use, and fully functioning.
41. If the Team is unable to resolve an issue with the Edge machine within thirty (30) minutes from the initial notification to the Team, the Team shall arrange for delivery, installation and setup of a fully functioning replacement Edge machine to the polling site, to be delivered within two (2) hours from the initial notification to the Team.
42. If a voter attempts to vote on an Edge machine that malfunctions, the Supervisor shall instruct its poll workers to immediately contact the Team to troubleshoot the Edge machine. If the Team and the poll workers are unable to resolve the malfunction, the poll worker shall offer the following options to the voter without expressing a preference for one option over another:
  - a. Offer the use of a replacement Edge machine and explain that it may take up to two (2) hours to arrive; or
  - b. Offer the voter a paper ballot and assistance with completing the paper ballot, if necessary.

### **Election Day Record-Keeping**

43. Edge Machine Record: Beginning on the effective date of this Agreement, for each Election the clerk must maintain a written or electronic record of all requests to use the Edge machine at their polling place. The clerk shall submit this Edge machine record to the Supervisor as soon as practicable after voting ends. For each request to use an Edge machine, this record shall include the following:

- a. whether the Edge machine was operational;
  - b. if the Edge machine was not operational, the steps taken by poll workers to remediate the issue(s); and,
  - c. whether the voter was able to vote on the Edge machine, obtained assistance with the ballot, or did not vote.
44. Communication Log: The Team shall maintain a log of all communications with polling place personnel they initiate or receive during each Election regarding the Edge machines. The log shall include:
- a. the date and time of the communication;
  - b. the personnel involved;
  - c. polling place name and precinct number;
  - d. a summary of the communication; and
  - e. a description of the resolution, including whether:
    - i. the poll worker or Team member was able to troubleshoot the Edge machine and make it operational;
    - ii. a Team member was dispatched;
    - iii. a replacement Edge machine was delivered; or
    - iv. a resolution was not obtained.

## **Public Education**

45. The Supervisor shall develop public educational materials to inform citizens about the availability of an accessible voting system. Such materials must include press releases to be distributed to local media, and content to be posted on the Supervisor's websites. Within ninety (90) days of the effective date of the Agreement, the Supervisor shall submit the proposed public educational materials for review and approval to the United States. The Supervisor shall disseminate these materials within ten (10) days of the United States' approval.
46. Within ninety (90) days of the effective date of this Agreement, the Supervisor shall post information on its website about the availability of the Supervisor's accessible voting system. The Supervisor shall ensure that the information on the accessible voting system on its website conforms to, at a minimum, the Web Content Accessibility Guidelines 2.0 Level AA Success Criteria and other Conformance Requirements ("WCAG 2.0 AA"). The WCAG 2.0 AA is available at: <http://www.w3.org/TR/WCAG20/>.
47. The Supervisor shall make a demonstration Edge machine available to the public several months prior to each Election at each of the Supervisor's Offices and by demonstrating it at least twice annually at meetings of organizations that serve the Palm Beach County's citizens who are blind or have vision impairments.

## **Monitoring and Reporting**

48. The United States shall have the right to:

- a. visit any Palm Beach County polling place upon reasonable notice and approval – not to be unreasonably withheld -- by the Supervisor pursuant to law, and to inquire about the availability of an accessible voting system, to observe its operability, and to observe the voting process to determine whether officials are notifying eligible voters about the availability of the accessible voting system; and
  - b. upon reasonable notice to the Supervisor and approval – not to be unreasonably withheld -- by the Supervisor pursuant to law, contact officials, employees, agents, and representatives of the Supervisor involved in activities related to compliance with this Agreement.
49. For the term of the Agreement, the Supervisor shall inform the United States, in writing, of any improvements, alterations, or changes made to the Supervisor's accessible voting system.
50. For the term of this Agreement, after each Election, the Supervisor of Elections shall submit to the United States a summary of efforts to implement each of the provisions and requirements of this Agreement, including: copies of all new or revised policies, procedures, public education materials, and training materials prepared pursuant to paragraphs 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47; a record of all requests to use the Edge machine, as provided in paragraph 43; and Election Day Response Team communication logs, as provided in paragraph 44.
51. All materials sent to the United States pursuant to this Agreement shall be sent by email to Elizabeth.Johnson@usdoj.gov and Angela.Miller5@usdoj.gov or to the following address by common carrier Federal Express, delivery prepaid: Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue, N.W., Fourth Floor, Washington, D.C. 20005. All materials shall include a subject line referencing Palm Beach County Supervisor of Elections and DJ numbers 204-18-218 and 166-18-43.

## **Compliance**

52. If at any time more than two weeks prior to an Election the United States obtains information that the Supervisor is or is about to be in breach of any of the terms of this Agreement, the United States shall advise the Supervisor in writing by notice sent to the Supervisor by overnight mail and email. The Supervisor shall have five (5) business days following the transmittal of such notice to respond in writing to the United States. The Parties shall thereafter attempt to resolve immediately any issues of noncompliance or potential noncompliance. If the Parties are unable to agree on a resolution of all issues, the United States may take appropriate action to enforce the terms of this Agreement and enforce Title II of the ADA, its implementing regulation, or Section 301(a)(3)(A) of HAVA. Nothing in this Agreement shall prevent the United States from taking any action required to enforce any and all other applicable provisions of Title II of the ADA, its implementing regulation, and Sections 301 and 302 of HAVA.



53. If the United States obtains information that the Supervisor is or is about to be in breach of any of the terms of this Agreement within two weeks of an Election, the United States shall advise the Supervisor by whatever means practicable and the Supervisor shall respond as soon as possible. The Parties shall attempt immediately to resolve any issues of potential noncompliance. If the Parties are unable to agree on a resolution of all issues, the United States may take appropriate action to enforce the terms of this Agreement and enforce Title II of the ADA or Section 301(a)(3)(A) of HAVA.
54. Any legal proceeding arising in connection with this Agreement must be brought in the United States District Court for the Southern District of Florida, and all Parties consent to the jurisdiction of that court.
55. Any legal proceeding to enforce this Agreement may seek specific performance of the terms therein, and any other relief authorized by law.
56. Failure by the United States to enforce any provision of this Agreement shall not be construed as a waiver of its right to do so with regard to any provision of this Agreement.

#### **Other Provisions**

57. **Signatories Bind Parties.** The persons signing for the Parties represent that they are authorized to bind their respective Parties to this Agreement.
58. **This Agreement may be executed in counterparts each copy, email or pdf or which will be considered an original and taken together constitute one agreement.**
59. **Modification or Amendment.** This Agreement may be modified or amended only upon a written mutual agreement of the Parties.
60. **Agents and Successors Bound.** This Agreement shall be applicable to and binding upon the Supervisor, its officers, agents, employees, successors, and assigns.
61. **Scope.** This Agreement is not intended to remedy any other potential violations of the ADA, HAVA, or any other law not specifically referenced herein. This Agreement does not affect the Supervisor's continuing obligation to comply with all aspects of the ADA and HAVA.
62. **Severability.** If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties, the Parties shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the Parties as closely as possible to the initially agreed upon relative rights and obligations.
63. **Effective Date and Term.** The effective date of this Agreement is the date of the last signature below. This Agreement will remain in effect for three (3) years from its

effective date, unless extended by mutual consent of the Parties. Any legal proceeding to enforce the terms of this Agreement brought prior to its termination date shall toll the Agreement's termination during the pendency of that legal proceeding.


The undersigned agree to the terms of this Settlement Agreement.


For the United States of America:

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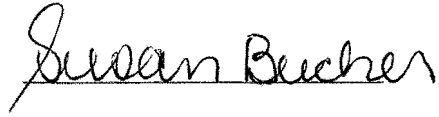
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