



U.S. Department of Justice

Civil Rights Division

*Disability Rights Section - NYA
950 Pennsylvania Ave, NW
Washington, DC 20530*

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Via Email & Overnight Mail

Judge Neal Franklin c/o
J. Eric Magee, Esq.
Allison, Bass & Magee, LLP
A.O. Watson House
402 West 12th Street
Austin, Texas 78701
e.magee@allison-bass.com

Re: The United States' Findings and Conclusions Based on its Investigation of Smith County's Election Website Under Title II of the Americans with Disabilities Act, DJ No. 204-75-152

Dear Counsel and Your Honor:

The United States Department of Justice (the Department) has completed its investigation under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, of the election website of Smith County (the County). The Department opened this investigation in response to a complaint alleging that the County's election website (the Website) is inaccessible to individuals with disabilities in violation of Title II. We write to report our findings of fact and conclusions of law.

Title II prohibits discrimination against people with disabilities in all services, programs, and activities of state and local governments, including county governments. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). State and local governments must provide people with disabilities equal access to the benefits of their services and programs. *Id.* They also must take steps to ensure that their communications with people with disabilities are as effective as their communications with others. 28 C.F.R. § 35.160(a)(1). Title II's requirements apply to all the County's the services, programs, and activities, including those offered on the Internet. *See* 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130, 35.160; 28 C.F.R. pt. 35, app. A, at 178 (2010). Title II authorizes the Department to investigate complaints, make findings, and seek a remedy for any violations found, including filing a lawsuit. 42 U.S.C. § 12133; 28 C.F.R. pt. 35, subpt. F.

People with disabilities navigate websites in various ways. People who are blind or have low vision may use screen readers, which are devices that speak the text that appears on a screen. And people with manual disabilities that affect their ability to grasp and use a mouse may use voice recognition software to control their computers and other devices with verbal commands or may use a keyboard.

As described more fully below, the Department finds that the County is violating Title II by failing to provide an accessible election website. *See* 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130, 35.160. The Website is intended to provide voters with critical election information, such as where, when, and how to vote.

The Website imposes barriers that limit or deny access to this critical information for users with vision or manual disabilities. For example, menus and links do not function properly for people who have manual disabilities and use a keyboard to navigate the Website; improper headings prevent people with vision disabilities from understanding the structure of pages and their content; posted documents are inaccessible for people who are blind and use assistive technologies like screen readers; and the Website's search results page has barriers for people with vision disabilities or who use speech input to navigate the Website. For many users with disabilities, these barriers make it difficult or impossible to access the Website's information. Thus, the County denies people with disabilities equal access to the Website and effective communication of the voting information that it contains, in violation of Title II.

This letter explains the Department's findings of fact and conclusions of law and the minimum steps that the County must take to meet its legal obligations and remedy the identified violations.

I. The Department's Investigation

The Department opened this investigation in response to a complaint that the County's election website is inaccessible to individuals with disabilities in violation of Title II. According to the complaint, the Website contains accessibility barriers that exclude people with vision, manual, and other disabilities from accessing critical information on the Website such as where, when, and how to vote. Before filing a complaint with the Department, the complainants notified the County of these website accessibility barriers and requested that the County make its online content accessible to people with disabilities. After the County failed to do so, the complainants filed their complaint with the Department.

The Department subsequently notified the County that it was opening an investigation of the County's election website under Title II of the ADA. During the investigation, the Department requested and reviewed information from the complainants and the County and evaluated the accessibility of the Website through testing. Throughout the investigation, the Department found recurrent issues and critical accessibility barriers for people with disabilities on the Website.

II. Findings of Fact

The County's election website contains essential information for voters. Because voter information may change often, up to the day before an election, it is especially important that all voters can equally access posted information on the Website. But the Department's investigation found that the Website is not fully accessible to people with vision or manual disabilities and is deficient in critical respects. People with disabilities thus are denied equal access to the Website and the crucial information it contains, in violation of Title II.

A. The County's Election Program and Website Services

The Website provides important information about how to participate in elections and exercise the fundamental right to vote, as well as how to benefit from other election services, programs, and activities. For example, the Website provides access to information such as voter registration applications, voter identification requirements, and voting information for people with disabilities. The Website also links to other election information, like precinct maps, sample ballots, early voting, voting on election day, past election results, and campaign filing forms.

B. The County's Election Website Imposes Accessibility Barriers.

The Website imposes fundamental accessibility barriers for people with disabilities. These barriers, which deny people with disabilities access to important election information, are set out below.

1. The ExpressVote Video Link and Other Elements are Inaccessible Using a Keyboard.

People with manual disabilities who use a keyboard to navigate the Website must be able to tab to and select all the elements that can be selected through use of a mouse. But the ExpressVote link is not accessible using a keyboard. Only people who can use a mouse can access this information. If a user navigates with the tab key, the tab key skips over the ExpressVote video link entirely, depriving people with manual disabilities of critical voting information. Some other Website elements similarly cannot be selected when navigating with a keyboard.

2. Search Results are not Announced.

People with vision disabilities who use screen readers need the Website to announce search results, including whether no search results were found or the number of search results that were returned. On the Website, when no search results are found, or when a count value of search results is displayed, this information is not announced by the screen reader. People with vision disabilities who use screen readers thus will not know the status of their search.

3. Headings are not used Correctly.

Many of the Website's headings are not properly coded as headings, making them inaccessible to people with vision disabilities. People who use screen readers rely on proper headings and heading levels to provide an understandable structure of a page and its content. For example, "Smith County Elections Administration," "Smith County Election Precinct Changes Approved by Commissioners Court on April 18, 2023," and "Location" should be marked with correct heading levels so that people with vision disabilities can navigate the content. Without properly coded headings, users cannot quickly navigate to these specific content areas.

4. Many PDF Documents Posted on the Website are Inaccessible.

People with vision and manual disabilities who use screen readers or other assistive technology can only read the content in a PDF document that is properly tagged or coded. PDF tags are an invisible layer of formatting within a PDF that identify the type of content and arrange that content into a logical reading order. Each document has different tags depending on its content, such as paragraphs, headings, lists, tables, and figures. Incorrect or missing tags make it difficult to read and navigate a PDF with a screen reader, because they misidentify the document content or cause the document to be read in an illogical order. Many PDFs on the Website are inaccessible. For example, images and charts located at the “How to do business in Smith County” link and a PDF located at the “Notice” link are inaccessible. People who have vision disabilities and use screen readers cannot access these documents.

5. Main Menus with Sub-Menus Expand Inappropriately.

Main menus with sub-menus expand upon keyboard tab focus and require keyboard users to tab through all of them to move to the next main menu. The main menus should only show their sub-menus upon selecting “Enter” on the keyboard. Users with vision disabilities should be able to tab past main menus that they do not want to visit without being forced to tab through all the sub-menus, but the Website does not allow for that. For example, to move from the Search icon link to the County Calendar link in the left navigation and bypass “Online Service,” “Government,” “Residents,” “Visitors” and “Business,” a user must press the tab key many times.

6. The Search Results Page Has Several Label Announcing Issues.

Screen reader users need to hear the displayed label of a form or checkbox. This is especially important when a website has more than one group of similar checkboxes, which lets a user select the desired topic they want to read. For example, the “Department and Content Type” labels are not announced for the checkboxes on the left side of the Search Results page. Other information, such as the “Search By” form fields and the “Sort By” select list, also are not announced.

III. Conclusions of Law

By maintaining an election website that imposes barriers to access, the County discriminates against people with vision, manual, and other disabilities, in violation of Title II, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). More specifically, the County denies full and equal access to its election programs and online services and fail to ensure effective communication with individuals with vision and manual disabilities. 28 C.F.R. §§ 35.130(a)-(b)(1), 35.160(a)(1).

A. The County Denies People with Vision and Manual Disabilities Equal Access to Its Election Programs and Online Services Provided Through Its Website.

The County is a public entity subject to Title II of the ADA. 42 U.S.C. § 12131(1)(B); 28 C.F.R. § 35.104. Under Title II of the ADA, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). This means that the County must give individuals with disabilities an equal opportunity to participate in and benefit from any service provided to others. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1). These legal requirements include providing equal access to the County’s website and the public content posted there.

Indeed, Title II “applies to all services, programs, and activities provided or made available by public entities.” *See* 28 C.F.R. § 35.102(a); 28 C.F.R. pt. 35, app. A, at 178 (2010); 28 C.F.R. § 35.102, pt. 35 app. B, at 183 (Title II “applies to anything a public entity does”). The County offers much of its election services and programs, including voting and election information, on its website. Because the County’s election website includes many inaccessible features and major access barriers, it limits the ability of people with disabilities to participate fully in, and benefit equally from, the County’s election programs and services available through the Website. Such services and programs include precinct information, sample ballots, election results, and information about where, when, and how to vote. Denying equal access to this information not only violates Title II of the ADA, but it also interferes with the exercise of the fundamental right to vote.

B. The County Fails to Ensure Effective Communication with People with Disabilities.

Under Title II of the ADA, the County must take appropriate steps to ensure that its communications with people with disabilities are as effective as its communications with others. 28 C.F.R. § 35.160(a)(1). Public entities choosing “to provide services through web-based applications . . . or that communicate with their constituents or provide information through the Internet must ensure that individuals with disabilities have equal access to such services or information.” 28 C.F.R. pt. 35, app. A, at 178; *see also* U.S. Dept. of Justice, *Guidance on Web Accessibility and the ADA* (Mar. 18, 2022), <https://www.ada.gov/resources/web-guidance/>.

To this end, the Title II regulation requires the County to “furnish appropriate auxiliary aids and services” to ensure that individuals with disabilities have an equal opportunity to participate in and benefit from the County’s programs and services. 28 C.F.R. § 35.160(b)(1). People with disabilities, including those who have vision or manual disabilities, may need auxiliary aids and services to access and interact with online content. Examples of auxiliary aids and services that may be necessary to ensure effective communication with people with disabilities include captioning, screen reader and magnification software, and other “accessible electronic and information technology.” 42 U.S.C. § 12103; 28 C.F.R. § 35.104. To access online content, for example, people who are blind or have low vision may need alt text for visual online content, like images.

As discussed above, the County fails to provide needed auxiliary aids and services to allow people with vision and manual disabilities to access and understand the election information communicated to the public through the Website. And it includes inaccessible PDF documents that cannot be read by people using screen reader software. The County has chosen to communicate election information through the Internet but fails to ensure that people with disabilities have equal access to that information, in violation of Title II.

IV. Remedial Measures

To remedy these violations, the County must take steps to ensure that its election website is accessible to individuals with disabilities, including establishing mechanisms to solicit feedback and ensure compliance. The County should promptly implement corrective measures, including the following:

1. Ensure that its election website is accessible to and usable by people with disabilities by complying with the standards of WCAG 2.1 Level AA so that individuals with disabilities can access the same information, engage in the same interactions, and enjoy the same services as nondisabled individuals with substantially equivalent ease of use.
2. Develop and implement procedures to monitor ongoing compliance with these technical standards to the extent necessary to avoid discrimination against people with disabilities and ensure effective communication with them.
3. Develop mechanisms and implement procedures to solicit, receive, and respond to complaints or feedback regarding any barriers to accessing Web content on its election website and suggested improvements to the content's accessibility. These mechanisms and procedures should ensure that such feedback and complaints are promptly reviewed, investigated, and addressed through appropriate action, and that the results of the review are provided timely to each complainant.
4. Adopt and publish a written policy on its website to explicitly state that the County will not discriminate against people with disabilities and will fully comply with Title II's requirements, including by providing an accessible website and appropriate auxiliary aids and services to ensure effective communication with people with disabilities.
5. Appoint a qualified ADA Coordinator responsible for monitoring its compliance with Title II, training county staff on the ADA and website accessibility, and overseeing investigations and resolutions of disability-related complaints.
6. Appropriately train and educate county staff about website accessibility and Title II's nondiscrimination requirements.
7. Provide the United States with written status reports delineating all steps taken to comply with these requirements, including the date(s) on which each step was taken, and, where applicable, information sufficient to demonstrate compliance.

V. Conclusion

We hope to work cooperatively with you to resolve the Department's findings. If the County is interested in working with the United States to reach an appropriate resolution along the lines described above, please contact Paula Rubin (paula.rubin@usdoj.gov), or Cheryl Rost (cheryl.rost@usdoj.gov), Trial Attorneys in the Disability Rights Section of the Civil Rights Division, within seven days of this letter's date.

If the County declines to enter into voluntary compliance negotiations or if negotiations do not succeed, the Department may take appropriate action to enforce the ADA, as described at 28 C.F.R. §§ 35.173 and 35.174. We therefore request that the County maintains in its current form any and all documents, such as email communications, that could be related to the subject of this correspondence.

Please note that this Letter of Findings is a public document and will be posted on the Civil Rights Division's website. We will also share a copy of this letter with the complainants. Complainants may file a private lawsuit pursuant to 42 U.S.C. § 12133, irrespective of the Department's findings.

If you have any questions as you review this letter, please contact us.

Sincerely,



Rebecca B. Bond
Chief
Disability Rights Section

/s/James Gillingham
James Gillingham
Civil Chief
Eastern District of Texas