

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL NO. 4:16-CV-2331

HARRIS COUNTY, TEXAS,

Defendant.

_____)

FIRST AMENDED COMPLAINT

THE UNITED STATES OF AMERICA alleges the following:

INTRODUCTION

1. This action is brought by the United States to enforce Title II of the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, against Harris County, Texas, acting through its Clerk. Harris County is responsible for selecting and ensuring the accessibility of facilities to be used as polling places for federal, state, and local elections and for overseeing the County’s voting program. Harris County has violated the ADA by failing to provide a voting program that is accessible to persons with mobility and vision disabilities.

JURISDICTION AND VENUE

2. This Court has jurisdiction of this action under 29 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 12133. The Court may grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201 and 2202.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, in that all of the claims and events giving rise to this action occurred in this district.

PARTIES

4. Plaintiff is the United States of America.

5. Defendant Harris County, Texas, including its respective departments, agencies, and other instrumentalities, is a unit of local government in the State of Texas, is a “public entity” within the meaning of 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.

FACTS

6. Harris County, through its Clerk (hereinafter, collectively, “Harris County” or the “County”), is responsible for the administration of federal, state, and local elections, including the selection of facilities to be used as polling places. The County is also responsible for assessing and ensuring the physical accessibility of each polling place facility.

7. The County uses approximately 775 Election Day polling places and 39 Early Voting polling places in each of its county-wide elections.

8. Voters may vote during Early Voting at any of the County’s Early Voting polling places, at their assigned polling place on Election Day or, under limited conditions, by ballot by mail (which may be returned by mail or in person at the Early Voting clerk’s main office).

9. The United States investigated the accessibility of Harris County's polling places for persons with disabilities and conducted architectural surveys of 86 polling places (seven Early Voting polling places and 79 Election Day polling places) used by the County during the January 2013 Special Election for Texas Senate District No. 6. Senate District No. 6 includes only a portion of Harris County; the County used only seven Early Voting polling places and 142 Election Day polling places during the January 2013 Special Election.

10. On September 29, 2014, the United States issued a Letter of Findings to Harris County pursuant to 28 C.F.R. § 35.172. The United States found that of the 86 polling places surveyed in the January 2013 Special Election, only 29 (including one Early Voting location) were accessible on Election Day to voters with disabilities. The United States found that five facilities were not accessible for use as polling places and could not be made accessible without permanent, architectural modifications. The remaining 52 polling places, including the six remaining Early Voting locations, were not accessible for use as polling places, but had non-compliant elements that could be remedied with temporary measures (such as portable ramps) such that, if appropriately implemented, the polling places would be accessible during Early Voting and on Election Day. The Letter of Findings detailed the non-complying elements for each of the inaccessible polling places, and listed the temporary corrective measures for the 52 polling places that could be remedied through temporary measures.

11. In the Letter of Findings, the United States explained that "[g]iven the architectural barriers at the County's polling places, as summarized above and listed in [the attachments to the Letter of Findings], the Department finds that the County has violated Title II by failing to select facilities to be used as polling places that are accessible (including making them accessible through temporary measures) to persons with disabilities on Election Day and

during Early Voting. . . . [T]he County's use of inaccessible facilities as polling places has the effect of discriminating against voters with disabilities and denying them the opportunity to participate in the County's voting programs, services, and activities in the most integrated setting appropriate, i.e., at their designated polling place and alongside their fellow citizens."

12. The Letter of Findings concluded, "To remedy the deficiencies discussed above and protect the civil rights of individuals with disabilities who seek to participate in the County's voting programs, services, and activities, the County must, at a minimum, implement the remedial measures identified by the Department as necessary to bring the County's Election Day and Early Voting into compliance with Title II In addition, the County must assess the remaining County polling places not surveyed by the Department and determine whether temporary measures or relocation to alternative accessible sites are necessary to bring all of the County's polling places into compliance with Title II."

13. On August 11, 2015, Harris County responded to the Letter of Findings. Harris County stated that it was remedying deficiencies specifically identified by the United States. Harris County further stated that "[s]ince the visit by the Department of Justice of the Harris County polling locations, we are visiting all of our polling locations to determine accessibility We are making recommendations and taking corrective action."

14. However, Harris County continues to use some of the inaccessible polling places the United States identified in that Letter in federal, state, and local elections, without providing a temporary or permanent measure to correct the non-compliant features. For example, Harris County continues to use the Charlton Park Recreation Center (8200 Park Place Boulevard, Houston), even though the designated accessible parking does not have an adequate access aisle and there are built up curb ramps where the access aisle should be located. Harris County also

continues to use the Meadow Creek Village Park Community Center (5333 Berry Creek Drive, Houston) as a polling place, but the facility is inaccessible due to the lack of a level landing and lack of maneuvering clearance in front of the entrance.

15. In order to verify Harris County's statement that it was "visiting all of our polling locations to determine [and] making recommendations and taking corrective action," the United States conducted a follow up survey of polling places not included in the September 2014 Letter of Findings. Thus, during the May 7, 2016 Special Election for State Representative District 139, the United States investigated 32 Election Day polling places that it had not previously visited. The United States found that most of these polling places surveyed had architectural barriers to people with disabilities, including, for example, steep curb ramps and ramps, gaps in sidewalks and walkways, and locked gates along the route barring pedestrian access. The United States thus determined that Harris County had not implemented procedures to resolve accessibility violations throughout its voting programs, services, and activities.

16. Voters with disabilities assigned to inaccessible polling places are being harmed in that they are being denied the same opportunities as nondisabled voters to vote in person during Early Voting and on Election Day, and to participate equally in the electoral process. The United States has received complaints from, and has been otherwise made aware of, voters who have had difficulty accessing polling places in Harris County.

17. For example, James Sweatt Jr. uses a power chair due to his mobility disability. In March 2016, he went to his designated polling place, Sylvan Rodriguez Elementary School at 5858 Chimney Rock Rd, Houston, TX 77081, to vote in the primary election. This election was administered by Harris County. Mr. Sweatt and his aide were first in line to vote when the polls opened. There was a high threshold at the designated polling place entrance at the side door,

where voters entered, that his power chair could not go over. Mr. Sweatt asked to use the front door instead, but a polling place official told him he could not. Mr. Sweatt waited outside for more than an hour until an unidentified person helped lift the power chair over the step. Mr. Sweatt also had to remove the tray attachment to his power chair in order to fit through the door. Mr. Sweatt prefers to vote at his designated local polling place.

18. As further example, Lydia Landry uses a powerchair due to her mobility disability. She voted at the County Freeman Branch Library on October 24, 2016. At that location, voters generally accessed the polls via a route that required climbing several steps. The accessible route for voters with disabilities was on the other side of the building, and no signs pointed to the accessible route. Thus, after joining the line of voters, Ms. Landry was unable to determine where the accessible route was. While her partner held her place in line, she eventually located the accessible route and was able to enter the polling place to ask officials how she should proceed, although maneuvering her powerchair in the polling place was difficult. She was told that she should wait inside while her partner held a sticky note indicating her place in line. According to Ms. Landry, other individuals with disabilities were told to find strangers to hold sticky notes indicating their places in line, but some of the strangers threw the sticky notes away. Ms. Landry saw several other people with disabilities encountering difficulties in navigating the polling place.

19. Even where Harris County provides curbside voting (which is not as integrated a setting as voting inside the polling place) to individuals with disabilities, curbside voting is not always provided willingly. For instance, Ms. Rosalie Vasquez brought her mother, brother, and son to vote on October 26, 2016, at Octavia Fields Branch Library. Her mother uses a walker; her brother has a lung condition that prevents him from standing for any length of time; and her

son has spina bifida and uses a wheelchair. She went into the building and requested curbside voting for her three family members (she had voted in person on a different day). An election judge came to her car and angrily told her that he recommended that her family vote by mail in the future. Election officials spoke to her son in Spanish, despite his telling them that he did not speak Spanish, and challenged her mother's signature. Although two of her family members eventually succeeded in voting curbside, Ms. Vasquez said that they felt intimidated and discouraged by the experience.

20. Harris County also does not routinely provide signage at its polling places indicating that curbside voting is possible or how a person with a disability can access curbside services.

21. All conditions precedent to the filing of this Complaint have occurred or been performed. 28 C.F.R. Part 35, Subpart F.

CAUSE OF ACTION

Title II of the Americans with Disabilities Act

22. The allegations of the foregoing paragraphs are hereby re-alleged and incorporated by reference as if fully stated herein.

23. Defendant excludes qualified individuals with a disability from participation in or denies them the benefits of the County's voting services, programs, or activities, or subjects them to discrimination, on the basis of disability, in violation of Title II of the ADA, 42 U.S.C.

§ 12132, and its implementing regulation, 28 C.F.R. Part 35, by, *inter alia*:

a. denying individuals with disabilities the opportunity to participate in or benefit from the County's voting services, in violation of 28 C.F.R. § 35.130(b)(1)(i);

b. affording individuals with disabilities an opportunity to participate in or benefit from the County's voting services that is not equal to that afforded to nondisabled individuals, in violation of 28 C.F.R. § 35.130(b)(1)(ii);

c. limiting individuals with disabilities in the enjoyment of the voting rights, privileges, advantages, or opportunities enjoyed by nondisabled individuals, in violation of 28 C.F.R. § 35.130(b)(1)(vii);

d. utilizing criteria or methods of administration that have the effect of subjecting individuals with disabilities to discrimination on the basis of disability or that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the County's voting program with respect to individuals with disabilities, in violation of 28 C.F.R. § 35.130(b)(3);

e. selecting facilities to be used as polling places that have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination, or that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities, in violation of 28 C.F.R. § 35.130(b)(4);

f. failing to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the County can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity, in violation of 28 C.F.R. § 35.130(b)(7);

g. failing to administer the County's voting services, programs, and activities in the most integrated setting appropriate to the needs of persons with disabilities, in violation of 28 C.F.R. § 35.130(d);

h. subjecting individuals with disabilities to discrimination because the facilities used in the County's voting program are inaccessible to or unusable by individuals with disabilities, in violation of 28 C.F.R. § 35.149; and

i. failing to operate the County's voting program, service, or activity so that, when viewed in its entirety, it is readily accessible to and usable by persons with disabilities, in the most integrated setting appropriate, in violation of 28 C.F.R. §§ 35.150 and 35.151.

24. The individuals named above, and others, have been and continue to be harmed and aggrieved by Harris County's ADA violations.

25. Harris County had knowledge that there was a significant likelihood that some polling places did not comply with the ADA, but failed to implement necessary corrective measures.

Prayer For Relief

WHEREFORE, the United States prays that the Court:

A. Grant judgment in favor of the United States and declare that the Defendant's actions violate Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35;

B. Enjoin the Defendant, its agents and successors in office, and all persons acting in concert with the Defendant from failing or refusing promptly to comply with the requirements of Title II of the ADA and its implementing regulation;

C. Order the Defendant, its agents and successors in office, and all persons acting in concert with the Defendant promptly to develop a plan, within 30 days of this Court's order, to remedy the demonstrated violations of Title II of the ADA and its implementing regulation, and to fully and completely remedy the violations;

D. Award compensatory damages to any aggrieved persons in an appropriate amount for injuries suffered as a result of the County's failure to comply with the requirements of Title II of the ADA and its implementing regulation; and

E. Order such other appropriate relief as the interests of justice may require.

Respectfully submitted,

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Dated: September 25, 2017

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel via the District's ECF system on September 25, 2017.

s/ Jimmy A. Rodriguez
Jimmy A. Rodriguez