

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE KENTON COUNTY, KENTUCKY BOARD OF ELECTIONS
DJ No. 204-30-100**

This settlement agreement (the "Agreement") is entered into between the United States of America and the Kenton County, Kentucky Board of Elections (collectively, the "Parties").

INTRODUCTION

1. The United States conducted an investigation of the Kenton County Board of Elections ("the Board") under Title II of the Americans with Disabilities Act of 1990, as amended ("Title II" and "ADA"), 42 U.S.C. §§ 12131-12134, and Title II's implementing regulation, 28 C.F.R. Part 35.

2. The Board has approximately 70 precincts, currently located in 24 polling place locations, including buildings that are privately or publicly owned. The Board is responsible for selecting each polling place and ensuring the accessibility of each polling place.

3. During the election on May 17, 2022, the United States surveyed all 24 of the Board's polling places and all ballot box locations used during the election. The United States observed that 23 of the 24 polling places and surveyed contained noncompliant elements that rendered the facilities inaccessible to voters with disabilities, such as a lack of van accessible parking; excessively sloped ramps, some without handrails or edge protection; excessively sloped portions of parking spaces, access aisles, and exterior routes to the entrance; numerous gaps and level changes along exterior routes; and protruding objects. In addition, the United States observed a lack of knee and toe clearance at the accessible voting machines and at other voting stations at some locations, and a lack of the same level of privacy afforded to voters using the accessible machines that was provided to other voters.

4. The Board denies the United States' allegations and does not admit, concede, or otherwise acknowledge that it has violated the ADA.

5. Individuals with mobility impairments have disabilities within the meaning of the ADA where those impairments substantially limit one or more major life activities of such individuals, including walking. Individuals with vision impairments have disabilities within the meaning of the ADA where those impairments substantially limit one or more major life activities of such individuals, including seeing. 42 U.S.C. § 12102(2).

6. The Board 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 and its implementing regulation.

7. The term "the Board," as used in this Agreement, shall include the Board and all of its members, officers, employees, contractors, successors, assigns, and administrative personnel; and any other person under the authority or control of the Board.

8. The Board operates services, programs, and activities within the meaning of Title II, including operating a voting program for federal, state, and local elections for which it selects and uses sites as polling places.

9. 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.

10. The Parties agree that it is in their mutual interest, and the United States believes that it is in the public interest, to resolve this investigation on mutually agreeable terms without litigation. In consideration of the mutual promises contained in this Agreement, good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to avoid the costs, expenses, and uncertainty of protracted litigation, the Parties, intending to be legally bound, enter into this Agreement.

TERMS OF SETTLEMENT

I. Definitions

11. "Election" or "Election Day" shall include the periods of No Excuse Absentee In-Person Voting and Election Day, and all other days on which voting occurs, in all elections operated by the Board, including primary, special, and general elections.

12. "Accessible on Election Day" means that a polling place is compliant with the 2010 ADA Standards for Accessible Design ("2010 Standards") (28 C.F.R. § 35.104, as set forth in appendices B and D to 36 C.F.R. Part 1191 and the requirements contained in 28 C.F.R. § 35.151) for the polling places based upon the individual site on Election Day, whether such compliance is achieved through ADA-compliant permanent modifications or through the use of temporary measures such as those provided for in Paragraph 20 below.

13. "Election Day Surveyors" or "EDSs" are individuals who will review compliance at polling place locations where temporary measures are to be implemented on Election Day on behalf of the Board.

14. "Effective Date" of this Agreement is the date of the last signature below. Unless otherwise specified, all time periods run from the Effective Date.

15. The term "polling place" as used in this agreement includes a facility at which voting is conducted or a ballot drop box location.

II. Obligations of the Board

A. Accessible Voting Program

16. The Board will take all reasonable and necessary steps to effectuate its obligation to comply with the ADA with respect to its voting program and this Agreement. In particular, the Board shall ensure all relevant policies, practices, and procedures meet the following obligations:

- a. The Board shall not exclude qualified individuals with disabilities from participation in or deny them the benefits of its voting program, or subject them to discrimination, on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a), 35.149.
- b. The Board 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.
- c. The Board shall administer its voting program in the most integrated setting appropriate to the needs of persons with disabilities. *Id.* § 35.130(d).
- d. The Board shall afford voters with disabilities the same amount of privacy and independence provided to voters without disabilities. *Id.* § 35.130(b)(1)(ii).
- e. The Board shall take appropriate steps to ensure that communications with voters, applicants, members of the public, and companions with disabilities are as effective as communications with others. *Id.* § 35.160(a)(1).
- f. The Board shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including voters, applicants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of the voting program. 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. *Id.* § 35.160(b).
- g. Within one hundred (100) days of the Effective Date of this Agreement, the Board shall submit its policies, practices, and procedures to the United States for review and approval. Within ten (10) days of receiving comments from the United States, the Board shall incorporate in its policies, practices, and procedures any additions or modifications proposed by the United States that bring the Board's policies, practices, and procedures into compliance with the ADA.

17. The Board shall provide accessible polling places in order to have an accessible voting program, including a program that is accessible to persons with mobility

or vision disabilities. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130, 35.149. The Board shall select facilities to be used as polling places that do not exclude qualified individuals with disabilities from or deny them the benefits of the polling place, or otherwise subject them to discrimination. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(4).

18. For all elections occurring after the Effective Date of this Agreement, the Board will implement measures to remediate the issues identified in Attachment A, to make those polling place locations Accessible on Election Day, or will relocate those locations not remediated to an alternative accessible location pursuant to the process established in Paragraphs 22 and 24 of this Agreement. The Board will provide its remediation plan to the United States within one hundred (100) days of the Effective Date of this Agreement. If the Board asserts, and the United States agrees, that remediation and relocation to an accessible polling place location are infeasible, then the Board shall comply with Title II's program accessibility requirements. 28 C.F.R. § 35.150.

19. For all facilities not owned by the Board, the Board shall maintain in operable working condition on Election Day the features and equipment owned by the Board (including temporary equipment such as portable ramps, traffic cones, signs, wedges, and door stops) that are required to make polling places Accessible on Election Day. 28 C.F.R. § 35.133(a). If circumstances arise such that a polling place location not owned by the Board or County that was previously accessible is no longer accessible because the features or equipment owned by the Board are no longer operable, then the Board shall either provide operable temporary equipment or the Board will relocate the polling place to an alternative, accessible location pursuant to the process established in Paragraphs 22 and 24 of this Agreement. If the Board asserts, and the United States agrees, that remediation and relocation to an accessible polling place location are infeasible, then the Board shall comply with Title II's program accessibility requirements. 28 C.F.R. § 35.150.

20. The Board agrees that the following measures will be implemented where necessary to make an otherwise inaccessible polling place Accessible on Election Day. The list of measures is not exhaustive; the Board may propose other reasonable, temporary measures subject to the review and approval of the United States.

- a. Portable ramps (including curb ramps) up to and including ramps six feet long, with side edge protection.
- b. Portable wedges or wedge ramps.
- c. Floor mats.
- d. Traffic cones.
- e. Relocating furniture or other movable barriers.
- f. Door stops.

- g. Propping open doors.
- h. Unlocking doors.
- i. Signage, including parking and accessible entrance directional signage.
- j. Portable buzzers or door bells.
- k. Removing astragals (center door posts on double doors) that are not a permanent part of the structure from doorways.

B. Survey and Review of Polling Place Locations

21. The Board shall continue to use the survey instrument in the Department's 2016 ADA Checklist for Polling Places and the 2010 Standards. The Board will add the Department's 2022 Ballot Drop Box Checklist to the survey instrument. The survey instrument will be modified to include: (1) measurements of each feature in the survey form (e.g., width of parking space, slope of curb ramp); (2) photographs of each element of the polling place and of each measurement; (3) the identification of all appropriate remedial measures, including the remedial measures in Paragraph 20 of this Agreement; and (4) measurements (including slope measurements) and photographs of each remedial measure as it will be implemented on Election Day. The survey instrument will be submitted to the United States for review and approval within thirty (30) days of the Effective Date of this Agreement. The Board agrees to begin using the Department's ADA Checklist for Polling Places within ten (10) days of the Department publishing the ADA Checklist for Polling Places found at <https://www.ada.gov/votingck.htm>. The Department will notify the Board if the ADA Checklist for Polling Places is updated. The Board agrees to add the four components above to any Department updates to the ADA Checklist for Polling Places. Surveys that have been approved prior to the Board beginning the use of the updated ADA Checklist for Polling Places shall continue to be valid and do not need to be resurveyed.

22. For all polling place locations that were not surveyed by the United States in the May 17, 2022 Election, and the Board intends to use in future elections, the Board will conduct a survey using the survey instrument referenced in Paragraph 21 of this Agreement. If the United States disputes the accuracy of a survey, then the Board will have an opportunity to respond and will work with the United States to re-survey the portions of the polling place in question. If the United States concludes that the Board has proposed a remedial provision that does not fully address a barrier to accessibility, then the Board will propose and implement, subject to the review and approval of the United States, a remedial measure consistent with Paragraph 20 of this Agreement or relocate a polling place to a location that can be made Accessible on Election Day. If the Board asserts, and the United States agrees, that remediation and relocation to an accessible polling place location are infeasible, then the Board shall comply with Title II's program accessibility requirements. 28 C.F.R. § 35.150.

23. Following the United States' review and approval of a polling place survey, the Board will implement appropriate remedial provisions to make the polling place

location Accessible on Election Day. If the Board chooses not to or is unable to implement one or more of the remedial provisions to make a polling place location Accessible on Election Day, it will relocate the inaccessible polling place location to a location that is Accessible on Election Day, selected pursuant to the process established by Paragraphs 22 and 24 of this Agreement. If the Board asserts, and the United States agrees, that remediation and relocation to an accessible polling place location are infeasible, then the Board shall comply with Title II's program accessibility requirements.

24. The Board shall use the survey instrument referenced in Paragraph 21 of this Agreement to make all future polling place location selections. If the Board ultimately determines that a newly proposed location is inaccessible (as defined by the survey instrument) and cannot be made Accessible on Election Day, then the Board will reject the location and continue searching until a location that will be Accessible on Election Day can be found subject to Paragraph 22. When the Board identifies a new prospective polling place location, the Board will provide the United States notice within twenty-one (21) days of the selection of the proposed new location, along with copies of all surveys (including photographs) of the polling place. The new polling place location shall be selected pursuant to the process established by Paragraph 22 of this Agreement. The parties recognize that under Kentucky law, KRS 117.065, all polling places must be established by September 20 of each year. Both parties will work toward resolving any outstanding discussions or disputes of any polling place under review by the September 20 deadline. If the Board asserts, and the United States agrees, that remediation, relocation, or selection of an alternate accessible polling place location are infeasible, then the Board may use the polling place location in the election following the deadline but will continue to follow the processes in Paragraph 22 to resolve the issues.

25. If the Board finds that it cannot implement a previously approved remedial provision for a specific polling place location, the Board will immediately notify and confer with the United States. If the issue cannot be resolved to the United States' satisfaction, the Board will relocate the polling place location to an alternative location that is Accessible on Election Day pursuant to the process established by Paragraphs 22 and 24 of this Agreement.

C. Election Officer and Poll Worker Training

26. Prior to each election during the term of this Agreement, as part of its training program for election officers and poll workers, including precinct clerks, judges, and sheriffs, the Board will continue to provide training on Title II of the ADA and the requirements of this Agreement as applied to the Board's voting program, including:

- a. Voting room or area requirements, including requirements related to setting up the accessible voting machine, under the 2010 ADA Standards;
- b. Temporary remedial measures, including: (a) why such measures are necessary; (b) how the measures must be implemented (e.g., how to install ramps, the placement of mats over (and not in front of) thresholds); and (c) a description of the role of the Board's Election Day Surveyors (EDSs), as set

forth in Paragraph 30 of this Agreement, and the need to follow the instructions of the EDSs regarding the implementation of temporary measures on Election Day;

- c. Interacting with individuals with disabilities and making reasonable modifications necessary to ensure that qualified individuals with disabilities are afforded an equal opportunity to participate in the Board's voting program; and
- d. The Board's policies, practices, and procedures, including the policies, practices, and procedures pursuant to Paragraph 16 and Section F.

27. For each session of the training conducted under this Agreement, the Board shall maintain attendance logs reflecting the date of the training, names and titles of attendees, and the attendees' signatures. The Board may continue its current practice of electronically checking in trainees and that check in process will record trainees' attendance.

28. Prior to each election during the term of this Agreement, the Board will provide training to all EDSs designated pursuant to Paragraph 300 of this Agreement. The training of the EDSs will address: (a) temporary measures, including why they are needed and how the measures must be implemented (e.g., how to install ramps, the placement of mats over (and not in front of) thresholds); (b) how to resolve errors in the implementation of temporary measures on Election Day; (c) how to document the implementation of temporary measures on Election Day using checklists or compliance review forms referenced in Paragraph 2929 of this Agreement; and (d) what the EDSs are required to do to implement the requirements of this Agreement.

D. Election Day Compliance Review

29. The Board will develop a checklist of the temporary measures to be implemented on Election Day at each polling place location where such measures are required. The checklist shall be included in the materials provided to each election officer for Election Day and provided to each Board employee or vendor involved in installing or implementing temporary measures for Election Day. The checklist shall include clear instructions and diagrams/photos for the remedial measures to be implemented by the polling place election officer. Copies of these checklists, instructions, and diagrams/photos will be provided to the United States no later than ninety (90) days before each election.

30. The Board will designate individuals as EDSs to review compliance at the polling place locations where temporary measures are to be implemented on Election Day. The Board will provide at least five teams of two members in each countywide election. For each election that is not countywide, the Board will field a number of teams that is similarly proportionate to the size of the election. The EDSs shall review compliance with as many polling place locations in each election as is reasonable, with a minimum of eight (8) polling places reviewed in each election for each team. Any polling place location found by the EDSs to be non-compliant in an election shall be reviewed by EDSs in the subsequent

election. The EDSs shall review polling places where temporary measures are to be implemented on a rotating basis so that they are not reviewing the same polling place locations in a subsequent election, except for those found to be non-compliant.

31. The Board and the EDSs will use the checklist developed pursuant to Paragraph 29 of this Agreement to review compliance on Election Day. The EDSs shall document their compliance reviews (both compliant and non-compliant polling place locations) with detailed photographs. After documenting a non-compliant polling place location, the EDSs shall remedy any non-compliant implementation of a temporary remedy when possible. Copies of these compliance reviews will be provided to the United States within sixty (60) days after each election.

32. If the Board does not properly implement the temporary remedial measures necessary at a particular polling place location on Election Day in two (2) consecutive elections, then the Board will no longer use the polling place location and will relocate it to a location that is Accessible on Election Day. If the Board asserts, and the United States agrees, that remediation and relocation to an accessible polling place location are infeasible, then the Board shall comply with Title II's program accessibility requirements. 28 C.F.R. § 35.150.

E. Staff Training

33. Within one hundred twenty (120) days of the Effective Date of this Agreement, the Board will provide training from an outside source to all individuals involved in administering the Board's voting program, including any relevant contractors or vendors and those who conduct surveys or implement temporary measures, on Title II of the ADA and the requirements of this Agreement as applied to the Board's voting program, including:

- a. Polling place accessibility requirements under the 2010 ADA Standards;
- b. Temporary remedial measures, including: (a) why such measures are necessary; (b) how the measures must be implemented (e.g., how to install ramps, the placement of mats over (and not in front of) thresholds); and (c) a description of the role of the Board's Election Day Surveyors (EDSs), as set forth in Paragraph 30 of this Agreement, and the need to follow the instructions of the EDSs regarding the implementation of temporary measures on Election Day;
- c. Interacting with individuals with disabilities and making reasonable modifications necessary to ensure that qualified individuals with disabilities are afforded an equal opportunity to participate in the Board's voting program; and
- d. The Board's policies, practices, and procedures, including the policies, practices, and procedures pursuant to Paragraphs 16 and Section F.

34. The Board may tape the initial training to use for individuals hired after the initial training. The Board will provide this training on an annual basis for the duration of this Agreement. The Board must obtain the United States' approval of the trainer and the materials to be used in the training.

35. For each session of the training conducted under this Agreement, the Board shall maintain attendance logs reflecting the date of the training, names and titles of attendees, and the attendees' signatures.

F. Complaint Collection and Review Process

36. Within one hundred (120) days of the Effective Date of this Agreement, the Board will submit for approval by the United States procedures providing for the receipt of and prompt and equitable resolution of complaints alleging that the Board's voting program discriminates against persons with disabilities. 28 C.F.R. § 35.107(b). Within ten (10) days of receiving comments from the United States, the Board shall incorporate in its policies, practices, and procedures any additions or modifications proposed by the United States that bring the Board's policies, practices, and procedures into compliance with the ADA.

37. The complaint procedures shall include procedures for election officers and poll workers to gather and document appropriate information from a complainant on site at a polling place during an election, and for the Board to accept and document phone calls and emails received prior to, during, and after an election. The Board will publish the complaint procedures on the Board's website and provide notices at each polling place during each election. These procedures will be in place for all elections after the Effective Date of this Agreement.

38. Throughout the term of this Agreement, the Board will designate an individual to serve as an ADA Coordinator for the Board. The ADA Coordinator will continue to be trained in and knowledgeable about the ADA and the terms of this Agreement, and will investigate any complaint that the Board, election judges, or any other person under the authority or control of the Board receives alleging that the Board's voting program discriminates against persons with disabilities. The ADA Coordinator will also implement the complaint procedures described in Paragraph 37. 28 C.F.R. § 35.107(a).

39. The Board will publish a Notice to Voters with Disabilities on its website and at all polling places for all elections within one hundred twenty (120) days of the Effective Date of this Agreement, and for the term of this Agreement, that notifies voters of the name of, and contact information for, the Board's ADA Coordinator.

40. Every ninety (90) days, from the Effective Date of this Agreement, the Board will provide a written report to the United States including summaries of any written complaints, complaints received as voice messages or other audio files, or written descriptions of verbal complaints, that the Board, the election officers or poll workers, or any other person under the authority or control of the Board receives alleging that the Board's voting program discriminates against persons with disabilities; and any written

responses provided by the Board and a written description of actions taken in response to such complaints. The Board will provide the United States with copies of any written complaints, complaints received as voice messages or other audio files, or written descriptions of verbal complaints, upon request.

III. Enforcement and Miscellaneous Provisions

41. **Delivery of Materials:** All notices, demands, or other communications including reporting materials sent to the United States pursuant to this Agreement shall be in writing and delivered by e-mail to carrie.pond@usdoj.gov, copying elizabeth.johnson@usdoj.gov (or to any other e-mail address that the United States designates during the term of this Agreement) or by overnight delivery to Carrie B. Pond, 260 W. Vine Street, Suite 300, Lexington, KY 40507. The cover letter shall include a subject line referencing the Board, USAO No. 2020V00202 and DJ No. 204-30-100. Communications to the Kenton County Board of Elections shall be directed to Stacy H. Tapke, Kenton County Attorney (or to any other contact that the Board designates during the term of this Agreement).

42. **Reviewing Compliance:** The United States and the Board may review compliance with this Agreement at any time. The Board will cooperate fully with the United States' efforts to monitor compliance with this Agreement, including by providing the United States with timely access to polling places (including on Election Day), maps, surveys, employees, contractors, training sessions, relevant documents, and other reasonably requested information. At least biannually, the parties will confer to assess the Board's compliance with this Agreement. If the United States believes that the Board has failed to comply in a timely manner with any requirement of this Agreement, or that any requirement has been violated, the United States will so notify the Board in writing and will attempt to resolve the issue in good faith. If the United States is unable to reach a satisfactory resolution of the issue within thirty (30) days of the date it notifies the Board, the United States may file a civil action in federal district court to enforce the terms of this Agreement, or take any other action to enforce Title II of the ADA.

43. **Term:** This Agreement shall terminate in three years.

44. **Entire Agreement:** This Agreement, including Attachment A, constitutes the entire agreement between the United States and the Board on the matters raised herein and no other statement or promise, written or oral, made by any party or agents of any party, that is not contained in this written Agreement, including Attachment A, shall be enforceable.

45. **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.

46. **Non-Waiver:** Failure by the United States to enforce any provisions or deadlines in this Agreement shall not be construed as a waiver of the right of the United

States to enforce any deadlines or provisions of this Agreement.

47. Limitation: This Agreement is limited to resolving claims under Title II of the ADA related to the facts specifically set forth in Paragraphs 1 through 3, above, concerning physical accessibility of polling places. Nothing in this Agreement relates to other provisions of the ADA or affects the Board's obligations to comply with any other federal, state, or local statutory, administrative, regulatory, or common law obligation, including those relating to nondiscrimination against individuals with disabilities.

48. Modifications: Any modifications of this Agreement, such as extensions of the time limits for performance imposed by the Agreement, may be made only by the mutual written consent of the Parties.

49. Binding Nature of Agreement: This Agreement shall be applicable to and binding upon the Board, its officers, agents, employees, and assigns.

50. Preservation of Documents: Throughout the term of this Agreement, the Board shall preserve documents, electronically stored information, or other information related to this Agreement and necessary to determining the Board's compliance with this Agreement.

51. Counterparts: This Agreement may be executed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document.

52. Publicly Available: A copy of this document will be made available to any person by the Board on request.

Lexington, KY

_____, 2022

FOR THE UNITED STATES:

CARLTON S. SHIER, IV
United States Attorney for the
Eastern District of Kentucky

By:

CARRIE B. POND
Assistant United States Attorney
260 W. Vine Street, Suite 300
Lexington, KY 40507-1612

Covington, KY

Jan. 24, 2023

FOR THE KENTON COUNTY
BOARD OF ELECTIONS

By:

Stacy Tapscott, Kenton County Attorney
Counsel for Kenton County
Board of Elections
As authorized at the Jan. 9, 2023
regular meeting of the BOE

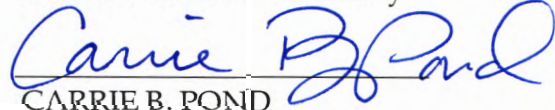
Lexington, KY

Jan. 25, 2023

FOR THE UNITED STATES:

CARLTON S. SHIER, IV
United States Attorney for the
Eastern District of Kentucky

By:



CARRIE B. POND
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260 W. Vine Street, Suite 300
Lexington, KY 40507-1612

Covington, KY

_____, 2022

FOR THE KENTON COUNTY
BOARD OF ELECTIONS

By: _____