



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

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Re: The United States' Findings and Conclusions Based on its Investigation of Upton County's Election Website Under Title II of the Americans with Disabilities Act, DJ No. 204-76-243

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 Upton 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; pages have the same title so that people with vision disabilities do not know what page they are on; posted documents are inaccessible for people who are blind and use assistive technologies like screen readers; and images lack alternative text necessary to make them accessible to people with vision disabilities. 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, mail-in ballot applications, and important election dates. The Website also links to other election information, like precinct maps, sample ballots, early voting, voting on election day, curbside voting, and past election results.

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. Menus Cannot be Opened or Closed with a Keyboard.

The expand and collapse controls on the main Website page—"Register to Vote"; "Are You Registered? Check Here!"; "Maps"; and "Click below for Ballot by Mail Application"—are not accessible with a keyboard. Menus listing information for past elections are found toward the bottom of the main Website page, are similarly inaccessible. And two expand and collapse controls on the right side of the main Website page, but no text, are also inaccessible. Those inaccessible menus contain upcoming election information. As a result of these barriers, people with vision or manual disabilities who use a keyboard to navigate the Website cannot choose whether to expand or collapse these menus. When they use the keyboard's tab key to navigate the Website and tab to these menus, the menus always open automatically. These users then must tab through every item in the open menu to continue moving through the Website. In contrast, someone using the mouse to navigate the Website can choose whether to expand or collapse these menus. They can move efficiently through the Website in a way that people with certain disabilities using a keyboard cannot.

2. Open and Closed Menus are Incorrectly Called Checklists.

The same expand and collapse controls on the main Website page that are discussed above do not announce their displayed labels to people with vision disabilities who use a screen reader and keyboard to navigate the Website. Instead, the expand and collapse controls announce, "check box," making these elements, or parts of the Website, inaccessible to people with vision disabilities. People who navigate the Website with a keyboard's tab key and listen for labels of elements with a screen reader will not know what these elements represent. Further, they misleadingly direct users to check or uncheck a box.

3. Errors are Improperly Communicated on Register to Vote Form.

The Website improperly communicates errors in completed Register to Vote forms. If a user makes a mistake when filling out the form, the Website identifies the errors when the person chooses the "Select" button. The mandatory fields with errors will appear in a red outline for

only a second. Then a note that the form was “opened in a new tab” replaces the fields and directs users to click to continue to their registration. But the fields with mistakes are never announced for screen reader users, and the “opened in a new tab” message’s purpose is unclear and thus confusing to users. Finally, if users choose the “click here to continue your registration” link, the page that loads does not save any of the data entered before.

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

People with vision or 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 of images or text on the Website lack tags and alternative text (described more below), or are inaccessible scanned images. Most of these inaccessible documents are largely found as links under the various past election menus located under the calendar on the Website’s main page. People who have vision disabilities and use screen readers cannot access these documents.

5. Headings are not used Correctly.

Many of the Website’s headings are not 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, the Website’s lack of proper headings creates confusion about the structure of the text on the Website’s main page. While websites should only have one element labeled as a Heading 1, or h1, the Website improperly labels three elements as h1. Here, the “Upton County Texas” text at the top of the page should be on the only h1, but two other hidden elements under expand and collapse menus are also labeled as h1s. Other parts of the Website, including the images of text for “Register to Vote”; “Contact Us”; “Maps”; “How Can I Register to Vote?”; and “Upcoming Statewide Elections” should each be coded as a Heading 2, or h2, so that screen reader users know that these are sub-headings on the Website. Without properly coded headings, users cannot quickly navigate to these specific content areas.

6. Page Titles are not Unique.

The Website lacks unique page titles, making it hard for people with vision disabilities to identify what page they are on. Every page on the Website refers has the same page title, “Upton County, Texas.” Thus, people with vision disabilities cannot tell which page they are on.

7. Search Results are not Announced.

The County adopted a design for the Website’s search function that is inaccessible for users with vision disabilities. Instead of embedding accessible search results in the Website’s page, the County sends users to the Google web browser when they search for something using the Website’s search function. Users with vision disabilities are sent to the Google web browser

without notice or explanation, where they do not hear the search results. Users with vision disabilities thus will not know the results of any searches they perform on the Website, whereas users without vision disabilities can access their search results.

8. The Website Contains Images with Missing or Improper Alternative Text.

People with vision disabilities who use screen readers (devices that speak the text appearing on a screen) or other assistive technologies cannot fully access the information in a picture or image, unless it contains alternative text (commonly known as “alt text”). Alt text is hidden text that describes images and other non-text content for blind individuals and others who use screen reader software. Even if an image contains words, a screen reader generally cannot read those words unless alt text is provided. Without alt text, the information in the image is effectively invisible to someone using a screen reader. For this reason, adding alt text is needed to make a website accessible to people with vision disabilities.

On the Website, numerous images have either no alt text or have insufficient alt text that does not communicate all necessary information. For example, image links for “Contact Us”; “Register to Vote”; and “Upcoming Statewide Elections” are missing alt text entirely. Other image links, such as the “Texas Counties Deliver” image on the Website, have insufficient alt text, making them inaccessible to persons with vision disabilities. Alt text is needed to communicate all the information in this image to people with vision disabilities. Images of text only, without alt text, limit users’ ability to modify the text for better presentation, such as adjusting font type, size, or spacing. Where the image has insufficient alt text, then the user does not get all the displayed text available to a user without a disability. And if the image is of text, without alt text, then it cannot be announced by the screen reader.

9. Image Links do not Show Visible Focus Indication.

People with manual disabilities who do not use a mouse to navigate websites need a visual focus indicator so that they can see where they are on the page when tabbing through menus, links, and other information. Visual focus indicators highlight or otherwise show which element on a webpage is selected. Focusable elements include links, buttons, form fields, and other interactive elements that can be operated with a keyboard. Image links on the Website do not show visible focus indicators for people navigating the Website with a keyboard. Without any indication of where the cursor is on the page, a website user cannot select those image links and access that important content. In contrast, people who use a mouse can see where the cursor or arrow is on the page and easily click on a link and navigate from menu to menu and list to list.

10. The Website Contains Two Hidden Links.

The Website’s main page includes two hidden links between the “Go” and “Home” elements. The first link opens nothing when selected. The second link opens an alternative full-page version of the main menu. These links are inaccessible to or usable by people with manual or vision disabilities because visual users will not know why they are blank tab stops and screen reader users will hear this and not know what they are for. This issue will cause confusion as these users try to navigate the Website.

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
Section Chief
Disability Rights Section

cc: Mary F. Kruger, Civil Chief, Western District of Texas