

**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.)	
_____)	

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 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 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.

11. During the May 7, 2016 Special Election for State Representative District 139, the United States investigated the County's 32 Election Day polling places, and found that most of the 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.

12. Harris County continues to use some of the inaccessible polling places the United States identified in its September 29, 2014 letter in federal, state, and local elections, without

providing a temporary or permanent measure to correct the non-compliant features at particular polling places.

13. 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.

14. 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

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

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.

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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