

**SETTLEMENT AGREEMENT  
BETWEEN THE UNITED STATES OF AMERICA  
AND LUZERNE COUNTY  
REGARDING THE ACCESSIBILITY OF POLLING PLACES**

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

**BACKGROUND**

1. The United States Department of Justice (the "Department") opened an investigation of Luzerne County (the "County") under title II of the Americans with Disabilities Act of 1990, as amended ("ADA"), 42 U.S.C. §§ 12131-12134, and title II's implementing regulation, 28 C.F.R. pt. 35, to determine the physical accessibility of County's polling places to people with mobility and vision disabilities. Title II of the ADA prohibits public entities from excluding individuals with disabilities from participation in or denying them the benefits of the voting program, or subjecting them to discrimination, on the basis of disability. 42 U.S.C. § 12132, 28 C.F.R. §§ 35.130(a), 35.149. Title II also prohibits public entities from selecting facilities to be used as polling places that have the effect of excluding individuals with disabilities from or denying them the benefits of the voting program, or otherwise subjecting them to discrimination. 28 C.F.R. § 35.130(b)(4). Title II requires public entities to administer their services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d).
2. Luzerne County 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 of the ADA, 42 U.S.C. §§ 12131 – 12134, and its implementing regulation, 28 C.F.R. pt. 35.
3. The Department is authorized under the ADA to determine the County's compliance with title II of the ADA and title II's implementing regulation, and to resolve the matter by informal resolution, such as through the terms of this settlement agreement. If informal resolution is not achieved, the Department is authorized to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. 28 C.F.R. pt. 35, Subpart F. The Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action to enforce title II of the ADA.
4. The County, through its Bureau of Elections, is responsible for reviewing the accessibility of each polling place and selecting each polling place. The County has 180 voting precincts.
5. In the November 3, 2015 general election, the Department surveyed 52 of the County's 180 polling place locations. The Department found that many of the County's polling places contain barriers to access for persons with disabilities, and thus the County violated title II by failing to select facilities to be used as polling places on Election Day that are accessible to persons with disabilities. The Department's findings are contained in Attachment 1.

## **TERMS OF SETTLEMENT**

### **Consideration**

6. 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.

### **Definitions**

7. "Accessible on Election Day" means that a polling place is compliant with the 2010 ADA Standards for Accessible Design ("2010 Standards") on Election Day, whether such compliance is achieved through permanent physical modifications or through the use of temporary measures such as those provided for in Paragraph 15 below.
8. "Effective Date" of this Agreement is the date of the last signature below.
9. "Election" or "Election Day" as used in this Agreement shall include both the period of Early Voting and Election Day.
10. "Election Day Surveyors" or "EDSs" are County personnel (or contractors) who will review compliance at polling place locations where temporary measures are to be implemented on Election Day.

### **Obligations of County**

#### **A. Accessible Voting Program**

11. Luzerne County shall not exclude individuals with disabilities from participation in or deny them the benefits of the voting program, or subject them to discrimination, on the basis of disability. 42 U.S.C. § 12132, 28 C.F.R. §§ 35.130(a), and 35.149. The County shall select facilities to be used as polling places that do not exclude individuals with disabilities from or deny them the benefits of the polling place, or otherwise subject them to discrimination. 42 U.S.C. § 13132; 28 C.F.R. § 35.130(b)(4). The County shall administer its voting program in the most integrated setting appropriate to the needs of persons with disabilities. 28 C.F.R. § 35.130(d).
12. For all elections occurring after the Effective Date of this Agreement, the County will implement measures to remediate the violations at polling places identified and as set forth in Attachment 1, to make those polling place locations accessible on Election Day, or will relocate those locations to an alternative accessible location pursuant to the process established in Paragraph 17 of this Agreement. Nothing in this Agreement limits the County from making ADA-compliant, permanent modifications to its polling place locations instead of providing temporary remedial measures or relocating a polling place location. If remediation as listed on Attachment 1 or relocation to an accessible facility is impossible, as agreed to by the United States, then the County agrees to comply with title II's program accessibility requirements.

13. The County shall maintain in operable working condition on Election Day those features of facilities and equipment (including, but not limited to, permanent equipment such as lifts and elevators, and temporary equipment such as portable ramps, traffic cones, signs, wedges, and door stops) that are required to make polling places accessible to and usable by persons with disabilities. 28 C.F.R. § 35.133(a). If circumstances arise such that a polling place location that was previously accessible is no longer accessible because a feature of the facility or equipment is no longer operable, then the County shall purchase new equipment or relocate the polling place to an alternative, accessible location pursuant to the process established in Paragraph 17 of this Agreement. If remediation or relocation to an accessible facility is impossible, as agreed to by the United States, then the County agrees to comply with Title II's program accessibility requirement.
14. The County will cooperate fully with the United States' efforts to monitor compliance with this Agreement, including but not limited to, providing the United States with timely access to polling places (including on Election Day), maps, surveys, and other requested information.
15. The County agrees that the following measures are reasonable and will be implemented where necessary to make an otherwise inaccessible polling place accessible on Election Day. The list of measures is not exhaustive; the County 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 moveable barriers.
  - f. Door stops.
  - g. Propping open doors.
  - h. Unlocking doors.
  - i. Signage, including parking signage.
  - j. Portable buzzers or door bells.
  - k. Removing astragals (door posts) that are not a permanent part of the structure from doorways.

## **B. Survey and Review of Polling Place Locations**

16. The County will develop a survey instrument to assess whether a polling place location is or can be made accessible on Election Day. The survey instrument will be based on the 2010 Standards of the United States' and 2016 "ADA Checklist for Polling Places" publication. The survey instrument will include a requirement to include photographs and will also require the identification of appropriate remedial provisions, including the remedial provisions in Paragraph 15 of this Agreement. The survey instrument will be submitted to the United States for review and approval within 21 days of the Effective Date of this Agreement. The County shall incorporate in its survey instrument any changes, additions, or modifications proposed by the United States.
17. The County shall review each newly proposed polling place location to determine whether it is accessible to persons with disabilities or could be made accessible on Election Day through the use of the remedial measures provided for in Paragraph 15 of this Agreement or through permanent modifications, before selecting the location as a polling place. The County shall use the survey instrument referenced in Paragraph 16 of this Agreement to make all future polling place location selections. If the County 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 County will reject the location and continue searching until an accessible location or one that can be made accessible on Election Day can be found.
18. Beginning with the effective date of this Agreement, the County will survey the polling place locations not surveyed by the Department that the County intends to use in future elections, using the survey instrument referenced in Paragraph 16 of this Agreement. The County will provide these surveys to the United States as they are conducted, to be completed no later than December 1, 2017.
19. If the Department concludes that a survey was conducted by the County in error, then the County will re-survey the portions in error. If the Department concludes that the County has proposed a remedial provision that does not address the violation, then the Department will recommend a temporary remedial measure consistent with Paragraph 15 of this Agreement that the County will implement in the next election. If the County chooses not to or is unable to implement one or more of the recommended temporary remedial measures, it will relocate the inaccessible polling place location to an accessible polling place location selected pursuant to the process established by Paragraph 17 of this Agreement.
20. For the polling place locations surveyed by the County pursuant to Paragraph 18 of this Agreement, by the November 2017 election, the County will implement the appropriate remedial provisions to make polling place locations accessible on Election Day, or will relocate inaccessible locations to an alternative accessible location pursuant to the process established by Paragraph 17 of this Agreement.
21. For the duration of this Agreement, when the County selects a new polling place location, the County will provide the United States notice within twenty-one (21) days of the decision. The County will provide the United States with copies of all surveys (and photographs) conducted within twenty-one (21) days of the decision to use the location as a polling place. The United States' approval must be obtained prior to the location being used in an election. The United States' approval will be based exclusively on

whether the purposed polling place location satisfies the survey instrument referenced in Paragraph 16 of this Agreement.

22. If the County finds that it cannot implement a previously agreed to or approved remedial provision regarding a specific polling place location, the County will immediately notify the United States and, upon request, meet and confer with the United States. If the issue cannot be resolved to the United States' satisfaction, the County will relocate the polling place location to an alternative accessible location pursuant to the process established by Paragraph 17 of this Agreement.

### **C. Training**

23. Prior to each election during the term of this Agreement, as part of its training program for Election Officers and poll workers, the County will provide training concerning 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 County's Election Day Surveyors (EDSs), as set forth in Paragraph 28 of this Agreement, and the need to follow the instructions of the EDSs regarding the implementation of temporary measures on Election Day.
24. The County will request that all Election Officers who will be assigned to a polling place location that includes one or more temporary remedies, sign a form in which they are asked to swear or affirm that in performing Election Day duties the election official will make sure that all temporary measures at their polling place location be installed where instructed, be in place before the opening of the polls, and be maintained in place until the polling place closes to provide independent access to voters with disabilities.
25. After the first election occurring after the Effective Date of this Agreement, and for each election thereafter during the term of this Agreement, the County will identify each Election Officer whose polling place was the subject of a report from the previous election indicating that a temporary modification was not implemented properly, and will explain the noncompliance to the Election Officer and what must be done to remedy the identified issue(s) on Election Day. The Election Officer will be asked to initial the noncompliance report.
26. Prior to each election during the term of this Agreement, the County will provide training to all EDSs designated pursuant to Paragraph 28 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 27; and (d) what the EDSs are required to do to implement the requirements of this Agreement.

### **D. Election Day Compliance Review**

27. In the materials provided to each Judge of Election for Election Day, the County will include a checklist of the temporary measures to be implemented on Election Day at each polling place location where such measures are required. The checklist should



contain a place for signature by the Judge of Election that he or she put the temporary measures in place and kept them in place through Election Day, from the opening of the polls to their closing, and should be returned to the County along with other election materials. Copies of these checklists will be provided to the United States within twenty-one (21) days of the election.

28. Beginning with the first election occurring after the Effective Date of this Agreement, and throughout the duration of this Agreement, the County will designate County personnel (or contractors) as EDSs to review compliance at the polling place locations where temporary measures are to be implemented on Election Day. The County and the EDSs will use the checklist developed pursuant to Paragraph 27 of this Agreement to review compliance on Election Day. The EDSs will be required to document their compliance reviews (both compliant and non-compliant polling place locations) with 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 Department within twenty-one (21) days after the election.
29. If the County does not properly implement the temporary remedial measures necessary at a particular polling place location on Election Day in two (2) consecutive elections, and the County does not make permanent architectural remediations, then the County will no longer use the polling place location and will relocate it to an accessible location or one that can be made accessible on Election Day pursuant to Paragraph 17 of this Agreement. If remediation or relocation to an accessible facility is impossible, as agreed to by the United States, then the County agrees to comply with Title II's program accessibility requirements.

#### **Enforcement Provisions**

30. If at any time one of the Parties to this Agreement desires to modify any portion of this Agreement, it will promptly notify the other Party in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. The Party receiving a request to modify the Agreement will not unreasonably delay notifying the requesting Party as to whether it will agree to the proposed modification. No modification will take effect unless and until the Parties memorialize the agreed upon modification in writing.
31. All notices, demands, or other communications, including reporting materials, to be provided under this Agreement shall be in writing and delivered by email or overnight delivery to the following persons and addresses (or such other persons and addresses as any party may designate in writing from time to time):

#### **For the United States:**

Michael J. Butler  
Assistant United States Attorney  
Ronald Regan Federal Building  
228 Walnut Street, Suite 220  
Harrisburg, PA 17108

For Luzerne County:

Michael I. Butera, Esquire  
121 South Main Street  
Pittston, PA 18640

32. The United States may review compliance with this Agreement at any time. If the United States believes that the County 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 County 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 County, 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.
33. Failure by the United States to enforce a deadline or provision in this Agreement will not be construed as a waiver of the United States' right to enforce any deadlines or provisions of this Agreement.
34. A copy of this document will be made available to any person by the County on request.
35. This Agreement shall be applicable to and binding upon the County, its officers, agents, employees, and assigns.
36. This Agreement constitutes the entire agreement between the Parties 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 its attachments, shall be enforceable.
37. This Agreement is limited to resolving claims under title II of the ADA related to the facts specifically set forth in Paragraphs 1-6 above concerning physical accessibility of polling places. Nothing in this Agreement relates to other provisions of the ADA or affects the County'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.
38. This Agreement will remain in effect for five years from the Effective Date.
39. The person signing for the County represents that he or she is authorized to bind the County to this Agreement.

For the United States



Michael J. Butler  
Assistant United States Attorney  
Ronald Regan Federal Building  
228 Walnut Street, Suite 200  
Harrisburg, PA 17108

Date: January 12, 2017

For Luzerne County:



Michael I. Butera, Attorney  
Bureau of Elections  
20 North Pennsylvania Avenue, Suite 207  
Wilkes-Barre, PA 18711

Date: December 7, 2016



**ADA POLLING PLACE SURVEY REPORTS SUMMARY - ATTACHMENT A, Accessible**  
**LUZERNE COUNTY, PA**

Municipality	Precinct	Polling Location Name	Address	City, State, ZIP	Space/Element	Subject / Issue	Noncompliant Item / Component	1991 ADA Standards	Description of Issue / 2010 ADA Requirement	§§ 2010 ADA Standards
HAZLETON CITY	W 09, W 11	Our Lady of Grace Church	750 North Vine Street	Hazleton, PA 18201	n/a	n/a	n/a	n/a	n/a	n/a
HAZLETON CITY	W 05	Terrace Plaza	601 South Poplar Street	Hazleton, PA 18201	n/a	n/a	n/a	n/a	n/a	n/a
KINGSTON BORO	W 07, W 08	Kingston Recreation Center	655 Third Avenue	Kingston, PA 18704	n/a	n/a	n/a	n/a	n/a	n/a
WILKES BARRE CITY	W 04, W 08, W 09	Toyota Sports Plex	38 Coal Street	Wilkes-Barre, PA 18702	n/a	n/a	n/a	n/a	n/a	n/a

ADA POLLING PLACE SURVEY REPORTS SUMMARY - ATTACHMENT B, Temporary  
LUZERNE COUNTY, PA

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ADA POLLING PLACE SURVEY REPORTS SUMMARY - ATTACHMENT C, Permanent  
LUTERNE COUNTY, PA

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