

SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE BOARD OF VOTER REGISTRATION AND
ELECTIONS FOR ANDERSON COUNTY
REGARDING THE ACCESSIBILITY OF POLLING PLACES
DJ # 204-67-186

This settlement agreement (“Agreement”) is entered into between the United States of America and The Board of Voter Registration and Elections Anderson County (“Board”) (collectively, “Parties”).

BACKGROUND

1. The United States Department of Justice (the “Department”) opened an investigation of The Board of Voter Registration and Elections for Anderson County (“Board”) 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 the Board’s polling places to people with mobility and vision disabilities.
2. 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 of the ADA and its implementing regulation.
3. 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.
4. The Board is responsible for reviewing the accessibility of each polling place and selecting each polling place. The Board has 79 listed precincts, currently housed in 79 polling place locations, and also, 1 early voting site.
5. During the June 12, 2018 Primary Election, the Department surveyed 15 of the Board’s 79 polling place locations and 1 early voting site. The Department found that many of the Board’s precincts are housed in polling places which contain barriers to access for persons with disabilities, and that the Board violated title II by failing to select and use facilities as polling places on Election Day that are accessible to persons with disabilities. The accessibility barriers identified by the Department are contained in Attachments A and B.

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”) (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) on Election Day, whether such compliance is achieved through permanent architectural measures or through the use of temporary measures such as those provided for in Paragraph 16 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 the period of early voting.
10. “Election Day Surveyors” or “EDSs” are Board personnel (or contractors) who will review compliance at polling place locations where temporary measures are to be implemented on Election Day.

Obligations of Board

A. Accessible Voting Program

11. The Board shall provide an accessible voting program, including a program that is accessible to persons with mobility or vision disabilities and accessible polling places at accessible sites. 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 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). The Board 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 Board will implement measures to remediate the violations at polling places identified and as set forth in Attachments A & B, 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 Paragraph 18 of this Agreement. The Board will provide its remediation plan to the United States within 90 days of the Effective Date of this Agreement. If the Board asserts, and the United States agrees, that remediation or

relocation to an accessible facility is infeasible, then the Board shall comply with Title II's program accessibility requirements. 28 C.F.R. § 35.150.

13. Nothing in this Agreement limits the Board from making ADA-compliant, permanent modifications to its polling place locations instead of providing temporary remedial measures or relocating a polling place location.
14. The Board shall maintain in operable working condition on Election Day those features of facilities and equipment (including 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 Board shall replace the inoperable equipment, or relocate the polling place to an alternative, accessible location pursuant to the process established in Paragraph 18 of this Agreement. If the Board asserts, and the United States agrees, that remediation or relocation to an accessible facility is infeasible, then the Board shall comply with Title II's program accessibility requirements.
15. 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, and other information requested by the Department.
16. 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 moveable barriers.
 - f. Door stops.
 - g. Propping open doors.

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

B. Survey and Review of Polling Place Locations

17. The Board will develop a survey instrument to assess whether each of its polling place locations is or can be made accessible on Election Day, whether temporarily or permanently. The survey instrument will be based on the 2010 Standards and the United States' "ADA Checklist for Polling Places" publication located at www.ada.gov/votingck.htm. The survey instrument will include a requirement to include photographs and will require the identification of appropriate remedial measures, including the remedial measures in Paragraph 16 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 Board shall incorporate in its survey instrument any reasonable changes, additions, or modifications proposed by the United States.
18. The Board 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 16 of this Agreement or through permanent modifications, before selecting the location as a polling place. The Board shall use the survey instrument referenced in Paragraph 17 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 an accessible location or one that can be made accessible on Election Day is found. If the Board asserts, and the United States agrees, that remediation of the newly selected facility or relocation to an alternate accessible facility is infeasible, then the Board shall comply with Title II's program accessibility requirements. 28 C.F.R. § 35.150.
19. Of the 79 precincts and 1 early voting site that housed in polling places that were used in the June Primary 2018 election, 15 were surveyed by the Department. Beginning with the Effective Date of this Agreement, the Board will survey the 55 polling place locations that were not surveyed by the Department for polling places that the Board intends to use in future elections, using the survey instrument referenced in Paragraph 17 of this Agreement. The Board will provide these surveys to the United States as they are conducted, and will ensure that all are provided to the United States no later than April 1, 2019.

20. If the United States disputes the accuracy of a survey, then the Board will 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 16 of this Agreement. If the Board 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 18 of this Agreement.
21. The Board agrees to first remediate issues identified as part of the June 2018 Primary Election discussed in Paragraph 19. Thereafter, the Board will remediate issues identified as part of the 2018 surveys conducted pursuant to Paragraph 19.
22. For the polling place locations surveyed by the Board pursuant to Paragraph 17 of this Agreement, by the next election after the Effective Date of this Agreement in 2018, the Board 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 18 of this Agreement.
23. Beginning January 1, 2019, and for the duration of this Agreement, when the Board selects a new polling place location, the Board will provide the United States notice within 21 days of the decision, along with copies of all surveys (and photographs) conducted in relation to 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 approval shall not be unreasonably withheld or delayed. The United States' approval will be based exclusively on whether the proposed polling place location satisfies the survey instrument referenced in Paragraph 17 of this Agreement. In the event of an emergency, the Board and the United States will consult as soon as practicable regarding the accessibility of the site selected.
24. If the Board finds that it cannot implement a previously-agreed to or approved remedial provision regarding a specific polling place location, the Board 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 Board will relocate the polling place location to an alternative accessible location pursuant to the process established by Paragraph 18 of this Agreement.

C. Training

25. Prior to each election during the term of this Agreement, as part of its training program for Poll Workers, the Board 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 Board'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.

26. After the 2018 elections, and at each training session for each election thereafter, the Board will identify each Poll Worker in attendance whose polling place was identified as non-compliant by an EDS compliance review from the previous election (pursuant to Paragraph 28 of this Agreement). The Board will explain to each Poll Worker the nature of the noncompliance and explain what the Poll Worker must do to remedy the identified issues on Election Day.

27. Prior to each election during the term of this Agreement, the Board will provide training to all EDSs designated pursuant to Paragraph 29 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 28; and (d) what the EDSs are required to do to implement the requirements of this Agreement.

D. Election Day Compliance Review

28. In the materials provided to each Election Board Worker for Election Day, the Board will develop and 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 must contain a place for a signature by the Poll Worker that he or she put the temporary measures in place and kept them in place throughout Election Day, from the opening of the polls to their closing, and be returned to the Board along with other election materials. Copies of these checklists will be provided to the United States within 30 days of the election.

29. Beginning with the first election occurring after the Effective Date of this Agreement, and throughout the duration of this Agreement, the Board will designate personnel (or contractors) as EDSs to review compliance at the polling place locations where temporary measures are to be implemented on Election Day. The Board and the EDSs will use the checklist developed pursuant to Paragraph 28 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 30 days after the election.

30. If the Board does not properly implement the temporary remedial measures necessary at a particular polling place location on Election Day in two consecutive elections, or the Board does not make permanent architectural remediations, then the Board 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 18 of this Agreement. If the Board asserts, and the United States agrees, that remediation or relocation to an accessible facility is infeasible, then the Board shall comply with Title II's program accessibility requirements.

Training and Technical Assistance from the United States

31. Upon request from the Board, the United States will provide training to the Board personnel on the surveying process and the application of the 2010 Standards to polling place locations.
32. Upon request from the Board, the United States will provide technical assistance to the Board concerning the implementation of the terms of this Agreement, including assistance in preparing training materials and on ways to implement temporary measures to make a polling place accessible on Election Day.

Enforcement Provisions

33. Modifications: If a Party wants to modify any portion of this Agreement, it will promptly notify the other Party in writing, setting forth the facts and circumstances 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.
34. Delivery of Materials: 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:

Civil Rights Coordinator

U.S. Attorney's Office

55 Beattie Place, Suite 700

Greenville, SC 29601

(864) 282-2100

For Anderson Board:

Katy Smith

Executive Director

Anderson County

Registration and Elections Office

301 N. Main Street

Anderson SC 29621

PO Box 8002

Anderson SC 29622

(864) 260-4035

acvote@andersoncountysc.org

35. Enforcement: The United States may review compliance with this Agreement at any time. 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.
36. Non-Waiver: 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 deadline or provision of this Agreement.
37. Publicly Available: A copy of this document will be made available to any person by the Board on request.
38. Applicability: This Agreement shall be applicable to and binding upon the Board, its officers, agents, employees, and assigns.
39. Entire Agreement: 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.
40. Counterparts: This Agreement may be executed in counterparts all of which taken together constitute one document.
41. Limitation: This Agreement is limited to resolving claims under title II of the ADA related to the facts specifically set forth in Paragraphs 1-5 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.

42. Term: This Agreement will remain in effect for three years from the Effective Date.

43. Authority: The person signing for the Board represents that he or she is authorized to bind the Board to this Agreement.

FOR THE UNITED STATES

SHERRY A. LYDON
United States Attorney

/s/

Robert Sneed
Assistant U.S. Attorney
U.S. Attorney's Office
55 Beattie Place, Suite 700
Greenville, SC 29601

Date: 11/9/18

**FOR BOARD OF VOTER REGISTRATION
AND ELECTIONS
FOR ANDERSON COUNTY**

/s/

Wilma Orr
Chairman of Board
Anderson County
301 N. Main Street
Anderson SC 29621

Date: 11/8/18