

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 5 : 15cv00077
)	
AUGUSTA COUNTY, VIRGINIA,)	
)	
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 Augusta County, Virginia, acting through its Board of Supervisors and Electoral Board. Augusta 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. Augusta 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 Augusta County, Virginia, including its respective departments, agencies, and other instrumentalities, is a unit of local government in the Commonwealth of Virginia, 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. Augusta County, through its Board of Supervisors and Electoral Board (hereinafter, collectively, “Augusta 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 25 polling places in each of its elections.

8. Voters may vote at their assigned polling place on Election Day or, under limited conditions, by absentee ballot by mail or in person at the voter registration office (housed at the County Government Center, one of the County’s 25 Election Day polling place locations).

9. The United States investigated the accessibility of Augusta County’s polling places for persons with disabilities and conducted architectural surveys of the 25 polling places used by the County in the 2013 elections.

10. On May 13, 2015, the United States issued a Letter of Findings to Augusta County pursuant to 28 C.F.R. § 35.172. The United States found that of the County's 25 polling places used in the 2013 elections, only four were accessible on Election Day to voters with disabilities. Of the remaining 21 polling places, the United States found that 19 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 on Election Day. The United States found that the remaining two facilities, including the Augusta County Government Center, were not accessible for use as polling places and could not be made accessible without permanent, architectural modifications.

11. Augusta County continues to use 24 of the 25 polling places in federal, state, and local elections, including the two facilities that require permanent modifications to be made accessible.

12. 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 on Election Day and to participate equally in the electoral process.

13. 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 and denies them the benefits of the County's voting services, programs, or activities, and 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, including but not limited to:

- 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 a disability 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. 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, in violation of 28 C.F.R. § 35.130(b)(4);
- e. 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); and
- f. 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 violation of 28 C.F.R. § 35.150(a).

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 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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