

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF
AMERICA
AND
THE NEWTON COUNTY, ARKANSAS BOARD OF ELECTION
COMMISSIONERS AND NEWTON COUNTY, ARKANSAS
DJ No. 204-10-40**

This settlement agreement (the “Agreement”) is entered into between the United States of America, Newton County, Arkansas and the Newton County, Arkansas Board of Election Commissioners (collectively, the “Parties”).

INTRODUCTION

1. The United States conducted an investigation of the Newton County Board of Election Commissioners (“the Board”) under Titles II and V of the Americans with Disabilities Act of 1990, as amended (“Title II”, “Title V”, and “ADA”, respectively), and their implementing regulations, 28 C.F.R. Part 35.
2. On March 3, 2020, the Board had 19 precincts, located in 18 polling place locations and one Early Voting polling place location, including buildings that are privately- or publicly-owned. The Board is responsible for selecting each polling place and ensuring the accessibility of each polling place.
3. During Early Voting on March 2, 2020, and during Election Day on March 3, 2020, the United States surveyed the county courthouse used for Early Voting and all 18 of the Board’s polling places used during the election. The United States observed that all of the polling places surveyed contained architectural barriers that rendered the facilities inaccessible to voters with disabilities, such as a lack of accessible parking areas and accessible routes due to gravel and grass ground surfaces; excessively sloped ramps, some without handrails and edge protection; numerous gaps and level changes along exterior routes; and protruding objects. In addition, the United States observed a lack of operable accessible voting machines at all polling places, including at Early Voting.
4. The Department also substantiated complaints alleging that the Board’s polling places contain architectural barriers that render the facilities inaccessible to voters with disabilities.
5. Individuals with mobility impairments have disabilities within the meaning of the ADA where those impairments substantially limit one or more major life activities of such individuals, including walking. Individuals with vision impairments have disabilities within the meaning of the ADA where those impairments substantially limit one or more major life activities of such individuals, including seeing. 42 U.S.C. § 12102(2).
6. 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 and its implementing regulation.
7. The term “the Board,” as used in this Agreement, shall include the Board and all

of the members, officers, employees, contractors, successors, assigns, administrative personnel, and any other person under the authority or control of the Board. Further, the term “the County” shall include the County and all of the members, officers, employees, contractors, successors, assigns, administrative personnel, and any other person under the authority or control of Newton County, Arkansas.

8. 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.

9. The Attorney General is responsible for administering and enforcing Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35. The Department is authorized, under 28 C.F.R. Part 35, Subpart F, to investigate the allegations in this matter, to issue findings, and to negotiate and secure voluntary compliance agreements.

10. The Parties agree that it is in their mutual interest, and the United States believes that it is in the public interest, to resolve this investigation on mutually agreeable terms without litigation. 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.

TERMS OF SETTLEMENT

I. Definitions

11. “Election” or “Election Day” shall include all elections operated by the Board, including primary and general elections, and shall include both the period of Early Voting and Election Day.

12. “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 ADA-compliant permanent modifications or through the use of temporary measures such as those provided for in Paragraph 22 below.

13. “Effective Date” of this Agreement is the date of the last signature below. Unless otherwise specified, all time periods run from the Effective Date.

II. Obligations of the Board and the County

A. Accessible Voting Program

14. The Board and the County will take necessary steps to effectuate its obligation to comply with the ADA with respect to its voting program and this Agreement. In particular, the Board shall revise all relevant policies, practices, and procedures to meet the following obligations:

- a. The Board shall not exclude qualified individuals with disabilities from participation in or deny them the benefits of its voting program, or subject them to discrimination, on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a), 35.149.
- b. The Board, with the required assistance of the County, shall maintain in operable working condition those features of facilities and equipment that are required by the ADA to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 35.133.
- c. The Board shall administer its voting program in the most integrated setting appropriate to the needs of persons with disabilities. *Id.* § 35.130(d).
- d. The Board shall ensure that its voting machines are operable and accessible, thereby affording voters with disabilities the same amount of privacy and independence provided to voters without disabilities, *id.* § 35.130(b)(1)(ii), effective communication, *id.* § 35.160(a)(1), and an equal opportunity to participate in, and enjoy the benefits of the voting program. *Id.* § 35.160(b).
- e. Within 60 days of the Effective Date of this Agreement, the Board shall submit its revised policies, practices, and procedures to the United States for review and approval. Within 10 days of receiving comments from the United States, the Board shall incorporate in its policies, practices, and procedures any additions or modifications proposed by the United States that bring the Board's policies, practices, and procedures into compliance with the ADA.

15. The Board, with the cooperation and assistance of the County, shall provide accessible polling places in order to have an accessible voting program, including a program that is accessible to persons with mobility or vision disabilities. 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 qualified 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).

16. For all elections occurring after the Effective Date of this Agreement, the Board, with the cooperation and assistance of the County, will implement measures to remediate the issues identified in Attachment A, 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 25 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 and relocation to an accessible polling place location are infeasible, then the Board shall

comply with Title II's program accessibility requirements as described in Paragraph 21 of this Agreement. 28 C.F.R. § 35.150.

17. Nothing in this Agreement limits the Board from making ADA-compliant, permanent modifications to any Board or County-owned polling place locations instead of providing temporary remedial measures or relocating a polling place location.

18. The Board has agreed that ADA-compliant, permanent modifications will be made to the following polling place locations should the board utilize these polling place locations in future elections:

- a. Big Creek: Mt. Judea Fire Department, 113 NC 4800 Mt. Judea, AR 72655;
- b. Dogpatch: Whippoorwill Woodworks, 8730 AR 7 N Marble Falls, AR 72648;
- c. Grove: Western Grove City Hall, 28659 US 65 Hwy Western Grove, AR 72685;
- d. Hudson: Parthenon Fire Department, 207 NC 8675 Parthenon, AR 72666;
- e. Jackson: Old Nursing Home, 504 W Court St Jasper, AR 72641;
- f. Jefferson: Swain Community Building, 8274 AR 16 Hwy Deer, AR 72628;
- g. Low Gap: Low Gap Church, 10004 AR 74 W Jasper, AR 72641;
- h. Pleasant Hill: Deer Fire Department, 18090 AR 16 Hwy Deer, AR 72628;
- i. Ponca: Ponca Fire Station, 4875 AR 43 Hwy Ponca, AR 72742;
- j. Richland: Log Hall Church, 2407 AR 374 Hwy Vendor, AR 72683; and
- k. White: Lurton Community Building, 70 NC 8800 Pelsor, AR 72856.

The permanent modifications may not necessarily remove all physical barriers at each polling place location. The Board and the County agree they will also implement temporary measures where necessary to provide accessible polling place locations in accordance with the provisions in this Agreement.

19. For Board- or County-owned facilities, the Board and the County shall maintain in operable working condition on Election Day the features and equipment (including voting machines, and 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 on Election Day. 28 C.F.R. § 35.133(a). If circumstances arise such that a Board- or County-owned polling place location that was previously accessible is no longer accessible because features or equipment are no longer operable, then the Board shall either provide operable equipment or the Board will relocate the polling place to an alternative, accessible location pursuant to the process established in Paragraph 25 of this Agreement. If the Board asserts, and the United States agrees, that remediation and relocation to an accessible polling place location are infeasible, then the Board shall comply with Title II's program accessibility requirements as described in Paragraph 21 of this Agreement.

20. For all facilities not owned by the Board or County, the Board shall maintain in operable working condition on Election Day the features and equipment owned by the Board or County (including temporary equipment such as portable ramps, traffic cones, signs, wedges, and door stops) that are required to make polling places Accessible on Election Day. 28 C.F.R. § 35.133(a). If circumstances arise such that a polling place location not owned by the County that was previously accessible is no longer accessible because the features or equipment owned by the Board or County are no longer operable, then the Board or County shall either provide operable temporary equipment or the Board will relocate the polling place to an alternative, accessible location pursuant to the process established in Paragraph 25 of this Agreement. If the Board asserts, and the United States agrees, that remediation and relocation to an accessible polling place location are infeasible, then the Board shall comply with Title II's program accessibility requirements as described in Paragraph 21 of this Agreement.

21. If the Board asserts, and the United States agrees, that remediation and relocation to an accessible polling place location are infeasible, then the Board shall comply with Title II's program accessibility requirements, see 28 C.F.R. Part 35, Subpart D.

22. The Board and the County agree 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 that are ADA-compliant;
- d. Traffic cones;
- e. Relocating furniture or other movable barriers;
- f. Door stops;
- g. Propping open doors;
- h. Unlocking doors;
- i. Signage, including parking and accessible entrance directional signage;
- j. Portable buzzers or door bells; and
- k. Removing astragals (center door posts on double doors) that are not a permanent part of the structure from doorways.

B. Survey and Review of Polling Place Locations

23. The Board shall revise its policies, practices, and procedures to select facilities to be used as polling places that do not exclude qualified individuals with disabilities from or deny them the benefits of the polling place, or otherwise subject them to discrimination on the basis of their disabilities. Within 60 days of the Effective Date of this Agreement, the Board shall submit its revised policies, practices, and procedures to the United States for review and approval. Within 10 days of receiving comments from the United States, the Board shall incorporate in its policies, practices, and procedures any additions or modifications proposed by the United States that bring the Board's policies, practices, and procedures into compliance with the ADA.

24. The Board will adopt a polling place accessibility survey instrument that conforms with the 2010 Standards. The survey instrument will include: (1) measurements of each feature in the survey form (*e.g.*, width of parking space, slope of curb ramp); (2) photographs of each element of the polling place and of each measurement; (3) the identification of all appropriate remedial measures, including the remedial measures in Paragraph 22 of this Agreement; and (4) measurements (including slope measurements) and photographs of each remedial measure as it will be implemented on Election Day. The survey instrument will be submitted to the United States for review and approval within 60 days of the Effective Date of this Agreement. Within 10 days of receiving comments from the United States, the Board shall incorporate in its survey instrument any reasonable changes, additions, or modifications proposed by the United States.

25. The Board shall select polling place locations that are Accessible on Election Day to persons with disabilities. It shall be the Board's policy and practice to review each newly proposed polling place location to determine whether it is Accessible on Election Day prior to its use in an election. The Board shall use the survey instrument referenced in Paragraph 24 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 a location that will be Accessible on Election Day can be found, subject to Paragraph 21.

26. When the Board identifies a new prospective polling place location, the Board will provide the United States notice within 21 days of the selection of the proposed new location, along with copies of all surveys (including photographs) of the polling place. The new polling place location shall be selected pursuant to the process established by Paragraph 25 of this Agreement. The United States' approval must be obtained before the Board uses the location in an election.

27. If the Board finds that it cannot implement a previously-approved remedial provision for a specific polling place location, the Board will immediately notify 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 location that is Accessible on Election Day pursuant to the process established by Paragraph 25 of this Agreement.

C. Election Officer and Poll Worker Training

28. Prior to each election during the term of this Agreement, as part of its training program for election officers and poll workers, including election clerks, judges, and sheriffs, the Board will provide training on Title II and Title V of the ADA and the requirements of this Agreement as applied to the Board's voting program, including:

- a. Voting room or area requirements, including requirements related to setting up and operating the accessible voting machine, under the 2010 ADA Standards;
- b. Temporary remedial measures, including: (a) why such measures are necessary; and (b) how the measures must be implemented (*e.g.*, how to install ramps, how to establish a temporary van accessible parking place);
- c. Interacting with individuals with disabilities and making reasonable modifications necessary to ensure that qualified individuals with disabilities are afforded an equal opportunity to participate in the Board's voting program;
- d. The ADA's retaliation prohibition; and
- e. The Board's revised policies, practices, and procedures, including the policies, practices, and procedures revised pursuant to Paragraphs 14, 21, and 24.

29. For each session of the training conducted under this Agreement, the Board shall maintain attendance logs reflecting the date of the training, names and titles of attendees, and the attendees' signatures.

30. After the first election occurring after the Effective Date of this Agreement, and at each training session for each election thereafter, the Board will identify each election officer in attendance whose polling place was identified as non-compliant by the County's or United States' compliance review from the previous election. The Board will explain to each election officer the nature of the noncompliance and explain what the election officer must do to remedy the identified issue(s) on Election Day.

D. Election Day Compliance Review

31. The Board will develop a checklist of the temporary measures to be implemented on Election Day at each polling place location where such measures are required. The checklist shall be included in the materials provided to each election officer for Election Day and provided to each Board employee or vendor involved in installing or implementing temporary measures for Election Day. The checklist shall include clear instructions and diagrams/photos for the remedial measures to be implemented by the polling place election officer. Copies of these checklists, instructions, and diagrams/photos will be provided to the United States no later than 90 days before each election.

32. The Board will designate an election official at each polling place location to review compliance at the polling place locations where temporary measures are to be implemented on Election Day.

33. The Board and the election official will use the checklist developed pursuant to Paragraph 31 of this Agreement to review compliance on Election Day. The election officials shall document their compliance reviews (both compliant and non-compliant polling place locations) with detailed photographs. The election official shall also certify that the remedial measures were maintained in place throughout Election Day. Copies of these compliance reviews will be provided to the United States within 30 days after each election.

34. If the Board does not properly implement the temporary remedial measures necessary at a particular polling place location on Election Day in two (2) consecutive elections, and, if the polling place location is a Board- or County-owned polling place location and the County or Board does not make permanent architectural remediation, then the Board will no longer use the polling place location and will relocate it to a location that is Accessible on Election Day. If the Board asserts, and the United States agrees, that remediation and relocation to an accessible polling place location are infeasible, then the Board shall comply with Title II's program accessibility requirements, as described in Paragraph 21 of this Agreement.

E. Anti-Retaliation

35. The Board shall not discriminate or retaliate against any individual because that individual has: (a) opposed in good faith any act or practice that they believe to be unlawful under the ADA; or (b) cooperated with the United States' investigation of the Board or the administration of this Agreement.

36. The Board shall not coerce, intimidate, threaten, or interfere with any individual in the good faith exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged any other individual in their exercise or enjoyment of, any right granted or protected by the ADA.

37. Within 60 days of the Effective Date of this Agreement, the Board shall submit to the United States for review and approval a policy on retaliation that complies with the requirements of the ADA. Within five days of the United States' approval, the Board shall disseminate the policy to all Board employees, including permanent, probationary, and temporary employees and contractors (collectively, "employees"). Such dissemination shall occur, at a minimum, via electronic mail, as well as by posting copies of this policy in every employee-only workspace and posting a link to this policy on the Board's employment-related websites and intranet sites available to employees.

38. The Board shall also disseminate this policy, at a minimum via electronic mail, to all new Board employees hired after the initial dissemination described in Paragraph 37, within five days of each new employee's start date.

F. Staff Training

39. Within 120 days of the Effective Date of this Agreement, the Board will provide training from an outside source to all Board employees and any relevant contractors or vendors, including those who conduct surveys or implement temporary measures, on Title II and Title V of the ADA and the requirements of this Agreement as applied to the Board's voting program,

including:

- a. Polling place accessibility requirements under the 2010 ADA Standards;
- b. Temporary remedial measures, including: (a) why such measures are necessary; and (b) how the measures must be implemented (*e.g.*, how to install ramps, how to establish a temporary van accessible parking place);
- c. Interacting with individuals with disabilities and making reasonable modifications necessary to ensure that qualified individuals with disabilities are afforded an equal opportunity to participate in the Board's voting program;
- d. The ADA's retaliation prohibition; and
- e. The Board's revised policies, practices, and procedures, including the policies, practices, and procedures revised pursuant to Paragraphs 14, 21, 23, and 24.

40. The Board may record the initial training to use for employees hired after the initial training. The Board will provide this training on an annual basis for the duration of this Agreement. The Board must obtain the United States' approval of the trainer and the materials to be used in the training.

41. For each session of the training conducted under this Agreement, the Board shall maintain attendance logs reflecting the date of the training, names and titles of attendees, and the attendees' signatures.

III. Enforcement and Miscellaneous Provisions

42. Designation of ADA Coordinator: Within thirty (30) days of the Effective Date of this Agreement and for the term of this Agreement, the Board will designate an employee of the Board, or an employee of the County, to serve as an ADA Coordinator for the Board. The ADA Coordinator will be trained in and knowledgeable about the ADA and the terms of this Agreement, and will investigate any complaint that the Board, election judges, or any other person under the authority or control of the Board receives alleging that the Board's voting program discriminates against persons with disabilities.

43. Publication of Notice to Voters with Disabilities: The County will publish a Notice to Voters with Disabilities on its website and at all polling places for all elections within one hundred twenty (120) days of the Effective Date of this Agreement, and for the term of this Agreement, that notifies voters of the name of, and contact information for, the Board's ADA Coordinator.

44. Delivery of Reporting Materials: All materials sent to the United States pursuant to this Agreement shall be sent by e-mail to undersigned counsel (or to alternate email addresses that the United States may designate during the term of this Agreement). If the materials cannot be e-mailed, then the materials shall be sent to the following address by common carrier other than the U.S. Postal Service: Matthew Faiella, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 4 Constitution Square, 150 M Street NE, Washington, D.C.

20002. The cover letter shall include a subject line referencing the Board and DJ No. 204-10-40.

45. Reviewing Compliance: The United States may review compliance with this Agreement at any time. 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, employees, contractors, training sessions, relevant documents, and other reasonably requested information. At least biannually, the parties will confer to assess the Board's compliance with this Agreement. 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 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.

46. Term: This Agreement shall terminate in three years.

47. Entire Agreement: This Agreement, including Attachment A, constitutes the entire agreement between the United States and the Board 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 Attachment A, shall be enforceable.

48. Severability: If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.

49. Non-Waiver: Failure by the United States to enforce any provisions or deadlines in this Agreement shall not be construed as a waiver of the right of the United States to enforce any deadlines or provisions of this Agreement.

50. Limitation: This Agreement is limited to resolving claims under Title II of the ADA related to the facts specifically set forth in Paragraphs 1 through 4, 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.

51. Modifications: Any modifications of this Agreement, such as extensions of the time limits for performance imposed by the Agreement, may be made only by the mutual written consent of the Parties.

52. Binding Nature of Agreement: This Agreement shall be applicable to and binding upon the Board and the County as well as their officers, agents, employees, and assigns.

53. Preservation of Documents: Throughout the term of this Agreement, the Board and the County shall preserve documents, electronically stored information, or other information related to this Agreement and necessary to determining their compliance with this Agreement.

54. Counterparts: This Agreement may be executed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document.

55. Publicly Available: A copy of this document will be made available to any person by the Board on request.

FOR THE UNITED STATES OF AMERICA:

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Date: June 15, 2021

Date: June 15, 2021

FOR THE NEWTON COUNTY BOARD OF ELECTION COMMISSIONERS:

/s/ Samuel Dye

Sam Dye, Chairman of the Board

Date: June 15, 2021

FOR NEWTON COUNTY, ARKANSAS

/s/ Warren Campbell

Hon. Warren Campbell, County Judge

Date: June 14, 2021