



U.S. Department of Justice

Civil Rights Division

*Disability Rights Section – 4CON
950 Pennsylvania Ave, NW
Washington, DC 20530*

*For hand delivery/ overnight mail:
Disability Rights Section
150 M St., NE
Washington, DC 20002*

June 17, 2024

VIA EMAIL & CERTIFIED MAIL/RETURN RECEIPT

Re: Investigation of Alaska's Voting Services, Programs, and Activities Under the Americans with Disabilities Act, DJ #204-6-54

Carol Beecher, Director of Elections
State of Alaska Division of Elections
P.O. Box 110017
Juneau, AK 99811-0017
Carol.beecher@alaska.gov

Dear Ms. Beecher:

The United States Department of Justice (the Department) has completed its investigation of Alaska's voting services, programs, and activities under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35. The Department opened this investigation in response to complaints alleging that several of the State's voting services, programs, and activities are inaccessible to individuals with disabilities in violation of the ADA. We write to report our findings of fact and conclusions of law.

The ADA prohibits discrimination against people with disabilities in all services, programs, and activities of state governments. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). State governments must provide people with disabilities equal access to the benefits of their services, programs, and activities, including those involving voting. *Id.* They also must ensure that their communications with people with disabilities are as effective as their communications with others, including those offered for voting and through the internet. *See* 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130, 35.160; 28 C.F.R. pt. 35, app. A, at 178 (2010). The State has obligations under the ADA to provide accessible voting facilities by selecting facilities that do not have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination, 28 C.F.R. § 35.130(b)(4), and are accessible to and usable by individuals with disabilities, *id.* § 35.149. The ADA authorizes the Department to investigate

complaints, make findings, and seek a remedy for any violations found, including filing a lawsuit. 42 U.S.C. § 12133; 28 C.F.R. pt. 35, subpt. F.

After review of all the information gathered for this investigation, the Department finds that the State, by reason of disability, excluded qualified individuals with disabilities from participation in and denied them the benefits of Alaska's voting services, programs, or activities, or subjected such individuals to discrimination, in violation of Title II of the ADA. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). The State violated the ADA by:

- (1) affording qualified individuals with disabilities an opportunity to participate in or benefit from the State's voting services, programs, or activities that is not equal to that afforded to nondisabled individuals, in violation of 28 C.F.R. § 35.130(b)(1)(ii);
- (2) providing a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others, in violation of 28 C.F.R. § 35.130(b)(1)(iii);
- (3) limiting qualified 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);
- (4) failing to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others, in violation of 28 C.F.R. § 35.160(a);
- (5) failing to furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity, in violation of 28 C.F.R. § 35.160(b)(1);
- (6) failing to make reasonable modifications in policies, practices, or procedures when the modifications were necessary to avoid discrimination on the basis of disability, in violation of 28 C.F.R. § 35.130(b)(7);
- (7) selecting facilities to be used as polling places and absentee voting sites 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);
- (8) subjecting qualified individuals with disabilities to discrimination because the

facilities used in the State's voting services, programs, or activities are inaccessible to or unusable by individuals with disabilities, in violation of 28 C.F.R. § 35.149; and

- (9) failing to operate the State's voting programs, services, or activities so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities, in the most integrated setting appropriate, in violation of 28 C.F.R. §§ 35.150 and 35.151.

This letter explains the Department's findings of fact and conclusions of law and the minimum steps that the State must take to meet its legal obligations and remedy the identified violations.

I. The Department's Investigation

Individuals complained that the State's voting services, programs, and activities for in-person voting are inaccessible to individuals with disabilities in violation of the ADA. According to the complaints, accessible voting machines that would allow persons with disabilities to vote privately and independently, were either unavailable at voting sites, or if available, they did not work. Additional complaints alleged that voting sites are not physically accessible for voters with mobility and vision disabilities and that a voter with disabilities could not adequately access voting-related information from the State's election website.

An investigation of in-person voting in local, state, and federal elections, including during periods of absentee and early voting, and on Election Day reviewed whether Alaska provided voters with disabilities the opportunity to vote in-person privately and independently using an accessible voting machine and whether the facilities used for voting were physically accessible for persons with disabilities. The review included elections held for the Regional Educational Attendance Area (REAA) and state and federal elections in August and November 2022. The review also included other aspects of Alaska's voting services, programs, and activities, including whether the Division of Elections' website provided online communications and voting services in an accessible manner when necessary to ensure effective communication with individuals with disabilities.

The investigation included onsite reviews of accessible voting machines and the physical accessibility of voting facilities in the August 2022 election; the onsite review of accessible voting machines conducted in the August and November 2022 elections filed in *Toyukak v. Meyer*, Case 3:13-cv-00137-SLG (D. Alaska); a review of the State's elections website: [Alaska Division of Elections - Home](#); and a review of information provided by the State and other information gathered during the investigation.

II. Findings of Fact

A. Alaska Fails to Provide Accessible Ballots for In-Person Voting

1. Regional Educational Attendance Area (REAA) Elections

For REAA elections, the State provides in-person voting for some districts, including absentee in-person voting, and voting on Election Day. The State does not provide an accessible voting machine at any polling place location. Only paper ballots are provided, with offers of assistance from poll workers. Although the State claims to provide a magnifying device at each polling place, it does not. Voters with disabilities faced obstacles voting in the October 2023 REAA election in which only paper ballots were available. One voter with a vision disability, after being told that no magnification device was available, required assistance to vote using a paper ballot. Another voter with disabilities who has difficulty walking, moving, writing, and talking struggled to complete the paperwork but poll workers failed to offer any assistance. Both voters stated that they would have preferred voting on an accessible machine, privately and independently, but no accessible machine was available.

2. Federal and State Elections

During federal and state elections, the State offers absentee in-person and Election Day voting. It provides in-person early voting in Juneau, the Anchorage area (Anchorage, Wasilla, Eagle River, and Palmer), Fairbanks, Nome, Homer, and Soldotna. Although the state claims that it provides accessible machines during early voting and on Election Day, not all early voting and Election Day sites had an accessible machine and at some sites the accessible machine was not operational. The State does not provide accessible voting machines at absentee in-person voting sites.

Voters with disabilities from across Alaska stated that, during elections in 2020 and 2022, the accessible machines were not operational when they arrived at polling places, and, for some, poll workers were unable to make the accessible machines operational. During the August and November 2022 elections, accessible voting machines were inoperable for part of the day at several sites. At many polling places, accessible voting machines were set up but were not operational. In at least one polling place, the machine was unassembled in its shipping box. In some locations, poll workers had no training on operating the accessible voting machines. In other locations, poll workers reported that they received training, but they still could not operate the accessible voting machines or correct errors. One voter who is blind tried to vote on an accessible machine during the August 2022 primary, but the audio was not recognizable, and the printer did not work. The voter had to vote using a paper ballot with assistance from a poll worker. In the November 2022 general election, the voter again found that the accessible machine at his polling place was inoperable. He went to another precinct to use an accessible machine but found the audio difficult to understand and could not get the attention of a poll worker for assistance. The voter is unsure if his ballot was properly counted.

B. The State's Elections Website is Inaccessible

The State's elections website generally seeks to provide resources to help maintain a fair election process and to register people to vote. The State's website contains voter and election information including voter registration forms, information for voters with disabilities, polling place locations, language assistance, and more. It also includes training videos on how to cast a ballot, use the accessible voting machines, and participate in early and absentee voting. Prior to an election, it also contains information and videos from the candidates.

People with disabilities navigate online on the Web in various ways. People who are blind or have low vision may use screen reader programs, which speak the text that appears on a screen. People who are deaf or hard of hearing may use captioning to understand oral information conveyed in a video. People with manual dexterity disabilities that affect their ability to grasp and use a mouse may use voice recognition software to control their computers and other devices with verbal commands or may use a keyboard. Inaccessible Web content denies people with disabilities equal access to information.

The State's election website has barriers to access for people with disabilities, including for those with print, vision, hearing, and manual disabilities. Barriers found on the voter registration pages include: no headings; inoperable buttons; no instructions for progress links; low color contrast; pages limited to landscape; pages that do not scale properly; no language tag; inadequate error alerts; and no instructions explaining different options. Other barriers on the website include language assistance videos without captions and audio descriptions, and graphics without alternative text associated with them. These barriers prevent people with disabilities from using the website. A voter with a vision disability who uses a screen reader to access the internet experienced many challenges when she tried to access the State's election website, and she was unable to successfully access information regarding her polling place.

C. The State's Absentee Ballot In-Person Voting and Polling Place Sites Are Inaccessible

During the August 2022 primary election, the State selected numerous absentee in-person and polling place sites that were not readily accessible to and usable by people with disabilities, and many of the sites had multiple features that did not comply with the applicable ADA Standards.¹ Non-compliant features included a lack of van accessible parking spaces and access

¹ Thirty-five absentee in-person and polling place sites were surveyed during early voting and on Election Day for the August 16, 2022 primary election. Reviewed elements included off-street parking; routes from parking, public transportation stops, or the street; building entrances; routes to the voting area; and the voting area. The surveys were based on the 2010 ADA Standards for Accessible Design (2010 ADA Standards), 28 C.F.R. § 35.104 (The 2010 ADA Standards are defined at 28 C.F.R. § 35.104 as the requirements set out in appendices B and D to 36 C.F.R. part 1191 and the requirements provided in 28 C.F.R. § 35.151.); the 1991

aisles; parking surfaces and exterior routes that are not firm, stable, and slip-resistant; exterior routes containing abrupt level changes or wide gaps, excessive cross slopes, ramps and curb ramps with excessive running slopes, ramps without handrails or without edge protection; entrances that lacked level landings or were too narrow or with high thresholds; and interior routes that had protruding objects. A voter with disabilities that make it difficult for her to walk, move, write, and talk, and her son, a voter with autism and a wheelchair user, arrived at their polling place during the October 2023 REAA election to find a muddy parking lot filled with standing water and a 2-inch step to get on the ramp to the entrance. Mud, standing water, and a 2-inch step are non-compliant features that make it very difficult to maneuver a wheelchair. Once inside, the voter had trouble filling out the paperwork, but was not offered assistance. She and her son voted a paper ballot as no accessible machine was available.

There were also non-compliant elements related to the accessible voting machines at several polling places. Some voting machines were not located on an accessible route or were placed so that they lacked maneuvering clearance for a voter using a wheelchair or other mobility device. Others were placed on tables that lacked adequate knee space or were on a table too tall so that the top controls of the voting machine would be out of reach for many people with disabilities, including many people who use wheelchairs. These barriers may prevent a person using a wheelchair from using the accessible voting machine and instead force them to vote using a paper ballot with assistance. Finally, some voting machines were placed facing the public so that voters using the machine lacked privacy.

Although many of the non-compliant elements could be addressed with temporary measures (*e.g.*, temporary van accessible parking signs, traffic cones placed under protruding objects, doors propped open, and temporary ramps installed to address level changes) to make them compliant with the 2010 ADA Standards, few temporary measures were in use during the election.

III. Conclusions of Law

A. The State Denies People with Disabilities Equal Access to Its Election Services, Programs, and Activities

Under the ADA, individuals with disabilities shall not be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by a public entity, on the basis of disability, 42 U.S.C. § 12132, 28 C.F.R. §

ADA Standards for Accessible Design (1991 ADA Standards), 28 C.F.R., part 36, app. D; and the Department's ADA Checklist for Polling Places, [ADA Checklist for Polling Places | ADA.gov](#). To remedy the non-compliant elements, however, Alaska must use the 2010 ADA Standards. *See* 28 C.F.R. § 35.151(c)(3).

35.130(a). The ADA regulation, set out at 28 C.F.R. part 35, reflects and implements the statute's broad nondiscrimination mandate. 42 U.S.C. § 12134 (directing the Attorney General to promulgate regulations). Under the ADA and its implementing regulation, a public entity, in providing any aid, benefit, or service, may not afford qualified individuals with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others, nor can the entity otherwise limit such individuals in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service. *See* 28 C.F.R. § 35.130(b)(1). Additionally, under the ADA and its implementing regulation, a public entity may not provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. 28 C.F.R. § 35.130(b)(1)(iii). A public entity also must make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7).

The failure to provide accessible ballots for voting in-person at all elections (REAA, state, and federal) denies voters with disabilities an equal opportunity to vote in person. Providing only paper ballots to voters with print disabilities deprives them of an equal opportunity to vote under the ADA because they must request assistance from someone else to mark their ballots. The failure to provide absentee in-person and polling place sites that are readily accessible to and usable by people with disabilities likewise denies voters with disabilities an equal opportunity to vote in person and to enjoy the related benefits that come with it. It denies them the opportunity to fully participate in a civic event; talk with their neighbors, fellow citizens, party officials, and election officials; and get candidate or issue-related information.

The State offers many of its election services, programs, and activities including voter registration and election information, on its website. Because the State's elections website includes many inaccessible features, it limits the ability of people with disabilities to participate fully in, and benefit equally from, the State's election services, programs, and activities available through the Website. Such services, programs, and activities include voter registration information and applications, sample ballots, election results, and information about where, when, and how to vote. Denying equal access to this information not only violates the ADA, but it also interferes with the exercise of the fundamental right to vote.

B. The State Fails to Provide Effective Communication to People with Disabilities

The ADA effective communication regulation obligates public entities to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a)(1). Along with the overarching requirement set out in § 35.160(a)(1), the regulation provides detailed guidance and imposes specific affirmative obligations on public entities' communication obligations. A public entity must furnish appropriate auxiliary aids and services

where necessary to afford qualified individuals with disabilities an equal opportunity to participate in and enjoy the benefits of its services programs, or activities. 28 C.F.R. § 35.160(b)(1). In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. 28 C.F.R. § 35.160(b)(2). To be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the *privacy and independence* of the individual with a disability. *Id.*

Public entities choosing “to provide services through web-based applications . . . or that communicate with their constituents or provide information through the Internet must ensure that individuals with disabilities have equal access to such services or information.” 28 C.F.R. pt. 35, app. A, at 178; see also U.S. Dept. of Justice, Guidance on Web Accessibility and the ADA (Mar. 18, 2022), [Guidance on Web Accessibility and the ADA | ADA.gov](#). People with disabilities, including those who have vision or manual disabilities, may need auxiliary aids and services to access and interact with online content. Examples of auxiliary aids and services that may be necessary to ensure effective communication with people with disabilities include captioning, screen reader and magnification software, and other “accessible electronic and information technology.” 42 U.S.C. § 12103; 28 C.F.R. § 35.104. To access online content, for example, people who are blind or have low vision may need alt text for visual online content, like images.

In fulfilling the effective communication mandate, a public entity need not take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. 28 C.F.R. § 35.164. Further, if compliance would result in a fundamental alteration or an undue burden, the public entity must “take any other action that would not result in such an alteration or burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.” *Id.*

Alaska discriminates on the basis of disability by failing to provide an accessible method for voters with print disabilities (including those with vision and physical disabilities) to vote. Only inaccessible paper ballots are provided in REAA elections and at in-person absentee voting sites in violation of the effective communication regulation. *See* 28 C.F.R. § 35.160. Although accessible voting machines are provided in state and federal elections² at most polling places (during early voting and on Election Day), they often are not operational. The State fails to ensure that accessible voting machines are properly activated and operated by poll workers. Forcing voters with visual disabilities, for example, to depend on sighted assistants to cast a ballot, conflicts with the nondiscrimination principles of the ADA to provide voting services in a way that protects the “privacy and independence” of the individual with a disability. *See* 28

² The Help America Vote Act of 2002 (HAVA), 52 U.S.C. §§ 20901-21145, requires States like Alaska to provide an accessible voting system for voters with disabilities at each polling place in all federal elections, *id.* § 21081(a)(3).

C.F.R. § 35.160(b)(2) (auxiliary aids must be accessible and provided in a way that protects the “privacy and independence” of the individual with a disability).

As discussed above, the State fails to provide needed auxiliary aids and services to allow people with print and hearing disabilities to access and understand election information communicated to the public through the State’s elections website. Voters with print disabilities face barriers when trying to access information or services, including voter registration, on the State’s website. Voters with hearing disabilities face barriers when trying to access language assistance videos without captions and audio descriptions.

Given the State’s exclusive use of paper ballots in REAA elections, the lack of an accessible voting machine at absentee in-person sites in state and federal elections, the lack of operational accessible voting machines at many polling places during state and federal elections, and an inaccessible elections website, the State fails to provide voters with disabilities effective communication in violation of the ADA. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.160(a)(1).

C. The State Fails to Select and Provide Voting Facilities Accessible to People with Disabilities

A public entity’s obligations for selection of sites or facilities in which to provide services, programs, or activities is explicitly addressed in the ADA regulation at 28 C.F.R. § 35.130(b)(4), which provides, in part:

A public entity may not, in determining the site or location of a facility, make selections-

- (i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or
- (ii) 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

Id. The ADA also requires the State to administer its services, programs, and activities in the most integrated setting appropriate to the needs of persons with disabilities. 28 C.F.R. § 35.150. When individuals with disabilities are excluded from facilities used for voting, they are precluded from fully interacting with persons without disabilities throughout the voting experience. *See Id.* pt. 35, app. B (analysis of § 35.130).

Additionally, under the ADA, no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. 28 C.F.R. § 35.149. For existing facilities, a public entity must operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.150(a). A public entity may comply with this

requirement by “such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, . . . alteration of existing facilities and construction of new facilities, . . . or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(b)(1). In determining whether a facility or site includes physical barriers to access for individuals with disabilities, whether under program access or the site selection regulation, we look to the design and construction standards provided in the 1991 and 2010 ADA Standards as applicable, and the requirements provided in 28 C.F.R. § 35.151.

As detailed above and in Attachment A, the State selected and provided polling places that had features and elements that do not comply with applicable ADA Standards. The State has selected polling places and other voting facilities that have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination. Further, the State’s site selection process has the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity—to select facilities that are accessible to or usable by individuals with disabilities. The State’s selection of inaccessible sites does not provide individuals with disabilities the opportunity to vote in the most integrated setting or with the same ease and convenience offered to non-disabled voters.

IV. Remedial Measures

To remedy the deficiencies discussed above and protect the civil rights of qualified individuals with disabilities who seek to participate in Alaska’s voting services, programs, and activities, the State must, at a minimum, implement remedial measures to bring its voting services, programs, and activities into compliance with the ADA. The State must furnish an accessible voting system in all federal, state, and local elections, and at each site that conducts in-person voting, including early voting, absentee in-person, and absentee ballot drop-off sites. The State must also provide its online election information and services in an accessible manner. The State must remedy the physical accessibility deficiencies found at each polling place or voting facility surveyed, which the State could remedy with temporary measures or by relocating its voting services, programs, or activities from the deficient sites to an alternate, accessible facility. In addition, the State must assess the remaining polling places or voting facilities not surveyed by the Department and determine whether temporary measures or relocation to alternative accessible sites is necessary to bring all the State’s polling places or voting facilities into compliance with the ADA.

V. Conclusion

As soon as practicable, but no later than July 1, 2024, we request that you contact Elizabeth Johnson and Dov Lutzker, the trial attorneys handling this investigation, at elizabeth.johnson@usdoj.gov and dov.lutzker@usdoj.gov, as to your position on a voluntary resolution.

We must advise you that, if we cannot reach a resolution, the Attorney General may initiate a lawsuit under the ADA. *See* 42 U.S.C. §§ 12133-34; 42 U.S.C § 2000d-1. We look forward to your response.

Sincerely,

/s/ Rebecca B. Bond

Rebecca B. Bond

cc: S. Lane Tucker
United States Attorney
District of Alaska