

Accessible Polling Places

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NOVEMBER 8, 2016 – a day I will never forget. A Registered Accessibility Specialist (RAS #290), I was an expert witness for Harris County, Texas, which had been sued by the U.S. Department of Justice. I spent 12 hours on Election Day at various polling places, observing accessibility issues for disabled persons at 13 polling places throughout the county. A 2009 survey by the U.S. Census Bureau's American Community Service provided an estimate of disabled persons in the county: 695,418 (17% of the county population in 2009). According to the survey, most of these disabled persons were of voting age.

In its Petition, the U.S. government stated it had *"investigated the accessibility of Harris County's polling places for persons with disabilities and conducted architectural surveys of 86 polling places used by the County during the January 2013 Special Election ..."*¹ On September 29, 2014, the United States issued a Letter of Findings to Harris County pursuant to 28 C.F.R. § 35.172. The United States found that of the 86 polling places surveyed in the January 2013 Special Election, only 29 (including one Early Voting location) were accessible on Election Day to voters with disabilities.² **Only 34% of the locations surveyed were accessible.**

At the time, on Election Day, Harris County voters were required to vote at the polling place in their precinct. Therefore, each of the 750 plus County precincts had its own polling place. That has since changed; now Harris County voters can vote at any polling place on election day.

The United States Department of Justice filed suit against Harris County in 2016, noting that *"Voters with disabilities assigned to inaccessible polling placings are being harmed in that they are being denied the same opportunities as nondisabled voters to vote in person during Early Voting and on Election Day, and to participate equally in the electoral process."*³ Specifically, the United States alleged that *"Defendant [Harris County] excludes qualified individuals with a disability from participation in or denies them the benefits of the County's voting services, programs, or activities, or subjects them to discrimination, on the basis of disability, in violation of Title II of the ADA, 42 U.S.C. § 12132, ..."*⁴ (Emphasis added)

¹ The United States of America, Plaintiff, v. Harris County, Texas, Defendant; Civil No. 4:16-CV-2331 in the United States District Court for the Southern District of Texas, Houston Division, page 2, item 9

² Ibid., page 3, item 10

³ Ibid., page 3, item 13

⁴ Ibid., Cause of Action, page 4

Harris County (2020 population 4,767,540)⁵ is the third most populous county in the United States, trailing only #2 – Cook County, Illinois (Chicago) and #1 – Los Angeles County, California. With over 750 individual precincts, locating and surveying polling places is a difficult task, since each precinct needs its own (accessible) polling place. In 2016 the County used about 35 of its own buildings as polling places, the remaining 700 plus locations were a disparate collection of private and public buildings. Over 4 days in the fall of 2016, I visited 33 polling places with County officials, observing the Department of Justice’s accessibility experts⁶ as they surveyed the various locations for accessibility compliance during early voting and on Election Day.



Subsequently, the United States reached an agreement with Harris County to resolve the lawsuit. In a press release dated March 12, 2019, the Department of Justice announced *“Under the agreement, Harris County will create and implement policies, practices, and procedures to bring its voting program into compliance with the ADA.”* The agreement committed Harris County to create *“an effective system for selecting accessible facilities for polling places; surveying polling place facilities to identify accessibility barriers; procuring and implementing temporary accessibility remedies, such as mats or ramps, during election; and providing effective curbside voting. **Harris County will hire subject matter experts** to provide technical assistance and training to the County’s staff, vendors, and election officials on how to provide accessible polling places, as well as to provide reports to the parties on the County’s progress in complying with the agreement.”* (Emphasis added)

Because polling places are typically a mix of public and private facilities, compliant accessibility elements for Election Day polling places may differ from the permanent element required by

⁵ If Harris County were a state, it would rank 28th in population, ahead of 22 other states

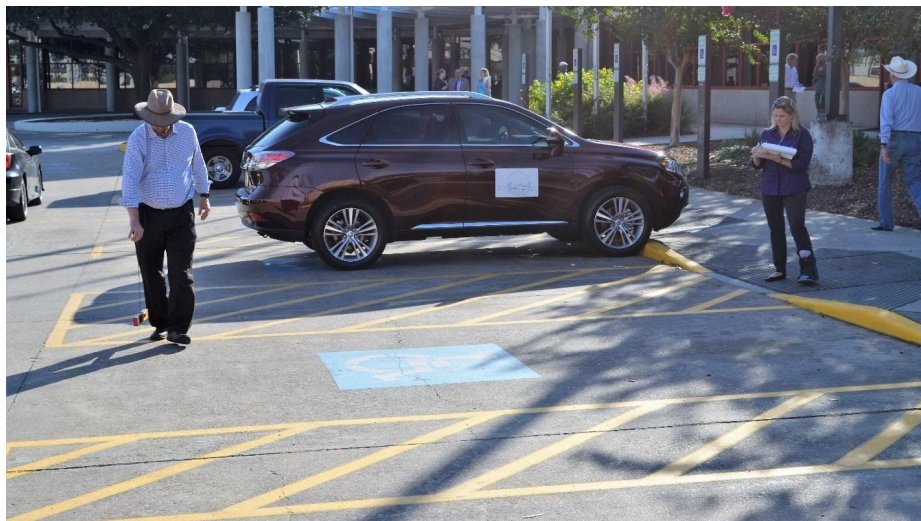
⁶ Several other members of the APA were retained by parties to the lawsuit

the ADA Standards and the Texas Accessibility Standards. Therefore, it's important for Accessibility Professionals to be aware of the "temporary measures" allowed by the Department of Justice.

The U.S. Department of Justice, Civil Rights Division, Disabilities Rights Section published an updated "ADA Checklist for Polling Places" in 2016. <https://www.ada.gov/votingchecklist.pdf> Accessibility professionals, including Registered Accessibility Specialists should be familiar with this document, which includes:

People with disabilities **must** have the opportunity to be full participants in an integrated civic event. The ADA **requires** that public entities ensure that people with disabilities can access and use **all** of their voting facilities. Because a mix of public and private facilities are used as polling places, public entities may ensure Election Day accessibility of a polling place by using low-cost **temporary measures**, such as portable ramps or door stopes, rather than necessarily making permanent modifications to a facility.⁷ If temporary measures will not fix a barrier, and public entities are unable to make a permanent modification to fix the barrier, then the public entity must look for an alternative, accessible polling place. In some circumstances, when a public entity is unable to identify or create an accessible polling place for a particular voting precinct or ward, election administrators may instead use an **alternative method of voting**⁸ at the polling place. (Emphasis added)

Of course, *"The updated Checklist includes provisions from the 2010 ADA Standards for Accessible Design. Any alterations made to a polling place must comply with the 2010 Standards."*



The ADA Checklist 2016 is intended to be used by **persons inexperienced** in evaluating facilities for accessibility, the assumption being that election officials will provide training to their staff

⁷ The document also makes it clear that *"a temporary remedy would [not] be appropriate in a public facility on an everyday basis"*

⁸ For example, Harris County has portable "laptop" sized voting machines that can be taken to disabled voters who are unable to leave their vehicles

on compliance with the ADA. Thus, the ADA Checklist 2016 is a simplified outline of the ADA/TAS standards, covering site arrival, parking, passenger drop-off, accessible routes, entrances/exits, elevators/lifts, and access to the voting area. Fortunately, public restrooms are **not required** for polling places.

Ideally, all polling places would fully comply with current ADA/TAS standards. (Try to imagine that!) In the real world, the number and variety of facilities used for voting make it almost certain that, except for relatively new public buildings, there will be many non-compliant conditions.

In my observations and inspections of over 50 Harris County polling places in 2016 and 2018 the number of non-accessible elements at polling places was typically “a lot.”⁹ In urban areas, many of the non-compliant elements were in the public right-of-way (sidewalks, curb ramps). The right-of-way is beyond the control of Harris County in most locations, making it difficult, if not impossible to correct, even temporarily, access routes from nearby bus stops and light rail stations.



If you have ever performed an inspection of an older facility for compliance with the Texas Accessibility Standards, you know what I am talking about. The 750 plus polling places in Harris County are so varied it is impossible to describe the range of non-compliant elements.

What to do? Unlike ADA/TAS compliance for commercial facilities, public accommodations, and governmental facilities, polling places can be made temporarily accessible when voting takes place. The ADA Checklist 2016 allows for temporary “solutions” that would never be allowed for permanent compliance.

The ADA Checklist 2016 includes basic accessibility standards for accessible routes, parking, doors, ramps, a “Polling Place Accessibility Checklist,” tools needed for accessibility surveys,

⁹ A technical term used by many accessibility professionals

and “Temporary Remedies” for non-accessible elements. Accessibility professionals will be knowledgeable about standards and tools used to survey facilities. The “Temporary Remedies” are unique to polling places, however. Below are the 2 pages in the ADA Checklist 2016 identifying these temporary elements:

Taking Photographs

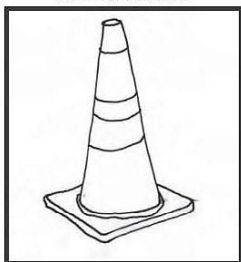
It is always useful to first take a photo that will clearly identify the site, then the elements surveyed. A comprehensive set of photographs makes it easier to understand existing conditions after the survey is completed. It is a good idea to take several photos of the exterior and interior of the polling place. We recommend taking photographs of measurements and non-compliant elements such as steps. It is likely that others may review information about the facility you are surveying.

Temporary Remedies

Many accessibility barriers at polling places can be removed with temporary remedies. Although not designed to be permanent solutions, the following tools can be used to provide remedies on Election Day to improve accessibility. These tools can often be found in local hardware and home improvement stores or online at minimal cost.

Temporary Remedies

Traffic Cones



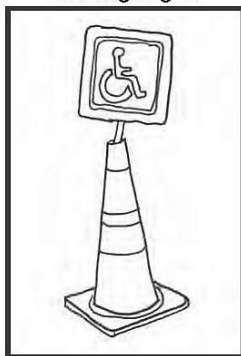
Traffic cones can be used to mark parking spaces, access aisles and passenger loading zones, to hold parking signs, and to warn of protruding objects.

Van Parking Sign



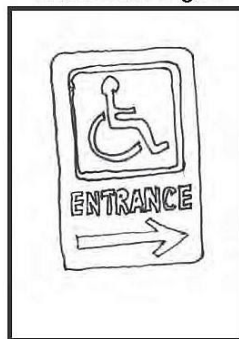
Van accessible parking signs should be used to designate van accessible parking locations.

Parking Signs



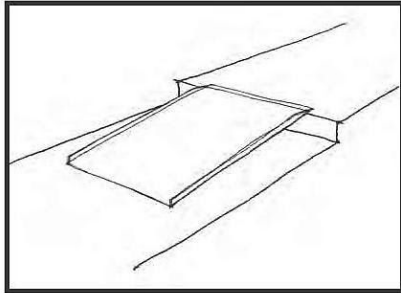
Accessible parking signs should be used to designate accessible parking locations.

Directional Signs



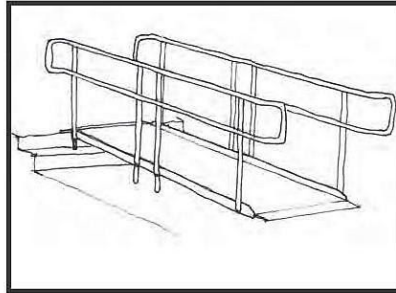
Directional signage should be used to show direction to the accessible route, accessible entrance, and voting area.

**Portable ramp -
step six inches or less**



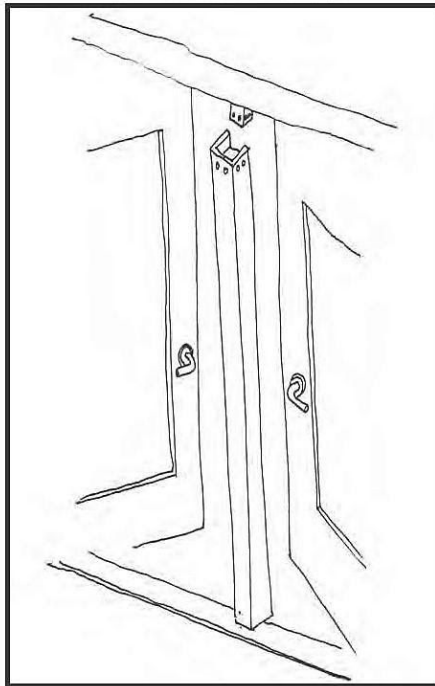
Portable ramps without handrails can only be used for heights six inches or less and can provide access at a curb or low step. Portable ramps also can be placed flat to cover holes or gaps in a sidewalk.

**Portable ramp -
greater than six inch step**



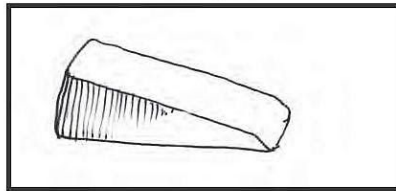
Portable ramps with handrails must be used for heights greater than six inches to provide access over steps. For ramps greater than six inches high, temporary edge protection such as a pipe or piece of wood can be attached with ties or twine to the edges of the ramp. Edge protection must run the entire length of the ramp.

**Remove post (increase clear width
at double leaf doors)**



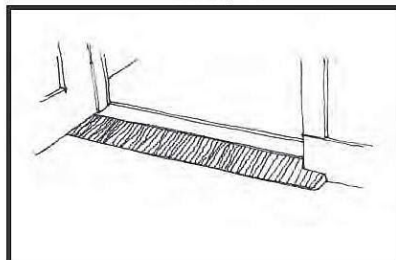
Remove center post between doors if the post is bolted to the door frame to provide a 32 inch clear opening or to allow double doors to be propped open.

Door stop



Door stops can be used to prop open a door if the door handle is inaccessible, or if there is an inadequate maneuvering clearance for a person using a wheelchair or other mobility device to open the door.

Wedges



Wedges can provide access at thresholds and slight changes in level.

These so-called temporary solutions are not necessarily compliant with the ADA/TAS standards but are acceptable for achieving access in polling places on Election Day.

Here is the cover page of the Polling Place Accessibility Checklist:

Part 3 : Polling Place Accessibility Checklist

Ward:_____ Precinct:_____ Staff:_____ Date:_____ Time:_____

Address:_____ Location name:_____

This checklist is designed to provide guidance for determining whether a polling place has basic accessibility features needed by voters with disabilities.

For each question below there are citations to the 2010 ADA Standards for Accessible Design (2010 Standards). Please review the 2010 Standards for all requirements.

There are some differences between the 1991 ADA Standards for Accessible Design (1991 Standards) and the 2010 Standards. Elements and spaces in a building constructed or altered before March 15, 2012, that complied with the 1991 Standards may remain in compliance with the 2010 Standards. See 28 C.F.R. §35.150(b)(2) for more information.

In completing the checklist, provide a measurement for every question with a "no" answer. Where a question asks about more than one element, provide a note in the comments explaining any noncompliant elements.

Status of Polling Place

____ All Elements Compliant

____ Non-Compliant Elements Remediable with Temporary Measures

____ Non-Compliant Elements Not Remediable with Temporary Measures
(Relocate Polling Place)

Here is the first page of the facility survey:

Ward: _____ Precinct: _____ Staff: _____ Date: _____ Time: _____

Address: _____ Location name: _____

| A | Parking | Yes | No | N/A | Comments/ Remedies |
|----|--|-----|----|-----|-----------------------|
| | <p>Only complete this section if off-street parking is provided to voters. If off-street parking is not provided to voters, go to Section B.</p> <p>If more than 25 parking spaces are provided to voters, see the 2010 Standards for the number of accessible parking spaces required. (§208.2)</p> | | | | |
| A1 | Is there at least one designated van accessible space with signage with the International Symbol of Accessibility and designated "van accessible"? (§§208.2, 208.2.4, 502.6) | | | | |
| A2 | <p>Are the designated van accessible spaces at least 96" wide with a 96" wide access aisle, or 132" wide with a 60" wide access aisle? (§§502.2, 502.3)</p> <p>Width of space _____</p> <p>Width of access aisle _____</p> | | | | |
| A3 | For van accessible spaces (particularly in a garage or parking structure), is there vertical clearance of at least 98" for the vehicular route to the parking space, in the parking space and access aisle, and along the vehicular route to the exit? (§502.5) | | | | |
| A4 | Are designated accessible parking spaces and the access aisles serving them on a level surface, with slopes not exceeding 1:48 in all directions? (Note: Curb ramps may not be part of an access aisle since they include slopes greater than 1:48.) (§502.4) | | | | |
| A5 | Are the surfaces of the designated accessible parking spaces and access aisles stable, firm, and slip resistant? (§§502.4, 302.1) | | | | |
| A6 | Are the designated accessible parking spaces located on the shortest accessible route to the accessible entrance? (§208.3.1) | | | | |

Accessibility professionals are uniquely qualified to provide election officials with ADA Title II accessibility compliance at polling places. For example, every one of the 254 Texas counties has at least one voting precinct that must be accessible to disabled persons. Obviously, the counties with the greatest populations will require hundreds of polling places, most of which are not county buildings. There is an opportunity for our profession to support the governmental entities responsible for accessible polling places, whether as employees of the governmental entity or consultants. Our services include training, surveys, consultation, and other accessibility needs.



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