

TO: House Committee on Energy and Digital Infrastructure (HEDI)

FROM: Emily Ray, hello@emilyray.com

DATE: April 13, 2026

RE: Third-Party Platform Governance in State Digital Systems: Accessibility, Consent, and Oversight Risks

Supplemental analysis submitted to support “Technical Clarifications on ADA Title II Digital Accessibility Testimony,” addressing structural accessibility and governance risks in vendor-operated state systems.

Structural Shift: From Digitization to Software-Governed Access

The Vermont Judiciary has implemented an electronic filing system (Odyssey / eFileVT) operated through a third-party software-as-a-service (SaaS) platform. This system now functions as the primary gateway for court filings and, in practice, as a required interface for meaningful participation in judicial proceedings—not only for attorneys, but also for self-represented litigants, process servers, landlords and tenants, and other non-parties.

This is not simply the digitization of records. It reflects a broader structural shift: procedural access to the courts is now mediated through a privately operated software environment governed by vendor-controlled design, system rules, and contractual terms.

This shift carries direct implications for compliance with ADA Title II, which requires state and local governments to ensure equal access to public services, including digital systems. When access to a public court system is conditioned on the use of a third-party platform, accessibility is no longer determined solely by state policy. It is materially shaped by software architecture, interface design, and vendor-controlled constraints.

However, the State’s legal responsibility for accessibility remains unchanged.

As a result, evaluating ADA compliance in this context requires examining not only front-end usability, but the underlying governance model through which access is delivered.

This analysis identifies three interrelated areas of structural risk:

1. Procedural functions are executed through private software infrastructure
 - Court operations depend on vendor-controlled workflows and system logic
2. Access to courts is conditioned on acceptance of private contractual terms
 - Users must accept arbitration clauses, liability limitations, and platform restrictions as a condition of participation
3. ADA Title II obligations remain with the State despite limited control over system design and remediation
 - Accessibility compliance becomes a non-delegable obligation within a vendor-controlled environment

Together, these conditions create a governance model in which constitutional access, procedural rights, and civil rights compliance are mediated through procurement decisions and software systems.

Courts as a Software-Mediated System

The Judiciary's authority to implement electronic filing is grounded in constitutional, statutory, and administrative rulemaking powers. However, the operational reality is that procedural compliance is now enforced through a vendor-hosted system.

In practice:

- Filing requirements are embedded in software workflows
- Submission validity is determined by system rules
- Case processing depends on proprietary infrastructure

This creates a condition in which software design effectively functions as procedural governance.

The significance is not simply that private vendors provide technical support, but that they now shape how users interact with core judicial processes. Workflow design, input constraints, error handling, and navigation structure all influence whether users can successfully participate in court proceedings, and these functions are now substantially controlled by vendors rather than the Judiciary itself.

From an accessibility standpoint, this has direct implications. If system workflows are not compatible with assistive technologies, or if required steps cannot be completed independently by users with disabilities, barriers to access are effectively built into the procedural system itself.

This dynamic also raises accountability considerations. When core public functions—such as filing, notice routing, and case initiation—are operationally executed through private infrastructure, questions emerge regarding oversight, responsibility, and the appropriate application of public obligations within vendor-managed systems.

Courts have recognized in cases such as *Marsh v. Alabama* that private entities performing functions traditionally associated with government may be subject to certain public-facing constraints. While third-party vendors are not state actors in a formal sense, their role in administering access to judicial and other systems introduces similar concerns regarding transparency, accountability, and the protection of individual rights.

In addition, an accountability gap may arise where responsibility for system failures is diffuse. Vendors may rely on contractual limitations of liability, while the State retains ultimate responsibility for system outcomes. In the context of ADA Title II, this gap is particularly significant, as individuals denied access due to system design or functionality may have limited recourse against the vendor, while the State remains legally obligated to ensure accessibility and equal access.

Access to Courts Under Mandatory Vendor Terms

To register for Vermont's eFileVT system, users must accept a third-party vendor's Terms of Use. These terms include provisions such as:

- Mandatory arbitration
- Class action waivers
- Limitations of liability
- Indemnification requirements
- Restrictions on platform responsibility

In a commercial context, such terms are generally understood as part of a voluntary exchange.

In the judicial context, they are not.

Access to the court system is not optional. For many users, particularly self-represented litigants, digital participation in legal proceedings depends on the ability to register for and use the platform. Where no meaningful alternative exists, acceptance of these terms becomes a practical condition of access.

This creates a structural tension. The State provides access to a public system, but that access is mediated through a private contractual framework that may impose limitations not otherwise present in a purely state-operated environment.

From an accessibility perspective, this dynamic can compound existing barriers. If users with disabilities encounter difficulties navigating registration, understanding terms, or completing required steps—and must still agree to those terms to proceed—the result may be both reduced access and constrained recourse.

This raises broader questions regarding how principles such as meaningful access, informed consent, and procedural fairness operate when public services are delivered through mandatory third-party platforms.

ADA Title II as a Non-Delegable Obligation

ADA Title II requires state and local governments to provide equal access to public services, including digital systems. Federal regulations now explicitly extend this obligation to web-based platforms and establish technical standards aligned with WCAG 2.1 Level AA.

These standards require that digital systems be:

- Perceivable
- Operable
- Understandable
- Robust

Critically, compliance with ADA Title II is non-delegable. A state may contract with vendors to develop or operate digital systems, but it cannot transfer its legal responsibility for accessibility.

This creates a structural challenge in vendor-operated systems:

1. Control vs. Responsibility
 - Vendors control system design, interface behavior, and development timelines
 - The State remains legally responsible for ensuring accessibility
2. Contractual Limitations Do Not Override Federal Obligations
 - Vendor terms may limit liability or disclaim warranties
 - These provisions do not alter the State's obligations under federal law
3. Accessibility Risk is Embedded in Procurement Decisions
 - If accessibility is not fully integrated into system design and maintenance, compliance risks are effectively built into procured platforms

In practical terms, if users cannot:

- Navigate workflows using assistive technologies

- Access notices in accessible formats
- Complete required filings independently

then the State may be in violation of ADA Title II, regardless of vendor involvement or contractual language.

Accessibility as a Governance Issue

The use of third-party platforms in state systems reflects broader trends in digital modernization. However, when these platforms become required gateways to public services, they introduce structural considerations that extend beyond technical implementation.

Accessibility under ADA Title II cannot be evaluated solely at the interface level. It must be understood within the full system of governance through which access is delivered—including vendor control, contractual terms, and procurement structures.

Where access to public systems is mediated through private platforms, the State retains responsibility for ensuring that those systems are accessible, equitable, and accountable.

As states continue to expand digital service delivery, these considerations become increasingly central to effective oversight, compliance, and the protection of public access rights.

The following questions are offered to support the Committee's oversight role as ADA Title II implementation moves from policy into operational enforcement.

On governance and responsibility

- How does the Judiciary reconcile vendor-controlled workflows with judicial rulemaking authority?
- Who is ultimately responsible when a filing is technically rejected due to system rules but legally timely under court rules?

On ADA compliance

- What portion of WCAG 2.1 AA compliance is contractually guaranteed by third-party SaaS vendors vs independently validated by the Judiciary?
- Has the Judiciary conducted end-to-end assistive technology testing of the current filing system?
- What is the remediation process when accessibility failures are identified, and what is the timeline for enforcement?

On access to courts and contractual terms

- Why is acceptance of private Terms of Use required to access a public filing system?
- Have arbitration clauses or liability limitations in vendor terms been reviewed for compatibility with public access to courts?
- What equivalent alternatives exist for litigants who refuse or cannot accept those terms?

On operational failure risk

- What is the documented rate of filing rejection due to system validation issues?
- How are missed service notifications tracked and remediated?
- What safeguards exist to detect, halt, and remediate system-level errors, data synchronization failures, or notification gaps that could result in legally actionable harm to individuals, including missed filings, improper case status changes, or enforcement actions based on inaccurate system records?¹

On procurement design

- What contractual leverage does the Judiciary retain over system design changes affecting access and compliance?
- What would be required—financially and operationally—to transition away from the current vendor infrastructure?

¹ In at least one ongoing class action involving a statewide eCourts implementation, plaintiffs allege that system errors and data integrity failures within court-managed electronic filing and case management systems contributed to erroneous arrests and periods of detention. These allegations underscore the importance of robust validation, auditing, and override mechanisms in systems where procedural data may directly affect liberty interests.