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10 **IN THE SUPERIOR COURT**  
11 **OF THE COUNTY OF KERN**

13 **THE PEOPLE OF THE STATE OF CALIFORNIA,**  
**EX REL. BILL LOCKYER, Attorney General of the**  
14 **State of California,**  
15 **Petitioner/Plaintiff,**  
16 **v.**  
17 **COUNTY OF KERN; ANN BARNETT, in her**  
**Official Capacity as County Clerk and Registrar of**  
18 **Voters of the County of Kern, and DOES 1 through**  
**10, inclusive,**  
19 **Respondents/Defendants.**  
20

CASE NO.  
**PETITION FOR WRIT OF**  
**MANDATE (Code Civ. Proc.,**  
**§ 1085) AND COMPLAINT**  
**FOR INJUNCTIVE RELIEF**  
**(42 U.S.C. § 12131 et seq.)**

21  
22 **INTRODUCTION**

23 The right to vote is fundamental in American society. This right inures to the benefit  
24 of all citizens regardless of their visual acuity, walking ability, ability to climb stairs, ascend  
25 steep inclines, or maneuver doors and latches. Voters with disabilities are entitled to participate  
26 in the American tradition of voting at public polling sites on an equal basis with voters who do  
27 not have disabilities and in an integrated setting, along with their friends, neighbors, and  
28 colleagues. The right to vote should not depend on the ability of individuals to surmount



1 promulgated by the California Secretary of State for accessibility by individuals with physical  
2 disabilities.

3 2. Title II of the Americans with Disabilities Act (“ADA”), United States Code, title 42,  
4 section 12131 et seq., which became effective January 26, 1992, and the regulations promulgated  
5 thereunder also require elections officials to ensure that the polling sites they designate be  
6 readily accessible to and usable by individuals with disabilities on election day.

7 **JURISDICTION AND VENUE**

8 3. This Court has jurisdiction over causes of action for mandamus relief pursuant to Code  
9 of Civil Procedure section 1085 alleging the failure to carry out mandatory statutory  
10 responsibilities pursuant to Elections Code 12280. This court also has concurrent jurisdiction  
11 with the federal courts over causes of action alleging violations of the ADA.

12 4. Venue is proper in this court because the unlawful acts complained of in this  
13 Petition/Complaint occurred within the County of Kern.

14 **PARTIES**

15 5. Petitioner Bill Lockyer is the duly elected Attorney General of the State of California.  
16 Under the California Constitution, Article V, section 13, the Attorney General has the duty to see  
17 that the State’s laws are uniformly and adequately enforced for the protection of public rights  
18 and interests. The Attorney General also possesses *parens patriae* standing to commence legal  
19 actions for violations of any federal law concerning the health and welfare of the State’s citizens,  
20 including violations of the ADA.

21 6. The Attorney General brings this action to protect the rights of individuals who  
22 have visual and/or mobility impairments, including those that use a wheelchair, walking aid, and  
23 are substantially limited in one or more of the major life activities, such as walking, or have an  
24 anatomical, physiological, or neurological condition that prevents the exercise of normal bodily  
25 function. These individuals have a qualified disability as that term is defined by applicable law.

26 7. The Attorney General invokes his *parens patriae* standing because Respondents/  
27 Defendants’ failure to ensure that Kern County’s polling sites are accessible affects a large  
28 number of California residents. According to the most recent U.S. Census data, as of 2004, Kern

1 County's population was estimated to be 734,846 and an estimated 22.5% of Kern County's  
2 population age five or older are individuals with disabilities. Absent Attorney General action,  
3 many of these individuals who are eligible to vote will be deterred from exercising or unable to  
4 exercise their fundamental right to vote on an equal basis with individuals without disabilities  
5 and will suffer irreparable harm.

6 8. The Attorney General has an interest in the health and well being of the People of the  
7 State of California. An important component of that well being is the ability of its citizens to  
8 exercise the fundamental right to vote in an integrated setting. Kern County employs  
9 approximately 146 polling sites during statewide elections. A voter with a disability who does  
10 not discover that his or her polling site is inaccessible until election day would be unable to  
11 obtain legal relief before the polls closed and his or her right to vote in that election would be  
12 irretrievably lost or compromised.

13 9. The Attorney General also has a substantial sovereign interest in assuring that all  
14 citizens are free to exercise their fundamental right to vote and to do so in an integrated setting  
15 without discrimination on the basis of their disability. Such discrimination threatens the rights  
16 and privileges of California's citizens, and jeopardizes the integrity of the democratic process.

17 10. Respondent/Defendant County of Kern ("County" and/or "Kern") is a  
18 public entity incorporated under the laws of the State of California under the California  
19 Constitution, Article XI, section 1. The County operating through its County Elections  
20 Department is responsible for conducting elections under the California Elections Code. This  
21 responsibility includes designating polling site locations to enable voters to cast their ballots on  
22 election day. The County is responsible for ensuring, among other access requirements, that  
23 every polling site has accessible parking, exterior routes of travel to the entrance, entrances, and  
24 interior access.

25 11. Respondent/Defendant Ann Barnett ("Barnett") is the County Clerk and Registrar of  
26 Voters for the County of Kern. Barnett is the official responsible for designating polling sites in  
27 Kern County and ensuring that these sites meet state and federal accessibility laws, including the  
28 Secretary of State's accessibility guidelines, on election day.



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**2. Exterior Routes of Travel:**

- Accessible routes including ramps to travel to the entrance
- Adequate path widths to accommodate wheelchairs
- Slip resistant surfaces
- Obstructions
- Ramp adequacy: width, level landings, handrails, and guardrails
- Entrance accessibility
- Adequate signage for disabled entrances

**3. Interior of Polling Site:**

- Adequate doorway clearances
- Adequate doorway thresholds
- Door operation
- Accessible exit doors
- Accessible panic hardware for doors
- Adequate clearance on each side of a doorway
- Accessible hallways and corridors
- Interior obstructions
- Accessible voting booths
- Adequate voting privacy
- Adequate lighting
- Adequate ramps
- Adequate flooring: Stable, slip resistant
- If applicable, adequacy of any elevators
- If applicable, accessibility of the restrooms
- Responsiveness of poll workers to accommodation requests

18. The surveys assessed those violations which were most easily observable and potentially most significant in hampering or precluding access to the polling sites by voters with disabilities. For instance, since January 1992, in order for a polling site to be readily

1 accessible to voters with disabilities in compliance with the ADA, the following accessibility  
2 conditions, among others, set forth in the ADA Accessibility Guidelines (ADAAG) codified at  
3 28 C.F.R. Pt. 36, App A, must be present at polling sites on election day: if off-street parking is  
4 provided at the polling site, at least one disabled parking space with an eight-foot aisle to allow  
5 for the loading and unloading of a passenger with a wheelchair must be provided; there must be  
6 at least one accessible route from the parking area to the entrance that is not interrupted by  
7 unramped steps or abrupt level changes greater than half an inch; ramps must be equipped with  
8 level landings, handrails, edge protections and a non-slip surface and the slope must not exceed  
9 8.3%; doorways must be at least 32-inches wide with the door open at 90 degrees; door  
10 thresholds must be no greater than a half-inch in height; if the main entrance is not accessible,  
11 the accessible alternative entrance must be clearly marked; and, any obstructions that overhang a  
12 pedestrian's way must be sufficiently high so that a person with a visual impairment would not  
13 bump into them. The above-referenced accessibility requirements are also required by the  
14 current Secretary of State's accessibility guidelines that were in effect during the November  
15 2004 election. A number of these requirements were also included in the Secretary of State's  
16 former accessibility guidelines that were in effect during the March 2, 2004 general election.

17 19. During the March 2, 2004 statewide election, Petitioner surveyed 115 of the 146  
18 polling sites in Kern County. The survey results revealed that of the sites surveyed,  
19 approximately 75% had one serious physical barrier in violation of the ADAAG's requirements  
20 governing parking, exterior route of travel and interior of the site that would make it difficult for  
21 voters with disabilities to exercise their right to vote at the sites, with each of those sites  
22 averaging 3.5 ADAAG violations, per site. A number of these violations also violated the  
23 Secretary of State's accessibility guidelines that were in effect during that election. Further, at  
24 least five of the sites surveyed were completely inaccessible to voters with disabilities in  
25 violation of both the ADAAG and the Secretary of State's accessibility guidelines because steps  
26 or other significant physical barriers were present.

27 20. Of the Kern County sites surveyed during the March 2, 2004 election, the survey  
28 results revealed that approximately 45% of the 105 sites that provided on-site parking had at

1 least one violation of the ADAAG that would make voting for individuals with disabilities who  
2 drove to the polling site difficult, if not impossible.

3 21. The survey results further showed that approximately 33% of the Kern County polling  
4 sites surveyed during the March 2, 2004 election had sections of the exterior path of travel to the  
5 entrance of the polling site that failed to comply with the ADAAG. The ADAAG violations  
6 included unramped stairs or abrupt level changes, pathways or ramps that were excessively  
7 steep, ramps without the required handrails, lack of proper signage to direct voters to accessible  
8 paths of travel and overhangs that a person with visual impairments could hit. A number of  
9 these architectural barriers and conditions also violated the Secretary of State's accessibility  
10 guidelines in effect during the March 2, 2004 election.

11 22. Approximately 36% of the Kern County polling sites surveyed during the March 2,  
12 2004 election had at least one violation of the ADAAG at the entrance or along the path of travel  
13 inside the voting site. The violations included doorways or hallways that were insufficiently  
14 wide, door thresholds that were excessively high, doorways that did not provide appropriate  
15 maneuvering space, and/or door hardware that was inaccessible to individuals with disabilities.  
16 A number of these barriers also violated the Secretary of State's accessibility guidelines.

17 23. Approximately 47% percent of the polling sites surveyed in Kern County during the  
18 March 2, 2004 election that had restrooms available to the public had one or more violations of  
19 the ADAAG that would make usage of the restrooms difficult, if not impossible, for voters with  
20 disabilities.

21 24. The results from the Petitioner's survey of Kern County's polling sites during the  
22 March 2004 general election were provided to the County of Kern on or about May, 2004.

23 25. During the November 2, 2004 election, Petitioner surveyed 83 of the approximate  
24 146 polling sites in Kern County. The survey results reflected that a vast majority of the polling  
25 sites had multiple violations of state and federal disability laws that would make it difficult for  
26 voters with disabilities to participate in voting activities at those sites. Specifically, at least one  
27 violation of the Secretary of State's accessibility guidelines and the ADAAG was present at  
28 approximately 94% of all polling sites surveyed, with each of those sites averaging

1 approximately 5.5 violations per site. Further, as was the case during the March 2, 2004  
2 election, there were again several polling sites in Kern County that were totally inaccessible to  
3 persons with disabilities, since steps or other significant barriers were present at the sites that  
4 would completely exclude those persons from voting.

5 26. Examples of violations of the Secretary of State's accessibility guidelines and the  
6 ADAAG at polling sites in Kern County during the November 2, 2004 election demonstrated by  
7 the survey results include the following:

8 a. Of the total of 79 voting sites that had on-site parking spaces for voters,  
9 approximately 44% had at least one violation of the ADAAG and Secretary of State's  
10 accessibility guidelines that would make voting for persons with disabilities who drove to the  
11 site difficult, if not impossible. The violations found included parking spaces or access aisles  
12 that were too narrow, inadequate location proximity to the voting entrance or a lack of  
13 appropriate signs designating the accessible spaces.

14 b. Approximately 35% of Kern County's polling sites surveyed had violations of  
15 the ADAAG and Secretary of State's accessibility guidelines along the exterior route of travel to  
16 the voting area. The barriers observed included unramped steps or abrupt changes in level, paths  
17 of travel that were excessively steep, ramps that were not wide enough, and overhangs that a  
18 person with visual impairments could run into.

19 c. Approximately 41% of the sites surveyed had at least one violation of the  
20 ADAAG and Secretary of State's accessibility guidelines at the entrance or along the path of  
21 travel inside the voting area. The barriers found in these areas of the polling sites included  
22 doorways or hallways that did not meet the width requirements for wheelchairs, door thresholds  
23 that were too high and doorways that did not provide appropriate maneuvering space.

24 d. Of the 20% of the surveyed sites where restrooms were available to the public,  
25 approximately 40% had one or more violations of the ADAAG and Secretary of State's  
26 accessibility guidelines that would make usage of the restrooms difficult, if not impossible for  
27 voters with disabilities.

28 27. At several polling sites, the above-described accessibility violations are so serious that

1 they would totally preclude access or present extreme hazards or difficulties for voters with  
2 disabilities. For instance, the following polling sites were all used in Kern County during the  
3 November 2004 election:

4 a. Among other ADA violations at the North Heights Baptist Church site, the site  
5 had steps that led up to the main and alternative entrances, making it impossible to reach the  
6 voting building with a wheelchair in violation of both the ADAAG and the Secretary of State's  
7 accessibility guidelines;

8 b. At the Villa de Oro Rec. Center site, there was no accessible path of travel for  
9 pedestrians from the sidewalk to the entrance of the voting site, except through the parking lot  
10 which was hazardous and thus not considered accessible. There was no van accessible aisle in  
11 the parking lot and none of the disabled parking spaces were closest to the walkway serving the  
12 voting site. Further, all the exterior pathways from the parking lot were less than the required  
13 48" width in violation of the Secretary of State's accessibility guidelines, and the slope of the  
14 pathway from the parking lot was steeper than 5%. Additionally, a ramp constructed over a high  
15 threshold at an entrance to the voting area was too narrow and had a sharp edge in violation of  
16 the ADA and Secretary of State's accessibility guidelines. These conditions would cause voters  
17 using a wheelchair to have an extremely difficult time maneuvering on the ramp;

18 c. The Victory Chapel site had no spaces in its parking lot marked for persons with  
19 disabilities in violation of the ADAAG and Secretary of State's accessibility guidelines. Further,  
20 the main entrance to the voting area was reachable only by stairs and the ramp at the alternative  
21 entrance was only 43" wide in violation of the Secretary of State's accessibility guidelines.  
22 Additionally, the ramp at the alternative entrance was not equipped with appropriate handrails  
23 and curbs, the side entrance door at the top of the ramp had an inaccessible threshold that was  
24 approximately 1" high (twice the maximum allowed height) and the restrooms were not  
25 accessible for individuals with disabilities in violation of the ADAAG and Secretary of State's  
26 accessibility guidelines

27 d. The Liberty Christian Center site provided a disability parking space near the  
28 voting area with inadequate aisle space in violation of the ADAAG and Secretary of State's

1 accessibility guidelines which would have been impossible for a passenger to use if the driver  
2 had a standard van for wheelchair unloading. Further, the parking space was at the beginning of  
3 a path of travel that would lead a voter to a walkway that had no handrails and had an incline of  
4 approximately 10%, twice the maximum limit, and the restrooms available to the voters were  
5 inaccessible to persons using wheelchairs in violation of the ADAAG and Secretary of  
6 State's accessibility guidelines

7 28. In December 2004, Petitioner provided the County of Kern with its results from its  
8 survey conducted during the November 2, 2004 election.

9 29. Respondents' failure to comply with the Secretary of State's accessibility guidelines  
10 and ADA with respect to its selection of polling sites harms those individuals who may use  
11 wheelchairs, or walk with the aid of crutches and walkers for whom steep slopes, distant parking,  
12 inadequate parking spaces, and stairs constitute complete obstacles to access. Furthermore, even  
13 individuals who are not presently disabled may, through accident or illness, become disabled, or  
14 at least temporarily so, and face the same types of barriers. These individuals may also find  
15 themselves shut out from their polling site because of insurmountable physical barriers or  
16 deterred from accessing these sites because of the County's violations of state and federal  
17 disabled access laws.

18 30. Respondents' failure to ensure that the County's polling places are accessible to voters  
19 with disabilities will cause those individuals irreparable harm.

20 **FIRST CAUSE OF ACTION**

21 **PETITION FOR WRIT OF MANDATE (CODE CIV. PROC. § 1085)**  
22 **FOR FAILURE TO PERFORM MINISTERIAL DUTY UNDER**  
23 **THE CALIFORNIA ELECTIONS CODE**

24 **(AGAINST ALL DEFENDANTS)**

25 31. The People reallege and incorporate by reference paragraphs 1 through 30 of this  
26 Petition/Complaint.

27 32. Since at least 1990, Respondents have had a clear, present and ministerial duty to  
28 ensure that their polling sites comply with the Secretary of State's accessibility guidelines.

33. The Attorney General, as chief law officer of the State of California has a clear,

1 present and beneficial right to require the Respondents to comply with the Secretary of State's  
2 accessibility guidelines and Elections Code section 12280. It is in the public's interest for all  
3 polling sites to comply with the Secretary of State's accessibility guidelines to ensure that  
4 individuals with disabilities are given the opportunity to exercise their right to vote on an equal  
5 basis with voters who do not have disabilities.

6 34. During the March 2 and November 2, 2004 statewide elections, Respondents failed to  
7 ensure that all of its polling sites complied with the Secretary of State's accessibility guidelines  
8 that were in effect during each of the two-referenced elections.

9 35. By failing to ensure that their polling sites complied with the standards set forth in the  
10 Secretary of State's accessibility guidelines during the March 2 and November 2, 2004 statewide  
11 elections, Respondents have violated their ministerial duties under Elections Code section  
12 12280.

13 36. Based on Kern County's pattern of pervasive non-compliance with the ADA and the  
14 Secretary of State's accessibility guidelines in its selection of polling sites, the Attorney General  
15 believes that unless enjoined, Respondents will continue to select polling sites that are not in  
16 conformity with the Secretary of State's accessibility guidelines and Elections Code section  
17 12280. Respondents' violations of Election Code section 12280 and the Secretary of State  
18 accessibility guidelines, unless enjoined, will cause irreparable harm to the People of the State of  
19 California.

20 37. With respect to Respondents violations of the Secretary of State's accessibility  
21 guidelines and Elections Code section 12280, the Attorney General has no plain, speedy and  
22 adequate remedy at law.

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2 **SECOND CAUSE OF ACTION**

3 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**  
4 **(42 U.S.C. §§ 12131-12134)**

5 **(AGAINST ALL RESPONDENTS/DEFENDANTS)**

6 38. The People reallege and incorporate by reference paragraphs 1 through 30 of this  
7 Complaint.

8 39. Respondents are public entities and public officials for purposes of Title II of the  
9 ADA, United States Code, title 42, section 12131.

10 40. Title II of the ADA provides that "[s]ubject to the provisions of this subpart, no  
11 qualified individual with a disability shall, by reason of such disability, be excluded from  
12 participation in or be denied the benefits of the services, programs or activities of a public entity,  
13 or shall be subjected to discrimination by any such entity." 42 U.S.C., § 12132 . This provision  
14 requires the County to ensure that the polling sites it selects provides voters with disabilities with  
15 meaningful access to voting sites on election day. Given the fundamental importance of voting  
16 in our society, meaningful access under the ADA in the context of voting requires that voters  
17 with disabilities have the opportunity to vote at his or her regularly designated polling site on  
18 election day, in an integrated setting, along with friends, neighbors and colleagues.  
19 Meaningful access under the ADA in the context of voting thus requires elections officials to  
20 ensure that voters with disabilities are not confronted with architectural barriers that are  
21 expressly prohibited by ADAAG's requirements governing parking, exterior path of travel, and  
22 the interior of public and private facilities used as polling sites.

23 41. The requirement that elections officials comply with the ADAAG as to its selection of  
24 voting sites is also mandated by the federal regulations promulgated pursuant to the ADA.  
25 Those regulations require that when providing a service, a public entity may not "[a]fford a  
26 qualified individual with a disability an opportunity to participate in or benefit from the aid,  
27 benefit, or service that is not equal to that afforded to others." 28 C.F.R, § 35.130, subd.  
28 (b)(1)(ii). Further, when determining the site or location of a facility, a public entity may not  
make selections:

1 "(i) That have the effect of excluding individuals with disabilities from, denying them  
2 the benefits of, or otherwise subjecting them to discrimination; or  
3 "(ii) That have the purpose or effect of defeating or substantially impairing the  
4 accomplishment of the objectives of the service, program, or activity with respect to  
5 individuals with disabilities." 28 C.F.R., § 35.130 subd. (b)(4).

6 42. During the March 2 and November 2, 2004 statewide elections, the County failed to  
7 provide voters with disabilities with meaningful access to its polling sites on election day in  
8 violation of the ADA and its implementing regulations. The County's voting program at the  
9 polling sites, and/or in its entirety, was not readily accessible to voters with disabilities in  
10 compliance with the ADA during the March 2, and November 2, 2004 statewide elections. By  
11 failing to ensure that its polling sites comply with the ADAAG, respondents have violated the  
12 ADA and the regulations promulgated thereunder, including the United States Code, title 42,  
13 section 12132 and the Code of Federal Regulations, title 28, chapter 1, section 35.130.

14 43. In light of Kern County's pattern and practice of non-compliance with the ADA, the  
15 People believe that Respondents will continue to fail to ensure that the polling sites it selects are  
16 in conformity with the ADAAG and the ADA. Respondents' ongoing violations of the ADA,  
17 unless enjoined, will cause irreparable harm to the People of the State of California.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, the People pray for judgment as follows:

20 1. That a preliminary injunction issue enjoining Respondents County of Kern and Ann  
21 Barnett, in her Official Capacity as County Clerk and Registrar of Voters of the County of Kern,  
22 during the pendency of this litigation from violating Elections Code section 12280 and/or the  
23 Americans with Disabilities Act, United States Code, title 42, sections 12131-12134 and its  
24 implementing regulations when selecting polling sites in Kern County, including, but not limited  
25 to, the violations alleged in this Petition/Complaint;

26 2. That a peremptory writ of mandate issue, under Code of Civil Procedure section 1085,  
27 directed to Respondents County of Kern and Ann Barnett, in her Official Capacity as County  
28 Clerk and Registrar of Voters of the County of Kern and compelling said Respondents to ensure

1 that all of the polling places in the County of Kern for every election comply with the Secretary  
2 of State's accessibility guidelines in effect at the time of the election.

3 3. That all Respondents, their agents, employees, officers, representatives, successors,  
4 partners, assigns, and all persons acting in concert or participating with them, be permanently  
5 enjoined from violating the Americans with Disabilities Act, United States Code, title 42,  
6 sections 12131-12134 and its implementing regulations and failing to comply with the disability  
7 access requirements set forth in the ADAAG when selecting polling sites in the County of Kern,  
8 including, but not limited to, the violations alleged in this Petition/Complaint;

9 4. That a monitor, to be paid for by the County of Kern, be appointed by the Court to  
10 oversee compliance with the peremptory writ of mandate and permanent injunction;

11 5. That the People recover their costs and reasonable attorneys fees pursuant to 42  
12 U.S.C., § 12205; and,

13 6. That the Court grant such other and further relief as it may deem just and proper.

14 Dated: October 12, 2005

15 Respectfully submitted,

16 BILL LOCKYER  
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18 LOUIS VERDUGO, JR.  
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20 MICHAEL F. SWEENEY  
21 Deputy Attorney General

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26 Bill Lockyer, Attorney General of the State of  
27 California  
28