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July 15, 2002

Voting Modernization Board
c/o Elections Division
Secretary of State's Office
1500–11th Street, Fifth Floor
Sacramento, California 95814

Dear Voting Modernization Board:

Protection and Advocacy, Inc. (PAI), works under a federal mandate to protect the rights of Californians with disabilities. PAI is writing to ask the Voting Modernization Board to consider disability issues in its deliberations and final decisions. In addition, PAI asks the Board to require that the funds allocated by it be used in accordance with the law to ensure full and equal access to the state's election systems to disabled voters in all parts of the State.

Casting a vote in elections is held to be a fundamental right of every eligible citizen. *Reynolds v. Sims*, 377 US 533 (1964), *Bush v. Gore* 121 S.Ct. 525, 530, (2000). Yet, for so long, voters with disabilities have faced significant barriers to the full and equal exercise of this franchise. The visually-impaired, particularly, experience a serious curtailment of this important right. They are denied the constitutional guarantee that their votes shall be secret. While other voters have access to a number of methods that afford them privacy during voting, to date, the State has not established a single state-wide system whereby persons with sight disabilities receive this entitlement. As testimony to this Board has indicated, this failure is not due to lack of feasible solutions. There are available technologies that can be used independently by all voters, whether or not they have a disability. In addition, there are ongoing problems for persons with impaired mobility. They continue to encounter difficulty with physical accessibility of polling stations in some parts of the State, especially in the less-populated areas.

These problems continue to exist in California, even though they violate laws prohibiting disability-based discrimination. State-conducted activities, such as elections, are subject to the dictates of the Americans with Disabilities Act (ADA). Under this law, States must ensure that persons with disabilities have an opportunity to participate in, and benefit from, their programs on an equal basis as those without disabilities. To this end, they must implement a range of measures, such as removal of barriers, provision of auxiliary aids and modification of procedures and practices. Despite these legal mandates, the guarantee of privacy in voting remains elusive to thousands of Californians with disabilities. The ADA has already been the basis of lawsuits against other states for their failures, vis-à-vis their disabled electorate. *See, Lightbourn v. Garza* 928 F.Supp 711 and Nat'l *Organization on Disability v. Tartaglione* 2001 WL 1231717 (E.D.Pa. 2001). This trend is expected to accelerate and spread across the country. Pending legislation in Congress will add more momentum to this waive of legal actions. Under its mandate, PAI will be among the many agencies that will take the necessary steps to ensure the enforcement of these laws in California.

As this Board goes about assisting the State in updating its voting processes, PAI urges the allocation of funds under its jurisdiction in a manner and under such conditions that guarantee equality of access to individuals with disabilities. PAI believes that this can be attained only if the Board establishes requirements that the allotted funds be used to make every polling station wheelchair-accessible and for every precinct to have, at a minimum, one voting system that allows independent access to persons with all disabilities.

Sincerely,
PROTECTION & ADVOCACY, INC.

Taymour Ravandi
Staff Attorney