

**State of Colorado
Department of State**

HAVA DIVISION



SECRETARY OF STATE
HAVA COMPLAINT: SOS-HAVA-03-04-0001
November 5, 2004

IN RE:

**REPORT OF INVESTIGATION OF ACCESSIBILITY TO POLLING PLACE
PRECINCT #1350903206—AUGUST 10, 2004 PRIMARY ELECTION**

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IN RE:	}	
	}	SECRETARY OF STATE
REPORT OF INVESTIGATION	}	STATE OF COLORADO
ACCESSIBILITY TO POLLING PLACE	}	
PRECINCT #1350903206	}	SOS-HAVA-03-04-0001
AUGUST 10, 2004 PRIMARY ELECTION	}	

I. Procedural Background

On August 11, 2004, the Office of the Secretary of State (the “Office”) received a written, sworn, signed, and notarized complaint dated August 10, 2004, filed by the Carrie Ann Lucas (“Lucas”) alleging specific violations of the Colorado Uniform Election Code and Title III of the Help America Vote Act of 2002 (42 USC 15512, *et seq.* (2002)) by the Arapahoe County Clerk and Recorder Nancy A. Doty (“Doty”), with regard to ingress and egress for disabled voters to a certain polling place (the “Polling Place”). Exhibit “1.” On August 16, 2004, this Office acknowledged receipt of the complaint by letter to the Arapahoe County Clerk and Recorder and assigned a unique tracking number (SOS-HAVA-03-04-0001) to the complaint evidencing the file date.

This Office acknowledged in the letter that the Lucas complaint met the requirements of § 1-1.5-105, 1 C.R.S. (2003), and the Help America Vote Act of 2002 (“HAVA”), 42 U.S.C. 15512, *et seq.* (2002), that the complaint was timely filed, and that this Office accepted jurisdiction. On August 16, 2004, this Office, by written correspondence, advised Doty of her right to a hearing; however, no hearing was requested. On August 16, 2004, via facsimile, this Office provided notice of the Lucas complaint to Doty.

On September 22, 2004, Doty filed a written inquiry requesting additional information from this Office asking for specification as to the date of election as the date in the complaint specified a date other than the election in question. Exhibit “2.” The correspondence further questions about curb cuts in the sidewalk as being on the Polling Place property or the street adjacent to said property and alleges “the Clerk and Recorder certainly has no control over public rights-of-way or the adjacent public sidewalks.” Additionally, Doty raised questions as to whether Section 1-7-111, CRS, permitting assistance to a disabled voter was included in the grounds for the complaint and urging that the allegations of “violating § 301(a)(3)(A) and (B)” of HAVA were premature since the date of compliance for the cited sections is January 1, 2006.

Thereafter, Lucas filed a letter dated October 7, 2004, which is construed as an amendment to the complaint (the “amendment”). Exhibit “3.” The amendment arose out of the same facts alleged in Lucas’ original complaint and was therefore accepted.

As part of its investigation, this Office inspected the ingress and egress to, as well as, the polling place at precinct number 1350903206, Calvary Apostolic Church at 5900 E. Yale Avenue, Denver, Colorado 80222. In addition, this Office requested and received from Doty written diagrams (with dimensions) of that portion of the church used as the polling place.

In issuing this Final Determination, the testimony of the witnesses has been heard and considered, the credibility has been weighed, the complaints and amendment, the responses thereto and related documents have been considered, this Office applies a preponderance of the evidence standard. *See Karnes v. SCI Colorado Funeral Services, Inc.*, 162 F.3d 1077, 1081 (10th Cir. 1998)(holding that the preponderance of evidence standard generally applies in Title VII cases where the federal or state statute does not explicitly set forth a standard, insofar as it constitutes a conventional rule of civil litigation)(citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 253 (1989); *Community Hospital v. Fail*, 969 P.2d 667, 681 (Colo. 1998)); *see also* § 13-25-127(1), 5 C.R.S. (2003)(stating that notwithstanding any provision of law to the contrary, the degree of proof required in any civil action shall be by a preponderance of the evidence).

II. Jurisdiction

Jurisdiction of the Office of Secretary of State is vested pursuant to § 1-1-107(2)(b), 1 Colorado Revised Statutes (“C.R.S.”)(2003), which specifically authorizes the Secretary of State to review the practices and procedures of the County Clerk and Recorder of Arapahoe County, its employees and other election officials in the conduct of an election. These powers have been vested in the Secretary of State pursuant to Section 11 of Article VII of the State of Colorado Constitution to secure the purity of elections and to guard against the abuses of the elective franchise. *See* § 1-1-107(5), 1 C.R.S. (2003). Further, this Office is empowered to exercise any other powers or perform any other duties that are consistent with Article 1.5 of Title 1, C.R.S. (2003) and that are reasonably necessary for the proper administration, implementation, and enforcement of the Help America Vote Act (“HAVA”) 42 U.S.C. 15512, et seq., (2002) and that will improve the conduct of elections in the state in conformity with HAVA. *See* § 1-1.5-104(1)(f), 1 C.R.S. (2003).

This Office determines that pursuant to § 1-1.5-105(2)(b), 1 C.R.S. (2003) and 42 U.S.C. 15512(a)(2)(B), Lucas has standing to bring a complaint.

III. Issues Raised by the Complainant

A. The complainant Lucas alleges the following:

1. That ingress and egress to the Polling Place is inaccessible to persons with disabilities who use wheelchairs;
2. That the Polling Place itself is structurally inaccessible to permit persons with disabilities who use wheelchairs access to the voting system deployed in the Polling Place;
3. That the voting system deployed in the Polling Place is not designed to permit access to voters with disabilities; and
4. That the voting system deployed in the Polling Place was inaccessible to voters with disabilities to vote independently and secretly.

IV. Findings of Fact

1. Access for purposes of ingress and egress to the Polling Place.

A. Complainant is a disabled voter.

Complainant Lucas is a person with multiple disabilities. Lucas uses a wheelchair and is deaf and legally blind. Because Lucas is legally blind, she is unable to drive a motor vehicle. On August 10, 2004, Lucas left her home at 5601 Yale Avenue in a motorized wheelchair to go to her polling place at precinct number 1350903206 to vote. The polling place at precinct number 1350903206 is situated at the Calvary Apostolic Church at 5900 E. Yale Avenue, Denver, Colorado 80222. Lucas alleges that because there are no curb cuts at southeast corner of the intersection of Yale Avenue and Holly Street, she was required to roll her wheelchair into Yale Avenue and navigate the motorized wheelchair within confines of the street (rather than the sidewalk) to get to the Polling Place. While operating her motorized wheelchair in the street, Lucas states she was nearly struck by a motor vehicle. It should be noted that Lucas does own a van that has 96 inch by 96 inch motorized ramp. However, Lucas states that because the polling place is less than two blocks from her home, she is unable to have someone drive her to the Polling Place because the polling place does not have any van accessible parking spaces.

B. Routes to the Polling Place for Persons of Disability to the Polling Place.

The polling place for precinct number 1350903206 is located at the southeast corner of the intersection of Yale Avenue and Holly Street. This intersection is traffic light controlled; however, there are no curb cuts for persons with disabilities on southeast corner of the intersection. Running parallel to Yale Avenue, there are poured concrete sidewalks that vary between 30 to 36 inches in width. Using Lucas' home as a reference, a disabled voter in a wheelchair could not follow the sidewalk on either the north or south side of Yale Avenue to the intersection of Yale Avenue and Holly Street and "roll" off the concrete curb, cross the Holly Street and "roll" up the concrete curb without risk of bodily injury. (A map is provided as Exhibit "4" indicating the street location and location of curb cuts.)

Should a person with disabilities be able to negotiate the curb cuts of this intersection and follow the sidewalk running on the north side of Yale Avenue, the disabled person would encounter Ivy Street. There are curb cuts at each corner; however, this intersection is not a traffic light controlled intersection. Therefore, a person with disabilities would not be able to cross Yale Avenue under the protection of a controlled intersection with safety.¹ As a result, for purposes of safe passage a person with disabilities would be required to cross Ivy Street and continue easterly on the sidewalk to Jasmine Street. Jasmine Street is a traffic light controlled intersection with curb cuts on all corners, including Yale Avenue. For purposes of personal safety for a person with disabilities, this is the safest and accessible route to cross Yale Avenue and then proceed in a westerly direction down to the Polling Place.²

¹ It should be noted that Yale Avenue experiences a high volume of traffic. This Office observed this volume on the date of inspection.

² The topography of the area indicates that there is an appreciable slope upwards when proceeding in an easterly direction parallel to Yale Avenue. Therefore, there is also a downhill slope when proceeding in a westerly direction

The inspection of the site by this Office reflects that a person without disabilities would be able to freely and with safety traverse the controlled access at the intersection of Yale Avenue and Holly Street.

2. Accessibility With Regard to Polling Place Property.

A. Parking.

Doty uses the vestibule to the Calvary Apostolic Church for the Polling Place. The Polling Place has a semi-circular drive that contains three disabled parking locations. (See Exhibit “5.”) The semi-circular drive is relatively level. And, the sidewalk along the perimeter has a natural slope of 8%; because of this slope, the space reserved on the western side of the drive has a significant curb causing an individual to step down onto the sidewalk. The sidewalk is approximately 96 inches wide immediately adjacent to the parking places. However, these parking spaces are not of sufficient width to accommodate a van with a motorized ramp similar to Lucas. As a result, a van with a 96-inch by 96 inch motorized ramp, if parked with the ramp extended, the entire length of the ramp would intrude and impede sidewalk traffic. In addition, the slope could not be negotiated safely for a person with disabilities. The wheelchair could “tip” or “roll” due to the slope. Therefore, this Office finds that the aforementioned parking places do not fulfill the definition of “disabled parking for vans.”

The Polling Place also has two alternative parking locations immediately east of the Polling Place structure reserved for the disabled. (See Exhibit “5.”) However, neither of these parking locations has adequately located, clearly marked access aisles on either side adjacent to the spaces and neither space can accommodate van parking for the disabled. Exhibit “6” demonstrates the layout of USDOJ ADA approved spaces that provide an adjacent access aisle for handicap accessible spaces. The inspection does indicate that a paved walkway exists immediately adjacent to both of the parking spaces, creating an accessible route to and from the structure. This Office directs Doty to follow the USDOJ ADA guide and create a universal parking space by utilizing an additional space on the east side of the structure. The addition of the third space will allow for the necessary 60-inch access aisle between the two new van accessible spaces measuring at least 132 inches in width.

B. Polling Place.

Access to the Polling Place is made through either of two double hung doors six foot in width. Examination of the door hardware reflects that such hardware is ADA compliant. Voters wishing to vote enter through these doors where they are processed and directed to vote at either of two voting booths in an adjacent hallway. (See Exhibit “7.”) On the day in question, Lucas voted at Booth #2 as noted in said exhibit. The size of the voting booths is 42 inches by 42 inches. The width of the hallway is six foot five inches. Immediately behind the polling booths are located what appear to be louvered, heating, ventilation, and air conditioning units. Along

parallel to Yale Avenue. As a result, a person with disabilities who uses a motorized wheelchair for purposes of transportation to and from the polling place may be able to accommodate the slope, individuals using non-motorized wheelchairs may find the effort more difficult.

the wall opposite of the voting booths are cabinets that are estimated to be 12 inches in width and which appear to traverse nearly the length of the hallway. (The hallway is seventeen feet nine inches in length.) Using simple mathematics, the walkway between the cabinets and the voting booths, as installed, is an estimated nineteen inches. The wheel-to-wheel width of a wheelchair (including motorized) is twenty-five inches. As a result, Lucas was forced to vote at polling booth #2. Lucas asserts that because of the arrangement of the check-in tables and polling booths in the room, “there was no accessible route to get past the machines, or to access the machines.” Lucas was forced to wait a period of time until the poll workers were able to move one of the voting machines to a more accessible location. When moved to a more accessible location, poll workers were still unable to close the booth curtain around the wheelchair so as to provide confidentiality to Lucas. Doty asserts that voting booth #2 was turned and angled towards the main entrance to permit Lucas to vote. This Office believes that such an arrangement is unsuitable. First, the voting equipment should be arranged to promote free flow of voters and to prevent voter frustration. Requiring poll workers to arrange and re-arrange in order to accommodate voters (while voters are forced to wait) does not promote such a free flow. Further in re-arranging the voting booth, the position employed did not promote, but impeded, access to voting booth #1. This Office finds that the arrangement of voting booths in the narrow hallway on Election Day does not meet the accessibility requirements under state or federal law. This Office recommends that Doty find an alternative arrangement of voting booths to ensure accessibility, confidentiality and security to all voters.

3. Voting Equipment.

Finally, Lucas asserts that the ballot on the voting equipment was not visually accessible.³ Lucas states that she can read Braille and can read only 30-point font or more. Because Lucas could not read the ballot, she was required to seek assistance pursuant to Section 1-7-111, CRS (2004).⁴ Pursuant to the Lucas’ request, an election judge read the ballot to her and assisted in pushing the buttons for the candidate choices because the buttons were neither tactile nor large enough to see.

Lucas asserts that such equipment violates Section 301(a)(3)(A) and (B) of the federal Help America Vote Act of 2002. Section 301(a)(3)(A) and (B) provide:

- (3) Accessibility for individuals with disabilities. The voting system shall:
 - (A) be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;

³ Since the mid-1980’s, Arapahoe County has used a full screen direct record electronic voting machine in its elections. As a result, it is not a paper ballot, but an electronic screen upon which the full face of the ballot appears. In order to cast a vote, the voter pushes a button on the screen opposite the name of the candidate, question or issue of choice and the vote is recorded and tabulated electronically.

⁴ CRS Section 1-7-111 (2004) authorizes any registered elector who declares to the election judges that, by reason of blindness or inability to read or write, he or she is unable to prepare the ballot or operate the voting device or electronic voting device without assistance, the elector is entitled, upon making the request, to receive the assistance of any one of the election judges or, at the elector’s option, any eligible elector selected by the disabled eligible elector.

(B) satisfy the requirement of subparagraph (A) through the use of at least 1 direct record electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

However, the effective date of this provision does not come into effect until January 1, 2006 and is to be applied prospectively.⁵ Inasmuch as Section 301(a)(3)(A) and (B) do not affect the election in question, CRS section 1-7-111 (2004) does authorize a workable, legal alternative. This Office finds that assistance was provided pursuant to CRS Section 1-7-111 and that such assistance factually met the requirements of the law.

V. Legal Authority

The right to vote and have that vote counted is deeply seated in the history of the United States. The Supreme Court of the United States has recognized the right to vote as being a fundamental right in a democracy ordained by self-determination. Voting is one of the most fundamental and cherished liberties in our democratic system of government. *Burson v. Freeman*, 504 U.S. 191, 214 (1992)(Justice Kennedy, concurring). The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. *Bush v. Gore*, 531 U.S. 98, 104-105 (2000). Undeniably the Constitution of the United States protects the rights of all qualified citizens to vote, in state as well as federal elections. A consistent line of decisions by this Court [the U.S. Supreme Court] in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, and to have their vote counted. *Reynolds v. Sims, supra*, at 544-555. It is unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in the box. *United States v. Mosley*, 238 U.S. 383, 386 (1915).

Section 1-1-107(2)(b), 1 C.R.S. (2003) authorizes the Secretary of State:

(2)(b) To inspect, with or without the filing of a complaint by any person, and review the practices and procedures of county clerk and recorders, elections commissions, their employees, and other election officials in the conduct of primary, general, and congressional vacancy elections and the registration of electors in this state.

Section 1-1.5-105, 1 C.R.S. (2003) provides in relevant part:

1-1.5-105. Complaint procedure

(1) Subject to the requirements of this section, in accordance with section 402 of

⁵ Each State and jurisdiction is required to comply with the requirements of this section (Section 301) on and after January 1, 2006. Help America Vote Act of 2002, Public Law 107-252, Section 301(d). The state of Colorado has chosen to exercise the option set forth in Section 303(a)(3)(B) by requiring one DRE specially equipped voting device in each polling place and has budgeted money for purchase of such devices prior to January 1, 2006.

HAVA, the secretary may establish by rule a uniform administrative complaint procedure to remedy grievances brought under title III of HAVA.

(2) Any rules promulgated pursuant to subsection (1) of this section shall provide for, but need not be limited to, the following:

- (a) A uniform and nondiscriminatory complaint procedure;
- (b) Authorization for any person who has either been personally aggrieved by or has personally witnessed a violation of Title III of HAVA that has occurred, is occurring, or that is about to occur, as applicable, to file a complaint;
- (c) A description by the complainant in his or her complaint of the alleged violation with particularity and a reference to the section of HAVA alleged to have been violated;
- (d) A requirement that the complaint be filed no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the complaint, whichever is later;
- (e) A requirement that each complaint be in writing and notarized, signed, and sworn by the person filing the complaint;
- (f) Authorization for the secretary to consolidate two or more complaints;
- (g) At the request of the complainant, a hearing on the record;
- (h) Authorization for the secretary to provide an appropriate remedy if the secretary determines that any provision of Title III of HAVA has been violated or to dismiss the complaint and publish the results of his or her review if the secretary determines that no provision of Title III of HAVA has been violated;
- (i) A final determination on the complaint by the secretary prior to the expiration of the ninety-day period that begins on the date the complaint is filed, unless the complainant consents to an extension of time for making such determination;
- (j) Resolution of the complaint within sixty days under an alternative dispute resolution procedure that the secretary shall establish in accordance with the requirements of this section if the secretary fails to satisfy the applicable deadline specified in paragraph (i) of this subsection (2), and the availability of the record and any other materials from any proceedings conducted under the complaint procedures established for use under such alternative dispute resolution procedures;
- (k) Authorization for the secretary to conduct a preliminary review of any complaint submitted to him or her and to dismiss any complaint that he or she

finds is not supported by credible evidence; and

(1) Recovery by the secretary of the costs of the proceeding against any complainant who files a complaint that, in connection with the final determination by the secretary pursuant to paragraph (i) of this subsection (2), is found, on the basis of clear and convincing evidence, to be frivolous, groundless, or vexatious.

(3) Notwithstanding any other provision of law:

(a) No complaint shall be brought pursuant to the procedure created by this section unless the complaint alleges a violation of Title III of HAVA;

(b) Proceedings for the resolution of a complaint brought pursuant to this section shall not be considered an adjudication under Article 4 of Title 24, C.R.S.; and

(c) The procedures created by this section shall constitute the exclusive administrative remedy for a violation of Title III of HAVA.

(4) Any person aggrieved by a final determination by the secretary acting pursuant to paragraph (i) of subsection (2) of this section may appeal the secretary's determination to the district court in and for the City and County of Denver within thirty days of the date of the determination.

VI. Conclusion

Summary of Final Determination

This complaint raises the issue of accessibility to the polling place, accessible polling places, and accessibility requirements for voting systems as the state of Colorado transitions from a decentralized, county-run election system to a centralized, uniform state-reviewed election system mandated by the federal Help America Vote Act. The law requires that every voter have the opportunity to cast an independent, secret ballot. To accomplish this, elections must be held in locations that are physically accessible.

Accessibility to the Polling Place.

From the evidence, this Office finds that the County Clerk and Recorder does not and cannot control the construction of sidewalks, curb cuts, and other assistive devices for persons with the full range of disabilities. These responsibilities fall directly under the purview of the City and County of Denver. However, this does not relieve the County Clerk and Recorder from seeking suitable polling locations that include barrier free access from public roadways and sidewalks to the polling place. This Office directs the County Clerk and Recorder to include accessible routes of ingress and egress to and from the polling location in her determination of accessible voting locations.

Polling Place Accessibility.

1. Parking.

Based upon the physical inspection and supportive diagrams and photographs, the designated disabled parking spaces in the semi-circular drive and the parking lot immediately adjacent to the polling place are not suitable for van parking for the disabled. The sidewalks along the designated parking spaces in the semi-circular drive are on a sloped incline that exceeds the required 1:12 ratio or 2% required for ramps. Furthermore, the width of such parking spaces is not sufficient to accommodate specially equipped vans. Nor is the width of the two parking spaces specially designated for disabled parking sufficient to accommodate specially equipped vans.

The solution is to employ the designated disabled parking spaces for non-specially equipped vans and to create two van accessible parking spaces employing the walkway adjacent thereto to accommodate disabled voters who use such vans as transportation to the polling place.

2. Polling Place *Situs*.

Subject to the aforementioned findings, the evidence reflects that the Polling Place can be rendered accessible with modifications. The evidence reflects that the use of the hallway that was previously used is unsuitable for an accessible voting area. However, the elimination of the use of the hallway does not condemn other possible layouts that balance accessibility, confidentiality, and security. The County Clerk and Recorder is ordered to deploy check-in tables and voting booths in such a fashion that promotes free flow of voters and permits disabled voters to cast their ballots privately.

Voting Systems Accessibility.

This Office finds that the accessibility requirements of section 301(a)(3)(A) and (B), HAVA, for accessible voting systems do not become effective until January 1, 2006. While accessible voting systems are not required until January 1, 2006, it does not obviate the requirement that Doty provide alternative aids to assist voters. For example, polling locations should include magnifying devices to assist those who are visually disabled. In other circumstances, pending the effective date of section 301(a)(3)(A) and (B), disabled voters may seek assistance pursuant to CRS section 1-7-111. This Office finds that Doty did meet the statutory requirements of CRS section 1-7-111 and that assistance was provided consistent with state law.

1. Independent and Confidential Voting by Disabled Electors.

The federal Help America Vote Act of 2002 and companion state statutes anticipate that by January 1, 2006, electors with the full range of disabilities will be able to exercise their right to vote independently and in secrecy. It is a date that all Coloradoans look upon with great anticipation. This Office is cognizant that advocates representing all aspects of the disability community were greatly involved in the drafting and passage of HAVA. In the HAVA

legislation, the authors and proponents both felt that a delayed implementation date would best address the challenges of this mandate.

RESPECTFULLY SUBMITTED this 5th Day of November, 2004.

Drew T. Durham
Director of Colorado HAVA
Office of the Secretary of State

APPROVED:

Date: _____

Donetta Davidson
Colorado Secretary of State

COMPLAINT

**For Alleged Violation of Title III of the
Help America Vote Act of 2002**

(42 U.S.C. §15512)

**Colorado Secretary of State, HAVA Division
1560 Broadway, Suite 200
Denver, Colorado 80202
Phone: 303.894.2200, ext. 6314
Fax: 303.869.4861**

RECEIVED

AUG 11 2004

**HAVA Division
Secretary of State**

Pursuant to section 1-1.5-105, Colorado Revised Statutes, the Secretary of State has sole jurisdiction to adjudicate alleged violations of Title III of the Help America Vote Act of 2002 (HAVA). Any person who believes that a violation of Title III of HAVA has occurred, is occurring, or is about to occur may file a complaint. In order to initiate the complaint process, a sworn, written, signed and notarized complaint must be filed with the Secretary of State no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the complaint, whichever is later. The complaint must allege the violation with particularity, contain a reference to the section of HAVA alleged to have been violated, and the person or entity responsible for the violation.

PERSON BRINGING COMPLAINT

Name Carrie Ann Lucas Home Phone 303-813-0242 Work Phone 303-839-0015 (TTY)
Address 5601 E. Yale Ave. County Arapahoe
City Denver State CO Zip Code 80222

PERSON OR ENTITY AGAINST WHOM COMPLAINT IS BROUGHT (limit one person/entity per form)

Name Arapahoe County Home Phone _____ Work Phone 303-795-4511
Address 5334 S. Prince St County Arapahoe
City Littleton State CO Zip Code 80166

VIOLATION:

If you believe that a violation of Title III of the Help America Vote Act of 2002 has occurred, is occurring or is about to occur, please state the specific acts committed by the person or entity named in this complaint along with a reference to section of HAVA alleged to have been violated: (If you need more space please attach a seperate sheet)

The polling place at precinct number 1350903206, Calvary Apostolic Church at 5900 E. Yale Ave., Denver, CO 80222 is not wheelchair accessible. The voting booths are also not accessible and do not allow a person with a visual impairment or physical disability to vote independently and secretly, violating § 301(a)(3)(A) and (B).

STATEMENT OF FACTS:

State in your own words the detailed facts and circumstances that form the basis of your complaint, including any relevant person(s). In your narrative explanation, please include relevant dates and times and the names and addresses of other persons whom you believe have knowledge of the facts. Also, give any reasons that you feel the alleged violation was committed by the person and/or entity against whom this complaint is brought.

I am a person with a multiple disabilities. I am a power wheelchair user, and I am deaf and legally blind. On July 9, 2004 I went to my polling place at 5900 E. Yale Ave. to vote. There is not a curb cut to get onto the sidewalk, so I was forced to roll in the street to get to my polling place. I was nearly hit by a tan colored SUV. I am unable to drive. I am not able to have someone drive me to my polling place (which is less than 2 blocks from my home) because the polling place does not have any van accessible parking spaces. I must have a van accessible parking space which is a 96" wide space with a 96" wide access aisle that allows my van ramp to deploy and allows me room to exit the van. When I got into the Church, I discovered the polling location for my precinct, 1350903206, was located in a narrow hallway. The table and machines were set up in such a way that there was no accessible route to get past the machines, or to access the machines. After some delay, the polling place workers were able to move one of the voting booths to a more accessible location. First, the booth curtain is unable to close around my chair. The booth was open to the room, and anyone waiting was able to see my vote. Second, the ballot was not visually accessible. I can read braille and I can read large print (30 pt or more at that distance). I was forced to allow a poll worker read the ballot to me. The ballot worker then had to assist me in pushing the buttons for my candidate choices because the buttons were neither tactile or large enough to see. Other voters are able to have a secret ballot and I was unable to have the same due to the poll booth design and the inaccessibility of the text.

STATE OF COLORADO
COUNTY OF Denver

I, the undersigned, under penalty of perjury, do swear or affirm that the information contained in this complaint is true and correct to the best of my knowledge.

[Signature]

Signature of Complainant

Sworn to and subscribed before me this 10 day of AUGUST, 2004.

Signature of Officer Authorized to Administer Oaths or Notary Public

[Signature]

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally known or Produced Identification _____

Type of Identification Produced CO DL



My Commission Expires 03/05/2008

NOTICE: This Complaint is not confidential and, once filed with the Department of State, will be treated as a public record.



Nancy A. Doty

Clerk & Recorder

September 22, 2004

OFFICE OF THE CLERK & RECORDER
5334 South Prince Street
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clerk@co.arapahoe.co.us

Mr. Drew T. Durham
Director of Colorado HAVA
State of Colorado
Civic Center Plaza
1560 Broadway, Suite 200
Denver, CO 80202-5169

Re: Carrie Ann Lucas Administrative Complaint
Tracking Number SOS-HAVA-03-04-0001

Dear Mr. Durham:

Before I am able to provide an initial response to your office in relation to the above noted administrative complaint, I would request that you provide me additional information and/or clarification in order that I may attempt to address the specifics of the complaint.

The first issue relates to a statement in the notarized complaint filed by Ms. Lucas. Ms. Lucas indicates that she went to her polling place for an election on July 9, 2004. Your letter of August 16, 2004, restates the "fact" that Ms. Lucas voted early on July 9, 2004. Of note are the facts that the Arapahoe County Clerk and Recorder did not conduct any election on July 9, 2004; that the Clerk and Recorder did not conduct early voting for the August 10, 2004, Primary Election at any location on July 9, 2004; and that the precinct identified in Ms. Lucas's complaint is not a designated early voting site. The records of this office indicate that Ms. Lucas did vote at the August 10, 2004, Primary Election at Precinct 1350903206 located at the Calvary Apostolic Church at 5900 E. Yale Ave. Does this matter relate to a July 9, 2004, incident or an August 10, 2004, incident?

The next matter that needs clarification is the statement in the Complaint that "There is not a curb cut to get onto the sidewalk so I was forced to roll in the street to get to my polling place." It is not clear from the documents whether the lack of a curb cut refers to the "sidewalk" along East Yale Avenue between her residence and the polling place or an internal "sidewalk" on the Church's property. To the extent that the complaint relates to sidewalks along the public street near her residence, the Clerk and Recorder certainly has no control over public rights-of way or the adjacent public sidewalks. Would you please clarify this matter concerning this sidewalk issue?

MOTOR VEHICLE
Littleton - Main Office
P.O. Box 9006
Littleton, CO 80160-9006
Phone: 303-795-4500
Fax: 303-738-7893

MOTOR VEHICLE
Aurora Branch Office
15561 E. Iliff Ave.
Aurora, CO 80013
Phone: 303-795-4500
Fax: 303-306-0614

MOTOR VEHICLE
Southeast Branch Office
12600 E. Arapahoe Rd.
Building C, Suite B
Centennial, CO 80112
Phone: 303-795-4500
Fax: 303-649-1104

MOTOR VEHICLE
Byers Branch Office
538 N. Hwy 36
Byers, CO 80103
Phone: 303-795-4500
Fax: 1-303-822-5308

RECORDING
5334 S. Prince St.
Littleton, CO 80166-0060
Phone: 303-795-4520
Fax: 303-794-4625

ELECTIONS
5334 S. Prince St.
Littleton, CO 80166-0211
Phone: 303-795-4511
Fax: 303-794-4625

Pursuant to Section 1-7-111, CRS, an election judge is permitted to assist a disabled eligible elector. Is the Secretary of State considering Ms. Lucas's complaint as a violation of Colorado law for providing assistance?

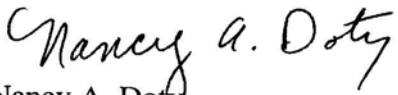
Ms. Lucas's complaint refers to "violating §301(a)(3)(A) and (B)." This federal statute indicates that each state and jurisdiction must comply with this section of the federal law on and after January 1, 2006. Is this complaint premature?

I certainly intend to cooperate with the Secretary of State. In talking to my staff, no one was aware of any previous complaints filed with your office relating to polling places to which the Arapahoe County Clerk and Recorder was required to respond. Because the staff is unaware of the process, I would request that you enumerate the issues which you want this office to address and that you clarify the administrative process that will follow, including any potential penalty that may be imposed.

Per your previous request, I have enclosed the measurement concerning the voting area and the voting machine placement at the Calvary Apostolic Church at 5900 E. Yale Ave.

Thank you for your consideration.

Sincerely,



Nancy A. Doty
Arapahoe County Clerk and Recorder

enc.

RECEIVED

OCT 08 2004
ELECTIONS / LICENSING
SECRETARY OF STATE

Carrie Ann Lucas
5601 E. Yale Ave.
Denver, Colorado 80222

October 7, 2004

Mr. Drew T. Durham
Director, Colorado HAVA
Colorado Department of State
1560 Broadway, Suite 200
Denver, Colorado 80202-5169

Re: SOS-HAVA-03-04-001

Dear Mr. Durham:

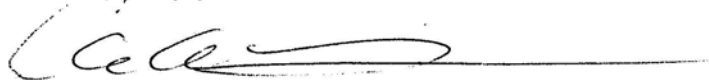
I am writing to respond to the questions you asked in your September 24, 2004 letter. You are correct, I voted on August 10, 2004, not July 9, 2004. I apologize for that mistake. Please amend my complaint to reflect the August 10, 2004 date.

The missing curb cut is on the southeast corner of Holly and Yale.

I believe there are some inaccuracies in the diagram provided to me. I have not had the benefit of a site visit, so I cannot attest to the accuracy of the measurements indicated on the diagram. At the time I voted, the voting booths were located on the south wall of the hallway. The voting booths were close to the larger foyer (where the polling place had been located in the past), with the check-in table (where the election judges were located) to the west of the voting booth. The width of the hallway between the front of the voting booth and the wall was not wide enough for my wheelchair to pass, and far narrower than the 36" accessible route required under the Americans with Disabilities Act Accessibility Standards. That measurement is not on this diagram. I did use the voting booth closest to the large foyer, and the election judges did turn the booth toward the foyer so that I could access it.

Please let me know if you have further questions. I can be reached at the above address or via email at clucas@ccdconline.org.

Very truly yours,



Carrie Ann Lucas

Exhibit 4 Area Street Map

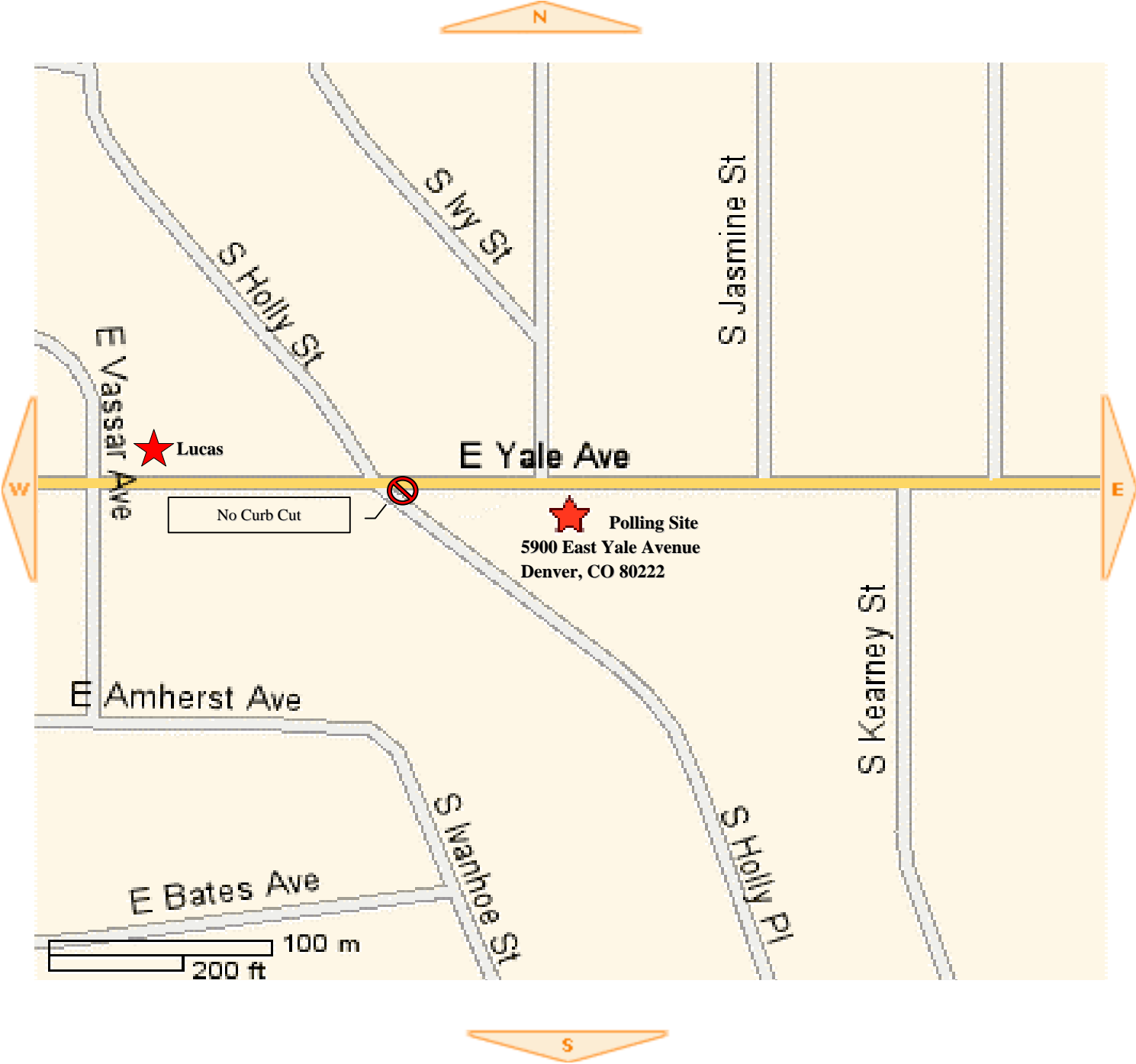


Exhibit 5 Pictures of Polling Place Handicap Parking Spaces

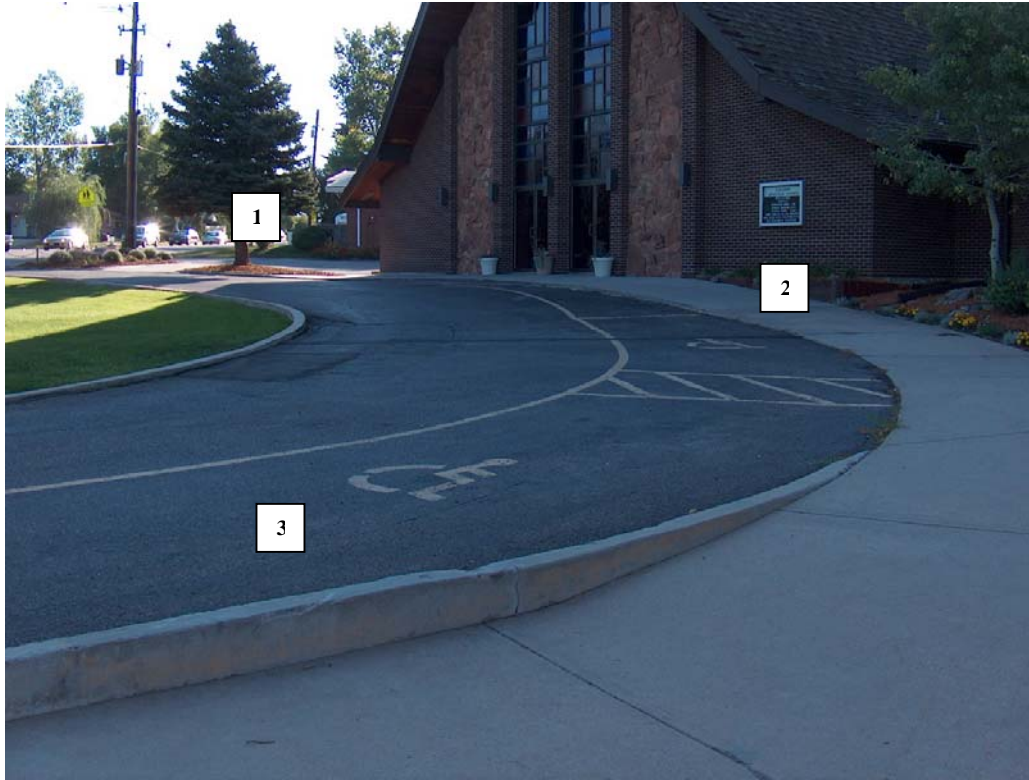


Exhibit 6 ADA Approved Accessible Parking Spaces

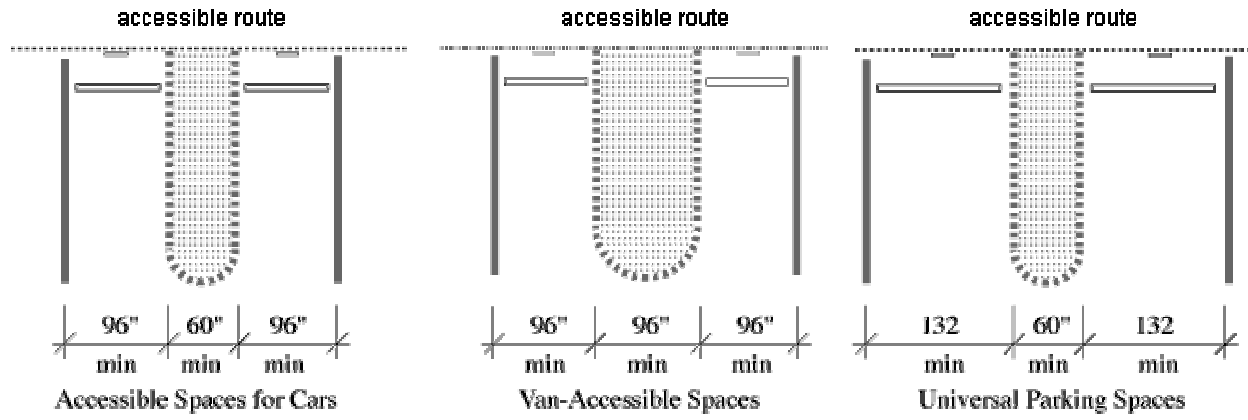


Exhibit 7 Doty Sketch of Vestibule

