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LEGAL PROCESS #2

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10
11 MAIA BARROW a minor, through her)
12 guardian ad litem, STEVE BARROW,)
13 and CALIFORNIA PUBLIC INTEREST)
14 RESEARCH GROUP)

15 Petitioners,)

16 v.)

17 DIRECTOR, DEPARTMENT OF HEALTH)
18 SERVICES OF THE STATE OF CALIFORNIA)

19 Respondent.)

Case No. **379538**

PETITION FOR
WRIT OF MANDATE

(CCP § 1095)
(Health & safety
Code § 24450)

20 INTRODUCTION

21 1. Petitioners, MAIA BARROW, a minor, and CALIFORNIA PUBLIC
22 INTEREST RESEARCH GROUP (CALPIRG), petition this court for
23 extraordinary relief in the form of a Writ of Mandate directed to
24 the Respondent DEPARTMENT OF HEALTH SERVICES (DHS), to carry out
25 and execute Health & Safety Code Sections 24450 to 24455, duly
26 enacted in 1990.

27 2. In September of 1990, Senate Bill 2733 (Rosenthal) was
28 enacted, adding Health & Safety Code §§ 24450-24455 (West 1992).
The statute requires the Department of Health Services, on or
before January 1, 1992, to adopt regulations for the design,

1 installation, inspection, maintenance, supervision, and training of
2 personnel involved in the design, installation, and maintenance, of
3 all playgrounds either operated by public agencies or any entity
4 where the playground is open to the public. Such regulations must
5 meet the standard of care imposed by courts on playground
6 operators, and must be at least as protective as the guidelines in
7 the Handbook for Public Playground Safety produced by the United
8 States Consumer Product Safety Commission.

9 3. The Department of Health Services has failed to adopt
10 playground safety regulations as required by said Health & Safety
11 Code §§ 24450-24455. The correspondence reflecting the
12 department's admission of its inaction is included in Exhibit A
13 attached hereto and incorporated herein by reference. The deadline
14 for final adoption of these regulations was January 1, 1992. No
15 proposed rules have been noticed or are otherwise pending.

16 4. Petitioners request that this court issue a writ of
17 mandate directing the Department of Health Services to propose
18 regulations and that said regulations be noticed in the California
19 Notice Register no later than November 15, 1994, set for hearing no
20 later than January 1, 1995, and adopted no later than February 1,
21 1995. If the Respondent is unable to meet the requested timetable,
22 it should be required to show cause in advance and obtain court
23 permission before implimenting a different timetable.

24 BENEFICIAL INTEREST OF PETITIONERS

25 5. Petitioner Maia Barrow is a seven year old girl who was
26 injured during 1994 while playing on playground equipment in a

1 public facility in Yolo County.¹ This playground would have been
2 affected by the regulations here at issue had they been adopted
3 pursuant to law. The injury suffered by Maia, which has long term
4 implications to her mobility, involved a fall to a hard surface of
5 the type prohibited by the United States Consumer Product Safety
6 Commission standards. This surface would also likely be prohibited
7 under any regulations adopted by DHS. Maia continues to play on
8 playgrounds which would be subject to the required regulations.

9 6. Petitioner CALPIRG is a non-profit, nonpartisan consumer
10 and environmental advocacy group with over 60,000 members in
11 California. CALPIRG recently released a nationwide survey
12 regarding the safety of over 400 public playgrounds and is
13 concerned about DHS' failure to adopt safety regulations.

14 7. Petitioners' intent in bringing this writ proceeding is
15 to enforce a public right and to compel DHS' official performance
16 of its public duty to adopt regulations according to the California
17 Health & Safety Code. Petitioners raise issues of public policy
18 and are interested, as citizens, in DHS' compliance with the
19 relevant statute.

20 8. Thousands of children suffer from serious injuries
21 related to playground equipment each year. In 1991, more than
22 247,000 injuries related to playground equipment occurred in the
23 United States among children under the age of fifteen and required
24 hospital emergency room treatment. The total number of such
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26 ¹ Guardian ad litem Steve Barrow is the custodial parent of
27 Maia Barrow.
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1 injuries has steadily increased. The estimated cost of playground
2 equipment-related injuries to children under the age of fifteen in
3 the United States was \$767 million in 1991.

4 9. There is strong public interest in the safety of children
5 and in regulations designed to make playgrounds reasonably safe.
6 By its own account, DHS has "received numerous calls from
7 playground developers, school districts, local park and recreation
8 districts, and others seeking guidance with respect to the new
9 regulations." (Exhibit B, attached hereto and incorporated herein
10 by reference.) Despite the public interest involved and inquiries
11 from interested parties, DHS has made no attempt to adopt the
12 required regulations and in turn has denied children safe
13 playgrounds as required by law.

14 CAPACITY OF RESPONDENT

15 10. Respondent is the acting director of the Department of
16 Health Services of the State of California and as such is
17 responsible for assuring that playground safety regulations are
18 adopted in accordance with the requirements of the law.

19 11. DHS has a clear, present and ministerial duty to adopt
20 regulations for the design, installation, inspection, maintenance,
21 and supervision of all playgrounds open to the public. Health &
22 Safety Code § 24450 (West 1992). This mandatory duty requires no
23 exercise of judgment or discretion and was to be performed by
24 January 1, 1992.

25 12. Respondent has the ability to adopt such regulations.
26 Despite this ability, Respondent failed to perform its duty to
27 adopt such regulations by the statutory deadline and continues to
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1 fail to perform this duty today.

2 13. Respondent's failure to perform its duty to adopt
3 playground safety regulations has injuriously affected the rights
4 of California's children and continues to place their safety at
5 risk.

6 STATEMENT OF THE CASE

7 Statutory Scheme

8 14. Health & Safety Code §§ 24450 and 24453 require the
9 Department of Health Services, in consultation with the office of
10 the State Architect, the California Parks and Recreation Society,
11 the League of California Cities, the Department of Parks and
12 Recreation, the State Department of Education, and the California
13 Council of the American Society of Landscape Architects, to adopt
14 regulations by January 1, 1992, for the design, installation,
15 inspection, maintenance, supervision, and training of personnel
16 involved in design, installation, and maintenance, of all
17 playgrounds either operated by public agencies or operated by any
18 entity where the playground is open to the public.

19 15. Those regulations must meet the standard of care imposed
20 by courts on playground operators, and must, at a minimum, impose
21 criteria which is at least as protective as the guidelines
22 published by the United States Consumer Products Safety Commission.

23 16. The regulations must include special provisions for
24 playgrounds in day care settings which shall be appropriate for
25 children within the range of ages in day care settings. The
26 regulations must also include special provisions for the needs of
27 the developmentally disabled in state institutions and in community
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1 care facilities, and other public and private institutions that
2 provide residential or day care specifically for the
3 developmentally disabled.

4 Regulatory Scheme

5 17. Pursuant to Health & Safety Code § 24450, the Department
6 of Health Services is required to adopt regulations for playground
7 safety. The adoption of playground safety regulations is an
8 appropriate duty delegated to this department.

9 18. DHS has failed and continues to fail to adopt regulations
10 as required by law. DHS has ignored this duty for almost four
11 years and has given no indication of any future plans to adopt the
12 regulations. The Strategic Plan for Injury Prevention and Control
13 in California is attached in full as Exhibit C attached hereto and
14 incorporated herein by reference. This "plan", created by the
15 State Injury Control Advisory Task Force and staff of DHS, is
16 illustrative of DHS' failure to address the playground safety
17 issue. This report makes no mention of playground safety,
18 equipment-related injuries or DHS' duty to adopt regulations.

19 PERFECTION OF REMEDIES/JURISDICTION OF COURT/VENUE

20 19. Petitioners have raised the issues raised herein in a
21 timely fashion and have fully exhausted administrative remedies.

22 20. This court has concurrent original jurisdiction to
23 entertain proceedings for extraordinary relief pursuant to
24 California Constitution Article VI, § 10.

25 21. Petitioners here file against a government agency and
26 officials in their official capacities within Sacramento County,
27 where such agency resides. This court is the proper court for
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1 trial of this action pursuant to Code of Civil Procedure § 395.

2 ABSENCE OR INADEQUACY OF OTHER REMEDIES

3 22. Petitioners have no plain, speedy, and adequate remedy in
4 the ordinary course of law, other than the relief sought in this
5 petition. The writ is required to mandate a non-discretionary
6 administrative action. This court is the only forum in which
7 Petitioners can make such a request.

8 PRAYER FOR RELIEF

9 WHEREFORE, Petitioners request judgment and the issuance of:

10 (1) a peremptory writ commanding Respondents under Health &
11 Safety Code §§ 24450-24455 to adopt regulations for the design,
12 installation, inspection, maintenance, and supervision of all
13 playgrounds open to the public pursuant to the Administrative
14 Procedure Act as follows: notice such regulations in the California
15 Notice Register no later than November 15, 1994, set for hearing no
16 later than January 1, 1995, and adopt no later than February 1,
17 1995. If the Respondent is unable to meet this timeline under the
18 Administrative Procedure Act, or if there is a delay caused by
19 Office of Administrative Law or other third party, Respondent must
20 move the court to alter those deadlines in advance; or issuance of

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VERIFICATION

I, *Steve Barrow*, am one of the petitioners in the above-entitled proceeding. I have read the foregoing petition and know its contents. The same is true of my own knowledge except as to those matters which are alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 30 day of September, 1994, at *Sacramento*, California.

Steve Barrow