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14 **UNITED STATES DISTRICT COURT**  
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
16 **WESTERN DIVISION**

14 SOUTHWEST VOTER  
15 REGISTRATION EDUCATION  
16 PROJECT, and SOUTHERN  
17 CHRISTIAN LEADERSHIP  
18 CONFERENCE OF GREATER LOS  
19 ANGELES,

20 Plaintiffs,

21 vs.

22 KEVIN SHELLEY, in his official  
23 capacity as California Secretary of  
24 State,

25 Defendant.

) Case No.

) **COMPLAINT FOR INJUNCTIVE**  
) **AND DECLARATORY RELIEF**

) [Fourteenth Amendment to the United  
) States Constitution; 42 U.S.C. § 1983;  
) Section 2 of the Voting Rights Act, 42  
) U.S.C. §1973]

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**JURISDICTION AND VENUE**

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1. This case challenges the threatened violation of the voting rights of thousands of California citizens, arising from the use of obsolete, unreliable, and discredited pre-scored punch card voting equipment in the election scheduled to take place on October 7, 2003 regarding the gubernatorial recall and the vote on Proposition 53 (Legislative Constitutional Amendment that would dedicate part of the state budget every year to State and Local infrastructures, such as parks, open space projects, water and highways) and Proposition 54 (the “Classification of Race, Ethnicity, Color and National Origin” Initiative). If the election proceeds on this date, voters in at least six counties – including Los Angeles County, the most populous electoral jurisdiction in the country – will use the same punch card voting machines challenged before this Court in the *Common Cause, et al. v. Jones* (Case No. 01-03470 SVW (RZx)) litigation, which resulted in a consent decree decertifying these machines effective March 1, 2004. Conducting the election on this date would violate the fundamental right to vote of all citizens in these counties, and would have an especially severe impact on the voting rights of African-American, Latino, and Asian-American voters. Plaintiffs therefore seek injunctive relief postponing the scheduled election until on or after this decertification date, so that all Californians participating in that election may cast votes in the recall election with assurance that their votes will accurately be counted. This case is brought under the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983, and Section 2 of the Voting Rights Act, 42 U.S.C. §1973. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1343. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

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2. Venue is proper pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claims herein occurred in this district, and because Defendant resides in this district.

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**INTRODUCTORY STATEMENT**

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2           3. The right to vote is fundamental to our constitutional democracy. At the  
3 heart of the right to vote is the principle that equal weight must be accorded to each  
4 vote and equal dignity to each voter. A voting system that disproportionately denies  
5 some citizens the right to have their votes counted, or that dilutes the collective  
6 political power of certain groups, is anathema to the one-person, one-vote principle  
7 that lies at the heart of our democracy.

8           4. If the gubernatorial recall election and vote on Proposition 53 and  
9 Proposition 54 proceed on October 7, 2003, as presently scheduled, voters in at least  
10 six California counties will disproportionately be denied their right to have their votes  
11 counted, as the result of the use of antiquated and unreliable pre-scored punch card  
12 (“PPC”) voting machines in those counties. Counties in the State of California use a  
13 variety of voting mechanisms with widely disparate levels of effectiveness in  
14 accurately recording voters' intentions. The result of this hodgepodge of voting  
15 systems is that a disproportionate number of votes in some counties are not counted at  
16 all, and that a grossly disproportionate number of African-American, Latino, and  
17 Asian-American voters in the State do not have their votes counted at all. Moreover,  
18 according to many publicly reported polls of registered voters in California, both of  
19 these elections are projected as close races, the outcome of which could be decided by  
20 narrow margins.

21           5. In 2000 and 2002, the most recent statewide elections, millions of  
22 California registered voters used pre-scored punch card voting machines that result in  
23 disproportionately high rates of spoiled, uncounted, and unmarked ballots compared  
24 to other systems used in the state. In the November 2000 election, 53.4% of voters  
25 statewide used pre-scored punch card machines. Yet ballots cast using pre-scored  
26 punch card machines accounted for 74.8% of all ballots that did not register a vote for  
27 the President of the United States. On information and belief, over 8.4 million people  
28 in counties using pre-scored punch card machines were registered to vote at the time

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1 of the November 2000 general election, over 5.9 million people actually voted, and  
2 there were over 132,000 uncounted votes on these machines. Pre-scored punch card  
3 machines resulted in an average combined overvote (the machine reading more than  
4 one vote and thus disqualifying that vote) and undervote (the failure of the machine  
5 reading the punch card to read any vote) rate of 2.23%. The combined overvote and  
6 undervote, herein referred to as the “error rate,” for these machines is more than  
7 double the error rate of any other type of machine or system used in California. The  
8 error rate in Los Angeles County, which presently uses VotoMatic pre-scored punch  
9 card machines (identical to the voting machines used in several counties in Florida  
10 during the November 2000 election), and where 4,075,037 registered voters reside,  
11 was more than 4½ times the error rate in Riverside County (2.7% error rate, compared  
12 to .59%).

13           6. The use of pre-scored punch card machines has a disproportionate adverse  
14 impact upon people of color, including African-American, Asian-American, and  
15 Latino voters. That is because people of color in California are more likely to live in  
16 counties that continue to use PPC systems and because, within those counties, PPC  
17 systems lead to high rates of undervotes and overvotes for people of color and those  
18 with lower levels of education.

19           7. A gubernatorial recall election has been set for October 7, 2003. At that  
20 election, California citizens will vote on whether to recall Governor Gray Davis and,  
21 if so, on whom will replace him. If the scheduled election proceeds on October 7,  
22 2003, at least six counties -- including Los Angeles County, the state and country’s  
23 most populous electoral jurisdiction -- will use PPC voting machines. This will result  
24 in the disproportionate disenfranchisement of those counties’ voters, and will have an  
25 especially severe impact on people of color.

26           8. In addition to the gubernatorial recall, the October 7, 2003 ballot is  
27 presently scheduled to include Proposition 53, which would ask voters if they want to  
28 expand significantly the funding for State and local physical infrastructure projects,



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1 who reside in Los Angeles County and other counties that will use PPC voting  
2 machines if the election proceeds on October 7, 2003. These voters will vote in the  
3 gubernatorial and Propositions 53 and 54 elections. SVREP's members will be  
4 directly and adversely affected by the use of PPC voting machines, if the election  
5 proceeds as scheduled on October 7, 2003.

6 11. Plaintiff SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE OF  
7 GREATER LOS ANGELES ("SCLC") is a non-profit, non-sectarian, inter-faith,  
8 advocacy organization committed to non-violent action to achieve social, economic,  
9 and political justice. SCLC was established by the Reverend Martin Luther King, Jr.  
10 and other religious leaders in 1957. Since then, it has worked to promote the full  
11 equality of African Americans and other minority groups in all aspects of American  
12 life, including voting, elections, and political participation. SCLC has approximately  
13 20,000 members in the greater Los Angeles area, where VotoMatic pre-scored punch  
14 card machines are used. SCLC's membership includes registered African-American  
15 voters who reside in Los Angeles County and who will vote in the gubernatorial and  
16 Propositions 53 and 54 elections. SCLC's members will be directly and adversely  
17 affected by the use of PPC voting machines, if the election proceeds as scheduled on  
18 October 7, 2003.

19 12. Defendant KEVIN SHELLEY is the Secretary of State of California.  
20 He is sued in his official capacity in connection with actions taken under color of  
21 state law. As Secretary of State, Defendant SHELLEY is the chief election officer of  
22 the State of California and has responsibility for general supervision and  
23 administration of the election laws, including the preparation of ballot materials,  
24 instructing county election officials, distributing information to voters, tabulating  
25 vote totals, and declaring the results of elections. The Secretary of State also has the  
26 responsibility to obtain and maintain uniformity in the application and administration  
27 of the election laws, and to provide technical assistance to local supervisors of  
28 elections on voting systems. Absent relief from this Court, Defendant SHELLEY will

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1 on October 7, 2003 conduct a statewide election that will include both a gubernatorial  
2 recall and Propositions 53 and 54, in violation of Plaintiffs' rights under the  
3 Fourteenth Amendment and Section 2 of the Voting Rights Act.

4 **FACTUAL ALLEGATIONS**

5 **Pre-Scored Punch Card Voting Systems**

6 13. There are four types of voting systems used in California: pre-scored  
7 punch cards, Datavotes, optical scans, and touch screens.

8 14. In counties using pre-scored punch card machines (VotoMatic or  
9 Pollstar machines), a voter entering the polling place is given a paper ballot in the  
10 form of a long piece of relatively heavy stock paper. The ballot card is pre-scored  
11 with columns of small, perforated rectangles, known as chads. Once inside the voting  
12 booth, the voter inserts the card into a slot and opens a booklet that lists the  
13 candidates for a given office. The voter then uses a metal stylus to attempt to punch  
14 out the rectangle on the card lined up next to the candidate or ballot measure of  
15 choice. The voter is required to turn to subsequent pages of the booklet, which list  
16 other candidates or ballot measures, for which the voter must punch out the adjacent  
17 rectangles in order to vote. If the ballot is not placed in the correct location in the  
18 machine, then the candidates' names or ballot measures will not line up properly with  
19 the rectangles that must be removed to register a vote. Because the candidates' names  
20 and ballot measure identifiers do not appear on the ballot itself, voters may not be  
21 able to tell from a visual inspection if their votes were cast as intended. In addition,  
22 pressing the stylus against the pre-scored rectangle sometimes does not cause the  
23 chad to be removed completely, which may result in the vote not being counted.

24 15. Datavote machines use a stapler-like tool that creates a hole in ballots. In  
25 contrast to pre-scored punch card machines like VotoMatic and Pollstar, no pre-  
26 scoring of the ballot is necessary. In order for the tool to be used, the ballot is placed  
27 in a holder which positions the row to be punched under the hole-punching part of the  
28 tool. The tool is mounted on the holder so that it can move up and down the row to

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1 the desired column. The names and parties of the candidates are printed directly on  
2 the Datavote ballot, which allows voters to ascertain after completing their ballot  
3 whether they voted as intended. Because Datavote machines do not rely on pre-  
4 scored punch cards, this system does not have the problem that exists with VotoMatic  
5 and Pollstar machines caused by chads that are not completely dislodged.

6 16. Optical scan systems (also referred to as “Mark Sense” systems), function  
7 in a similar way as standardized tests. The voter is given a ballot that lists the names  
8 of the candidates and any ballot measures. Next to each choice is either a small circle  
9 or an arrow with a gap. The voter must darken the bubble next to the preferred  
10 candidate or measure, or draw a straight line connecting the two parts of the arrow.  
11 The ballot is then placed in a box and, once ballots are collected, counted using an  
12 optical scanner. Some versions of the technology permit the voter to scan the ballot  
13 at the polling place to make certain that he or she voted as intended.

14 17. Touch screen voting machines (also known as direct recording electronic  
15 devices or DREs) resemble ATM machines in appearance. Upon entering the booth,  
16 the voter touches the name of the candidate or the ballot measure on a screen to  
17 register his or her preference. Typically, the voter may review the entire ballot to  
18 check the votes cast. It is not possible to vote twice, or “overvote,” for the same  
19 office or measure. The computer tallies the votes and sends them to a central  
20 location.

21 18. The voting systems used in California differ markedly in their  
22 propensity accurately and reliably to record the intentions of voters. In the November  
23 2000 presidential election, pre-scored punch card machines resulted in average  
24 combined overvotes and undervotes of 2.23% or 223 overvotes and undervotes per  
25 10,000 votes. This is at least double the average error rate of any other type of voting  
26 system used in California and nearly 3¾ times the error rate of the touch-screen  
27 voting machines used in Riverside County (2.23% error rate, compared to .59%). The  
28 error rate in Los Angeles County, which uses VotoMatic pre-scored punch card

1 machines and where 4,075,037 registered voters reside, was more than 4½ times the  
2 error rate in Riverside County (2.7% error rate, compared to .59%). The overall error  
3 rate for the optical scan voting system in the last election was .85%. The error rate  
4 for pre-scored punch card machines was therefore more than 2½ times greater than  
5 that of the optical scan voting systems.

6 19. The following tables identify the counties using pre-scored punch card  
7 machines and the number of registered voters in each county in the November 2000  
8 election:

9 **PRE-SCORED PUNCH CARD COUNTIES**

10 VotoMatic

11 <b>County</b>	<b>Registered Voters</b>
12 Alameda	669,918
13 Los Angeles	4,075,037
14 Mendocino	49,145
15 San Diego	1,411,672
16 Shasta	86,924
16 Solano	194,415
17 <b>Total</b>	<b>6,487,111</b>

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19  
20  
21 Pollstar

22 <b>County</b>	<b>Registered Voters</b>
23 Sacramento	611,014
24 San Bernardino	691,548
24 Santa Clara	789,332
25 <b>Total</b>	<b>2,091,894</b>

26 20. The VotoMatic pre-scored punch card machines used in the six listed  
27 counties in California are identical to machines used in several counties in Florida  
28 during the November 2000 election.

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1           21. Among the approximately 2.7 million people in the County of Los  
2 Angeles who voted or attempted to vote in the November 2000 election, there were  
3 over 72,000 overvotes and undervotes. The number of overvotes and undervotes in  
4 the County of Los Angeles alone is greater than the number of registered voters in 27  
5 California counties.

6           22. The use of pre-scored punch card machines in some counties results in  
7 the systematic failure to count disproportionately large numbers of votes, in  
8 comparison with counties using other machines. The continued use of this equipment  
9 in some counties would deny equal treatment to voters in those counties and equal  
10 dignity to their votes. The use of different machines with widely disparate error rates  
11 dilutes the collective votes of people in counties that use pre-scored punch card  
12 machines. No compelling, substantial, or legitimate state interest is served by the  
13 differential treatment accorded to voters in those counties as the result of the  
14 continued approval of these machines by Defendant and his failure to establish  
15 standards that would ensure equal treatment to all voters statewide. The use of pre-  
16 scored punch card machines, and the resulting denial of the vote to some individuals,  
17 bears no relationship to any legitimate prerequisite for granting or denying the right to  
18 vote.

19           23. In the State of California, a significantly higher percentage of African-  
20 American, Asian-American, and Latino voters than white voters reside in counties  
21 that use pre-scored punch card machines. Overall, people of color (including African  
22 Americans, Asian Americans, Latinos, and American Indians) constitute 45.5% of the  
23 population of counties using pre-scored punch card equipment, but only 30.9% of the  
24 population of counties using other, more reliable types of equipment. According to  
25 one recent study, based on data from the 1996 election, only 58.3% of white voters in  
26 California resided in counties using pre-scored punch card machines, compared to  
27 80.8% of African-American voters and 66.6% of Latino voters.

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1           24. The use of pre-scored punch card machines disproportionately impairs the  
2 right of African-American, Asian-American, and Latino voters to have their votes  
3 counted. Pre-scored punch card machines result in disproportionately high error rates  
4 for African-American, Asian-American, and Latino voters, as compared to white  
5 voters. The use of pre-scored punch card equipment discriminates against and causes  
6 the disproportionate denial of the voting rights of African-American, Asian-  
7 American, and Latino voters.

8 The Common Cause v. Jones Litigation and Consent Decree

9           In April 2001, Plaintiffs SCLC and SVREP and other individuals and groups  
10 brought the *Common Cause, et. al, v. Jones*, case. This federal voting rights case  
11 challenging the use in nine California counties of the same outdated and defective  
12 punch-card voting technologies that gave rise to the Florida election debacle and the  
13 United States Supreme Court’s opinion in *Bush v. Gore*, 531 U.S. 98 (2000).

14           The plaintiffs filed this suit in the United States District Court for the Central  
15 District of California on April 17, 2001, alleging violations of their right to vote  
16 under the Fourteenth Amendment resulting from the use of pre-scored punch card  
17 (“PPC”) voting systems. Plaintiffs in *Common Cause v. Jones* alleged the same  
18 disparities described above. Specifically, plaintiffs asserted that citizens residing in  
19 counties that use pre-scored punch cards were substantially less likely than citizens in  
20 other counties to have their votes counted. On April 24, 2001, Plaintiffs amended  
21 their complaint to add a claim under Section 2 of the Voting Rights Act. In support  
22 of this claim, the First Amended Complaint in *Common Cause v. Jones* alleged that  
23 African-American, Asian-American, and Latino citizens were disproportionately  
24 denied the right to have their votes counted because they were more likely to reside in  
25 the counties that use PPC voting systems.

26           On August 24, 2001, the district court (Judge Stephen V. Wilson) denied  
27 defendant Secretary of State Bill Jones’ request for judgment on the pleadings,  
28 concluding that the First Amended Complaint in *Common Cause v. Jones* stated

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1 claims under both the Fourteenth Amendment and Section 2 of the Voting Rights Act.  
2 Common Cause v Jones, 213 F. Supp. 2d 1106 (C.D. Cal. 2001).

3       On September 18, 2001, after the denial of his motion for judgment on the  
4 pleadings, Bill Jones, at that time California's Secretary of State, announced that he  
5 would decertify PPC voting systems for use in California pursuant to Cal. Govt. Code  
6 § 12172.5 and Cal. Elections Code § 19222. The decertification reflected the  
7 Secretary of State's determination that those systems were "defective, obsolete, or  
8 otherwise unacceptable," and that California's "[v]oters are entitled to have the  
9 infrastructure of democracy upgraded." The Secretary of State initially made  
10 decertification effective no later than January 1, 2006, and later advanced the  
11 decertification date to July 1, 2005.

12       Pursuant to a stipulation entered into by plaintiffs and defendants in *Common*  
13 *Cause v. Jones*, the district court on February 19, 2002 determined that it was feasible  
14 for the nine counties to convert to "other certified voting equipment" by March 2004.  
15 The district court thereafter denied the Secretary of State's Motion for  
16 Reconsideration on April 26, 2002, finding it "self-evident that *replacing voting*  
17 *systems that deprive individuals of the right to vote* is clearly in the public interest."  
18 Common Cause v Jones, 213 F. Supp. 2d 1110, 1113 (C.D. Cal. 2001) (emphasis  
19 added).

20       On May 6, 2002, pursuant to a consent decree entered by the district court in  
21 *Common Cause v. Jones*, the effective date of the decertification of PPC voting  
22 systems in California was advanced to March 1, 2004. The Court approved a consent  
23 decree on May 9, 2002, and awarded plaintiffs attorneys' fees on November 7, 2002,  
24 emphasizing that "statistical evidence advanced in [the] case suggested that the  
25 challenged punch card machines suffered from an error rate nearly double that of  
26 other polling technologies, and risked continuing effectively to disenfranchise  
27 thousands of voters as a result." The Secretary of State did not appeal the order  
28 requiring decertification of PPC machines effective March 1, 2004 or the order

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1 granting attorney's fees.

2 As a result of the *Common Cause v. Jones* consent decree, all PPC machines in  
3 the State of California must be replaced by March 1, 2004, in time for the next  
4 regularly scheduled statewide elections. This order will ensure that all California  
5 voters, including those voters who were previously compelled to use obsolete and  
6 unreliable PPC equipment, will be able to cast votes with assurance that their votes  
7 will actually be counted.

8 The Scheduled Recall Election

9 On July 23, 2003, Defendant SHELLEY certified the recall of Governor Gray  
10 Davis for the ballot, after determining that proponents had submitted more than 110%  
11 of the requisite signatures.

12 On July 24, 2003, Lt. Governor Cruz Bustamante set October 7, 2003 as the  
13 date for the recall election. The recall ballot is to include two parts, the first of which  
14 will ask voters to indicate whether the Governor shall be recalled, and the second of  
15 which will ask voters to indicate their choice for his replacement.

16 If the recall proceeds on October 7, 2003, then Proposition 54, the so-called  
17 "Racial Privacy Initiative," and Proposition 53, will also appear on the ballot.  
18 Proposition 54, sponsored by Mr. Ward Connerly, an outspoken opponent of race-  
19 conscious policies, would prohibit all state and local governmental entities in  
20 California from inquiring into or collecting information regarding race or ethnicity. If  
21 the recall election does not take place on October 7, 2003, then the vote on  
22 Proposition 54 will instead take place at the time of the next regularly scheduled  
23 statewide election, currently set for March 2, 2004. As the name suggests, the Racial  
24 Privacy Initiative has racial overtones, and, if enacted, will have an especially  
25 pronounced impact on people of color within the State of California.

26 25. If the recall election and the Propositions 53 and 54 vote take place on  
27 October 7, 2003, at least six counties (Los Angeles, San Diego, Sacramento, Santa  
28 Clara, Solano, and Mendocino) within the State of California are certain to use pre-

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1 scored punch card machines that are significantly less reliable than other machines, in  
2 terms of their ability accurately to record votes. A seventh county (San Bernardino)  
3 has not yet made a definitive determination as to whether it will use the PPC system  
4 in that election, or will attempt to use a more reliable voting system. Two counties  
5 (Alameda and Shasta) will have converted to non-PPC systems by October 7, 2003.

6 26. The use of pre-scored punch card machines in at least six counties during  
7 the scheduled election on October 7, 2003 would accord disparate and arbitrary  
8 treatment to people residing in those counties.

9 27. The use of pre-scored punch card machines in at least six counties during  
10 the scheduled election on October 7, 2003 would have a disparate and adverse impact  
11 upon African-American, Asian-American, and Latino voters.

12 28. The use of pre-scored punch card equipment, combined with the lack of  
13 adequate standards and procedures for manual recounts, would cause the denial the  
14 voting rights of African-American, Asian-American, and Latino voters, and the  
15 dilution of their voting strength. Under the totality of the circumstances, this system  
16 would give African-American, Asian-American, and Latino voters less opportunity to  
17 participate in the October 7, 2003 election, including participation in the recall,  
18 selection of a candidate of their choice in the event the recall succeeds, and  
19 participation in the vote regarding Propositions 53 and 54 . Diminution of the ability  
20 of voters of color to participate on equal terms with other voters would be especially  
21 unfortunate and unfair, given the enormous significance of the “Racial Privacy  
22 Initiative” to communities of color and given the fundamental right all of us share  
23 equally to select our elected leaders.

24 29. If the election proceeds as scheduled on October 7, 2003, Plaintiffs will  
25 suffer irreparable harm as the result of the inequalities among the voting systems that  
26 will be used. Plaintiffs have no adequate remedy at law for the deprivation of their  
27 rights, privileges, and immunities.

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1 (1) Declaratory relief that Defendant's conduct of an election on October 7,  
2 2003 that allows the continued use of Pollstar and VotoMatic pre-scored punch card  
3 machines in the State of California would violate Plaintiffs' rights under the  
4 Fourteenth Amendment and Section 2 of the Voting Rights Act;

5 (2) Injunctive relief requiring that Defendant postpone the recall election and  
6 the vote on Propositions 53 and 54, currently scheduled for October 7, 2004, until a  
7 date on or after March 1, 2004, the effective date of the decertification of VotoMatic  
8 and Pollstar PPC voting machines pursuant to the consent decree in *Common Cause*  
9 *v. Jones*;

10 (3) Awarding Plaintiffs their expenses, costs, fees, and other disbursements  
11 associated with the filing and maintenance of this action, including reasonable  
12 attorneys fees pursuant to 42 U.S.C. § 1988;

13 (4) Awarding such other equitable and further relief as the Court deems just  
14 and proper.

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16 DATED: August \_\_, 2003      Respectfully submitted,

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18 By: \_\_\_\_\_  
Mark D. Rosenbaum

19 DATED: August \_\_, 2003      Respectfully submitted,

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21 By: \_\_\_\_\_  
Daniel P. Tokaji

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