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1616 BEVERLY BOULEVARD LOS ANGELES CA 90026-5752 T: 213 977 9500 F: 213 250 3919 WWW.ACLU-SC.ORG

September 10, 2003

Clerk of the Court
United States Court of Appeal for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

RE: *SVREP, et al. v. Shelley*, Case No. 03-56498, September 11, 2003, Pasadena

Dear Ms. Catterson:

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellants wish to direct the Court's attention to *Idaho Coalition for Bears, et al., v. Cengarusa*, No. 02-35030, slip op. 13125 (9th Cir. 2003), decided by this Court on September 8, 2003, following the completion of briefing.

Idaho Coalition has direct bearing on the disputed question whether strict scrutiny or lesser scrutiny should apply to this Court's adjudication of the equal protection issue. This Court made clear in *Idaho Coalition* that "strict scrutiny applies to state laws treating nomination signatures unequally on the basis of geography." Slip op. at 13133. Appellants submit that the same level of scrutiny must apply to a state election that, by virtue of unequal distribution of outdated and defective voting technology, will treat *votes* unequally on the basis of geography.

Sincerely,

Mark D. Rosenbaum
Attorney for Plaintiffs/Appellants

cc: Susan Oie
Charles Diamond
Charles Bell
Hon. Stephen V. Wilson