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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
13 **EASTERN DIVISION**

14 SOUTHWEST VOTER  
15 REGISTRATION EDUCATION  
16 PROJECT; SOUTHERN  
17 CHRISTIAN LEADERSHIP  
18 CONFERENCE OF GREATER LOS  
19 ANGELES; and NATIONAL  
ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED  
PEOPLE, CALIFORNIA STATE  
CONFERENCE OF BRANCHES,

20 Plaintiffs,

21 vs.

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

23 Defendant.  
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Case No. EDCV 03-903 RT SGLx

**EX PARTE APPLICATION FOR A  
TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
CAUSE WHY A PRELIMINARY  
INJUNCTION SHOULD NOT  
ISSUE**

Date:  
Time:  
Ctm:

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1                   **APPLICATION FOR TEMPORARY RESTRAINING ORDER**

2                   Plaintiffs hereby apply, pursuant to Rule 65(b) of the Federal Rules of Civil  
3 Procedure and Local Rules 7.17 and 7.18, for a temporary restraining order (“TRO”),  
4 restraining and enjoining Defendant, his agents, employees, and those in active concert  
5 with him from conducting the gubernatorial recall election and vote on Propositions 53  
6 and 54, presently scheduled for October 7, 2003. Plaintiffs also request that this Court  
7 order the Defendant to show cause why a preliminary injunction should not issue,  
8 enjoining conduct of the gubernatorial recall election and vote on Propositions 53 and 54  
9 until a date on or after March 1, 2004, the effective date of decertification of Votomatic  
10 and Pollstar punch card machines.

11                   Plaintiffs seek ruling from this Court on the TRO no later than the close of  
12 business on Monday, August 18, 2003, so that the matter may be litigated before this  
13 Court and, if necessary, any emergency proceedings in the Ninth Circuit conducted and  
14 concluded by August 31, 2003. As set forth in the accompanying brief, there is an  
15 imminent risk of harm to Plaintiffs and voters throughout the State of California if the  
16 TRO does not issue. On July 24, 2003, the recall election was set for October 7, 2003 --  
17 less than two months away from today's date. As of August 10, 2003, the applications  
18 of more than 100 potential replacement candidates were still under review. As the Chief  
19 Justice of the California Supreme Court stated in his opinion dissenting from the denial  
20 of review of state law claims, the recall has already created “chaos, confusion, and [a]  
21 circus-like atmosphere.” Given the extremely fast track that the recall election is on, and  
22 the fact that the recall campaign has already begun in earnest, prompt issuance of a TRO  
23 is essential to bring order to the process.

24                   In light of the accelerated schedule for the recall, it is vital to candidates, election  
25 officials, and the California electorate that any appellate proceedings be resolved no later  
26 than August 31, 2003. In order to allow sufficient time for an emergency appeal to the  
27 Ninth Circuit, if necessary, it is necessary that this Court rule on the application for a TRO  
28 and OSC no later than August 18, 2003. Plaintiffs further request that, if the TRO issues,

1 the Court order the Defendant to show cause why a preliminary injunction should not  
2 issue.

3 If the TRO does *not* issue, then Plaintiffs would request that this Court also deny  
4 the order to show cause, so that this Court's ruling may be considered an appealable  
5 order allowing Plaintiffs to take an immediate emergency appeal to the Ninth Circuit.

6 This application is based on the First Amended Complaint in this action; the  
7 accompanying memorandum of points and authorities; the accompanying declarations and  
8 exhibits thereto; and such other evidence and argument as may be presented at or before  
9 the time of decision.

10 Plaintiffs requests that the temporary restraining order be granted without requiring  
11 Plaintiff to post bond or security, because Defendant will not suffer any pecuniary or  
12 other harm or damage by the issuance of the relief sought, and because Plaintiffs do not  
13 have the resources to post bond.

14 **NOTICE TO DEFENDANT**

15 On August 8, 2003, Mark D. Rosenbaum, one of the attorneys for Plaintiffs,  
16 telephoned Douglas S. Woods of the California Attorney General's office to inform him  
17 that this TRO application would be filed on either Monday or Tuesday of the following  
18 week. Mr. Woods was one of the attorneys for the Secretary of State in *Common Cause*  
19 *v. Jones*, which raised precisely the same legal claims as are at issue in this case, and was  
20 also one of the attorneys for the Secretary of State in *Davis v. Shelley*, a petition for writ  
21 of mandate in the California Supreme Court which raised similar claims.

22 Contemporaneous with the filing of these papers, Plaintiff is effecting personal  
23 service of the First Amended Complaint and the TRO papers on named Defendants.

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25 Dated: August 11, 2003

Respectfully submitted,

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Mark D. Rosenbaum  
Attorney for Plaintiffs

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