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13  
 14 **UNITED STATES DISTRICT COURT**  
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 PETER BENAVIDEZ; PAMELA HILL;  
 17 MITCH POMERANTZ; DEBORAH  
 18 MILES; JAMES TROESH; AUDREY  
 19 HARTHORN; JESSIE LORENZ;  
 20 BYRON YAN; PAUL LONGMORE;  
 21 RHONDA KING; SCOTT TAYLOR;  
 22 JEREMY JOHANSEN; AMERICAN  
 23 ASSOCIATION OF PEOPLE WITH  
 24 DISABILITIES; CALIFORNIA  
 25 COUNCIL OF THE BLIND, INC.;  
 26 CALIFORNIA FOUNDATION FOR  
 27 INDEPENDENT LIVING CENTERS;  
 28 RIVERSIDE COUNTY; and  
 MISHELLE TOWNSEND as Registrar  
 of Riverside County in her official  
 capacity,

Plaintiffs,

vs.

KEVIN SHELLEY, as Secretary of State  
 for the State of California

Defendant.

Case No. CV-04 3318 FMC (PJWx)

Hon. Florence-Marie Cooper

**DECLARATION OF JOHN E. MCDERMOTT IN SUPPORT OF:**

- 1) **Plaintiffs' Reply To The Secretary Of State's Opposition To Plaintiffs' Motion For Preliminary Injunction;**
- 2) **Plaintiffs' Reply to Los Angeles County's Amicus Brief; and**
- 3) **Plaintiffs' Reply to the Electronic Frontier Foundation's, et al., Amicus Brief**

Date: June 3, 2004

Time: 2:30 p.m.

Place: Courtroom 750  
Roybal Federal Courthouse

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HOWREY  
SIMON  
ARNOLD &  
WHITE, LLP

1 I, John E. McDermott, declare as follows:

2 1. I am a member of the Bar of the State of California and am admitted to  
3 practice before this Court. I am a partner in the law firm of Howrey, Simon, Arnold &  
4 White, LLP, and lead counsel for plaintiffs in this action. The matters stated below are  
5 based on my personal knowledge, unless noted specifically otherwise. If called as a  
6 witness, I could and would testify competently thereto.

7 2. Attached as Exhibit A is Ms. McCormack's 2003 testimony before the  
8 Secretary of State's Task Force on DREs. At page 3 appears the statement that DREs  
9 count votes more accurately than any other available voting system.

10 3. Attached as Exhibit B is Ms. McCormack's testimony before the federal  
11 Elections Administration Commission on May 5, 2004. At page 3 appears the statement  
12 that DREs count votes more accurately than any other available voting system:

13 "VVPAT proponents do not have a monopoly on wanting secure systems  
14 and the assurance all votes are counted accurately. Both sides in this  
15 debate seek the same overriding goal for election administration — the  
16 accurate casting, tabulation and reporting of all votes in accordance with  
17 the voters' intentions. The fact is that DRE systems have the proven track  
18 record of doing the best job of all available voting systems in achieving  
19 that goal."

20 4. Attached as Exhibit C is the Declaration of Mischelle Townsend filed with  
21 this Court in opposition to Los Angeles County's *ex parte* application to intervene. Ex.  
22 A contains email traffic between Ms. McCormack and the Secretary of State's office  
23 blaming each other for inaccurate Los Angeles County election data on the Secretary of  
24 State's website. Ex. B indicates her opposition to the Secretary's decertification orders.

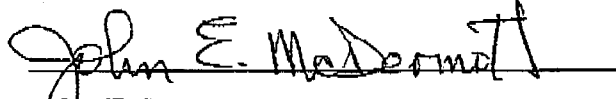
25 5. Attached as Exhibit D is Los Angeles County Registrar Conny  
26 McCormack's deposition testimony in which she testifies that DREs are safe and  
27 reliable, and that a voter verified paper audit trail (VVPAT) is unavailable, unapproved  
28 and unnecessary. These same sentiments are expressed in Exhibits A and B.

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6. Mr. Woods' characterization of plaintiffs' reliance on Dr. Brady is false. Plaintiffs continue to rely on Dr. Brady whose Second Declaration, after correcting the error caused by inaccurate data on the Secretary's website, reached the same basic conclusion as before — DREs count votes more accurately and reliably than any other voting system.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 25th day of May, 2004, at Los Angeles, California.

  
John E. McDermott