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25 UNITED STATES DISTRICT COURT

26 DISTRICT OF ARIZONA

27 Maria M. Gonzalez, et al.,  
28 Plaintiffs,

vs.

State of Arizona, et al.,  
Defendants.

)  
) No. CV06-01268-PHX-ROS (Lead)  
) CV06-01362-PHX-ROS (Cons)  
) CV06-01575-PHX-ROS (Cons)

) **ITCA PLAINTIFFS'**  
) **SUPPLEMENTAL BRIEF**  
) **RE POLL TAX**  
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25 On September 11, 2006, this Court ordered the parties to brief “whether  
26 the identification requirements for registration constitute a poll tax.” [Order, at 2] As  
27 the evidence admitted at the August 30 and 31, 2006 preliminary injunction hearing  
28 shows, and as explained more fully in the following Supplemental Brief submitted by

1 the Inter Tribal Council of Arizona, Inc., et al. (the “ITCA Plaintiffs”), the “evidence of  
2 citizenship” requirement of A.R.S. § 16-166(F) imposes an unconstitutional poll tax and  
3 should be enjoined.

#### 4 Preliminary Statement

5 The evidence presented to the Court during the evidentiary hearing on  
6 plaintiffs’ Motions for Preliminary Injunction establishes without question that the proof  
7 of citizenship requirement of the Arizona Taxpayer and Citizen Protection Act (the  
8 “Act” or “Proposition 200”) imposes a poll tax in violation of the Twenty-fourth and  
9 Fourteenth Amendments. In brief, to cast a ballot, an Arizona citizen must be registered  
10 to vote no fewer than 29 days before an election. *See* A.R.S. § 16-101. Under  
11 Proposition 200, a voter registration applicant must provide proof of United States  
12 citizenship in the specific forms prescribed by the Act. A.R.S. § 16-166(F).  
13 Uncontested evidence shows that, with but a few narrow exceptions not available to all  
14 citizens, the forms of identification deemed “satisfactory evidence of citizenship” by  
15 Proposition 200 (“Registration ID”) cannot be obtained without payment of a fee. As  
16 such, the tens of thousands of Arizonans who are entitled to vote, but not registered in  
17 their county of residence, must purchase Registration ID to exercise their right to vote.

18 Adopted to remedy discrimination against poor and minority voters, the  
19 Twenty-fourth Amendment stands as an absolute bar to imposition of a poll tax in  
20 federal elections, and through the Fourteenth Amendment, in state elections.  
21 Importantly, the prohibition of poll taxes extends beyond annual assessments actually  
22 denominated as poll taxes to include “sophisticated as well as simple-minded modes of  
23 impairing the right [to vote].” *Harman v. Forssenius*, 380 U.S. 528, 540-41 (1965)  
24 (citations omitted). Like Virginia, whose poll tax the Court considered in *Harman* and  
25 again in *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (1966), Arizona  
26 has a history of discrimination against minority voters. Indeed, not until 1948 did  
27 Native American voters achieve the franchise in Arizona. *See Harrison v. Laveen*, 196  
28 P.2d 456 (Ariz. 1948). In 1975, Arizona was brought under the preclearance provisions

1 of the Voting Rights Act because the State had used a prohibited test or device, such as a  
2 literacy test, as late as 1972 to bar access to the polls, and less than 50 percent of eligible  
3 Arizona citizens were registered or voted in the 1972 presidential election. *See* 42  
4 U.S.C. § 1973b; 28 C.F.R. Part 51, App.; 40 Fed. Reg. 43746 (Sept. 23, 1975).<sup>1</sup> And  
5 like the certificate of residency required in Virginia in 1965, Proposition 200's  
6 Registration ID requirement constitutes a modern-day poll tax and will bar many poor  
7 and minority voters from exercising their fundamental right to vote. *See Harman*, 380  
8 U.S. at 542. As such, enforcement of A.R.S. § 16-166(F) must be enjoined.

9 Factual Background

10 **A. Applicants for Voter Registration Must Provide “Satisfactory**  
11 **Evidence of Citizenship,” Which They Must Pay to Obtain.**

12 Since January 25, 2005 any person registering to vote in Arizona for the  
13 first time or registering to vote in a new county after previously being registered in  
14 another Arizona county must provide “satisfactory evidence of citizenship” with his  
15 voter registration application. A.R.S. § 16-166(F)-(G). “[S]atisfactory evidence of  
16 citizenship” is limited to the following:

- 17 1. [t]he number of the applicant’s [Arizona] driver license  
18 or nonoperating identification license issued after October 1,  
19 1996,
- 20 2. [a] legible photocopy of the applicant’s birth certificate  
21 that verifies citizenship to the satisfaction of the county  
22 recorder,
- 23 3. [a] legible photocopy of pertinent pages of the applicant’s  
24 United States passport identifying the applicant and the  
25 applicant's passport number or presentation to the county  
26 recorder of the applicant’s United States passport,

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25 <sup>1</sup> In addition, Congress has determined that conducting elections only in English  
26 excluded language-minority citizens from participating in the political process. To  
27 remedy that problem, 11 of Arizona's counties are subject to the language provisions of  
28 the Voting Rights Act. *See* 42 U.S.C. §§ 1973b(f), 1973aa-1a; 28 C.F.R. Part 55, App.

1 4. [a] presentation to the county recorder of the applicant's  
2 United States naturalization documents or the number of the  
3 certificate of naturalization . . . .,

4 5. [o]ther documents or methods of proof that are  
5 established pursuant to the Immigration Reform and Control  
6 Act of 1986,<sup>2</sup> [or]

7 6. [t]he applicant's bureau of Indian affairs card number,  
8 tribal treaty card number or tribal enrollment number.

9 A.R.S. § 16-166(F) ("Registration ID").

10 As discussed in greater detail below, the overwhelming majority of  
11 Arizonans cannot obtain any of the foregoing forms of Registration ID without paying a  
12 fee -- ranging from \$10 for an Arizona driver's license issued to a person over 50 years  
13 of age to \$220 for a replacement certificate of naturalization.<sup>3</sup> Defendants have offered  
14 no evidence whatsoever, in their briefing to date or at the preliminary injunction hearing  
15 to dispute the fees for Registration ID.

16 The only form of Registration ID that could possibly be available without  
17 payment is a tribal enrollment number. Uncontroverted testimony establishes that  
18 neither "bureau of Indian affairs cards" nor "tribal treaty cards," with or without  
19 numbers, are in use in Arizona.<sup>4</sup> A.R.S. § 16-166(F)(6). Moreover, not all tribes issue  
20 enrollment numbers or cards to their members.<sup>5</sup> Importantly, even if all Native  
21 American tribes with members who live in Arizona provided an enrollment number free  
22 of charge to each member, such form of Registration ID would be available to only four  
23 percent of Arizona's voting-age population.<sup>6</sup>

24 \_\_\_\_\_  
25 <sup>2</sup> Defendants have been unable to identify any document or method of proof that  
falls into this category. *E.g.*, Justman Dep. at 32:6-19; Rodriguez Dep. at 40:4-9.

26 <sup>3</sup> Ex. 40 at 2-3; Ex.47 at 12; *see also* Justman Dep. at 31:1-32:5.

27 <sup>4</sup> *See* Hr'g Tr. at 122:1-124:4 (Aug. 31, 2006).

28 <sup>5</sup> *Id.*

<sup>6</sup> Ex. 21 at 11.

1                   **B.     Arizonans Cannot Obtain Registration ID Without Paying a Fee.**

2                   Proposition 200 did nothing to ensure that Arizona citizens lacking  
3 Registration ID could obtain it without payment of a fee or a significant investment of  
4 time and effort. The evidence shows that, for the tens of thousands of Arizonans who  
5 lack documentary proof of citizenship, obtaining Registration ID is not merely  
6 extremely inconvenient, it represents a significant financial burden.

7                   The burden arises in part because obtaining the most common forms of  
8 identification is an interdependent process -- procuring one document usually depends  
9 on having another document. For example, to obtain a driver’s license or nonoperating  
10 identification license for the first time, one must produce a “primary” form of  
11 documentation such as a birth certificate. Obtaining a birth certificate, however,  
12 requires producing a “valid government-issued picture identification,” *i.e.*, a driver’s  
13 license, nonoperating license or a passport.<sup>7</sup> Thus, not only must Arizonans pay a fee to  
14 vote, they can only do so once they have successfully navigated several different  
15 bureaucratic mazes.

16                   **1.     Arizonans Must Pay a Fee to Obtain an Arizona Driver’s  
17 License or Nonoperating Identification License.**

18                   It is uncontested that Arizonans cannot obtain a driver’s license or  
19 nonoperating identification license without paying the State a fee. Depending on age, a  
20 driver’s or nonoperating identification license costs anywhere from \$10 to \$25.<sup>8</sup> The  
21 State does not impose a fee on nonoperating identification licenses issued to Arizonans  
22 over age 65 or those who receive public monies as disabled individuals under title XVI  
23 of the Social Security Act. *See* A.R.S. § 28-3165(J). However, because the Motor  
24 Vehicle Division (the “MVD”) does not issue nonoperating identification licenses to  
25 individuals who do not possess one of the other forms of Registration ID, such a “no  
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27                   <sup>7</sup> Ex. 41.

28                   <sup>8</sup> Ex. 40, at 2-3.

1 fee” Registration ID, even for the minority of Arizonans who would be eligible to  
2 receive one, is illusory.<sup>9</sup>

3           Notably, to obtain a driver’s license or nonoperating identification license,  
4 an applicant must produce other forms of identification, the most common of which  
5 carry their own price tag. An applicant must provide two documents from a combined  
6 list of “primary” and “secondary” documents, one of which must provide the voter’s  
7 photo and one of which must come from the list of “primary documents.” If an  
8 applicant lacks any form of photo identification, the applicant may produce three such  
9 documents, which must include at least one primary document. All documents must be  
10 originals or copies that are certified by the issuing agency.<sup>10</sup>

11           In addition to the cost of a driver’s license or nonoperating identification  
12 license, Arizonans in rural communities or without easy access to transportation face  
13 additional expense to obtain this form of Registration ID. Many of Arizona’s counties  
14 are extremely large and rural, and drive times to an MVD office from rural communities  
15 in large counties can exceed two hours.<sup>11</sup> Also, the vast majority of MVD offices are  
16 open only during business hours Monday through Friday -- when many voters are at  
17 work -- and many close during the lunch hours. Moreover, four MVD offices in three  
18 counties -- Coconino, Mojave and Pima -- do not operate on a full work week and are  
19 only open three to four weekdays and no weekends. Graham, Greenlee, La Paz, Santa  
20 Cruz and Yuma counties have only one office issuing driver’s licenses.<sup>12</sup> As such, to

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21           <sup>9</sup> See Ex. 41. Some of the forms of “primary” identification accepted by the  
22 MVD may be available without a fee, but only a small percentage of eligible voters who  
23 are over 65 or receive disability income from the federal government are likely to  
24 possess U.S. military identification, tribal identification or identification from the  
25 Arizona Department of Corrections. See also *Weinschenk v. State*, No. 06AC-CC00656,  
26 Judgment, at 8 (Mo. Cir. Ct., Cole County, Sept. 14, 2006) (enjoining Missouri’s voter  
photo identification law because, *inter alia*, “[t]he fact that the state does not charge for  
the nondriver license itself (if obtained for the purpose of voting) does not avoid the  
constitutional issue or economic reality that voters will have to ‘buy’ numerous  
government documents to get the ‘free’ photo ID”) (attached hereto as Ex. 72).

27           <sup>10</sup> *Id.*

28           <sup>11</sup> See Ex. 38.

<sup>12</sup> See Ex. 39.

1 obtain Registration ID from the MVD, many Arizonans must take time away from their  
2 jobs and travel long distances, in addition to paying fees.

3 **2. Birth Certificates are Not Provided to Arizonans for Free.**

4 To obtain an Arizona birth certificate, one must pay \$10 to \$15, as well as  
5 produce “a valid government-issued picture identification” bearing the applicant’s  
6 signature. A driver’s license, non-operating license or passport suffices for this  
7 purpose.<sup>13</sup> Those born outside Arizona face similar charges from other states.<sup>14</sup> In  
8 addition, older Arizonans born outside the state may be unable to obtain a copy of a  
9 birth certificate because some states do not issue birth certificates for individuals born  
10 before a certain date.<sup>15</sup>

11 If an applicant born in Arizona was never issued a birth certificate,  
12 because, for example, he was not born in a hospital, as is the case for many Native  
13 Americans and others, obtaining a delayed birth certificate is difficult and costly.<sup>16</sup>  
14 First, the applicant has to establish that, in fact, she has no birth certificate on file with  
15 the Office of Vital Records. The applicant must pay \$10 and file an application for a  
16 certified copy of her birth certificate. If none is found, Vital Records will issue a  
17 “Certificate of No Record” and mail the applicant a “Delayed Birth Application Packet.”  
18 The Delayed Birth Packet must include the Certificate of No Record, a notarized  
19 Affidavit of Facts of Birth and numerous other documents that may be unavailable.<sup>17</sup>  
20 Indeed, locating and paying a notary public to notarize the Affidavit of Facts of Birth  
21 places additional burden and financial strain on the poor, especially those who live in  
22  
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24 <sup>13</sup> See Ex. 42.

25 <sup>14</sup> See Ex. 44.

26 <sup>15</sup> See *id.*; See also *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326,  
27 1341 (N.D. Ga. 2005).

28 <sup>16</sup> See Hansen Dep. at 23:8-23; Justman Dep. at 28:7-29:8; Ex. 45.

<sup>17</sup> See, e.g., Hr’g Tr. at 121:4-25 (Aug. 31, 2006).

1 rural areas.<sup>18</sup> Moreover, the State advises that it can take up to a year to obtain a  
2 delayed birth certificate -- during which two or more elections would occur.<sup>19</sup>

3 **3. A United States Passport Costs Nearly \$100.**

4 For persons over 16 years of age, the fees for a United States Passport total  
5 \$97. This amount does not include the cost of passport photos. Moreover, to obtain a  
6 United States Passport for the first time, an applicant must submit proof of citizenship,  
7 *i.e.*, a certified copy of his birth certificate or his certificate of naturalization.<sup>20</sup>

8 **4. Replacement Certificates of Naturalization Cost \$220 and Take  
9 up to Two Years to Obtain.**

10 A naturalized United States citizen must pay \$220 to obtain a replacement  
11 certificate of naturalization if her certificate has been lost, stolen or become faded or  
12 mutilated.<sup>21</sup> The process to obtain a replacement Certificate takes almost two years. As  
13 such, U.S. citizen could be denied the right to vote in as many as eight Arizona elections  
14 while waiting to obtain a replacement certificate.<sup>22</sup>

15 **C. Tens of Thousands of Arizonans Lack Any “Satisfactory Evidence of  
16 Citizenship” And Must Purchase Such Evidence To Register to Vote.**

17 Expert testimony presented during the preliminary injunction hearing  
18 establishes that -- using a very conservative methodology -- as of July 2006, nearly  
19 30,000 Arizonans eligible to register possess no form of Registration ID.<sup>23</sup> Moreover,  
20 because an Arizona driver’s license or nonoperating identification license may only be  
21 used as Registration ID if it was issued after October 1, 1996 -- using that same  
22 conservative methodology -- approximately 25,000 more Arizonans lack Registration  
23 ID. Accordingly, at least 53,242 Arizona residents who are eligible to vote, but not yet

24 <sup>18</sup> *See id.* at 121:21-25. Moreover, an older Arizonan may find it difficult or  
impossible to locate a living person who can attest to the facts of her birth. *See id.* at  
121:4-25.

25 <sup>19</sup> *See* Ex. 45.

26 <sup>20</sup> *See* <http://foia.state.gov/FORMS/Passport/ds0011.pdf>

27 <sup>21</sup> *See* Ex. 47.

28 <sup>22</sup> Osborne Dep. at 39:15-18, 47:9-48:3.

<sup>23</sup> *See* Hr’g Tr. at 137:23-141:3 (Aug. 30, 2006).

1 registered, do not possess *any* form of Registration ID. Because Arizona’s population is  
2 growing rapidly, this number increases on a daily basis.

3 In July 2006, approximately 1,472,000 Arizonans were eligible to vote,  
4 but not registered to do so.<sup>24</sup> Hundreds of thousands of these individuals lack a driver’s  
5 or nonoperating identification license that may be used to establish citizenship. Based  
6 on “the most accurate number the [defendants could] provide,” only 76.8 percent of  
7 Arizonans possess a driver’s license or nonoperating license issued after October 1,  
8 1996.<sup>25</sup> As such, approximately 341,504 Arizona residents who are eligible to vote but  
9 not yet registered lack an Arizona driver’s license or non-operating identification.<sup>26</sup>

10 The other forms of “acceptable” Registration ID do little to help those who  
11 lack an Arizona driver’s license or non-operating identification card. Approximately  
12 70 percent of eligible potential registrants lack a U.S. passport, 95 percent do not have a  
13 Certificate of Naturalization, at least 96 percent have no form of Tribal identification,  
14 and an estimated 25 percent do not have reasonable access to a birth certificate.<sup>27</sup> When  
15 these proportions are considered together, no fewer than 53,242 eligible potential  
16 registrants lack *any* form of ID sufficient to prove citizenship.<sup>28</sup> Several county election  
17 officials agreed that citizens in their jurisdictions lack any form of Registration ID.<sup>29</sup>

18 The evidence shows that Arizonans who lack any form of Registration ID  
19 are more than abstract numbers. Because thousands of potential voter registrants must  
20 purchase Registration ID, the right to vote in Arizona now comes with a price tag -- a

21 <sup>24</sup> Ex. 21 at 2.

22 <sup>25</sup> Ex. 52 at 3. The State provided plaintiffs with its “most accurate” estimate of  
23 the percentage of Arizona voters who possess a driver’s or nonoperating identification  
24 license -- 87.4 percent. The State later disclosed that approximately 12 percent of  
25 driver’s and nonoperating identification licenses were issued before October 1, 1996 --  
26 lowering the percentage of Arizonans who possess a driver’s or nonoperating  
27 identification license sufficient to constitute Registration ID to 76.8 percent. *See* Ex. 59.

28 <sup>26</sup> *See* Ex. 21 at 5-6; *see also supra* n.24.

<sup>27</sup> Ex. 21 at 2.

<sup>28</sup> *Id.*

<sup>29</sup> Osborne Dep. at 43:12-17; Rodriguez Dep. at 90:15-18; Johnson Dep. at 31:14-  
32:17.

1 cost that is constitutionally-impermissible and too high for many Arizonans to pay. For  
2 example, Eva Steele, Tara Hernandez, Kenneth Totten, Tammy Pattison and Nicholas  
3 Fisher, Arizonans eligible to vote, do not have access to *any* forms of Registration ID,  
4 and thus cannot register to vote.<sup>30</sup> Mr. Totten, Mr. Fisher, Ms. Pattison and Ms. Steele  
5 all live on limited incomes and face a substantial financial burden if required to purchase  
6 proof of citizenship to vote.

### 7 Argument

#### 8 **I. Proposition 200’s Identification Requirements for Proof of Citizenship** 9 **Impose an Unconstitutional Poll Tax on Arizona Voters**

10 In 1964, the states ratified the Twenty-fourth Amendment to the U.S.  
11 Constitution, which prohibits conditioning ballot access on payment of a poll tax or any  
12 other tax on voting:

13 The right of citizens of the United States to vote in any  
14 primary or other election for President or Vice President, for  
15 electors for President or Vice President, or for Senator or  
16 Representative in Congress shall not be *denied or abridged* by  
17 the United States or any State by reason of failure to pay any  
18 *poll tax or other tax*.

19 U.S. Const., Amend. XXIV (emphasis added). The Amendment grew out of the basic  
20 repugnance to the idea of “exact[ing] a price for the privilege of exercising the  
21 franchise,” along with its “disenfranchisement of the poor.” *Harman*, 380 U.S. at 539.  
22 The prohibition on poll taxes extends to state elections. *Harper*, 383 U.S. at 666  
23 (concluding that a state that “makes the affluence of the voter or payment of any fee an  
24 electoral standard” violates the Equal Protection Clause of the Fourteenth Amendment).  
25 The Supreme Court first interpreted the Twenty-fourth Amendment in 1965 when a  
26 voter challenged a Virginia law passed in anticipation of the promulgation of the  
27 Twenty-fourth Amendment. *Harman*, 380 U.S. at 530. *Harman* remains the seminal  
28 decision on the Twenty-fourth Amendment. *See Common Cause/Georgia v. Billups*,  
406 F. Supp. 2d 1326, 1367 (N.D. Ga. 2005) (“*Billups I*”).

<sup>30</sup> Ex. 22, ¶¶ 5, 9; Ex. 33, ¶¶ 5, 9; Ex. 34 ¶ 6; Ex. 35, ¶ 5, Ex. 36, ¶¶ 5, 6.

1           In anticipation of the Amendment’s passage, Virginia had adopted a  
2 provision that allowed those voting in federal elections to submit a “certificate of  
3 residence” in lieu of paying Virginia’s poll tax. *Harman*, 380 U.S. at 532. The  
4 Supreme Court struck down the Virginia law, and in doing so emphasized that the  
5 Twenty-fourth Amendment “does not merely insure that the franchise shall not be  
6 ‘denied’ by reason of failure to pay the poll tax; it expressly guarantees that the right to  
7 vote shall not be ‘denied or abridged’ for that reason.” *Id.* at 540.

8           The state argued that requiring the certificate of residence “is a necessary  
9 substitute method of proving residence, serving the same function as the poll tax.” *Id.* at  
10 532. The Court rejected this argument, noting that voting by those who did not meet the  
11 eligibility requirements was adequately prevented by Virginia’s existing “use of the  
12 criminal sanction, purging of registration lists, challenges and oaths [and] public  
13 scrutiny by candidates and other interested parties.” *Id.* at 543. The Virginia law, the  
14 Court concluded, improperly imposed “a material requirement solely upon those who  
15 refuse to surrender their constitutional right to vote in federal elections without paying a  
16 poll tax,” and therefore violated the Twenty-fourth Amendment. *Id.* at 541. Thus, the  
17 Court held, the Twenty-fourth amendment “‘nullifies sophisticated as well as simple-  
18 minded modes’ of impairing the right.” *Id.* at 540-41 (citations omitted).

19           Like the Virginia law held to be invalid in *Harman*, Proposition 200 runs  
20 afoul of the Twenty-fourth Amendment. A prospective voter who does not possess any  
21 Registration ID cannot register to vote, and therefore cannot vote in any election in  
22 Arizona, unless he pays a fee ranging from \$10 (driver’s license for a driver over 49), to  
23 \$97 (United States passport), and even up to \$220 (replacement Certificate of  
24 Naturalization). Even if a voter is in the small percentage of Arizonans who may be  
25 entitled to a free nonoperating identification license, he must overcome substantial  
26 bureaucratic hurdles, and may need to pay to obtain certified or notarized copies of  
27 identification documents necessary to obtain this “free” Registration ID. By  
28 conditioning the exercise of the right to vote on possession of Registration ID, which

1 cannot be obtained free of charge, Proposition 200 institutes an unconstitutional poll tax.  
2 Simply put, “it imposes a material requirement solely upon those who refuse to  
3 surrender their constitutional right to vote in federal [and state] elections without paying  
4 a poll tax.” *Harman*, 380 U.S. at 541.

5           Indeed, because Proposition 200 allows no alternative to purchasing  
6 Registration ID -- which a voter may not need or want for any other purpose -- the law  
7 is even more onerous than the one the Supreme Court held unconstitutional in *Harman*.  
8 *See id.* at 541. Even though the fees for some forms of Registration ID are less than \$15  
9 -- which may seem an insignificant amount to many Arizonans -- they are nearly ten  
10 times as much as the poll tax deemed unconstitutional in *Harman*. *See id.* at 530-31  
11 (striking down a \$1.50 poll tax).

12           It matters not that the voter identification provisions of Proposition 200 are  
13 not denominated a “tax.” As *Harman* emphasized, “[c]onstitutional rights would be of  
14 little value if they could be . . . indirectly denied” by such methods. *Harman*, 380 U.S.  
15 at 540. Nor does it matter that the fees for Registration ID are not imposed annually and  
16 may be collected by a governmental entity other than the State. Indeed, construing the  
17 Twenty-fourth amendment to apply only if a State labels the fee required to vote a “tax ”  
18 and deposits that fee into its coffers annually would eviscerate the Amendment. The  
19 Twenty-fourth Amendment applies even if the regulation impeding the right is  
20 “somewhat less onerous than the poll tax” because “*no equivalent or milder substitute*  
21 *may be imposed.*” *Id.* at 542 (emphasis added); *see also Hill v. Stone*, 421 U.S. 289,  
22 292, 298 (1975) (striking down a law that did not give equal weight to ballots cast by  
23 voters who failed to render property for taxation, regardless of whether those who  
24 rendered property actually paid any tax). It is not the repetitive nature of a poll tax that  
25 makes it unconstitutional, but its mere existence. *Harper*, 383 U.S. at 666 (stating that  
26 making payment of “*any fee* an electoral standard” violates the Fourteenth Amendment)  
27 (emphasis added).

28

1           The recent decision from the Georgia district court, which preliminarily  
2 enjoined enforcement of Georgia’s newly-enacted polling place identification  
3 requirement, likewise confirms that Proposition 200 constitutes an illegal poll tax. The  
4 Georgia law required voters to pay to obtain photo identification to cast a ballot at a  
5 polling place. Like some forms of Registration ID, the Georgia voter identification was  
6 good for five or ten years. Relying on *Harman*, the court concluded that the law  
7 imposed an unconstitutional poll tax on voters who did not already possess state-issued  
8 photo identification. *Common Cause*, 406 F. Supp. 2d at 1369 (“[R]equiring . . . voters  
9 to purchase a Photo ID card effectively places a cost on the right to vote. In that respect,  
10 the Photo ID requirement runs afoul of the Twenty-fourth Amendment.”). The court  
11 explained that the cost of obtaining the required identification -- whether in dollars or  
12 inconvenience -- constituted a “material requirement” prohibited by the Twenty-fourth  
13 Amendment, and as such plaintiffs demonstrated a “substantial likelihood of succeeding  
14 on the merits with respect to their poll tax claim.” *Id.* at 1370 (citing *Harman*, 380 U.S.  
15 at 542). This analysis applies equally to Arizona’s Registration ID requirement. The  
16 Georgia identification requirement “effectively place[d] a cost on the right to vote.” *Id.*  
17 at 1369. Proposition 200 does the same.

18           The State’s interest in preventing voter fraud likewise cannot salvage  
19 Proposition 200 because the identification requirements imposed by Proposition 200 go  
20 far beyond those permitted by the Constitution. Indeed, a “poll tax, *regardless of the*  
21 *service it performs*, was abolished by the Twenty-fourth Amendment.” *id.* at 544  
22 (rejecting the poll tax even though it may serve as a reliable indicium of residence)  
23 (emphasis added); *cf. United Mine Workers, Dist. 12 v. Illinois State Bar Ass’n*, 389  
24 U.S. 217, 222 (1967) (stating that “laws which actually affect the exercise of  
25 [fundamental constitutional] rights cannot be sustained merely because they . . . provide  
26 a helpful means of dealing with . . . an evil [within the State’s legislative competence]”).  
27 Furthermore, in view of the numerous devices to gauge a voter’s eligibility to register  
28 and vote, such as “use of the criminal sanction, purging of registration lists, challenges

1 and oaths, public scrutiny by candidates and other interested parties,” a poll tax such as  
2 that imposed by Proposition 200 is wholly unnecessary to the proper administration of  
3 Arizona’s election laws. *Harman*, 380 U.S. at 543.

4 **II. The Cost of Obtaining Identification Documents Makes Wealth a Voting**  
5 **Qualification in Violation of the Equal Protection Clause.**

6 By requiring Arizona voters to present Registration ID that they cannot  
7 obtain without paying a fee, Proposition 200 makes wealth a qualification for voting.  
8 Such a qualification runs afoul of the Equal Protection Clause. Considering the same  
9 \$1.50 poll tax it held unconstitutional for federal elections in *Harman*, the Supreme  
10 Court concluded a year later “that a State violates the Equal Protection Clause of the  
11 Fourteenth Amendment whenever it makes affluence of the voter or payment of *any fee*  
12 an electoral standard. *Voter qualifications have no relation to wealth nor to paying or*  
13 *not paying this or any other tax.*” *Harper*, 383 U.S. at 666 (emphasis added); *see also*  
14 *M.L.B. v. S.L.J.*, 519 U.S. 102, 124 & n.14 (1996) (“The basic right to participate in  
15 political processes as voters and candidates cannot be limited to those who can pay for a  
16 license.”). Under the Equal Protection Clause, “classifications which might invade or  
17 restrain” fundamental rights such as the right to vote “must be closely scrutinized and  
18 carefully confined.” *Harper*, 383 U.S. at 670. The fees for identification required by  
19 Proposition 200 can *never* withstand such scrutiny because, even though the State “can  
20 demand from all an equal fee for a driver’s license”

21 the interest of the State, when it comes to voting, is limited to  
22 the power to fix qualifications. Wealth, like race, creed, or  
23 color, is not germane to one’s ability to participate  
24 intelligently in the electoral process. . . . To introduce wealth  
25 or payment of a fee as a measure of a voter’s qualification is  
26 to introduce a capricious or irrelevant factor.

27 *Id.* at 668. For eligible U.S. citizens who desire want to register and vote -- like Eva  
28 Steele, Kenneth Totten, Tammy Pattison, Nicholas Fisher and Tara Hernandez -- but  
who lack Registration ID, voting now comes with a price tag. But the Fourteenth  
Amendment prohibits a system like Arizona’s that “excludes those unable to pay a fee to

1 vote or who fail to pay.” *Id.* In view of the absolute constitutional bar to conditioning  
2 the right to vote on payment of any fee, the Registration ID requirement plainly violates  
3 the Constitution.

4 Conclusion

5 For the foregoing reasons, Proposition 200’s Registration ID requirement  
6 imposes an unconstitutional poll tax and its enforcement should be enjoined  
7 immediately.

8 RESPECTFULLY SUBMITTED this 18th day of September, 2006.

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I further certify that I caused a copy of the attached document to be mailed  
on the 18th day of September, 2006 to:

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