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22 of Arizona, Inc., et al.

23 UNITED STATES DISTRICT COURT  
24 DISTRICT OF ARIZONA

25 Maria M. Gonzalez, et al.,  
26 Plaintiffs,

27 vs.

28 State of Arizona, et al.,  
Defendants.

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

) **ITCA PLAINTIFFS' MOTION**  
) **FOR LEAVE TO EXCEED PAGE**  
) **LIMITATION FOR REPLY IN**  
) **SUPPORT OF MOTION FOR**  
) **PRELIMINARY INJUNCTION**  
)  
)

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29 Pursuant to Ariz. Dis. Ct. R. 7.2, plaintiffs the Inter-Tribal Council of  
30 Arizona, Inc., et al. (the "ITCA Plaintiffs") respectfully request leave to file a Reply in  
31 Support of Motion for Preliminary Injunction that exceeds the presumptive page limit  
32 set forth in Local Rule 7.2(e). A copy of the ITCA Plaintiffs' 19-page Reply is  
33 submitted herewith as Exhibit A.

1 Defendants the State of Arizona and Secretary of State Jan Brewer  
2 (collectively, the “State”) and the county recorders and elections directors of 14 Arizona  
3 counties (collectively, the “County Defendants”) filed separate Response briefs, which  
4 included arguments that did not substantially overlap. The record in this case is  
5 voluminous and the issues fact-intensive. Moreover, this case raises issues of statewide  
6 importance that implicate voting in the upcoming primary and general elections. As  
7 such, and in the interests of justice, the ITCA Plaintiffs request leave to file the attached  
8 Reply.

9 For the Court’s convenience, a proposed Order is submitted herewith.

10 RESPECTFULLY SUBMITTED this 23rd day of August, 2006.

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3 document to be electronically transmitted to the Clerk's Office using the CM/ECF  
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I further certify that I caused a copy of the attached document to be mailed  
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/s/ Michele L. Galvez

# **EXHIBIT A**



1 Preliminary Statement

2 The State of Arizona and Secretary of State Jan Brewer, joined by the  
3 county recorders and elections directors of 14 Arizona counties (collectively, the “State”  
4 or “defendants”) concede that if the voting-related provisions of the Arizona Taxpayer  
5 and Citizen Protection Act (“Proposition 200” or the “Act”) constitute a severe burden  
6 on the fundamental right to vote, they are subject to strict scrutiny. [Resp. in Opp. to the  
7 Mot. for Prelim. Inj. (“Resp.”), at 9] Such a law cannot be enforced unless “narrowly  
8 drawn to advance a state interest of compelling importance.” *Burdick v. Takushi*, 504  
9 U.S. 428, 434 (1990).

10 Defendants do *not* dispute the following facts:

11 ■ Since the implementation of Proposition 200’s amendment of A.R.S. § 16-  
12 166(F), 11 Arizona counties have rejected 20,713 voter registration forms for failure to  
13 provide “satisfactory evidence of citizenship” (“Registration ID”).

14 ■ In small local elections held in March and May 2006, at least 200 ballots  
15 cast were not counted because voters did not provide acceptable identification at the  
16 polling place (“Polling ID”). The number of uncounted ballots is expected to rise into  
17 the thousands in Maricopa County alone for the upcoming primary and general  
18 elections.

19 ■ The State has *no evidence whatsoever* that any person has ever  
20 impersonated another voter at a polling place in Arizona.

21 ■ Thirty-eight alleged non-citizens have cast ballots in Arizona over the past  
22 *ten years*. More than six times that many ballots were not counted in local elections  
23 held in Arizona just this Spring because registered voters did not provide Polling ID.

24 ■ Ninety-one percent of currently registered voters were not required to  
25 provide Registration ID when they registered to vote, and will never be required to do so  
26 unless they move to another Arizona county.

27 ■ Early voters, who are far less likely to be members of racial or ethnic  
28 minorities than those who vote at the polls, are not required to provide Polling ID.



1 [Resp. at 23] In truth, restoring the law to the pre-Proposition 200 standard would  
2 impose relatively minor administrative adjustment on the defendants.<sup>1</sup>

3 “To establish laches, a defendant must establish (1) lack of diligence by  
4 the plaintiff, and (2) prejudice to the defendant.” *Grand Canyon Trust v. Tucson Elec.*  
5 *Power Co.*, 391 F.3d 979, 987 (9th Cir. 2004). Absent prejudice, laches does not apply,  
6 regardless of the plaintiff’s lack of diligence: “Laches is not a doctrine concerned solely  
7 with timing. Rather, it is primarily concerned with prejudice. A lengthy delay, even if  
8 unexcused, that does not result in prejudice does not support a laches defense.” *Id.*  
9 (internal quotation omitted). Moreover, the Ninth Circuit has adopted “the principle that  
10 ‘laches must be invoked sparingly’ in suits brought to vindicate the public interest.”  
11 *Apache Survival Coalition v. United States*, 21 F.3d 895, 905 (9th Cir. 1994).

12 Applying these principles in the voting rights context, the Ninth Circuit  
13 has held that laches was not appropriate even though plaintiffs could have filed suit  
14 years earlier because the harm was continuing. In *Garza v. County of Los Angeles*, 918  
15 F.2d 763, 778 (9th Cir. 1990), plaintiffs contended that the 1981 reapportionment of the  
16 Los Angeles County Board of Supervisors diluted the voting strength of minority voters  
17 in violation of the Fourteenth Amendment and the Voting Rights Act. The defendants  
18 contended that laches applied because the plaintiffs waited several years and four  
19 general elections to file suit, and the county was “substantially prejudiced” by having to  
20 redistrict in 1990 when it would be redistricting again in 1991, after the 1990 Census.  
21 *Id.* at 778. Though the court recognized that plaintiffs could have filed suit as early as  
22 1981, it found laches inapplicable “because of the ongoing nature of the violation.” *Id.*

23 Here, plaintiffs exercised reasonable diligence. They brought their action  
24 four months before the first primary and six months before the first general statewide  
25 election after the November 2004 vote on Proposition 200. Moreover, the Secretary of  
26 State’s Procedure for Proof of Identification at the Polls (the “Polling Place  
27

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28 <sup>1</sup> See Ex. 61, at ¶¶ 7-13 (Declaration of Patty Hansen) (attached hereto).

1 Procedures”) was not enforceable until October 2005, when it was precleared under  
2 Section 5 of the Voting Rights Act, and not enforced on a broad scale until local  
3 elections in March 2006. Even then, it remained unclear until March 2006 that the  
4 Secretary of State would refuse to follow the Election Assistance Commission’s  
5 guidance to accept Federal Mail Registration Forms without documentary proof of  
6 citizenship. By proceeding prudently and appropriately, Plaintiffs have been able to  
7 establish through data provided by the counties that thousands of voters have been  
8 prevented from registering to vote because of Proposition 200’s requirements. As  
9 demonstrated by the Supreme Court precedents in this area, because Proposition 200  
10 constitutes a poll tax and violates the fundamental right to vote, the timing of the suit  
11 should not matter. *See e.g., Dunn v. Blumstein*, 405 U.S. 330 (1972); *Kramer v. Union*  
12 *Free Sch. Dist. No. 15*, 395 U.S. 621 (1969).

13 B. The Harm to Disenfranchised Voters Far Outweighs the Impact of  
14 “Confusion” on Defendants, Pollworkers and Voters.

15 Defendants are not unduly prejudiced by the timing of plaintiffs’  
16 Complaints. Plaintiffs merely ask this Court to restore the much simpler procedures for  
17 determining voter eligibility to that used for the last general election. This is hardly a  
18 major imposition: for Registration ID, it means instructing election workers to accept an  
19 otherwise valid registration application even if the applicant fails to provide citizenship  
20 documentation; for Polling Place ID, it means directing pollworkers not to request  
21 identification at the polls.<sup>2</sup> This causes no harm to voters who already provided the  
22 documentation required by Proposition 200, and eligible voters who do not have the  
23 identification now would be able to exercise their fundamental right to vote. As the  
24 Coconino County Defendants make clear -- “it is a simple matter to delete the [Polling  
25 ID] requirement should the court grant the injunction. *No harm will result to the county*  
26 *elections process.*” [Coconino Resp., at 6]

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27  
28 <sup>2</sup> Ex. 61, at ¶¶ 7-13.

1           The cases upon which defendants rely are inapposite. Here, plaintiffs seek  
2 to streamline election procedures and protect the franchise. In stark contrast, in  
3 defendants rely upon cases in which the plaintiffs sought to postpone elections or  
4 change ballots. See *Southwest Voter Registration Educ. Project v. Shelley*, 344 F.3d 914  
5 (9th Cir. 2003) (plaintiffs sought to have the California gubernatorial recall election  
6 postponed after absentee voting had begun); *Nader v. Keith*, 385 F.3d 729 (7th Cir.  
7 2004) (candidate sought to get on the ballot after some absentee ballots had been  
8 mailed); *Harris v. Purcell*, 973 P.2d 1166 (Ariz. 1998) (plaintiff sought to have certified  
9 ballot proposition removed less than two months before the election); *Mathieu v.*  
10 *Mahoney*, 851 P.2d 81 (Ariz. 1993) (same). Although the Maricopa County Director of  
11 Elections claims that changing the Registration or Polling ID requirements “likely  
12 would cause confusion for election officials, boardworkers, and voters,” no support is  
13 provided for this conclusory assertion. Indeed, this contention is largely undermined by  
14 Ms. Osborne’s own deposition testimony, where she admitted that if the Polling ID  
15 requirements are applied in the upcoming elections, there would also be confusion.<sup>3</sup> It is  
16 simply illogical to suggest that eliminating the largely untested, intricate and elaborate  
17 Polling ID procedures, and reverting to no ID requirements at all (with which  
18 pollworkers and election officials are familiar from previous elections) will somehow  
19 create *greater* confusion on election day.

20           C.     Section 5 Preclearance Is Not Required to Return to Pre-Proposition 200  
21                   Procedures.

22           The County Defendants claim that if the court preliminarily enjoins  
23 enforcement of the Act’s ID requirements, defendants would need to seek preclearance  
24 under Section 5 of the Voting Rights Act to return to the pre-Proposition 200 standard,  
25 and that there is no time to do so. [County Resp. at 5-6] The law is clear that if the  
26 Court enjoins Proposition 200, the defendants will not have to seek preclearance for the

27 \_\_\_\_\_  
28 <sup>3</sup> Ex. 27, at 80-81. Unless otherwise stated, citations are to exhibits submitted in support  
of the ITCA Plaintiffs’ Motion for Preliminary Injunction.

1 pre-Proposition 200 procedures. The “last legally enforceable” procedure -- *i.e.*, the last  
2 procedure that was not objected to under Section 5 or not invalidated by a court --  
3 becomes the relevant “benchmark” for the purposes of Section 5 review. *See Abrams v.*  
4 *Johnson*, 521 U.S. 74, 96-97 (1997); *Bone Shirt v. Hazeltine*, 387 F. Supp. 1035, 1042  
5 (D.S.D. 2005), *aff’d* 2006 WL 2404139 (8th Cir., Aug. 22, 2006); *Navajo Nation v.*  
6 *Arizona Indep. Redistricting Comm’n*, 230 F. Supp. 2d 998, 1004 n.8 (D. Ariz. 2002).  
7 Thus, if the Court enjoins Proposition 200, the pre-Proposition 200 procedures are the  
8 last legally enforceable procedures and need not be precleared a second time.

9 II. PROPOSITION 200’S ID REQUIREMENTS IMPOSE A SEVERE BURDEN  
10 ON VOTERS AND WOULD-BE VOTERS, AND ARE NOT NARROWLY-  
11 TAILORED TO PREVENT VOTER FRAUD.

12 A. Proposition 200 Must Be Strictly Scrutinized.

13 Even though it impacts the fundamental right to vote, the State argues that  
14 Proposition 200 should be analyzed under the “flexible” standard announced in *Burdick*  
15 *v. Takushi*, 504 U.S. 428, 434 (1992), instead of strict scrutiny. [Resp. at 9] In *Burdick*,  
16 the Supreme Court noted that where a state election law imposes only “reasonable,  
17 *nondiscriminatory* restrictions” on voters’ Fourteenth Amendment rights, the state’s  
18 “important regulatory interests” can suffice to justify the restrictions. 504 U.S. at 434  
19 (emphasis added). For two reasons, a higher standard applies. First, Proposition 200 is  
20 *not* a “nondiscriminatory” restriction. *See Anderson v. Celebrezze*, 460 U.S. 780, 788-  
21 95 (1983) (applying a higher standard to law that discriminates against voters who share  
22 a particular viewpoint, associational preference or economic status). Second, it imposes  
23 a severe burden on the fundamental right to vote, in which instance strict scrutiny must  
24 be applied. *See Campbell v. Hull*, 73 F. Supp. 2d 1081, 1093 (D. Ariz. 1999).

25 B. The ID Requirements Are Discriminatory.

26 Proposition 200 is discriminatory. First, the Registration ID requirements  
27 are not required of all voters. Only new registrants must provide proof of citizenship  
28 (and pay the necessary fees if they lack Registration ID) because voters registered as of  
the date of Proposition 200’s enactment are “grandfathered” in. *See A.R.S. § 16-*

1 166(G). Similarly, only voters who vote in person are required to produce Polling ID  
2 (and pay the necessary fees for Polling ID) because Proposition 200 does not require  
3 voters voting by early ballot to present any identification.

4           Importantly, the ID requirements of Proposition 200 disproportionately  
5 impact certain groups, in particular the poor, the elderly, and minority groups, including  
6 Native Americans. Voting restrictions that disproportionately impact upon a particular  
7 segment of the community, including the less affluent, must be closely scrutinized.  
8 *Anderson*, 460 U.S. at 793; *Bullock v. Carter*, 405 U.S. 134, 144 (1972) (restriction that  
9 causes disparity in voting power based on wealth must be “closely scrutinized”).  
10 Historically, 85% of minority voters, including Native American voters who require  
11 language assistance available only at polling places, vote in person, while only 48% of  
12 Anglo voters do so.<sup>4</sup> As Coconino County has made abundantly clear, Proposition 200  
13 “imposes a severe restriction on the fundamental right to vote for Native Americans, in  
14 particular . . . reservation residents.” [Coconino Resp. at 6] Because not all Tribes issue  
15 Tribal ID, the special procedure the State has created for Native Americans does not  
16 alleviate the disproportionate burden imposed on many Native Americans.<sup>5</sup>

17           C.     Although Proposition 200 Does Not Completely Bar Most Voters From  
18                   Casting a Vote, it Severely Burdens Voting Rights, and *Burdick*’s Lesser  
19                   Standard Does Not Apply.

20           Even if Proposition 200 were nondiscriminatory, it could still not be  
21 measured by the lesser standard set forth in *Burdick*. Where a state election law  
22 severely burdens voting rights, strict scrutiny always applies, even if the law is non-  
23 discriminatory. *Campbell*, 73 F. Supp. 2d at 1082-83, 1093 (applying strict scrutiny  
24 under *Burdick*, despite an explicit finding that the measures were “nondiscriminatory”).

25 \_\_\_\_\_  
<sup>4</sup> Ex. 21, at 8.

26 <sup>5</sup> See Ex. 58, at ¶¶ 37-40. The special procedure for Native American voters is not  
27 required by Proposition 200 and may be changed or eliminated at any time, subject to  
28 the political whims of elected office. As such, it is not “absolutely clear” that the Act’s  
unconstitutional impact is unlikely to affect more Native American voters in the future.  
*See FTC v. Affordable Media LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999).

1 Defendants assume that, because Proposition 200 does not erect a  
2 complete bar to voting, the burden is not “severe.” Stated differently, defendants argue  
3 that nothing in Proposition 200 makes voting an *impossibility* for Arizona voters.  
4 However, the threshold for demonstrating a “severe restriction” is not so high as to  
5 require that a law actually bar some voters from voting.

6 In *Campbell*, plaintiffs challenged Arizona’s ballot access laws. 73 F.  
7 Supp. 2d at 1082-83. Applying *Burdick*, the court found that the combined ballot access  
8 provisions severely burdened the plaintiffs’ rights to associate and to cast their votes  
9 effectively. *Id.* at 1086, 1092. The opinion established two principles. First, in  
10 determining the “character and magnitude of the asserted injury” to plaintiffs, a court  
11 must consider “the entire scheme regulating [voting],” not one provision “in isolation.”  
12 *Id.* at 1086, 1089-90. Second, restrictions on voting can be “severe” even though a voter  
13 exercising “due diligence” could eventually comply with them. *Id.* at 1084.

14 Proposition 200, like the ballot access restrictions in *Campbell*, does not  
15 operate as a total bar to voting for the majority of Arizonans. Some, though certainly  
16 not all, Arizonans can eventually procure satisfactory Registration ID and Polling ID,  
17 through the exercise of great “diligence.”<sup>6</sup> *Id.* However, making voting an impossibility  
18 is not what the Supreme Court requires for a state election law to constitute a “severe  
19 restriction.” Rather, the ability to vote cannot be conditioned on exercising a degree of  
20 effort, or spending an amount of money, that constitutes a “severe restriction.”  
21 Proposition 200 makes it infinitely more difficult for thousands of Arizonans to vote,  
22 because for these individuals, acquiring the necessary ID presents significant financial,  
23 bureaucratic, and practical hurdles. When Proposition 200 and Arizona’s “entire  
24 scheme regulating [voting]” is considered, it is clear that Proposition 200 imposes a  
25 severe restriction, and as such, is unconstitutional unless it survives strict scrutiny.

26 \_\_\_\_\_  
27 <sup>6</sup> *But see* Ex. 24, at 64 (describing an elderly voter who attempted to bring ID to the city  
28 clerk’s office after the election, but could not provide two forms of non-photo  
identification. Because her bills were her deceased husband’s name, she could not  
present sufficient Polling ID, her conditional provisional ballot was not counted).

1           D.     Registration ID Severely Burdens the Right to Vote.

2           1.     *Defendants Grossly Under-Represent the Number of Arizonans*  
3                 *Who Are Disenfranchised Because they Lack Registration ID.*

4           To minimize the startling number of voters who have been or will be  
5     barred from registering to vote, defendants emphasize that most Arizonans possess  
6     acceptable Registration ID. But it is the disenfranchised voters that matter, and their  
7     numbers are large: 20,713 Arizonans have already attempted to register, only to have  
8     their registrations rejected. Plaintiffs' expert's very conservative estimate identified  
9     28,540 Arizonans who are eligible to register but lack Registration ID.<sup>7</sup> Moreover,  
10    information the state produced after plaintiffs' deadline to disclose their expert's report  
11    shows an additional 24,702 people may lack Registration ID because they possess a  
12    driver's license or non-operating identification license issued before October 1, 1996.<sup>8</sup>

13           Defendants complain that the Sissons Report did not account for historical  
14    registration percentages, yet they offer no further information about historical  
15    registration rates. [Resp. at 14] Perhaps defendants did not provide that information  
16    because it shows that the number of Arizonans who have been prevented from  
17    registering to vote by Proposition 200 is much *higher* than the nearly 21,000 identified  
18    in their discovery responses. In January 2005, before implementation of the Act,  
19    74.95% of eligible Arizonans were registered to vote. In July 2006, only 73.48% are  
20    registered. While the difference in registration percentage may seem small, it translates  
21    to an additional 59,458 eligible but unregistered individuals -- a number significantly  
22    higher than the very conservative estimate plaintiffs have offered.<sup>9</sup>

23           <sup>7</sup> Ex. 21, at 2.

24           <sup>8</sup> Ex. 59 (August 3, 2006 letter from Stacey Stanton to Bill Richards) (attached hereto).  
25    12.12% of adult driver's or non-operating license holders possess a license that is too  
26    old to be used as Registration ID because it was issued before October 1, 1996.  
27    Applying that percentage to the percentage of Arizonans the State has identified as  
28    possessing a driver's or non-operating license, only 76.8% may use such a license to  
29    register. As such, 53,242 Arizonans likely lack any Registration ID.

30           <sup>9</sup> In July 2005, 2,879,752 of the 3,842,347 eligible Arizonans were registered to vote. In  
31    July 2006, 2,972,214 of the 4,044,822 eligible Arizonans were registered to vote. *See*  
32    July 2005 Registration Report, posted on the Secretary of State's website at  
33    <http://www.azsos.gov/election/voterreg/2005-07-01.pdf>; *see also* Ex. 21 at 3, 5; Ex. 52.

1                   2.       *The Tens of Thousands of Arizonans who Cannot Register to Vote*  
2                                    *Are Severely Burdened by the Act.*

3                   It is undisputed that eleven Arizona counties have already rejected 20,713  
4 voter registration applications since Proposition 200 took effect. Those would-be voters  
5 are barred from casting a ballot in the September primary election. Moreover, tens of  
6 thousands more people may decide they would like to register and vote in future  
7 elections, but will be prohibited from doing so because they lack Registration ID. While  
8 some may be able to obtain Registration ID by navigating confusing bureaucracies and  
9 paying a fee, others will find the Registration ID barrier insurmountable.<sup>10</sup>  
10 Consequently, for those who have been denied registration or will be unable to register  
11 in the future, Proposition 200 imposes a severe burden on the right to vote. Indeed, it  
12 does not merely limit their choices on the ballot, but stops them from voting altogether.  
13 As such, the Registration ID requirement must be enjoined because it is not “narrowly  
14 drawn to advance a state interest of compelling importance.” *Burdick*, 504 U.S. at 434;  
15 *cf. Common Cause/Georgia v. Billups*, 2006 WL 2089771 (N.D. Ga., July 14, 2006)  
16 (“*Billups II*”) (requiring narrow tailoring even under *Burdick*’s “flexible standard”).

17                   3.       *The Registration ID Provisions Are Not Narrowly Tailored to*  
18                                    *Prevent Non-Citizens from Registering and Voting.*

19                   Measured against the nearly three million registered voters in Arizona,  
20 defendants have produced scant evidence of registration by non-citizens, and even less  
21 evidence of non-citizens voting. Defendants insist a problem exists, but do so largely  
22 based on conjecture, asserting that voter fraud is “hard to detect and difficult to  
23 investigate.” [Resp. at 6]

24                   Given the speculative nature of the harm it supposedly addresses,  
25 Proposition 200 is hardly narrowly tailored. It imposes onerous identification  
26 requirements on prospective registrants, while leaving gaping loopholes for fraud. Most  
27 obviously, 2,706,223 individuals who were registered to vote on January 24, 2005 will

28 <sup>10</sup> See Ex. 33, at ¶ 9; Ex. 34, at 10; Ex. 35, at ¶ 6; Ex. 36, at ¶ 6; Ex. 60 (Declaration of Tammy Pattison) ( attached hereto), at ¶ 9.

1 never need to provide documentation of their citizenship, unless they move to a different  
2 Arizona county and re-register. *See* A.R.S. § 16-166(G). And, although the Act  
3 considers driver's or non-operating identification licenses issued after October 1, 1996  
4 to be "satisfactory evidence of citizenship," until 2000, licenses issued to non-citizens  
5 were indistinguishable from those issued to citizens. Defendants claim that "it is wrong  
6 to suggest that there are no safeguards to prevent non-citizens who hold licenses from  
7 registering to vote," but do not explain those safeguards with respect to non-citizens  
8 whose licenses were issued between October 1996 and 2000. [Resp. at 3 n.2] In short,  
9 defendants' evidence of fraudulent voter registrations is negligible, and Proposition  
10 200's Registration ID requirement is not narrowly tailored to combat this problem.

11 To support their assertions that the problem of voter fraud is acute,  
12 defendants point to a recent state legislative election that was decided by 13 votes.<sup>11</sup>  
13 [Resp. at 8] That close election shows exactly why Proposition 200 fails. Defendants  
14 have only produced evidence that 38 individuals -- alleged, but not proven, to be non-  
15 citizens -- have cast a vote in *ten years*, a period encompassing at least 13 statewide and  
16 national elections and many more local elections. Yet in less than two years,  
17 Proposition 200 has disenfranchised *tens of thousands* of eligible Arizonans, each of  
18 whom will be barred from casting a ballot in the upcoming elections, including the next  
19 race decided by 13 votes.<sup>12</sup> The math is plain: the thousands of voters disenfranchised  
20 by the Act are far more likely to influence the outcome of a close race than any non-  
21 citizen voters.

22

23

24 <sup>11</sup> In fact, the 2002 Republican Primary elections for Legislative District 20 were  
25 decided by 1,481 votes (State Senator) and 1,004 votes (State Representative). *See*  
26 Official Canvass of 2002 Primary Election, posted on the Secretary of State's website at  
27 <http://www.azsos.gov/election/2002/Primary/Canvass2002PE.pdf>.

28 <sup>12</sup> Since 1974, at least 12 statewide offices have been decided by fewer than 21,000  
votes -- in fact, in the last 30 years three Arizona governors, including the current  
governor, were elected by fewer than 12,000 votes. *See* Official Canvass of 1974, 1978,  
1982, 1986, 1994, 1998 and 2002 general elections, accessible from the Secretary of  
State's website at <http://www.azsos.gov/election/PreviousYears.htm>.

1 E. The State's Experience Establishes that Polling ID Imposes a Severe  
2 Burden on the Right to Vote.

3 Undisputed facts establish that hundreds of conditional provisional ballots  
4 cast in the first two elections in which voters were required to present Polling ID were  
5 not counted because voters did not return with Polling ID.<sup>13</sup> The Maricopa County  
6 Elections Director estimates that this number will swell to the thousands in Maricopa  
7 County alone once the general election occurs.<sup>14</sup>

8 Unsurprisingly, defendants do not address the actual number of voters who  
9 have already been disenfranchised by Proposition 200, focusing instead on the  
10 percentage of all Maricopa County voters who were forced to cast a conditional ballot,  
11 downplaying this figure and noting that identification is part of "America's everyday  
12 life." [Resp. at 12] But ID is *not* a part of every day life for many Americans who have  
13 little to no need for the kinds of ID acceptable under Proposition 200 -- because they do  
14 not drive, do not travel, live in group housing or in remote areas, and subsist on limited  
15 incomes.<sup>15</sup> Defendants cannot dispute that hundreds of votes have already gone  
16 uncounted, and despite the efforts of elections officials, thousands more voters will be  
17 disenfranchised this fall.

18 Those disenfranchised in the Spring 2006 elections did not have their  
19 ballots counted even though the State has included in its Polling Place Procedures what  
20 it calls the "fail-safe measure" of conditional provisional ballots. [Resp. at 5]  
21 Moreover, some counties' practice of accepting "official election material" as Polling ID  
22 has not remedied the problem. Maricopa County sent such election mail to voters for  
23 the Spring 2006 elections, but still issued 187 conditional provisional ballots that were  
24 never counted.<sup>16</sup> As the hundreds of uncounted conditional ballots show, the use of

25 <sup>13</sup> Ex. 5, at 3; Ex. 6, at 3; Ex. 7, at 5; Ex. 8, at 8; Ex. 11, at APA01282; Ex. 12, at 2; Ex.  
26 15 at 5; Ex. 16, at 3-4.

27 <sup>14</sup> Ex. 27, at 67-68.

28 <sup>15</sup> Ex. 33, at ¶ 9; Ex. 34, at ¶ 10; Ex. 35, at ¶ 6; Ex. 36, at 6; Ex. 60, at ¶ 9.

<sup>16</sup> Ex. 15, at 4; Ex. 27 at 60.

1 conditional provisional ballots and the provision of “election mail” to use as Polling ID  
2 do not cure the Act’s severe restriction of the right to vote.

3 F. The State Fails to Demonstrate Any Rational Connection, Let Alone a  
4 Narrowly Tailored One, Between Polling ID and Preventing Fraud.

5 Crucially, defendants have been unable to identify even a single instance  
6 of imposter voting at Arizona polls, which is the *only* form of voter fraud that the  
7 Polling ID requirements might prevent. The State argues that without Polling ID, a  
8 person not legally-entitled to vote can simply provide the name of a registered voter and  
9 obtain a ballot. [Resp. at 6] Yet defendants have identified no instances of such in-  
10 person voter fraud. Moreover, even with the Polling ID requirement, a person could  
11 obtain non-photo identification belonging to a registered voter (perhaps through mail  
12 theft, a common crime in Arizona) and impersonate that person at the polls. In short,  
13 Polling ID solves a problem that does not exist, and does not solve it very effectively.

14 The irrationality of the Polling ID requirement is further evidenced by the  
15 fact that approximately half the ballots cast in Arizona are cast as early votes, and those  
16 voters need not provide Polling ID. Indeed, the State actually *encourages* people to vote  
17 by early ballot -- a mechanism through which it would be easier to accomplish voter  
18 fraud.<sup>17</sup> By not requiring Polling ID for early votes, the State essentially concedes that  
19 Polling ID is not necessary to prevent voter fraud. Rather, as several county elections  
20 officials have testified, the signature matching process for early votes is sufficient to  
21 guard against fraud.<sup>18</sup>

22  
23 <sup>17</sup> *Burdick* and *Anderson* drew the analytical process for election law challenges from  
24 ordinary constitutional litigation, but the test the Court fashioned differs in one  
25 significant respect from other litigation. Review at the lower end of the scale requires  
26 “reasonableness,” and does not continue down to approving regulations that impose a  
27 burden merely because the regulation is “rational.” *Burdick*, 504 U.S. at 434; *Anderson*,  
28 460 U.S. at 789. Consequently, judicial review of less burdensome election regulations  
is similar to that of commercial speech regulation, where the Court requires a  
“reasonable fit” between the governmental interest and the means chosen to accomplish  
that interest. *See Bd. of Trustees of SUNY v. Fox*, 492 U.S. 469, 480 (1989). Arizona’s  
scheme falls below that standard, for it does not even meet the rational basis test.

<sup>18</sup> *E.g.*, Ex. 24, at 69; Ex. 26, at 35.

1 III. POLLING PLACE IDENTIFICATION LAWS IN OTHER STATES ARE FAR  
2 LESS BURDENSOME THAN PROPOSITION 200, AND DEFENDANTS'  
3 CASES DEMONSTRATE THAT THE ACT IS UNCONSTITUTIONAL.

4 Defendants downplay Proposition 200's Registration and Polling ID  
5 requirements as commonplace, consistent with voting requirements throughout the  
6 country. [Resp. at 9-10] On the contrary, Arizona's law is unprecedented and sets the  
7 most onerous requirements in the nation.

8 After a federal court enjoined enforcement of its voter identification law  
9 because it burdened the fundamental right to vote and constituted a poll tax, Georgia  
10 enacted a new law to cure the constitutional deficiency. *Billups II*, 2006 WL 2089771 at  
11 \*2; see also *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1376 (N.D. Ga.  
12 2005) ("*Billups I*"). Georgia's relaxed ID requirements required the state to issue a  
13 "voter ID card" *free of charge to any registered voter* who avowed he desired an ID card  
14 to vote, did not have any other form of ID under the statute, and "produced evidence that  
15 he or she is registered to vote in Georgia." *Id.* at \*9. Many documents not acceptable in  
16 Arizona would be sufficient to obtain a Georgia voter ID -- student ID card, transit card,  
17 pilot's license, nursing home ID card, employee ID card, state or federal tax returns,  
18 paycheck or pay stub, Medicare or Medicaid statement, and certified school records, to  
19 name a few. *Id.* at \*10-15. Indeed, a Georgia voter may obtain the required voter ID  
20 card with his voter registration application or voter's precinct card, which may be  
21 obtained free of charge without showing any ID.<sup>19</sup> *Id.* at \*15

22 Similarly, the voter ID law at issue in *Rokita* was much less stringent than  
23 Proposition 200 because it included an indigency exception and an exception for any  
24 individual who had religious objections to being photographed. *Indiana Democratic*  
25 *Party v. Rokita* 2006 WL 1005037 at \*5 (S.D. Ind., Apr. 14, 2006). Notably, plaintiffs  
26 failed to put forth even *one* person adversely affected by the voter ID law. The court  
27 emphasized this failure, noting that "Plaintiffs' lack of evidence confirms that [the voter

28 <sup>19</sup> Because of the short time before the next election in which to educate voters about the  
ID requirement, the court held even these less onerous ID requirements constituted an  
undue burden on the right to vote. *Billups II*, at \*59

1 ID law] is narrowly tailored because every hypothetical individual who Plaintiffs assert  
2 would be adversely affected actually benefits from one of its exception.” *Id.* at \* 35. In  
3 contrast, the ITCA, Gonzalez and Navajo Nation Plaintiffs, have all submitted  
4 declarations from many individuals affected by Proposition 200. Proposition 200,  
5 *unlike* the law in *Rokita*, also includes identification requirements for registering to vote;  
6 the State’s assertion that “like Arizona, Indiana’s law applies *only* to voters at the polls,”  
7 is inaccurate. [Resp. at 10]

8           In *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio  
9 2004), the plaintiffs challenged Ohio’s directive that first-time voters who arrive at the  
10 polling place without documentary proof of identification vote a provisional ballot and  
11 return to the polling place with such proof.<sup>20</sup> 340 F. Supp. 2d at 827. Crucially,  
12 however, Ohio’s directive allowed voters lacking the physical identification to *orally*  
13 *recite the last four digits of their driver’s license number or social security number.* *Id.*  
14 Upon such recitation, the voter did not need to return to the polling place. *Id.* at 829-30.  
15 Rather, the obligation to return to the polling place applied only to voters who had no  
16 physical identification of any kind *and* who could not remember the last four digits of  
17 their driver’s license or social security number -- a very small group of voters, the court  
18 noted. *Id.* at 829-830. The Ohio law thus provided an avenue by which voters could  
19 always vote a provisional ballot without the required identification and without any  
20 extra burden. Proposition 200 lacks these procedures and instead requires a voter  
21 without Polling ID to return to the polling place later with requisite identification in  
22 hand. If a voter does not have it, the voter must purchase Polling ID (or start utility  
23 service, own a car and pay for insurance, start a bank account, etc).

24           Also, contrary to the State’s suggestion, the cases noted by the Georgia  
25 district court in *Billups I* confirm that Proposition 200 does not pass constitutional  
26

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27 <sup>20</sup> Documentary proof of ID included a driver’s license, or a copy of *one* of the  
28 following: current utility bill, bank statement, government check, paycheck, or other  
government document showing name and address. *Blackwell*, 340 F. Supp. 2d at 826.

1 muster. [See Resp. at 5 n.5, 10 n.9] First, the identification requirements applied *only* to  
2 first-time voters, not all voters as Proposition 200 does, and none of the three involved  
3 proof of citizenship requirements for registration. *Billups I*, 406 F.Supp.2d at 1376 n. 10  
4 (citing *Colorado Common Cause v. Davidson*, 2004 WL 2360485 (D. Colo. Oct. 18,  
5 2004); *Blackwell*, 340 F. Supp. 2d 823; *Bay County Democratic Party v. Land*, 347 F.  
6 Supp. 2d 404 (E.D. Mich. 2004)).

7 Proposition 200 suffers from a fundamental and fatal flaw that renders it  
8 constitutionally defective: It provides no savings mechanism for all voters, and the  
9 Polling ID requirements discriminate in that they do not apply to early voters, who are  
10 three and a half times more likely to be Caucasian. Only 9% of Native Americans vote  
11 by early ballot, compared to the 52% of voters in precincts where Anglo voters make up  
12 95% or more of the population.<sup>21</sup> [Coconino Resp. at 3]

13 IV. ON ITS FACE, PROPOSITION 200 CONSTITUTES A POLL TAX AND  
14 UNCONSTITUTIONALLY CONDITIONS THE FRANCHISE ON  
WILLINGNESS OR ABILITY TO PURCHASE ID.

15 A. Potential Voters Cannot Obtain Registration ID For Free.

16 Defendants concede that Registration ID is not available without payment  
17 of a fee. [See Resp. at 18] While some individuals may be eligible to obtain a non-  
18 operating identification license without paying a fee, it is almost impossible to obtain  
19 identification from the MVD without another form of Registration ID.<sup>22</sup> Accordingly,  
20 the minority of older Arizonans who qualify for a fee exemption cannot obtain a non-  
21 operating license without paying for Registration ID.

22 The State places unjustified reliance on the Indiana District Court's ruling  
23 in *Rokita* to support its claim that the Act does not impose a poll tax. In fact, the court  
24 never determined whether the cost of purchasing documents created a poll tax. Rather,  
25 the court left the issue unresolved because the plaintiffs provided no evidence that any  
26 person would be required to pay money to obtain identification. See *Rokita*, 2006 WL

27 <sup>21</sup> Ex. 21 at 8.

28 <sup>22</sup> See Ex. 41.

1 1005037 at \*38. In this case, plaintiffs have identified several individuals who cannot  
2 register to vote in Arizona because they lack Registration ID and cannot afford to  
3 purchase it.<sup>23</sup> As such, requirement of Registration ID unconstitutionally bars those  
4 potential voters from exercising their rights to vote.

5 B. Polling ID is Not Available to All Arizonans Free of Charge.

6 Defendants likewise do not dispute that most forms of Polling ID are not  
7 available free of charge, whether the cost is for the identification itself or for a service  
8 without which the identification would not be provided. [See Resp. at 16] Instead,  
9 defendants rely on provision of free voter registration cards and “official election  
10 material” to remedy the constitutional problem Proposition 200 creates. [Id.] While  
11 many Arizona counties are providing this type of Polling ID free of charge to active  
12 voters, it is undisputed that fewer than all of the counties are doing so, or that eligible,  
13 but “inactive” voters will not receive free Polling ID.<sup>24</sup> Indeed, even if a voter lives in a  
14 county that plans to send “official election material” to voters to use as Polling ID, if  
15 that voter has moved, even within a precinct, or otherwise changed mailing addresses,  
16 she will not receive free Polling ID. As such, as implemented by the Secretary, the Act  
17 bars some voters from receiving a regular ballot unless they have purchased Polling ID.

18 Importantly, representatives of several counties have acknowledged that  
19 neither Proposition 200 nor the Polling Place Procedures require them to send “official  
20 election material” to individual voters or accept it as Polling ID. Nor does the Act  
21 require the Procedures to include any free ID. Accordingly, both the Secretary and the  
22 Counties are free to change their procedures and stop providing or accepting “official  
23 election material” or voter registration cards as Polling ID. Likewise, the Secretary  
24 could change or eliminate the special procedures for Native American voters at any  
25 time. For these reasons, Proposition 200 is unconstitutional on its face.

26  
27 <sup>23</sup> See Ex. 33 at ¶¶ 5, 9; Ex. 34 at ¶ 6; Ex. 35 at ¶¶ 5-6; Ex. 36 at ¶¶ 5-6.

28 <sup>24</sup> E.g., Ex. 20.

1 C. The Costs for Obtaining Registration and Polling ID Violate the Twenty-  
2 fourth and Fourteenth Amendments.

3 Because one cannot cast a ballot without first registering, and one cannot  
4 register without presenting Registration ID, which defendants admit may only be  
5 obtained for a fee, Proposition 200 imposes a poll tax in violation of the Twenty-fourth  
6 Amendment on those who do not possess Registration ID. *See Harman v. Forssenius*,  
7 380 U.S. 528, 542 (1965). The unconstitutional effect of Proposition 200 is not  
8 remedied because the fees paid for Registration or Polling ID may be set by and paid to  
9 the federal government, a tribal government or a private entity. *See id.* at 542 (barring  
10 any “equivalent or milder substitute” to a poll tax). Indeed, the Twenty-fourth  
11 amendment prohibits not only monetary assessments paid to the jurisdiction  
12 administering the election before receiving a ballot, but “nullifies sophisticated as well  
13 as simple-minded modes of impairing the right guaranteed [and] hits onerous procedural  
14 requirements which effectively handicap exercise of the franchise.” *Id.* at 540-41  
15 (citation omitted); *see also Hill v. Stone*, 421 U.S. 289, 292, 298 (1975) (striking down a  
16 law that did not give equal weight to ballots cast by voters who failed to render property  
17 for taxation, regardless of whether those who rendered property actually paid any tax).

18 It is immaterial that the fees for Registration ID and Polling ID are not  
19 imposed annually.<sup>25</sup> It is not the repetitive nature of a poll tax that makes it  
20 unconstitutional, but its mere existence. *Harper v. Va. State Bd. of Elections*, 383 U.S.  
21 663, 666 (1966) (stating that making payment of “*any fee* an electoral standard” violates  
22 the Fourteenth Amendment) (emphasis added). Indeed, the court in *Billups I* concluded  
23 that requiring voters to purchase photo identification that remained valid for five or ten  
24 years constituted a poll tax, because “it effectively places a cost on the right to vote.”  
25 406 F. Supp. 2d at 1369. Proposition 200 does the same.

26  
27 <sup>25</sup> Moreover, the fee for Registration ID is not necessarily imposed only once. [*See*  
28 *Resp.* at 18] If a voter moves to another Arizona county after his Registration ID  
expires, he must again pay to obtain Registration ID.



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RESPECTFULLY SUBMITTED this 23rd day of August, 2006.

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I further certify that I caused a copy of the attached document to be mailed  
on the 23rd day of August, 2006 to:

Honorable Roslyn O. Silver  
Sandra Day O'Connor U.S. Courthouse, Ste. 624  
401 West Washington, SPC 59  
Phoenix, Arizona 85003-2158

/s/ Michele L. Galvez

# EXHIBIT 59



# Arizona Department of Transportation

## Motor Vehicle Division

1801 West Jefferson Street Phoenix, Arizona 85007

Janet Napolitano  
Governor

Victor M. Mendez  
Director

Stacey K. Stanton  
Division Director

August 3, 2006

Bill Richards, CIV/ALS  
Office of the Arizona Attorney General  
1275 W. Washington St.  
Phoenix, AZ 85007

Dear Mr. Richards:

The Arizona Department of Transportation, Motor Vehicle Division is responding to your telephone request of August 1, 2006 for Arizona driver license and identification card statistics for those over age seventeen.

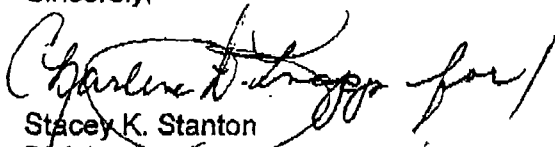
Total number of current/valid Arizona driver licenses issued to drivers over age 17: 4,034,819.

Total number of current/valid Arizona identification cards issued to those over age 17: 716,123.

Total number of current/valid Arizona driver licenses held by drivers over age 17, and issued before October 1996: 355,582.

Total number of current/valid Arizona identification cards held by drivers over age 17, and issued before October 1996: 220,458.

Sincerely,

  
Stacey K. Stanton  
Division Director



2001 Award Recipient

# EXHIBIT 60

## DECLARATION

Pursuant to 28 U.S.C. § 1746, I, Tammy Pattison, hereby declare as follows:

1. My name is Tammy Pattison, I am 45 years of age, and I have personal knowledge of the facts stated below. I give this declaration in support of the Plaintiffs' motion for a preliminary injunction in the above-captioned case, and for any other reason authorized by law.
2. I am a citizen of Arizona and of the United States. I am a resident of Phoenix, Arizona, which is located in Maricopa County, where I have lived since January 2005.
3. I am not currently registered to vote in my Arizona county of residence. I would like to register to vote because I moved to Arizona from another state, and have not yet registered to vote in Arizona.
4. I meet the qualifications to register because I am a United States citizen, I am a resident of Arizona, I will be age 18 or over on November 7, 2006, I have not been convicted of a felony, and I have not been found mentally incompetent by a court.
5. Although I am a United States citizen, I do not possess any of the following documents showing my citizenship status: an Arizona driver license or non-operating identification issued after October 1, 1996; a copy of my birth certificate showing my current name, or a copy of my birth certificate showing a previous name as well as additional documentation that proves my identity; a U.S. passport; U.S. naturalization documents or the number of a

certificate of naturalization issued to me; a BIA Card Number, Tribal Treaty Card Number, Tribal Enrollment Number, Tribal Certificate of Indian Blood or Tribal or BIA Affidavit of Birth; or a driver license or non-operating identification from another state that indicates that I have provided satisfactory proof of United States citizenship.

6. I do not possess any of the following documents showing my name, a photograph, and my current address: a valid, unexpired Arizona driver's license; a valid, unexpired Arizona non-operating license; Tribal identification; other valid, unexpired government-issued identification.
7. I do not possess two of the following documents showing my name and my current address: a utility bill for electric, gas, water, solid waste, sewer, telephone, cellular phone or cable television; a bank or credit union statement; a valid, unexpired Arizona vehicle registration; an Indian census card; a property tax statement of my residence; a tribal enrollment card or other form of tribal identification; a vehicle insurance card; a recorder's certificate; or valid, unexpired federal, state or local government-issued identification, including a voter registration card issued by the county recorder.
8. I prefer to vote in my precinct and cast my ballot in person.
9. There are other circumstances that make my obtaining documents showing my citizenship status and documents showing my name and current address burdensome, impractical and unnecessary, in particular: (a) I do not drive a motor vehicle; (b) I do not need documents showing my citizenship for any practical purpose in my day-to-day life; (c) utility bills, bank accounts and

similar documents are addressed to a post office box; (d) due to health reasons, it is difficult for me to take public transportation or walk long distances; (e) I have physical disabilities which make it difficult for me to take public transportation or walk long distances; (f) I do not have access to the internet; (g) if there are fees associated with obtaining documents showing my citizenship status and documents showing my name and current address, I do not have the economic means to pay them because of my limited income.

10. As a consequence of these certain circumstances, I believe that “The Arizona Taxpayer and Citizen Protection Act” unduly burdens my right to participate in local, state and/or federal elections.
11. I object to having to incur a financial burden, directly or indirectly, in order to exercise my right to vote.
12. I intend to vote in the next scheduled elections. I am concerned that I will not be permitted to register because I do not have and cannot obtain without burden documents showing my citizenship status. I am also concerned that even if I am able to register, I will not be permitted to vote in person at my precinct because I do not have the required documents showing my current address. Therefore, I respectfully ask the Court to prevent election officials from denying me and other Arizona citizens the right to vote based on the inability to provide certain documentation.

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

Executed on this 7 day of August, 2006.  
DATE MONTH

Tammys Patterson  
(Signature)

# EXHIBIT 61

## **DECLARATION OF PATTY HANSEN**

Pursuant to 28 U.S.C. § 1746, I, Patty Hansen, declare:

1. I have served as Elections Administrator of Coconino County since June 30, 2003. I have personal knowledge of the facts stated herein.

2. As Elections Administrator, I report directly to the Coconino County Recorder. My duties as Elections Administrator include overseeing both the voter registration and elections activities conducted by the County Recorder's office. With respect to voter registration, these responsibilities include processing voter registration applications, ensuring compliance with federal and state voter registration laws, and maintaining voter registration files. As far as election activities, my responsibilities include hiring and training poll workers regarding current election law and procedures, ensuring working voting equipment, and most other aspects of election administration. My office is responsible for all voter registration and election administration in Coconino County.

3. I have nearly 20 years of experience as an elections administrator, having previously served as an Elections Administrator at Ramsey County (St. Paul), Minnesota; an Elections Administrator at Hennepin County (Minneapolis), Minnesota; and Election Commissioner and Deputy Election Commissioner for Lancaster County (Lincoln), Nebraska.

4. Coconino County is the second-largest county in the United States in terms of land area in the contiguous 48 states. With respect to

population, it is a mid-sized Arizona county, with 62,896 registered voters as of September 23, 2006.

5. I am very familiar with the requirements of Proposition 200, as I have worked for many months with the Secretary of State's office and other county officials to implement both the proof of citizenship requirement for voter registration ("Registration ID") and polling place identification requirement ("Polling Place ID"). I am responsible for ensuring that the requirements of Proposition 200 are implemented in Coconino County.

6. I also am very familiar with the requirements and procedures for voter registration and polling place voting that existed prior to the enactment of Proposition 200, having overseen several elections in Coconino County under the pre-Proposition 200 laws and procedures, including the November 2004 general election.

7. It would not cause any hardship to the Coconino County Recorder's office, or to the voters or poll workers in Coconino County, if the Court were to issue a preliminary injunction invalidating the Registration ID and or Polling Place ID requirements of Proposition 200 for the September 12 and November 7, 2006 elections.

8. With respect to Polling Place ID, neither my office, nor Coconino County poll workers or voters would be inconvenienced if the Court were to issue a preliminary injunction invalidating the Polling ID requirements for the September and November 2006 elections. In fact, based on my experience,

there would be less confusion for election officials, poll workers and voters in Coconino County if the Court were to invalidate the Polling ID requirements, and the election were conducted in accordance with the familiar procedures in place prior to Proposition 200. There are several reasons for this.

9. First, the new Polling ID procedures developed after Proposition 200 are complex. Three different procedures apply to process ballots depending upon the type of ID presented by a voter: a regular ballot, a regular provisional ballot, and a "conditional" provisional ballot. I have developed a color-coded system for use in Coconino County in order to assist election officials and poll workers in processing ballots in accordance with these three different procedures. I anticipate that there will be mistakes made by poll workers and some lack of consistency in processing ballots under the new Polling Place Procedures notwithstanding the training that my office will provide to election officials and poll workers.

10. Another reason that there likely would be more confusion under the new Polling ID procedures is that our poll workers and voters (both in Coconino County and statewide) have limited experience with new procedures. In Coconino County, we have not yet had a county-wide election using the new Polling ID procedures.

11. In addition, we are simply more familiar with the pre-Proposition 200 procedures. If a preliminary injunction is issued, my office would simply rely upon the election manuals and procedures that have guided us in past


years. Many of our poll workers and voters, and in particular elderly individuals, have been using these procedures for many years. If an injunction is issued, I would simply instruct the County's precinct inspectors (who are the chairpersons of each precinct and responsible for assigning duties) to follow the prior procedures. I cannot imagine any circumstance in which poll workers would apply the new Polling Place ID requirements if they were instructed to use the prior procedures.

12. Finally, if an injunction were issued, there would be no need to print additional or different ballots. We would use the regular ballots that already have been prepared, and we would use provisional ballots in those circumstances in which they were used in pre-Proposition 200 elections. If an injunction were issued, we would not have any reason to use the "conditional" provisional ballot procedure. In summary, based on my experience, there would be more uniformity and less confusion using the pre-Proposition 200 polling place procedures

13. Likewise, it would cause no hardship to my office if the Court were to issue a preliminary injunction invalidating the Registration ID requirements of Proposition 200, and instructing that we revert to the prior procedures with which we are familiar for processing voter registration applications. If this occurred, my office would simply accept those registration applications received after an injunction which met the applicable requirements. This would not cause confusion for my office.

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

EXECUTED this 23rd day of August, 2006 in Flagstaff, Arizona.

  
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Patty Harisen