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SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

JANE DOE, individually and on behalf of all others similarly situated, Plaintiffs, vs. JOE ARPAIO, MARICOPA COUNTY SHERIFF, in his official capacity; MARICOPA COUNTY, Defendants.	No. CV2004-009286 **MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF POINTS AND AUTHORITIES** (Assigned to Hon. Robert Oberbillig) **Oral Argument Requested**

Pursuant to Arizona Rule of Civil Procedure 56, Plaintiffs respectfully move this Court for summary judgment on their Motion for Contempt and/or For a Modification of the Injunction filed on August 8, 2008. Plaintiffs filed the Motion for Contempt because Defendants violated the injunction that prohibits them from requiring inmates to obtain a court order as a precondition to being transported for an abortion. Pursuant to settlement negotiations, which commenced shortly after

the motion was fully briefed, the parties agreed that Defendants would adopt a formal process for handling abortion requests that would be communicated to employees and inmates. This agreement settled the Motion[1] except for one substantive issue: whether Defendants may include in that formal process the new requirement that indigent inmates seeking abortion care must pre-pay transportation and security costs of up to $600. While Defendants may seek *reimbursement* for transport costs – as they did until Plaintiffs filed for contempt – they cannot now obstruct access to abortion care by conditioning access on upfront payment of transport costs. Indeed, doing so violates both the United States and Arizona Constitutions. Accordingly, the Court should modify the injunction to clarify that Defendants' cannot use this latest maneuver to circumvent the 2005 injunction.[2] This motion is supported by the following Memorandum of Points and Authorities and Separate Statement of Facts.

[1] A stipulation of partial settlement followed, and was ordered by this Court.

[2] When the underlying case was on appeal, the Court of Appeals noted that "[t]he superior court will plainly have the authority to enforce this [injunction] if the County unreasonably . . . refuses a transportation request." *Doe v. Arpaio*, 150 P.3d 1258, 1267 n.11 (Ariz. Ct. App. Div. 1 2007).

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual Background.

This case was instituted in May 2004 by Jane Doe after Defendants refused to transport her from Defendants' jail for an abortion without a court order. The relevant facts are fully discussed in the Arizona Court of Appeals' decision. *Doe*, 150 P.3d 1258. In summary, Ms. Doe discovered she was pregnant the day before the County took her into custody to serve her sentence. She immediately and repeatedly informed jail and medical personnel that she wanted an abortion. Defendants told Ms. Doe that pursuant to the longstanding policy of the Maricopa County Sheriff's Office ("MCSO") they would not transport her for an abortion unless she obtained a court order directing them to do so. After a court denied her request for an order, Ms. Doe brought the underlying action seeking immediate transport and challenging the MCSO policy as unconstitutional. This Court granted an immediate injunction, and ultimately held the policy unconstitutional under the Fourteenth Amendment of the U.S. Constitution. This Court's decision was affirmed by the Arizona Court of Appeals. *Doe*, 150 P.3d 1258. The Arizona Supreme Court denied review on September 25, 2007. The United States Supreme Court denied certiorari. *Arpaio v. Doe*, 128 S. Ct. 1704 (2008).

Shortly thereafter, Defendants violated the injunction by telling an inmate, referred to under the pseudonym Mary Roe, that she needed a court order to obtain an abortion. (Plaintiffs' Separate Statement of Facts in Support of Their Motion for Summary Judgment (hereinafter "SOF") at ¶ 4.) As a result, Plaintiffs filed the Motion for Contempt. In the midst of settlement negotiations, Defendants shifted tactics, insisting that inmates who seek abortions must pay significant transportation and security costs before Defendants will transport them. (*Id.* at ¶ 16.) This prepayment provision would require inmates seeking a first-trimester abortion – which can be completed in several hours – to pay a "deposit" of $300 for transportation and security, and that inmates seeking a second-trimester abortion – which typically requires two trips to the doctor over two days – to pay a $600 deposit. (*Id.*) Any deposit amount not spent on actual costs, which includes staff time and mileage, would be refunded to the inmate. (*Id.*) If the procedure takes longer than expected, however, the inmate would have to pay Defendants any amount incurred above the deposit amount. (*Id.*)

The unconstitutionality of the transportation pre-payment provision (hereinafter the "Provision") was illustrated when Sarah Poe, another inmate who is also a referred to by a pseudonym, asked to be transported for an abortion. Defendants' employee, a nurse in Correctional Health Services ("CHS"), told Ms.

Poe that if she wanted an abortion she would need to speak with an attorney. (*Id.* at ¶ 10.) However, Ms. Poe had not yet been assigned a public defender, which Ms. Poe was eligible for because she is indigent. (*Id.* at ¶ 11.) She was therefore unable – based on the nurse's misrepresentations – to obtain abortion care. (*Id.* at ¶ 12.) Once she obtained an attorney, Ms. Poe followed her attorney's instructions and submitted a "tank order" for transport to an abortion provider. (*Id.* at ¶ 13.) Defendants' employee, another CHS nurse, initially told Ms. Poe that there would be no charge for the transport. (*Id.* at ¶ 14.) Subsequently, a Lieutenant informed Ms. Poe that she would have to pre-pay transport costs in the amount of $500.[3] (*Id.* at ¶ 15.) Though Ms. Poe's family was able to pre-pay for the cost of the abortion itself, neither she nor her family had the means to also pre-pay $500 for the transport costs. (*Id.* at ¶ 17.) Trying to ensure Ms. Poe's ability to access abortion care, Plaintiffs' counsel contacted the National Network of Abortion Funds ("NNAF") to ask if they had funds available and if they would be willing to pre-pay the transport costs. (*Id.* at ¶ 18.) NNAF did provide the funds, and Ms. Poe was eventually able to obtain an abortion. (*Id.*) If NNAF had been unable to pay the transportation costs, Ms. Poe would have been forced to carry to term. (*Id.* at 22.)

[3] Though Defendants demanded a deposit of $500 a day from Ms. Poe, they subsequently changed the policy to require a deposit of $300 a day.

The Provision at issue sharply contradicts Defendants' prior representations. Indeed, during the course of discovery in 2005, Defendants represented that their policy required inmates to *reimburse* Defendants for transportation and security costs, *id.* at ¶ 23,[4] and this Court, the Court of Appeals, and Plaintiffs relied on that representation. *See, e.g., Doe*, 150 P.3d at 1264 ("the County requires that inmates transported for non-therapeutic abortion procedures *reimburse* the County for security and transportation costs") (emphasis added).

Additionally, abortion transport is the only type of transport for which Defendants demand payment. For example, inmates who are transported for compassion visits – to attend a funeral or visit a dying relative – are not required to pay Defendants for transport costs, either before or after the transport. (*Id.* at ¶ 27.) Similarly, inmates transported for other medical care or for court appearances are not charged for their transport.

Moreover, forcing indigent inmates to raise up to $600 as a condition of transport is analogous to demanding a court order: it is designed to obstruct the inmate's access to abortion care and it creates unnecessary delay. This is the latest tactic in Defendants' long history of creating obstacles that delay inmates seeking abortion care, often pushing women further into their pregnancies. Though abortion

[4] Defendants also made these representations in their depositions and in their briefs. *See, e.g.*, Defendants' Opening Brief, Court of Appeals, at 28.

is a safe procedure, each week of delay creates an increased risk of complications such as perforation of the uterus, retained tissue, hemorrhaging, and even death. (*Id.* at ¶ 21.) In addition to being medically riskier, the abortion procedure is more costly as the pregnancy progresses. Because the inmate is required to prepay for the procedure (which Plaintiffs do not oppose) the added expense of a later procedure may create further delay. In other words, delay compounds delay. Moreover, delays that push an inmate past the second trimester will force her to carry to term.

II. The Transportation Pre-Payment Provision Violates the Federal Constitution.

A. Requiring Inmates to Pre-Pay for Transportation for an Abortion Violates the Fourteenth Amendment.

Defendants' demand for upfront transport costs – in the amount of up to $600 – violates the Fourteenth Amendment. In *Turner v. Safley*, 482 U.S. 78, 89 (1987), the Supreme Court held that prison regulations that prohibit or limit inmates' exercise of constitutional rights may be valid if they are "reasonably related to legitimate penological interests." Here, the Provision clearly impinges on the constitutional right to access abortion and is not reasonably related to any legitimate penological interests. This Court should therefore declare the Provision unconstitutional and amend the injunction to prohibit Defendants from enforcing it.

1. The Provision Impinges on the Constitutional Right to Access Abortion.

Requiring inmates – particularly those who are indigent – to pre-pay Defendants for transportation and security costs impinges on their constitutional right to access reproductive health care under the Fourteenth Amendment of the U.S. Constitution. In *Planned Parenthood v. Casey*, the Court reaffirmed the "central holding" of *Roe* – that "a State may not prohibit *any* woman from" choosing an abortion "before [fetal] viability." 505 U.S. 833, 879 (1992) (emphasis added). In doing so, the Court held that the government cannot:

> [P]lace[] a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. A statute with this purpose is invalid because the means chosen by the State to further the interest in potential life must be calculated to inform the woman's free choice, not hinder it. And a statute which, while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path of a woman's choice cannot be considered a permissible means of serving its legitimate ends.

Id. at 877.

The Provision is precisely such an obstacle. As indicated in Ms. Poe's declaration, the transportation pre-payment requirement would have forced her to forego an abortion and carry to term if NNAF, a private organization, had been unwilling or unable to pay for her transportation costs. (SOF at ¶ 22.)

Accordingly, for some female inmates, particularly those who are indigent, the Provision impinges on the constitutional right to obtain an abortion.

Moreover, it is unconstitutional for the government to condition the exercise of a constitutional right on the payment – much less the pre-payment – of either a fee or a tax. *See, e.g., M.L.B. v. S.L.J.*, 519 U.S. 102 (1996) (striking down requirement that parents pay transcript fees to appeal termination of parental rights based on right to access courts for marriage and family issues); *Bounds v. Smith*, 430 U.S. 817 (1977) (holding that the Constitution requires prison authorities to provide free resources to ensure that the right to access courts is meaningful and noting that the "cost of protecting a constitutional right cannot justify its total denial"); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966) (striking down poll tax under equal protection clause because it infringed on right to vote); *Burns v. Ohio*, 360 U.S. 252 (1959) (striking down docket and filing fees for indigent criminal defendants who seek appellate review because it interferes with right to access courts); *Griffin v. Illinois*, 351 U.S. 12 (1956) (holding that state cannot discriminate against indigent criminal defendants by conditioning appellate review on payment of transcript fees). Here, Defendants cannot insist that inmates

pay them money as a precondition to exercising their fundamental constitutional right to obtain an abortion.[5]

Furthermore, the Policy impinges on the constitutional right to abortion because it singles out and penalizes inmates who choose abortion. Defendants do not require payment – let alone upfront payment – for *any transport other than for abortion care*. Penalizing the exercise of a constitutional right violates longstanding Supreme Court precedent. For example, in *Shapiro v. Thompson*, 394 U.S. 618 (1969), the Court struck down state statutes that conditioned welfare benefits on a residency requirement, holding that the statutes violated the right to travel. *See also Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974) (holding that one year residency requirement for indigent individuals to obtain non-emergency medical care penalized the right to travel); *Sherbert v. Verner*, 374 U.S. 398 (1963) (holding that state could not burden right to free exercise of religion by denying unemployment benefit to individuals unwilling to work on their Sabbath). Pregnant inmates have two choices: carry the pregnancy to term or obtain an abortion.

[5] The delay caused by the Provision – for example by forcing inmates to raise large sums of money – may push inmates further into their pregnancy, which may force an inmate to obtain a later abortion with increased risks. Or the delay may force the inmate to carry to term, thereby causing her to lose her constitutional rights altogether. As the Court of Appeals noted, "involuntary delays in obtaining an abortion have constitutional significance because time is likely to be of the essence in an abortion decision." *Doe*, 150 P.3d at 1261 (internal quotation marks and citations omitted).

Consistent with Defendant Arapio's well-documented opposition to abortion, the Provision unconstitutionally penalizes those who choose the latter.[6]

2. The Provision Is Not Reasonably Related to a Penological Interest.

Defendants' impingement of a fundamental right is not reasonably related to any penological interest. In *Turner*, the Supreme Court held that factors relevant in determining the reasonableness of a prison regulation include: (1) whether there is a "valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it"; (2) whether "other avenues remain available for the exercise of the asserted right"; (3) whether accommodation of the asserted right will have a significant impact on fellow inmates and prison staff, "and on the allocation of prison resources generally"; and (4) whether there are "ready alternatives" for accommodating the prisoner's constitutional rights "at *de minimis* cost to valid penological interests." 482 U.S. at 89-91 (internal quotations and

[6] Though outside the prison context the government is not obligated to pay for a woman's transportation to a physician for abortion care, once the state takes someone into its custody, it deprives them of the means to exercise their rights on their own and therefore must accommodate them. *See, e.g., DeShaney v. Winnebago Co. Dep't of Soc. Servs.*, 489 U.S. 189, 199-200 (1989) ("when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.").

citations omitted). An analysis of these factors demonstrates that the Provision is not reasonably related to a legitimate penological interest.

(1) There is simply no legitimate penological interest served by the transportation pre-payment provision. Legitimate penological interests include, for example, security and safety. *See, e.g., Turner*, 482 U.S. at 91. Defendants cannot assert a legitimate penological interest that is served by requiring inmates to pay upfront for transportation costs for an abortion.[7]

(2) The second *Turner* factor inquires whether there are alternative means available to inmates to exercise the affected right. *Turner*, 482 U.S. at 90. Defendants do not dispute that they will not transport an inmate for an elective abortion absent pre-payment for the transport costs. If an inmate is indigent and therefore unable to pre-pay these costs, she will not be able to access an abortion. Defendants therefore provide no alternative means for an inmate to obtain an abortion.[8]

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[7] It is undisputed that Defendants, particularly Defendant Arpaio, have an ideological opposition to abortion. *See, e.g.*, Defendant Joe Arpaio's and Maricopa County's Response to Plaintiff's Separate Statement of Facts and Defendants' Separate Statement of Facts in Support of Their Motion for Summary Judgment, Docket No. 36 at ¶ 9. But an ideological opposition to abortion is not a legitimate penological interest and cannot be the basis for denying inmates their constitutional rights.

[8] That a private organization was able to pay Ms. Poe's transport costs, and may or may not be able to pay these costs for some future inmates, does not constitute alternative means to access abortion. For example, in holding that prisons must facilitate constitutional rights, the courts have not relied on the presence or absence

(3) The third *Turner* factor evaluates the impact that the accommodation of the asserted right will have on the allocation of resources. *Turner*, 482 U.S. at 90. The Court of Appeals already settled this issue. Indeed, the court determined that demand for abortion transport is *de minimus* and therefore will not affect resources:

> Transportation for abortion services are a negligible fraction of the overall transportation the County performs each year, and there is no evidence that the costs associated with this transportation are significantly higher than other transportation.

Doe, 150 P.3d at 1267. The court also noted that "'where conditions within a prison facility are challenged as constitutionally inadequate, courts have been reluctant to consider costs to the institution a major factor in determining whether a constitutional violation exists.'" *Id.* at 243 (quoting *Monmouth County Corr. Inmates v. Lanzaro*, 834 F.2d 326, 336 (3d Cir. 1987)). Indeed, as the court recognized in *Monmouth County*:

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of a private organization to assist with the exercise of the inmates' rights. Indeed, even if NNAF were a reliable source, which it is not, its existence could no more justify the Provision than, hypothetically, the NAACP's potential ability and willingness to pay a tax on inmates' interracial marriages could justify a tax on such unions. Moreover, the Defendants also cannot point to the availability of the courts, and the possibility that they may waive the prepayment requirement for indigent women. Defendants are basically suggesting a court-order requirement for indigent women, similar to the policy struck down by this Court. Indeed, as the Court of Appeals said, "[t]he County does not adequately accommodate the exercise of an inmate's constitutional rights by simply recognizing that the courts are available to enforce those rights." *Doe*, 150 P.3d at 1260 n.2.

> [No] reason [has] been suggested why, in terms of costs, a prison's obligation to accommodate the retained right of the inmate to choose abortion should be treated any differently from its obligation to accommodate other fundamental rights, such as access to the courts or free exercise of religion. In those contexts, prison funds are routinely expended to facilitate the meaningful exercise of the asserted right.

834 F.2d at 343. Moreover, as the Court of Appeals recognized, if the inmate is forced to carry to term, equal or greater resources will be expended to provide pre-natal and delivery care, including an off-site transport for at least her delivery. *Doe*, 150 P.3d at 1264; *cf. Memorial Hosp.*, 415 U.S at 265 (County's claimed fiscal savings resulting from denying indigent individuals non-emergency medical care was "illusory" because such care prevents emergency hospitalization that is paid by the County).

Furthermore, the County can seek reimbursement for the transport costs. As the Court of Appeals recognized, "the County presents no evidence that the cost for these [abortion] transports significantly impacts the County's security or transportation costs, nor do we see how it could as the County requires that inmates . . . reimburse the County for security and transportation costs." *Id.* at 1264. Defendants can obtain reimbursement in several ways. For example, they could require inmates to acknowledge in writing that they must reimburse Defendants for transport costs, and the current policy already allows Defendants to deduct the amount of the transport from their inmate account. That is precisely what happens

in the context of co-payments for other medical care: By statute, Defendants can charge a fee or co-payment for medical services, but "[a]n inmate shall not be refused health services for financial reasons." Ariz. Rev. Stat. § 31-161(A). Instead, "the sheriff may maintain a negative balance on an inmate's personal account against which future collections may be made." *Id.* at § 31-161(B). If the inmate leaves the jail with a negative balance in her account, Defendants can collect the debt and, if necessary, can seek a civil judgment and then garnish wages or freeze bank accounts.

(4) The fourth and final *Turner* factor analyzes whether there are "ready alternatives" for accommodating the inmates' constitutional rights. *Turner*, 482 U.S. at 90. There is a ready alternative: Defendants can require reimbursement from inmates for the actual transportation and security costs, which is precisely what they did before Plaintiffs filed the instant motion. As discussed above, Defendants can deduct the funds from the inmate's prison account; can require a written commitment from the inmate; and/or can seek a civil judgment. The costs associated with these alternatives are miniscule compared to the overall prison costs. As the Eighth Circuit has noted, "alternatives do [not] have to be entirely cost-free; costs that are insubstantial in light of the overall maintenance of the prison are acceptable." *Salaam v. Lockhart*, 905 F.2d 1168, 1171 (8th Cir. 1990).

* * *

Accordingly, under *Turner*, Defendants' demand for upfront transportation and security costs violates the Fourteenth Amendment.

B. Requiring Pre-Payment for Abortion Transports Violates the Eighth Amendment.[9]

Conditioning the provision of medical care on payment also violates the Eighth Amendment's protection against cruel and unusual punishment.[10] As the Supreme Court held in *City of Revere v. Massachusetts General Hospital*, the government must ensure that medical care is provided, but payment for that care can later be allocated to another governmental entity or to the inmate. 463 U.S. 239, 245-46 (1983). In other words, care cannot be denied because the inmate cannot pay.

The Courts of Appeals have relied on *City of Revere* to, for example, uphold co-payments for medical care and other necessities, but those cases make clear that

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[9] The underlying Eighth Amendment claim was fully briefed in this Court and on appeal, though the courts did not reach this claim. *See, e.g.*, Appellees' Answering Brief, filed in Court of Appeals on May 12, 2006, at 48-50.

[10] The Provision is unconstitutional as applied to pre-trial detainees and sentenced inmates. "The Eighth Amendment applies to sentenced prisoners, but the Due Process Clause of the Fourteenth Amendment operates to provide similar protection for pre-trial detainees." *Reynolds v. Wagner*, 128 F.3d 166, 173 (3d Cir. 1997).

medical care cannot be denied because of an inmate's inability to pay. *See, e.g., Tillman v. Lebanon County Corr. Facility*, 221 F.3d 410, 417-20 (3d Cir. 2000) (citing cases regarding the constitutionality of co-payments for inmate medical care); *see also Monmouth County*, 834 F.2d at 347 (prison officials cannot condition provision of needed medical services on the inmate's ability to pay). Recognizing this constitutional mandate, the State allows counties to charge inmates a fee or co-payment for medical services, but "[a]n inmate shall not be refused health services for financial reasons." Ariz. Rev. Stat. § 31-161(A). Accordingly, Defendants cannot constitutionally deny access to reproductive health care because of an inmate's ability to pay, and therefore the Provision is also unconstitutional under the Eighth Amendment.

III. Requiring Prepayment for Transportation and Security Costs Violates the Arizona Constitution.

The Provision also violates the equal privileges and immunities clause of Arizona's Constitution. Art. II, § 13. Arizona courts have repeatedly held that the Arizona Constitution is independent of, and often provides broader protection than, the federal Constitution. *See Pool v. Superior Court*, 139 Ariz. 98, 108, 677 P.2d 261 (1984) ("[I]nterpretation of the state constitution is, of course, our province. . . . [W]e cannot and should not follow federal precedent blindly") (internal citations

omitted). The Provision is unconstitutional on independent state constitutional grounds.

The Arizona Supreme Court's decision in *Simat Corp. v. Arizona Health Care Cost Containment System*, forecloses penalizing inmates who choose abortion as the Provision does here. 56 P.3d 28 (Ariz. 2002). In *Simat Corp.*, the court held:

> The question we must answer is whether the state, once it undertakes to provide medically necessary treatment to [indigent] patients, can deny such treatment to one group of patients simply because they choose to exercise a constitutionally protected right. To state the issue is to answer it. Having undertaken to provide medically necessary health care for the indigent, the state must do so in a neutral manner.

Id. at 32. The court determined that – because Arizona citizens enjoy both a "fundamental right to choose abortion" under the federal constitution and "a right to equal treatment under our own constitution" – strict scrutiny was the appropriate level of review. *Id.* The court held that to pass muster under strict scrutiny, the funding ban must "serve[] a compelling state interest and [must be] narrowly tailored and necessary to achieve that interest." *Id.* at 33. The court concluded that the state could not prohibit funding for medically necessary abortions for indigent women: "the state cannot deprive a woman of the right of choice by conditioning

the receipt of benefits upon a citizen's willingness to give up a fundamental right."[11] *Id.* at 37.

Here, regardless of how the relevant classes are conceptualized, the Provision does not treat inmates who seek abortion care in a "neutral manner as compared to the manner in which it treats others in the same class," *id.* at 32, because they are the only ones singled out for pre-payment of transportation and security costs. For example, all inmates who need off-site medical care, including female inmates who carry their pregnancies to term, are transported at no cost. Similarly, inmates are routinely transported to the courts at no cost. Even inmates who are transported to visit a dying relative or to attend a funeral – transports that are not related to a constitutional right – are transported at no cost. (SOF at ¶ 27.) Therefore, based largely (if not solely) on Defendant Arpaio's ideological opposition to abortion, inmates who seek abortion care are treated differently from everyone else "simply because they choose to exercise a constitutionally protected right." *Simat Corp.*, 56 P.3d at 32.

This differential treatment cannot be justified by a compelling state interest, and therefore the Provision fails to pass the strict scrutiny test. One state interest

[11] The court reached this conclusion despite the fact that the U.S. Supreme Court reached the opposite conclusion under the federal Constitution. *See Harris v. McRae*, 448 U.S. 297 (1980).

that has been recognized in the abortion context is preservation of fetal life. But the only time that interest can justify a total denial of the right to abortion is after fetal viability. *See, e.g., Casey*, 505 US at 870. Though the government can make childbirth a more "attractive alternative," *Simat Corp.*, 56 P.3d at 33, Defendants have done much more than that here. Defendants are asking for upfront payment of up to $600 – a large sum of money for any inmate, let alone an indigent one – to access abortion. Inmates unable to pay this prohibitive cost will necessarily be forced to carry to term. The Provision therefore fails strict scrutiny review and must be enjoined.

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CONCLUSION

For the foregoing reasons, the Provision should be declared unconstitutional under the state and federal Constitutions and the injunction should be modified to prevent Defendants from enforcing it.[12]

RESPECTFULLY SUBMITTED this 1st day of July, 2009.

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[12] Plaintiffs reassert their request for attorneys' fees and costs pursuant to Rules 54(g) and 54(f) of the Arizona Rules of Civil Procedure, 42 U.S.C. § 1988, and Ariz. Rev. Stat. § 12-341.

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