

## FACT SHEET: NAACP & NAPAWF v. Tom Horne



In 2013, the American Civil Liberties Union (ACLU), on behalf of the National Asian Pacific American Women's Forum (NAPAWF) along with the National Association for the Advancement of Colored People (NAACP)-Maricopa County Branch, brought a lawsuit against the State of Arizona for passing a race- and sex- selective abortion ban. The lawsuit challenged the abortion ban on the grounds that it unconstitutionally and unequivocally discriminates against people of color. Lawmakers in support of the ban cite high numbers of sex-selective abortions in Asian countries as a primary reason why the ban should be enacted in their State of Arizona. The race piece of the ban relies on the relative rate of abortion among Black women to argue that Black women are deciding to abort their babies because they are Black. Both of the rationales employed in enacting this ban are based on stereotypes about people of color communities and have no bases in fact.

### BACKGROUND

In March, 2011, the state of Arizona passed and signed "Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act" (HB 2443) into law. This is an abortion ban that targets Asian and African American women, and criminalizes doctors for performing abortions based on race or sex. Under the Act, anyone who "knowingly performs, coerces, solicits, or accepts money for a race- or sex- selective abortion" is guilty of a Class 3 felony. Any physician or medical or mental health professional who knowingly fails to report known violations is subject to a civil fine of up to ten thousand dollars. Advocates for women in both the Asian American & Pacific Islander and Black communities have vehemently opposed this ban and others like it, which have been proposed at the federal level and in many states, as deceptive, hypocritical, and harmful to communities of color.

### PARTIES

The NAACP-Maricopa County is one of 2,200 local NAACP chapters around the country. The NAACP is the nation's oldest and largest civil rights organization. NAPAWF is the largest, multi-issue Asian American and Pacific Islander (AAPI) women's organization in the country. It works to further social justice and human rights for AAPI women and girls. The Defendant is Tom Horne, the Attorney General of

Arizona. Tom Horne is listed as the Defendant on behalf of the State of Arizona.

### PROCEDURAL HISTORY

The ACLU on behalf of NAACP and NAPAWF (Plaintiffs) filed suit in the U.S. District Court of Arizona and asserted that the Act violates the Equal Protection Clause of the 14th Amendment because it targets and stigmatizes Black and AAPI women and is based entirely on racially motivated stereotypes and generalizations about Black and AAPI women's reasons for deciding to terminate a pregnancy. The State of Arizona (Defendant) argued that Plaintiffs have not demonstrated sufficient harm and therefore lack standing. The District Court, or trial court, dismissed the case for lack of standing, stating that the stigmatizing injury based on racial discrimination is not sufficient in this case. The court said, in effect, that if there is no individual claiming that they were personally denied the ability to obtain an abortion, then there is no harm in this case to bring suit. The question of law is whether the stigmatization that flows from intentional discrimination and a law based on racial stereotypes is sufficient to establish standing for an Equal Protection claim. Plaintiffs appealed the question of standing to the Ninth Circuit. The Ninth Circuit (San Francisco, CA) called the parties in for an oral argument. The appellate oral argument on this case will take place on December 9, 2015.