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17 *Attorneys for Plaintiffs*

18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF ARIZONA**

20 NATIONAL ASSOCIATION FOR THE) NO.
21 ADVANCEMENT OF COLORED PEOPLE,)
22 MARICOPA COUNTY BRANCH,)
23 NATIONAL ASIAN PACIFIC AMERICAN) COMPLAINT
24 WOMEN’S FORUM,)
25)
26 Plaintiffs,)
27)
28 v.)
29)
30 TOM HORNE, ATTORNEY GENERAL OF)
31 ARIZONA, IN HIS OFFICIAL CAPACITY;)
32 ARIZONA MEDICAL BOARD; AND LISA)
33 WYNN, EXECUTIVE DIRECTOR OF THE)
34 ARIZONA MEDICAL BOARD, IN HER)
35 OFFICIAL CAPACITY,)
36)
37 Defendants.)

38 Plaintiffs National Association for the Advancement of Colored People, Maricopa
39 County Branch, and National Asian Pacific American Women’s Forum for their
40 complaint in the above-captioned matter allege as follows:

1 **PRELIMINARY STATEMENT**

2 This is an action seeking a declaration that H.B. 2443 (“the Act”) violates the
3 Fourteenth Amendment to the United States Constitution. This action also seeks a
4 permanent injunction enjoining the Defendants from enforcing or administering the Act.
5 The Act is codified as Ariz. Rev. Stat. Ann. §§ 13-3603.02, 36-2157.

6 The Act is an attack on the dignity of the Black women and Asian or Pacific
7 Islander (“API”) women of Arizona. Based on nothing more than invidious racial
8 stereotypes about the reasons minority women seek abortion care, the Act intentionally
9 singles out Black and API women and stigmatizes their abortion decisions. The Act is
10 premised on the sponsors’ beliefs that Black and API women are deliberately using
11 abortion to destroy their own communities. This unprecedented move to disparage and
12 control the personal, private decisions of Black and API women, in particular, is a blatant
13 violation of Equal Protection and the prohibition against state laws that discriminate on
14 the basis of race.

15 **PARTIES**

16 **Plaintiffs**

17 1. Plaintiff Maricopa County Branch, National Association for the
18 Advancement of Colored People, (MC-NAACP) founded in 1919, has hundreds of
19 members, including Black women of child-bearing age. Founded in 1909, the national
20 NAACP is the nation’s oldest and largest civil rights organization and currently has more
21 than 500,000 members nationwide and around the world. MC-NAACP is one of 2,200
22 local NAACP chapters around the country. MC-NAACP’s members include women who
23 have sought and women who will seek abortion care, as well as women who have
24 considered or would consider doing so if faced with an unintended or medically
25 complicated pregnancy.

26 2. MC-NAACP’s principal objectives are to ensure the political, educational,
27 social and economic equality of minority group citizens of Arizona; to eliminate racism;
28 to publicize the adverse effects of discrimination; and to initiate lawful action to secure

1 the elimination of racial and ethnic bias. MC-NAACP is particularly concerned about
2 discrimination against Black women, who bear the brunt of two or more categories of
3 protected status. MC-NAACP strongly supports the right of all Black women facing an
4 unintended pregnancy to make the best decision for their circumstances—whether that
5 decision is to continue the pregnancy and parent, place the child for adoption, or
6 terminate the pregnancy—and trusts Black women to make important moral decisions for
7 themselves, their families, and their communities. MC-NAACP vigorously objects to the
8 invidious and unfounded racial stereotype, which underlies the Act, that a Black woman
9 who chooses abortion does so out of racial animus towards her own community. In
10 addition, the MC-NAACP vigorously objects to the invidious and unfounded assumption,
11 also underlying the Act, that Black women who make the personal and private decision to
12 end a pregnancy do not do so knowingly or thoughtfully.

13 3. MC-NAACP joins this lawsuit on behalf of its members because the Act is
14 motivated by, based on, and perpetuates racially discriminatory stereotypes about Black
15 women and abortion care, and thereby demeans, stigmatizes, and discriminates against its
16 members.

17 4. Plaintiff National Asian Pacific American Women’s Forum (“NAPAWF”),
18 founded in 1996, is the largest national, multi-issue API women’s membership
19 organization with more than 2,000 dues-paying members and more than 6,000 activists
20 nationwide, including API women in Arizona of child-bearing age. NAPAWF’S Arizona
21 members include API women who have sought and will seek abortion care, as well as
22 API women who have considered or would consider doing so if faced with an unintended
23 or medically complicated pregnancy.

24 5. NAPAWF's mission is to build a movement to advance social justice and
25 human rights for API women and girls. As part of its work, NAPAWF advocates, *inter*
26 *alia*, on a broad range of sexual and reproductive justice issues that affect the lives of API
27 women and girls—including son-preference and bans on sex-selection abortion—and
28 works to educate its members, policymakers and the public on these issues. To address

1 17. Under the Act, anyone who knowingly performs, coerces, or solicits or
2 accepts money for a race- or sex-selection abortion is guilty of a Class 3 felony. *See*
3 *Ariz. Rev. Stat. Ann. § 13-3603.02(A)*.

4 18. Under the Act, any physician, physician’s assistant, nurse, counselor or
5 other medical or mental health professional who knowingly fails to report known
6 violations of this section is subject to a civil fine of not more than ten thousand dollars.
7 *Id.* at (D).

8 19. Under the Act, the Attorney General or the County Attorney may bring an
9 action in Superior Court to enjoin the activity prohibited by the Act. *Id.* at § 13-
10 3603.02(B).

11 20. The Act also creates a civil penalty provision that allows certain individuals
12 to recover against a physician who has allegedly performed a race- or sex-selection
13 abortion. *Id.* at § 13-3603.02(C).

14 21. For example, the Act allows a woman’s husband at the time she has a sex-
15 selection or race-selection abortion, or if the woman has not attained eighteen years of
16 age at the time of the abortion, her parents, to bring a civil action to obtain relief,
17 including monetary damages for all alleged injuries, whether psychological, physical or
18 financial, including a loss of companionship and support, resulting from the abortion. *Id.*
19 at § 13-36-3.02 (C).

20 22. The woman’s husband (or her father, if she is a minor) may avail himself of
21 the civil penalties provision even if the pregnancy is a result of his criminal conduct, i.e.
22 rape or incest.

23 23. There is no provision in the Act that allows a woman who is allegedly
24 manipulated or coerced into having a race- or sex-selection abortion against her will to
25 recover civil damages under the Act.

26 24. The Act also amended *Ariz. Rev. Stat. § 36-2157* to require any person who
27 knowingly performs or induces an abortion to complete an affidavit, before the abortion,
28 stating (1) that the person making the affidavit is not providing the abortion care because

1 of the “child’s” sex or race and (2) has no knowledge that the woman has decided to seek
2 abortion care because of the “child’s” sex or race.

3 Legislative History and Intent

4 25. The stated purpose of the Act, which is entitled the “Susan B. Anthony and
5 Frederick Douglass Prenatal Nondiscrimination Act of 2011,” is to “protect unborn
6 children from prenatal discrimination in the form of being subjected to abortion based on
7 the child's sex or race.” Ex. A. To achieve its stated purpose, the Act requires any doctor
8 who performs an abortion to complete an affidavit that states, *inter alia*, that the woman
9 seeking abortion care does not do so out of racial or gender animus towards her own
10 fetus. *See* Ariz. Rev. Stat. Ann. § 36-2157. This affidavit becomes a permanent feature
11 of the woman’s medical files.

12 26. According to the legislative history, the Act was justified on two grounds:
13 (1) that the high rate of abortion in the Black community proves that Black women are
14 terminating their pregnancies in order to “de-select” members of their own race and (2)
15 that the future immigration of API women to Arizona will make sex-selection abortion an
16 issue within the state.

17 27. The sponsors and supporters of the Act did not identify any example of a
18 race- or sex-selection abortion that took place in Arizona.

19 28. Because the Act is based entirely on racially-motivated stereotypes and
20 generalizations about Black and API women’s reasons for deciding to terminate a
21 pregnancy, the Act violates the Equal Protection Clause of the Fourteenth Amendment of
22 the U.S. Constitution.

23 Ban on Race-Selection Abortion

24 29. The statements of the primary sponsor of HB 2443 and other legislators
25 who supported this bill focused exclusively on the reported rates of abortion among
26 Black women.

27 30. During the debate in the House Health and Human Services Committee,
28 Rep. Montenegro, the Act’s primary sponsor, was quoted as stating the Act was

1 necessary “because minority babies are several times more likely to be aborted than white
2 babies.” According to Rep. Montenegro, this was evidence that so-called race-selection
3 abortions were occurring in Arizona. *See e.g.*, Tessa Muggeridge, “House panel
4 advances bill to ban abortions based on gender or race,” Cronkite News (Feb 9, 2011),
5 available at [http://cronkitenewsonline.com/2011/02/house-panel-advances-bill-to-ban-](http://cronkitenewsonline.com/2011/02/house-panel-advances-bill-to-ban-abortions-based-on-gender-or-race/)
6 [abortions-based-on-gender-or-race/](http://cronkitenewsonline.com/2011/02/house-panel-advances-bill-to-ban-abortions-based-on-gender-or-race/). Montenegro also “insisted that some abortions are
7 performed because a mother does not want a . . . minority baby.” Caitlin Coakley
8 Beckner, “House OKs outlawing of race- and gender- selection abortion,” Arizona
9 Capitol Times (Feb 21, 2011, 4:55 p.m.), available at
10 [http://azcapitoltimes.com/news/2011/02/21/bill-to-ban-selection-abortion-gets-initial-](http://azcapitoltimes.com/news/2011/02/21/bill-to-ban-selection-abortion-gets-initial-oks/#ixzz2KLO6v3Tl)
11 [oks/#ixzz2KLO6v3Tl](http://azcapitoltimes.com/news/2011/02/21/bill-to-ban-selection-abortion-gets-initial-oks/#ixzz2KLO6v3Tl).

12 31. Similarly, another Senator read a letter into the legislative record from U. S.
13 Congressman Trent Franks that stated a ban on race-selection abortions was necessary
14 because “African-American babies are now aborted at five times the rate of White babies
15 to the point that nearly 50 percent of Black babies are aborted. This is perfectly legal in
16 America . . . We criticize other nations for human right [*sic*] abuses; at the same time, we
17 look the other way while our own children are being killed simply because [they are] the
18 wrong . . . race.” Act: Senate Floor Session, 2011 Leg., 50th Sess., 1st Reg. Sess., 8
19 (March 21, 2011) (attached hereto as Exhibit B) (“Ex. B”).

20 32. The rate of abortion among Black women was offered by many legislators
21 as evidence of so-called race-selection abortions. *See e.g.*, Act: Hearing on H.B. 2443
22 Before the H. Comm. On Health and Human Services 2011 Leg., 50th Sess., 1st Reg.
23 Sess. (February 9, 2011) at 63-66, 74-75 (offering rate of abortion among Black women
24 in Arizona and nationwide as evidence of race-selection abortion and justification for
25 bill) (attached hereto as Exhibit C) (“Ex. C”). However, at no time during the legislative
26 debate was any testimony or evidence introduced attempting to link the rate or number of
27 abortions among white women, or women of any race except Black women, to so-called
28 race-selection abortions.

1 33. The Act’s sponsors and supporters did not consider any reasons for the
2 higher abortion rate among Black women, other than a desire to reduce the number of
3 Black people in our society.

4 34. The legislative record also reveals that an important motivation for the
5 supporters of this bill was their belief in the existence of an alleged plot by some abortion
6 providers to eliminate the Black race, along with their belief that Black women were too
7 foolish to resist such a plot. *See e.g.*, Ex. C at 63-65, 84-85; Act: Hearing on H.B. 2443
8 Before the H. Comm. of the Whole, 2011 Leg., 50th Sess., 1st Reg. Sess., 10-11
9 (February 21, 2011) (attached hereto as Exhibit D) (“Ex. D”).

10 35. The Act’s sponsors and supporters put forward no other reasons for the rate
11 of abortion among Black women.

12 36. The Act’s sponsors and supporters in the legislature took the position that
13 the race-selection ban was necessary to protect Black women from their weak-
14 mindedness in failing to resist those seeking to reduce or eliminate the Black race. No
15 testimony was introduced as to why Black women, unlike women of other races, were
16 manipulated into obtaining abortion care they did not want.

17 37. The public and record statements and positions of the sponsors of the Act
18 and its supporters demonstrate that they were motivated to pass this Act based on their
19 beliefs that a ban on race-selection abortion is necessary to stop Black women from
20 having abortions and thereby to reduce the rate of abortion among Black women.

21 38. No evidence was introduced in the legislature in support of this Act that
22 identified any woman in Arizona who had an abortion with the intent to reduce the
23 number of Blacks in Arizona or in the population generally.

24 39. This Act, which purports to protect the embryos and fetuses of “minority”
25 women from being “targeted for abortion,” necessarily considers the race of the pregnant
26 woman who decides to obtain abortion care (or her partner).

27 40. It is undisputed that a Black baby requires a Black parent.
28

Ban on Sex-Selection Abortion

1
2 41. The Act also imposes requirements and sanctions on sex-selection
3 abortions. The legislative concerns about these alleged acts were derived solely from the
4 Act’s sponsors’ and supporters’ beliefs about API women. No evidence was presented
5 about women from any other race allegedly engaging in this practice.

6 42. The sponsors and supporters of this Act repeatedly presented reports of sex-
7 selection abortions in India and China. *See e.g.*, Ex. C at 62-63, 86-89; Ex. D at 44; Act:
8 Hearing on H.B. 2443 Before the S. Comm. on Healthcare and Medical Liability Reform,
9 2011 Leg., 50th Sess., 1st Reg. Sess., 72, 90 (March 2, 2011) (attached hereto as Exhibit
10 E) (“Ex. E”).

11 43. The sponsors and supporters of this Act repeatedly invoked the present and
12 future immigration of API women to Arizona as justification for the Act.

13 44. The ban in the Act on sex-selection abortions was based on the sponsor’s
14 and supporters’ race-based beliefs and stereotypes about API women and the reasons they
15 decide to seek abortion care.

16 45. For example, Senator Murphy, Vice-Chair of the Senate Committee on
17 Healthcare and Medical Liability Reform, stated when explaining his vote:

18 We know that it’s something that is pervasive in some areas. We
19 know that people from those countries and from those cultures are
20 moving and immigrating in some reasonable numbers to the United
21 States and to Arizona. And so with that in mind, why in good
22 conscience would we want to wait until the problem does develop
23 and bad things are happening and then react when we can be
24 proactive and try to prevent the problem from happening in the first
25 place.

26 Ex. E at 92-93.

27 46. Similarly, State Senator Nancy Barto, another of the bill’s sponsors,
28 explained the need for a ban on sex-selection abortion as follows: “We have to admit
what is happening. The trend lines are there. With a multicultural society as America is
becoming more of, we have to guard against that.” *See e.g.* Ex. E at 95; *see also* Ex. C at
88 (Statement of Sydney Hay, Defending America’s Future) (“[S]ome Americans are
exercising sex selection practices within the United States consistent with discriminatory

1 practices common to their country of origin or the country to which they trace their
2 ancestry”). Likewise, upon passage of the bill, Sen. Barto stated, “We are a multicultural
3 society now and cultures are bringing their traditions to America that really defy the
4 values of America, including cultures that value males over females.” Associated Press
5 (Mar. 31, 2011), “Arizona law bans abortion based on race or gender,”
6 [http://www.foxnews.com/politics/2011/03/31/arizona-law-bans-abortions-based-race-](http://www.foxnews.com/politics/2011/03/31/arizona-law-bans-abortions-based-race-gender/#ixzz2KLUU1VXI)
7 [gender/#ixzz2KLUU1VXI.](http://www.foxnews.com/politics/2011/03/31/arizona-law-bans-abortions-based-race-gender/#ixzz2KLUU1VXI)
8

9 47. The language used by the Act’s sponsors and supporters, suggesting that
10 API women as a group possess shared racial characteristics that make them a threat to
11 American values and society, mirrors the racist and xenophobic language that drove Anti-
12 Asian measures in the late 19th and early 20th century in this country. *See Hirabayashi v.*
13 *United States*, 828 F.2d 591, 596 (9th Cir. 1987) (“The Justice Department . . . argued
14 that because of cultural characteristics of the Japanese Americans, including religion and
15 education, it was likely that some, though not all, American citizens of Japanese ancestry
16 were disloyal”); *Oyama v. California*, 332 U.S. 633, 668-69 (1948) (“[Japanese] are said
17 to constitute a menace, a ‘yellow peril,’ to the welfare of California. They are said to be
18 encroaching on the agricultural interests of American citizens. They are said to threaten
19 to take over all the rich farm land of California. They are said to be so efficient that
20 Americans cannot compete with them.”) (Murphy, J., concurring) (describing legislative
21 history of Alien Land Law); *Korematsu v. United States*, 323 U.S. 214, 237-38 (1944)
22 (“Individuals of Japanese ancestry are condemned because they are said to be a ‘large,
23 unassimilated, tightly knit racial group, bound to an enemy nation by strong ties of race,
24 culture, custom and religion.”) (internal citations omitted) (Murphy, J., dissenting).

25 48. No evidence was presented to the legislature in support of this Act of any
26 woman of any race, including an API woman, having a sex-selection abortion in Arizona
27 in order to prevent the birth of a female (or male) baby.

28 49. No evidence was presented to the legislature in support of this Act about
any woman, including an API woman, who had allegedly engaged in or supported sex-

1 selection abortions in another country and were now living in or planning to reside in
2 Arizona.

3 50. The State of Arizona's own statistics, which were available to the
4 legislators at the time they considered the Act, showed no discrepancy between the
5 gender ratios of births to API women and of births to other women in Arizona: Over the
6 ten-year period from 1999-2009, the percentage of female births in Arizona has remained
7 constant, and fluctuated within a small range, for all groups; for the total population, the
8 percentage of births that were female babies ranged from 48-50%; among White non-
9 Hispanic women it was 48-49%; among Hispanic or Latina women it was 49%; among
10 Black or African-American women it was 46-51%; among American Indian or Alaska
11 Native women it was 49-51%; and among API women it was 47-50% (48% in 2009).
12 Arizona Department of Health Services, Arizona Health Status and Vital Statistics 2009
13 report, Induced Terminations of Pregnancy, Table 1B-5, 1B-6, 1B-8, 1B-10, 1B-12, 1B-
14 14, <http://www.azdhs.gov/plan/report/ahs/ahs2009/t1b.htm>.

15 51. These statistics also showed that the vast majority (approximately 85%) of
16 abortions among women of all races in Arizona take place before the sex of the embryo
17 or fetus can be determined (11 weeks or less). *Id.* at Table 1D-4, *available at*
18 <http://www.azdhs.gov/plan/report/ahs/ahs2009/pdf/1d4.pdf>. Among API women the
19 number is even higher: 91% of API women obtaining abortion care in Arizona do so
20 before it is possible to learn the gender of the embryo or fetus. *Id.*

21 **Impact of the Act**

22 52. The Act intentionally stigmatizes certain women seeking abortion care on
23 the basis of race.

24 53. The Act is motivated by racist and discriminatory beliefs about the reasons
25 Black and API women decide to obtain abortion care.

26 54. The Act intentionally denies Black and API women equal treatment under
27 the law because its purpose is – by virtue of their race – to scrutinize their personal,
28 private, and constitutionally protected decisions to have an abortion.

1 Dated this this 29th day of May, 2013.

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ACLU FOUNDATION OF ARIZONA

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By /s/ Daniel J. Pochoda

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