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*Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Planned Parenthood Arizona, Inc.; Jane Doe  
#1; Jane Doe #2, Jane Doe #3,

Plaintiffs,

v.

Tom Betlach, Director, Arizona Health Care  
Cost Containment System; Tom Horne,  
Attorney General,

Defendants.

Civil Action No. \_\_\_\_\_



1 eligibility to participate in the Medicaid program. Plaintiffs Jane Doe #1, Jane Doe #2, and  
2 Jane Doe #3 are patients of PPAZ who are enrolled in the Medicaid program.

3 4. Plaintiffs seek declaratory and injunctive relief. The Act violates Section  
4 1396a(a)(23) of Title 42 of the United States Code (“Medicaid freedom of choice provision”)  
5 because, by barring PPAZ from the Medicaid program, it prevents PPAZ’s patients from  
6 receiving services from the qualified, willing provider of their choice. It violates the  
7 Supremacy Clause because it imposes restrictions on eligibility for Medicaid funds that are  
8 in excess of and inconsistent with restrictions and requirements established by the federal  
9 government for receipt of these funds. The Act imposes an unconstitutional condition in  
10 violation of the Due Process Clause because it disqualifies PPAZ from participation in the  
11 Medicaid program based on its provision of abortion outside the program. It violates the  
12 Equal Protection Clause because it distinguishes, without adequate justification, between  
13 family planning providers who provide abortion outside the Medicaid program and those  
14 who do not. Finally, the Act violates the Contracts Clause because it impairs PPAZ’s  
15 contractual relationships with the State’s managed care contractors and the contractual  
16 obligations contained therein.

17 5. The Act is scheduled to take effect on August 2, 2012. Unless enjoined by this  
18 Court, the Act will cause significant and irreparable harm to PPAZ and to its Medicaid  
19 patients, including Plaintiffs Jane Doe #1, Jane Doe #2, and Jane Doe #3, who will lose their  
20 provider of choice, will find their family planning services interrupted, and—particularly in  
21 certain underserved areas—will be left with few or no alternative providers.  
22  
23  
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**JURISDICTION AND VENUE**

1  
2 6. Subject-matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 &  
3 1343.

4 7. PPAZ’s claims for declaratory and injunctive relief are authorized by 28 U.S.C.  
5 §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the  
6 general legal and equitable powers of this Court.  
7

8 8. Venue in this judicial district is proper under 28 U.S.C. § 1391.

9  
10 **THE PARTIES**

11 **A. Plaintiffs**

12 9. Plaintiff PPAZ is a not-for-profit corporation organized under the laws of  
13 Arizona. PPAZ brings this action on behalf of itself and its patients.

14 10. PPAZ, the largest provider of reproductive health services in Arizona, operates  
15 13 health centers throughout the state. For more than twenty years, PPAZ has participated in  
16 the Medicaid program, providing medical services to low-income enrollees.  
17

18 11. Each year, PPAZ provides more than 66,000 patient visits, approximately 3,000  
19 of which are for Medicaid patients. For example, last year, during these visits, PPAZ  
20 provided over 9,400 pap smears, over 16,200 tests and treatments for sexually transmitted  
21 diseases, over 33,700 breast exams, 136 HPV immunizations, and over 85,400  
22 contraceptives.  
23

24 12. At five of its 13 health centers, PPAZ also provides abortions.

25 13. Plaintiffs Jane Doe #1 and Jane Doe #2 are a mother and daughter who are  
26 Arizona residents and Medicaid patients. They have sought family planning services at  
27  
28

1 PPAZ's Yuma Center and desire to continue to do so. They are due back for their next  
2 appointments in September 2012. They sue on their own behalf.

3 14. Plaintiff Jane Doe #3, an Arizona resident and Medicaid patient, has been a  
4 patient of PPAZ since 1997. She regularly seeks family planning services at PPAZ's  
5 Flagstaff Center and desires to continue to do so. She is due back for her next appointment  
6 in September 2012. She sues on her own behalf.

7  
8 15. Plaintiffs Jane Doe #1, Jane Doe #2, and Jane Doe #3 appear anonymously  
9 because of the private and personal nature of the medical care that they receive at PPAZ, and  
10 their desire not to have that information become public in order for them to assert their legal  
11 rights.  
12

13 **B. Defendants**

14 16. Defendant Tom Betlach is the Director of the Arizona Health Care Cost  
15 Containment System (AHCCCS), the agency that administers the state Medicaid program,  
16 and which, in the absence of the Act, would disburse the funds at issue to PPAZ through the  
17 managed care contractors with which PPAZ currently contracts. Defendant Betlach is sued in  
18 his official capacity.  
19

20 17. Defendant Tom Horne is the Attorney General of Arizona, and is authorized by  
21 the Act to bring an action to enforce its terms. Defendant Horne is sued in his official  
22 capacity.  
23

24 **THE ACT AND ITS IMPLEMENTATION**

25 18. The Act provides that "[t]his state or any political subdivision of this state may  
26 not enter into a contract with or make a grant to any person that performs nonfederally  
27  
28

1 qualified abortions or maintains or operates a facility where nonfederally qualified abortions  
2 are performed for the provision of family planning services.” The Act defines “nonfederally  
3 qualified abortion” as an “abortion that does not meet the requirements for federal  
4 reimbursement under Title XIX of the Social Security Act,” i.e., any abortion except where  
5 the pregnancy is the result of rape or incest or threatens the life of the patient. Ariz. Rev.  
6 Stat. § 35-196.05(B).

8 19. On June 27, 2012, PPAZ and many of its physicians received a letter from  
9 AHCCCS requiring PPAZ to attest that, as of August 2, 2012, it will cease providing  
10 abortions except in narrow circumstances set forth in the enclosed attestation. These  
11 circumstances are where the pregnancy is a result of rape or incest, where the pregnancy  
12 endangers the woman’s life, and for Medicaid patients only, certain situations where the  
13 pregnancy endangers the woman’s health. The letter makes clear that, unless PPAZ and its  
14 physicians limit their abortion services to these narrow circumstances, AHCCCS will  
15 immediately terminate their provider status and block all further Medicaid reimbursements to  
16 PPAZ. A true and correct copy of this letter is attached and incorporated herein as Exhibit 1.

## 17 **THE MEDICAID PROGRAM**

### 18 **1. The Medicaid Statute**

19  
20  
21  
22 20. The Medicaid program, established under Title XIX of the Social Security Act of  
23 1935, 42 U.S.C. § 1396 *et seq.*, pays for medical care provided to eligible needy people. A  
24 State may elect whether or not to participate; if it chooses to do so, it must comply with the  
25 requirements imposed by the Medicaid statute and by the Secretary of the U.S. Department  
26 of Health and Human Services (“HHS”) in her administration of Medicaid. *See generally* 42  
27  
28

1 U.S.C. § 1396a(a)(1)-(83).

2 21. To receive federal funding, a participating State must develop a “plan for  
3 medical assistance” and submit it to the Secretary of HHS for approval. 42 U.S.C. §  
4 1396a(a).

5 22. Among other requirements, the State plan must provide that: “[A]ny individual  
6 eligible for medical assistance . . . may obtain such assistance from any institution, agency,  
7 community pharmacy, or person, qualified to perform the service or services required . . .  
8 who undertakes to provide him such services.” 42 U.S.C. § 1396a(a)(23)(A).

9  
10 23. Congress has singled out family planning services for special additional  
11 protections to ensure freedom of choice, specifically providing that, with respect to these  
12 services and with certain limited exceptions not applicable here, “enrollment of an individual  
13 eligible for medical assistance in a primary care case-management system . . . , a medicaid  
14 managed care organization, or a similar entity shall not restrict the choice of the qualified  
15 person from whom the individual may receive services.” § 1396a(a)(23)(B).

16  
17 24. For decades, Congress has attached a rider to HHS’s appropriations blocking the  
18 use of Medicaid funds for abortion, except in limited circumstances. *See, most recently,*  
19 Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, §§ 613-14, 125 Stat. 786,  
20 925-26 (2011). However, the Medicaid Act does not prohibit entities that provide abortion  
21 services from receiving Medicaid funds.

## 22 **2. Implementation of the Medicaid Act**

23  
24 25. For decades, HHS has repeatedly interpreted the “qualified” language in Section  
26 1396a(a)(23) to prohibit states from denying access to a provider for reasons unrelated to the  
27

1 ability of that provider to perform Medicaid-covered services or to properly bill for those  
2 services, including reasons such as the scope of the medical services that the provider  
3 chooses to offer.

4 26. Most recently, the Centers for Medicare and Medicaid Services (“CMS”)  
5 rejected an Indiana plan that, just like the Arizona Act, barred state agencies from  
6 contracting with or making grants to any entities that perform abortion. Specifically, CMS  
7 found that Indiana’s plan violated the Medicaid freedom of choice provision.  
8

9 27. HHS has explained that “[t]he purpose of the free choice provision is to allow  
10 [Medicaid] recipients the same opportunities to choose among available providers of covered  
11 health care and services as are normally offered to the general population.” State Medicaid  
12 Manual § 2100, CMS Manuals Publication #45.  
13

14 28. Consistent with this understanding, HHS has a long history of rejecting state  
15 plans to limit the type of provider that can provide particular services. *See, e.g.*, 53 Fed. Reg.  
16 8699 (Mar. 16, 1988) (rejecting plan that would limit providers to “private nonprofit”  
17 organizations).  
18

### 19 **3. PPAZ’s status as a provider in Arizona’s Medicaid Program**

20 29. Arizona does not directly reimburse providers. Rather, it contracts with private  
21 managed care providers (collectively, “AHCCCS managed care contractors”), who in turn  
22 contract with medical care providers to reimburse those providers for providing care to  
23 Medicaid beneficiaries who are enrolled with the respective managed care contractors. PPAZ  
24 has entered into fee-for-service agreements with several of the AHCCCS managed care  
25 contractors. Under the terms of its contracts, PPAZ agreed to provide health and medical  
26  
27  
28



1 services to the contractors' members, and the contractor agreed to reimburse PPAZ for these  
2 services. PPAZ must maintain its provider participation agreement with AHCCCS in order to  
3 be reimbursed for providing services to the AHCCCS managed care contractors.

4 30. AHCCCS re-credentials a provider every three years. AHCCCS has re-  
5 credentialed PPAZ, without break or incident, at least since 1991.  
6

### 7 **THE IMPACT OF THE ACT ON PPAZ AND ITS PATIENTS**

8 31. Unless the Act is enjoined or unless PPAZ were to cease providing abortions  
9 (except under the narrow circumstances allowed under the Medicaid program), it will no  
10 longer be able to provide reproductive healthcare services to approximately 3,000 Medicaid  
11 patients. PPAZ will lose the revenues from these services, which were approximately  
12 \$350,000 over the past 12 months.  
13

14 32. For PPAZ patients, including Plaintiffs Jane Doe #1, Jane Doe #2, and Jane Doe  
15 #3, implementation of the Act will deprive them of access to the high-quality, specialized  
16 care that PPAZ uniquely provides.  
17

18 33. Women insured through Medicaid choose PPAZ as their reproductive healthcare  
19 provider for a number of reasons. To begin with, four of PPAZ's 13 medical centers are in  
20 areas that the federal government has classified as "medically underserved" based on four  
21 variables: 1) the ratio of primary medical care physicians per 1,000 population, 2) the infant  
22 mortality rate, 3) the percentage of the population with incomes below the poverty level, and  
23 4) the percentage of the population age 65 or over. These are PPAZ's Flagstaff Health  
24 Center, Maryvale Health Center, Yavapai Health Center, and Tempe Health Center. Five of  
25 PPAZ's centers are in areas classified as "low provider," a designation based on similar  
26  
27  
28

1 criteria. See Shortage Area Database, Health Resources and Services Administration, U.S.  
2 Dep't of Health and Human Services, available at  
3 <http://datawarehouse.hrsa.gov/GeoAdvisor/ShortageDesignationAdvisor.aspx> (last accessed  
4 June 29, 2012); Guidelines for MUA and MUP Designation U.S. Dep't of Health and  
5 Human Services, available at <http://bhpr.hrsa.gov/shortage/muaps/index.html> (last accessed  
6 July 10, 2012).

8 34. Because these areas are generally medically underserved to begin with, and  
9 because many providers are unwilling to provide services at Arizona's low reimbursement  
10 rates, many of the Medicaid patients in these areas have few or no alternative options and  
11 will find it difficult or impossible to access reproductive health care services if the Act goes  
12 into effect. Those who are unable to find an adequate alternative will not receive the medical  
13 services they need, an effect that would lead to higher rates of unintended pregnancies and  
14 transmission of sexual diseases.  
15

17 35. Even for patients who have an alternative provider, the Act will deny them  
18 access to the high-quality, specialized care that PPAZ uniquely provides. Patients insured  
19 through Medicaid choose PPAZ based on a number of factors that are generally not available  
20 at other providers. With its evidence-based practices and up-to-date technology, PPAZ is  
21 known as a provider of high-quality medical care. Many individuals who receive other  
22 health care through community care providers or other Medicaid providers choose to have a  
23 separate provider such as PPAZ for their reproductive health care because they are  
24 concerned about their privacy and because they fear being judged by other providers.  
25

27 36. In addition, many low-income patients have unique scheduling constraints  
28

1 because they are juggling inflexible work schedules, childcare obligations, and lack of  
2 childcare resources. To ensure that these patients have access to family planning services,  
3 PPAZ offers extended hours. One PPAZ center is open seven days a week. All of PPAZ's  
4 urban centers are open at least one night per week until seven or eight, and five of PPAZ's  
5 centers have Saturday hours. In addition, PPAZ spaces patient appointments so as to  
6 minimize wait times. Other providers of similar services often require long waits before  
7 patients can be seen.  
8

9         37. Medicaid patients generally have a hard time finding family planning and  
10 related reproductive health care services in Arizona. Because Arizona reimburses providers  
11 at exceptionally low levels, many health care providers refuse to take Medicaid. For  
12 example, Medicaid reimburses PPAZ at 45% *less* than the cost PPAZ incurs by providing the  
13 services.  
14

15         38. One group at particular risk of losing necessary—and in some cases life-  
16 saving—services is women who are legally entitled to a Medicaid-funded abortion because  
17 their pregnancy either is the result of rape or incest or poses certain risks to their health or  
18 life. On information and belief, there are few, if any, abortion providers in Arizona who will  
19 be able to continue participating in Medicaid if the Act goes into effect. Thus, should the  
20 Act take effect, Arizona women on Medicaid who otherwise would have been able to obtain  
21 a Medicaid-funded abortion will no longer be able to do so because those physicians will  
22 have been disqualified from Medicaid.  
23

24         39. Plaintiff Jane Doe #1 is a single mother of four children (one of them Jane Doe  
25 #2). They live in Yuma, Arizona, a “low provider area.” She works full time as a restaurant  
26  
27  
28

1 manager. Plaintiff Jane Doe #3 lives in Flagstaff, Arizona, a “medically underserved” area.  
2 She has a longstanding relationship with PPAZ as her main provider for family planning and  
3 other reproductive health services, and chooses to receive her care at PPAZ for any services  
4 Medicaid covers. She is a single parent, juggling work, school, and childcare obligations.  
5 All three individual Plaintiffs rely on PPAZ as the place they can turn to for urgent care and  
6 for prompt, efficient services. All three patients are due back at Planned Parenthood for  
7 further treatment in September 2012. If the Act goes into effect, they will be prevented from  
8 receiving services from their provider of choice, will have their health care interrupted, and  
9 may encounter difficulties finding alternative care.  
10  
11

12  
13 **CLAIMS FOR RELIEF**

14 **CLAIM I – MEDICAID ACT**

15 40. Plaintiffs hereby incorporate Paragraphs 1 through 39 above.

16  
17 41. The Act violates Section 1396a(a)(23) of Title 42 of the United States Code by  
18 denying PPAZ’s patients, including the Plaintiffs Jane Doe #1, Jane Doe #2, and Jane Doe  
19 #3, the right to choose any willing, qualified healthcare provider under the Medicaid  
20 program.  
21

22 42. Therefore, pursuant to 42 U.S.C. § 1983, this Court should declare the Act  
23 illegal and preliminarily and permanently enjoin enforcement of the Act.  
24

25 **CLAIM II – SUPREMACY CLAUSE**

26 43. Plaintiffs hereby incorporate Paragraphs 1 through 39 above.

27 44. The Act violates the Supremacy Clause of the United States Constitution by  
28

1 placing impermissible eligibility restrictions on federal funds that are in excess of and  
2 inconsistent with those established by the federal government.

3 45. Therefore, pursuant to 42 U.S.C. § 1983, as well as directly pursuant to the  
4 Supremacy Clause, this Court should declare the Act to be unconstitutional and should  
5 preliminarily and permanently enjoin enforcement of the Act.  
6

7 **CLAIM III – FOURTEENTH AMENDMENT DUE PROCESS**

8 46. Plaintiffs hereby incorporate Paragraphs 1 through 39 above.

9 47. The Act imposes an unconstitutional condition on PPAZ’s eligibility to  
10 participate in Medicaid because it disqualifies PPAZ from Medicaid based on its provision of  
11 abortion services outside the Medicaid program.  
12

13 48. Therefore, pursuant to 42 U.S.C. § 1983, this Court should declare the Act to be  
14 unconstitutional and should preliminarily and permanently enjoin enforcement of the Act.  
15

16 **CLAIM IV – FOURTEENTH AMENDMENT EQUAL PROTECTION**

17 49. Plaintiffs hereby incorporate Paragraphs 1 through 39 above.

18 50. The Act violates PPAZ’s Fourteenth Amendment rights by singling out abortion  
19 providers for unfavorable treatment without adequate justification.  
20

21 51. Therefore, pursuant to 42 U.S.C. § 1983, this Court should declare the Act to be  
22 unconstitutional and should preliminarily and permanently enjoin enforcement of the Act.  
23

24 **CLAIM V – CONTRACTS CLAUSE**

25 52. Plaintiffs hereby incorporate Paragraphs 1 through 39 above.

26 53. The Act violates PPAZ’s rights under the Contracts Clause of the United States  
27 Constitution by substantially impairing its contractual relationships with AHCCCS managed  
28

1 care contractors without furthering a significant and legitimate public purpose.

2 54. Therefore, pursuant to 42 U.S.C. § 1983, this Court should declare the Act to be  
3 unconstitutional and should preliminarily and permanently enjoin enforcement of the Act.

4 **RELIEF REQUESTED**

5 WHEREFORE, Plaintiffs request that this Court:

6  
7 55. Issue a declaratory judgment that the Act violates the Medicaid Act and is  
8 therefore void and of no effect;

9 56. Issue a declaratory judgment that the Act violates the Supremacy Clause of the  
10 United States Constitution and is therefore void and of no effect;

11  
12 57. Issue a declaratory judgment that the Act violates the Due Process Clause of the  
13 Fourteenth Amendment and is therefore void and of no effect;

14 58. Issue a declaratory judgment that the Act violates the Equal Protection Clause of  
15 the Fourteenth Amendment and is therefore void and of no effect;

16  
17 59. Issue a declaratory judgment that the Act violates the Contract Clause of the  
18 Constitution and is therefore void and of no effect;

19 60. Issue preliminary and permanent injunctive relief, without bond, restraining the  
20 enforcement, operation, and execution of the Act by enjoining Defendants, their agents,  
21 employees, appointees, delegates, or successors from enforcing, threatening to enforce, or  
22 otherwise applying the provisions of the Act;

23  
24 61. Grant Plaintiff attorneys' fees, costs and expenses pursuant to 42 U.S.C. § 1988;  
25 and

26  
27 62. Grant such further relief as this Court deems just and proper.  
28

1 Dated: July 16, 2012

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*Planned Parenthood Arizona, Inc., et al. v. Tom Betlach; Tom Horne*

**INDEX OF EXHIBITS**

Exhibit 1: Letter from AHCCCS Provider Registration to Planned Parenthood of AZ  
dated June 25, 2012



# **EXHIBIT 1**

Janice K. Brewer, Governor  
Thomas J. Bellach, Director

801 East Jefferson, Phoenix, AZ 85034  
PO Box 25520, Phoenix, AZ 85002  
Phone: 602-417-4000  
www.azahcccs.gov



*Our first care is your health care*  
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

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June 25, 2012

Planned Parenthood of AZ  
5651 North 7<sup>th</sup> Street  
Phoenix, AZ 85014

Re: Attestation of Compliance with A.R.S. 35-196.05  
Provider Number: 062547

Dear Provider:

AHCCCS is requesting that you sign and return the attached attestation.

During the 2012 Regular Session, the Arizona Legislature passed House Bill 2800 which, effective August 2, 2012, enacted A.R.S. 35-196.05(B) prohibiting the AHCCCS Administration from contracting with:

"... any person that performs nonfederally qualified abortions or maintains or operates a facility where nonfederally qualified abortions are performed for the provision of family planning services."

The full text of the bill, also referred to as Arizona Laws 2012, Chapter 288, can be viewed at: [www.azleg.gov/legtext/50leg/2r/laws/0288.pdf](http://www.azleg.gov/legtext/50leg/2r/laws/0288.pdf).

Under the terms of your provider agreement with AHCCCS, you are required to comply with all federal, state and local laws, rules, regulations, executive orders, and agency policies governing performance of duties under this Agreement. To ensure compliance with this new statutory requirement, you must sign the attached attestation and return it to:

AHCCCS Provider Registration  
P.O. Box 25520, Mail Drop 8100  
Phoenix, AZ 85002

If you do not return the signed attestation before August 2, 2012, AHCCCS is required to terminate your provider participation agreement. Pursuant to A.R.S. 36-2904(D), **neither the AHCCCS Administration nor its managed care contractors will reimburse you for ANY medical services if you do not have an AHCCCS provider participation agreement.**

We appreciate your contribution and look forward to your continued participation in our program.

Sincerely,

AHCCCS Provider Registration

ATTESTATION OF COMPLIANCE WITH A.R.S. 35-196.05

On behalf of the Provider identified below my signature, I hereby attest to the following:

1. As of August 2, 2012, and thereafter, the Provider will not perform any abortions for any member of the public or maintain or operate a facility where any abortion is performed for any member of the public unless one of the following conditions is present:
  - a. A licensed physician has certified that the pregnant woman suffers from a physical disorder, physical injury, or physical illness (including a life-endangering physical condition caused by or arising from the pregnancy itself) that places the member in danger of death unless the pregnancy is terminated.
  - b. The pregnancy is a result of rape or incest.
  - c. A licensed physician has attested that the pregnancy termination is medically necessary for an AHCCCS eligible woman because continuation of the pregnancy could reasonably be expected to pose a serious physical or mental health problem for the pregnant woman by:
    - i. Creating a serious physical or mental health problem for the pregnant member,
    - ii. Seriously impairing a bodily function of the pregnant member,
    - iii. Causing dysfunction of a bodily organ or part of the pregnant member,
    - iv. Exacerbating a health problem of the pregnant member, or
    - v. Preventing the pregnant member from obtaining treatment for a health problem.
  - d. Other circumstances where, under A.R.S. 35-196.05(B), a medical condition exists such that the abortion is performed for a treatment of a medical condition and is not performed for the provision of family planning services. Describe the circumstances and medical condition here: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The Provider will inform the AHCCCS Administration within 48 hours if the Provider fails to comply at any time with these attestations by providing written notice sent to:

AHCCCS Provider Registration  
P.O. Box 25520, Mail Drop 8100  
Phoenix, AZ 85002

3. I am authorized to make these attestations on behalf of the Provider.

<b>Signature</b>	<b>Date</b>
<b>Printed Name</b>	<b>Provider Name</b>
<b>Title</b>	<b>Provider ID number</b>

JS 44 (Rev. 09/11)

**CIVIL COVER SHEET**

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Planned Parenthood Arizona, Inc.; Jane Doe #1; Jane Doe #2; Jane Doe #3

(b) County of Residence of First Listed Plaintiff Maricopa  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Lawrence J. Rosenfeld / Daniel B. Pasternak, Greenberg Traurig, LLP,  
2375 E. Camelback Rd., Ste. 700, Phoenix, AZ 85016

**DEFENDANTS**

Tom Betlach, Director, Arizona Health Care Cost Containment System; Tom Horne, Attorney General

County of Residence of First Listed Defendant Maricopa  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                                       |                            |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
|   | PTF                                   | DEF                                   |   | PTF                                   | DEF                        |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN**

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. Sec. 1983; U.S. Constitution

Brief description of cause:  
Civil action-enjoin enforcement of Ariz. Rev. Stat. Ann. 35-196.05 on federal statutory/constitutional grounds

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** \_\_\_\_\_  
CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

07/16/2012 /s/ Lawrence J. Rosenfeld

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.