

[Planned Parenthood Center of Tucson, Inc., v. Marks \(1972\)](#) ^[1]

By: Nunez-Eddy, Claudia Keywords: [Reproductive Health Arizona](#) ^[2]

In the 1972 case *Planned Parenthood Center of Tucson, Inc., v. Marks*, the Arizona Court of Appeals required the Arizona Superior Court to rehear the case *Planned Parenthood Association v. Nelson* (1971) and issue a decision on the constitutionality of Arizona's [abortion](#) ^[3] laws. In 1971, the Planned Parenthood Center of Tucson filed the case *Planned Parenthood Association v. Nelson* asking for the US District Court to rule on the constitutionality of the Arizona Revised Statutes 13-211, 13-212, and 13-213, which made it illegal for anyone to advertise, provide, or receive an [abortion](#) ^[3]. The decision in *Planned Parenthood Center of Tucson, Inc., v. Marks* forced the Arizona Superior Court to issue a decision on the constitutionality of the Arizona [abortion](#) ^[3] laws, and is one in a series of lawsuits that culminated in the legalization of [abortion](#) ^[3] in Arizona in 1973.

The Arizona [abortion](#) ^[3] laws, then listed as Arizona Revised Statutes (ARS) 13-211, 13-212, and 13-213, regulated [abortion](#) ^[3] access throughout the state of Arizona. Statute 13-211 made it illegal for anyone in the state to provide or supply any drug, instrument, or surgical procedure with the intent to cause an [abortion](#) ^[3]. Statute 13-212 made it illegal for any pregnant woman to solicit or receive any drug or procedure that caused an [abortion](#) ^[3]. Statute 13-213, made it illegal to advertise information about [contraception](#) ^[4] or [abortion](#) ^[3] services. Those statutes prevented reproductive health organizations from offering [abortion](#) ^[3] as an option to women faced with unwanted pregnancies.

Planned Parenthood and other reproductive health groups had made several unsuccessful attempts to repeal the Arizona [abortion](#) ^[3] laws through the judicial system starting in the 1970s. In 1971, the Planned Parenthood Center of Tucson, an [organization](#) ^[5] that provided women in southern Arizona with [contraception](#) ^[4] and [family planning](#) ^[6], filed a lawsuit, *Planned Parenthood Association v. Nelson*, against Gary Nelson, the Arizona Attorney General, whose office was in Phoenix, Arizona. Planned Parenthood filed the suit in the United States District Court of Arizona in Phoenix. The lawsuit challenged the constitutionality of the Arizona [abortion](#) ^[3] laws, Arizona Statutes 13-211, 13-212, and 13-213. A group of physicians practicing in obstetrics and gynecology joined Planned Parenthood Center of Tucson in the lawsuit. On 11 June 1971, the US District Court stated that it would not issue a judgment on the constitutionality of the Arizona laws, as Planned Parenthood had failed to have its case reviewed in a state court.

One month later, Planned Parenthood and the physicians filed a suit challenging the Arizona [abortion](#) ^[3] laws in the Arizona Superior Court in Tucson, Arizona. An unmarried pregnant woman under the alias [Jane Roe](#) ^[7] joined Planned Parenthood in the suit. The alias preserved the woman's anonymity during the trial.

In the Arizona Superior Court, Planned Parenthood argued that the statutes were unconstitutional because they violated citizen's rights to privacy. They argued that the due process clause of the US Constitution's Fourteenth Amendment, which protects citizens' rights to life, liberty, and property, included a right to privacy. They argued that the right to privacy also included privacy in medical decisions, including the decision to have an [abortion](#) ^[3]. They also argued that the [abortion](#) ^[3] statutes exceeded the power granted to the states because the state had no compelling interest to warrant an absolute ban on abortions. The group argued that the statutes prevented women from receiving abortions and physicians from providing [abortion](#) ^[3] services without fear of prosecution under the law. However, all the physicians and married couples acknowledged that they had not committed any of the acts prohibited by the laws, nor had they been prosecuted or threatened with prosecution under the law.

In response to the lawsuit, Nelson filed a motion requesting that the Arizona Superior Court dismiss the lawsuit, arguing that Planned Parenthood Center of Tucson did not provide evidence illustrating a justifiable controversy. In legal cases, in order for courts to evaluate the constitutionality of a law, there must be a justifiable controversy, which exists when there is a tangible dispute based on current existing facts, rather than hypothetical situations. On 9 September 1971, Richard Royston of the Arizona Superior Court in Tucson dismissed Nelson's motion, allowing Planned Parenthood Center of Tucson's case to proceed.

However, the following year, judge Jack Marks in the Arizona Superior Court reheard Nelson's motion to dismiss the case against him. On 5 April 1972, Marks granted Nelson's motion and dismissed Planned Parenthood's lawsuit for a lack of controversy. However, on 12 April 1972, Marks reversed his original dismissal, allowing the lawsuit to proceed. The following month it was revealed that [Jane Roe](#) ^[7], a pregnant woman who was filing the case alongside Planned Parenthood Center of Tucson had obtained a legal [abortion](#) ^[3] in another state. In response, on 9 May 1972, Marks reinstated the original dismissal of the case, ruling that without a pregnant woman, Planned Parenthood Center of Tucson lacked a justifiable controversy in the case.

In 1972, following Mark's dismissal of the case, the Planned Parenthood Center of Tucson filed a lawsuit, *Planned Parenthood*

Center of Tucson, Inc. v. Marks, against Marks, arguing that he arbitrarily dismissed their case. The suit was filed in Division Two of the Arizona Court of Appeals in Tucson. The Planned Parenthood Center of Tucson argued that Mark's dismissal of the complaint was arbitrary and that the Arizona Superior Court exceeded its jurisdiction by failing to decide the case. Planned Parenthood argued that a controversy existed because the [abortion](#)^[3] laws restricted the activities of Planned Parenthood Center of Tucson, the physicians, and Jane Roe. Planned Parenthood argued that in other circumstances, it would refer some clients to physicians for abortions, but was unable to do so for fear of criminal prosecution. The physicians in the case argued that they would perform, if not for the laws, abortions for some women who faced, or whose fetuses faced, severe health risks if the pregnancies continued. The doctors alleged that they would also provide abortions for patients that included women with mental illnesses that would prevent them from adequately caring for infants after birth. However, because of the Arizona [abortion](#)^[3] laws, Planned Parenthood and the physicians were unable to advertise, recommend, or provide any [abortion](#)^[3] services without fear of prosecution under the law. Planned Parenthood also argued that the State of Arizona intended to prosecute anyone who violated the laws.

Judges James Hathaway, Joseph Howard, and Henry Stevens heard the case *Planned Parenthood Center of Tucson Inc., v. Marks* in Division Two of Arizona Court of Appeals. Lawyers Stanley Feldman and Elaine Pollack represented Planned Parenthood Center of Tucson, along with [Jane Roe](#)^[7] and the group of physicians. John O'Dowd, Assistant Attorney General, and lawyer John Neubauer represented Marks.

On 30 May 1972, the Court of Appeals of Arizona ruled that a controversy did exist and required the Arizona Superior Court to rehear the case and issue a declaratory judgment on the constitutionality of the statutes. Hathaway wrote the majority opinion for the court, explaining the court's decision. He stated that because the Arizona Superior Court had found a lack of justifiable controversy in Planned Parenthood's complaint, the Court of Appeals of Arizona needed to determine if a controversy existed. Hathaway first explained that a court could only evaluate the constitutionality of a law if an actual controversy exists. The controversy must be real and supported by established facts. Hathaway noted that courts may not evaluate theoretical controversies. For a court to render a decision, he explained, the complaint must present sufficient facts and evidence to establish such controversy.

In the majority opinion, Hathaway argued that to hear a case, if courts required a violation of law or prosecution under the law for a legal controversy, they deprived citizens of court decisions that functioned as forewarnings. Howard and Stevens concurred with the opinion. Hathaway stated that when courts ruled on the constitutionality of a law, they aimed to eliminate any uncertainty in the law and to settle a controversy caused by a law. Hathaway ruled that requiring the violation of the law as a prerequisite to test the constitutionality of the law encouraged lawlessness.

Hathaway stated that even without a pregnant woman present to demonstrate a controversy on behalf of the Planned Parenthood Center of Tucson, the court found that there was still a justifiable controversy. The Court of Appeals disagreed with the decision previously issued by Marks and found that the complaint from Planned Parenthood Center of Tucson illustrated a justifiable controversy. Therefore, the Court of Appeals ordered the Arizona Superior Court to reverse their initial decision, hear the case *Planned Parenthood Association v. Nelson* filed by Planned Parenthood Center of Tucson, and issue a ruling on the constitutionality of the Arizona [abortion](#)^[3] laws.

Following the Court of Appeals decision in *Planned Parenthood Center of Tucson Inc., v. Marks*, the Arizona Superior Court reheard the case *Planned Parenthood Association, v. Nelson* on 29 September 1972. The Arizona Superior Court ruled that the Arizona [abortion](#)^[3] statutes, ARS 13-211, 13-212, and 13-213 were all unconstitutional. In January 1973, Nelson appealed the decision to Division Two of the Arizona Court of Appeals in Tucson. In response to Nelson appealing the case, the case name was changed to *Nelson v. Planned Parenthood Center of Tucson* (1973). The Court of Appeals ruled that the Arizona [abortion](#)^[3] statutes were constitutional and reversed the decision of the Arizona Superior Court. However, after the Court of Appeals issued its decision, the US Supreme Court in Washington, D.C., ruled in *Roe v. Wade*^[8] (1973) that the constitutionally protected right to privacy in the Fourteenth Amendment extended to women's decisions to terminate pregnancies, and it federally legalized [abortion](#)^[3]. Following the US Supreme Court precedent set in *Roe v. Wade*^[8], the Court of Appeals of Arizona amended its decision in *Nelson v. Planned Parenthood Center of Tucson* and ruled the Arizona [abortion](#)^[3] statutes unconstitutional, legalizing [abortion](#)^[3] in Arizona

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In the 1972 case Planned Parenthood Center of Tucson, Inc., v. Marks, the Arizona Court of Appeals required the Arizona Superior Court to rehear the case Planned Parenthood Association v. Nelson (1971) and issue a decision on the constitutionality of Arizona's abortion laws. In 1971, the Planned Parenthood Center of Tucson filed the case Planned Parenthood Association v. Nelson asking for the US District Court to rule on the constitutionality of the Arizona Revised Statutes 13-211, 13-212, and 13-213, which made it illegal for anyone to advertise, provide, or receive an abortion. The decision in Planned Parenthood Center of Tucson, Inc., v. Marks forced the Arizona Superior Court to issue a decision on the constitutionality of the Arizona abortion laws, and is one in a series of lawsuits that culminated in the legalization of abortion in Arizona in 1973.

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