



## **Arizona Criminal Law Banning Nude Images Violates First Amendment**

Bookstores, Publishers, News Media, Librarians and Photographers File Suit to Protect Free Speech

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PHOENIX – A broad coalition of bookstores, newspapers, photographers, publishers and librarians filed a lawsuit in federal court today challenging a new Arizona law that criminalizes speech protected by the First Amendment.

The law makes the display, publication or sale of nude or sexual images without the subject's explicit consent a felony punishable by nearly four years in prison.

As written, Arizona's "nude photo law" could be applied to any person who distributes or displays an image of nudity—including pictures that are newsworthy, artistic, educational or historic—without the depicted person's consent, even images for which consent was impossible to obtain or is difficult to prove. A bookseller who sells a history book containing an iconic image such as the Pulitzer Prize-winning photograph "Napalm Girl," the unclothed Vietnamese girl running from a napalm attack, could be prosecuted under this law. A library lending a photo book about breast feeding to a new mother, a newspaper publishing pictures of abuse at the Abu Ghraib prison, or a newsweekly running a story about a local art show could all be convicted of a felony.

"This law puts us at risk for prosecution," said Gayle Shanks, owner of Changing Hands Bookstore, one of the plaintiffs, which has been in operation for more than 40 years in Tempe and recently opened a location in Phoenix. "There are books on my shelves right now that might be illegal to sell under this law. How am I supposed to know whether the subjects of these photos gave their permission?"

The law was passed with the stated intent of combating "revenge porn," a term popularly understood to describe a person knowingly and maliciously posting an identifiable, private image online with the intent and effect of harming an ex-lover.

But the law, Arizona Revised Statutes Section 13-1425, criminalizes far more than these offensive acts. The law isn't limited to revenge. A prosecutor need not prove that the person publishing the photograph intended to harm the person depicted. Likewise, a person who shares a photograph can be convicted of a felony even if the person depicted had no expectation of privacy in the image and suffered no harm. The law applies even when the person in the picture is not

recognizable. And the law is not limited to “porn”—it criminalizes publication of nude and sexual images that could not possibly be considered pornography, let alone obscene.

The law is so broad and vague that it could send people to prison for sharing material that is fully protected by the First Amendment. And that’s not merely a hypothetical concern—Voice Media Group, one of the plaintiffs in the suit, publishes the *Phoenix New Times*, which has previously been harassed by law enforcement for engaging in protected speech, including the publication of nude images from a local art show.

“Arizona’s law clearly violates the First Amendment, because it criminalizes protected speech,” said Lee Rowland, staff attorney with the ACLU’s Speech, Privacy, and Technology Project. She added, “States can address malicious invasions of privacy without treading on free speech, with laws that are carefully tailored to address real harms. Arizona’s is not.”

The lawsuit also claims that the nude photo law is unconstitutionally vague and violates the Commerce Clause of U.S. Constitution.

In addition to Changing Hands Bookstore, booksellers challenging the law include Antigone Books in Tucson; Bookmans, which has stores in Tucson, Phoenix, Mesa and Flagstaff; Copper News Book Store in Ajo; and Mostly Books in Tucson. They are joined by Voice Media Group, which publishes the *Phoenix New Times* among other newsweeklies, the American Booksellers Foundation for Free Expression, the Association of American Publishers, the Freedom to Read Foundation and the National Press Photographers Association, whose members have produced images that may now be criminal to distribute in Arizona, including the “Napalm Girl” photograph mentioned earlier.

“This law will have an unconstitutional chilling effect on free speech.” said David Horowitz, executive director of the Media Coalition, whose members include the plaintiff associations of publishers, librarians and booksellers. “To comply with the law, booksellers and librarians will have to spend countless hours looking over books, magazines and newspapers to determine if a nude picture was distributed with consent. Many store owners will simply decline to carry any materials containing nude images to avoid the risk of going to prison.”

Plaintiffs are represented by the ACLU Foundation of Arizona, the ACLU Foundation, and the law firm Dentons US LLP, general counsel to Media Coalition, Inc.

The case, *Antigone Books v. Horne*, is available at: [mediacoalition.org/antigone-books-v-horne](http://mediacoalition.org/antigone-books-v-horne) and <https://www.aclu.org/free-speech/antigone-books-v-horne-challenge-arizonas-nude-photo-law>.

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