# Griswold v. Connecticut

**Date**: June 7, 1965
**Author**: Justice William O. Douglas (majority opinion)
**Genre**: Court Opinion

## Summary Overview

*A Connecticut law passed in 1879 forbade citizens from accessing birth control for purposes of contraception. Citizens were not allowed to have access to information regarding birth control, were prohibited from receiving counsel about birth control, and were not able to access instruments or medication that would prevent reproduction. Furthermore, medical professionals and their assistants and staff were forbidden to provide birth control services to individuals. Those found in violation of this law could be fined up to $100.00, face imprisonment, or both. In 1961, two workers at a New Haven Planned Parenthood clinic were arrested and charged with violating the Connecticut law. Upon reviewing the case, the Supreme Court struck down the statute on the basis that the law violated a series of constitutional amendments which guaranteed American citizens the right to privacy.*

## Defining Moment

After women gained the right to vote in 1920 through the passage of the Nineteenth Amendment, the movement towards women's rights significantly slowed down in this country. It was not until the mid-1960s that the movement began to see a resurgence. Betty Friedan's publication, *The Feminine Mystique,* helped women across the nation realize they were not alone in their lukewarm feelings towards their position in society. Prior to this revitalization in the fight for women's rights, a struggle regarding the legality and accessibility of birth control was taking place in the country. By 1936, birth control was no longer considered obscene, but advocates for accessible birth control struggled throughout the 40s and 50s to defeat state laws preventing women from gaining access to contraception. In 1960, the Food and Drug Administration approved the birth control pill, but states were still reluctant to allow citizens access to the medication.

In Connecticut, a state law had been in place since 1879 forbidding any person from selling birth control mechanisms, or giving advice on birth control for purposes of preventing pregnancy. Any individual found guilty of violating this law would be subject to a fine of $100.00, imprisonment, or both; including any individual who assisted in providing information or access to birth control. In Connecticut, this law had been challenged repeatedly but held strong for over eighty years. In 1961, under Planned Parenthood, a birth control clinic was established in New Haven, Con-

*Justice William O. Douglas, the author of the majority opinion in* Griswold. *Photo via Wikimedia Commons. [Public domain.]*

necticut. Estelle Griswold, the executive director of the clinic, and C. Lee Buxton, the attending physician were providing information and offering advice to patients regarding methods of birth control specifically for the purpose of preventing pregnancy. Authorities raided the clinic, resulting in convictions and fines for both Griswold and Buxton, who willingly admitted to violating the state law. The state of Connecticut upheld the convictions, and Griswold and Buxton petitioned the Supreme Court for a chance at having their case heard.

## Author Biography

William O. Douglas was born in 1898, and after the death of his father early in his life, Douglas was forced to work from a young age to help support his family and earn his education. Douglas attended Whitman College on scholarship, and went on to attend law school at Columbia where he would later teach. Douglas served as a faculty member at Yale Law, and received a political appointment to serve on the United States Securities and Exchange Commission. After Justice Brandeis retired from the Supreme Court in 1939, Douglas was nominated by Roosevelt to serve on the Court. Upon his confirmation at just forty years old, Douglas became one of the youngest ever appointed to the Court. With almost thirty-seven years of service on the Court to his name, Douglas holds the record for serving the longest term on the Supreme Court. William O. Douglas passed away on January 19, 1980.

## Historical Document

### *Griswold v. Connecticut*

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Appellant Griswold is Executive Director of the Planned Parenthood League of Connecticut. Appellant Buxton is a licensed physician and a professor at the Yale Medical School who served as Medical Director for the League at its Center in New Haven—a center open and operating from November 1 to November 10, 1961, when appellants were arrested. They gave information, instruction, and medical advice to married persons as to the means of preventing conception. They examined the wife and prescribed the best contraceptive device or material for her use. Fees were usually charged, although some couples were serviced free.

The statutes whose constitutionality is involved in this appeal are 53-32 and 54-196 of the General Statutes of Connecticut (1958 rev.). The former provides:

"Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

Section 54-196 provides:

"Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender."

The appellants were found guilty as accessories and fined $100 each, against the claim that the accessory statute as so applied violated the Fourteenth Amendment....

Coming to the merits, we are met with a wide range of questions that implicate the Due Process Clause of the Fourteenth Amendment. Overtones of some arguments suggest that *Lochner v. New York*, 198 U.S. 45, should be our guide. But we decline that invitation. We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions. This law, however, operates directly on an intimate relation of husband and wife and their physician's role in one aspect of that relation.

The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice—whether public or private or parochial—is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.

By *Pierce v. Society of Sisters*, *supra*, the right to educate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments. By *Meyer v. Nebraska, supra*, the same dignity is given the right to study the German language in a private school. In other words, the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge... And so we reaffirm the principle of the *Pierce* and the *Meyer* cases.

In *NAACP v. Alabama* we protected the "freedom to associate and privacy in one's associations," noting that freedom of association was a peripheral First Amendment right. Disclosure of membership lists of a constitutionally valid association, we held, was invalid "as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association." *Ibid*. In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion. The right of "association," like the right of belief (*Board of Education v. Barnette*, 319 U.S. 624), is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion; and while it is not expressly included in the First Amendment its existence is necessary in making the express guarantees fully meaningful.

The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Fourth and Fifth Amendments were described... as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life."

We have had many controversies over these penumbral rights of "privacy and repose." These cases bear witness that the right of privacy which presses for recognition here is a legitimate one.

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." . Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Reversed.

MR. JUSTICE GOLDBERG, whom THE CHIEF JUSTICE and MR. JUSTICE BRENNAN join, concurring.

I agree with the Court that Connecticut's birth-control law unconstitutionally intrudes upon the right of marital privacy, and I join in its opinion and judgment. Although I have not accepted the view that "due process" as used in the Fourteenth Amendment incorporates all of the first eight Amendments, I do agree that the concept of liberty protects those personal rights that are fundamental, and is not confined to the specific terms of the Bill of Rights. My conclusion that the concept of liberty is not so restricted and that it embraces the right of marital privacy though that right is not mentioned explicitly in the Constitution is supported both by numerous decisions of this Court, referred to in the Court's opinion, and by the language and history of the Ninth Amendment. In reaching the conclusion that the right of marital privacy is protected, as being within the protected penumbra of specific guarantees of the Bill of Rights, the Court refers to the Ninth Amendment, I add these words to emphasize the relevance of that Amendment to the Court's holding.

The Court stated many years ago that the Due Process Clause protects those liberties that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental."

The Ninth Amendment reads, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Amendment is almost entirely the work of James Madison. It was introduced in Congress by him and passed the House and Senate with little or no debate and virtually no change in language. It was proffered to quiet expressed fears that a bill of specifically enumerated rights could not be sufficiently broad to cover all essential rights and that the specific mention of certain rights would be interpreted as a denial that others were protected.

In presenting the proposed Amendment, Madison said:

"It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution [the Ninth Amendment]."

Mr. Justice Story wrote of this argument against a bill of rights and the meaning of the Ninth Amendment:

"In regard to...[a] suggestion, that the affirmance of certain rights might disparage others, or might lead to argumentative implications in favor of other powers, it might be sufficient to say that such a course of reasoning could never be sustained upon any solid basis....But a conclusive answer is, that such an attempt may be interdicted (as it has been) by a positive declaration in such a bill of rights that the enumeration of certain rights shall not be construed to deny or disparage others retained by the people."

He further stated, referring to the Ninth Amendment:

"This clause was manifestly introduced to prevent any perverse or ingenious misapplication of the well-known maxim, that an affirmation in particular cases implies a negation in all others; and, *e converso*, that a negation in particular cases implies an affirmation in all others."

These statements of Madison and Story make clear that the Framers did not intend that the first eight amendments be construed to exhaust the basic and fundamental rights which the Constitution guaranteed to the people.

To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendment and to give it no effect whatsoever. Moreover, a judicial construction that this fundamental right is not protected by the Constitution because it is not mentioned in explicit terms by one of the first eight amendments or elsewhere in the Constitution would violate the Ninth Amendment, which specifically states that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people...."

In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather, they must look to the "traditions and [collective] conscience of our people" to determine whether a principle is "so rooted [there]... as to be ranked as fundamental." The inquiry is whether a right involved "is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'... ."

Although the Constitution does not speak in so many words of the right of privacy in marriage, I cannot believe that it offers these fundamental rights no protection. The fact that no particular provision of the Constitution explicitly forbids the State from disrupting the traditional relation of the family—a relation as old and as fundamental as our entire civilization—surely does not show that the Government was meant to have the power to do so. Rather, as the Ninth Amendment expressly recognizes, there are fundamental personal rights such as this one, which are protected from abridgment by the Government though not specifically mentioned in the Constitution.

The logic of the dissents would sanction federal or state legislation that seems to me even more plainly unconstitutional than the statute before us. Surely the Government, absent a showing of a compelling subordinating state interest, could not decree that all husbands and wives must be sterilized after two children have been born to them. Yet by their reasoning such an invasion of marital privacy would not be subject to constitutional challenge because, while it might be "silly," no provision of the Constitution specifically prevents the Government from curtailing the marital right to bear children and raise a family. While it may shock some of my Brethren that the Court today holds that the Constitution protects the right of marital privacy, in my view it is far more shocking to believe that the personal liberty guaranteed by the Constitution does not include protection against such totalitarian limitation of family size, which is at complete variance with our constitutional concepts. Yet, if upon a showing of a slender basis of rationality, a law outlawing voluntary birth control by married persons is valid, then, by the same reasoning, a law requiring compulsory birth control also would seem to be valid. In my view,

however, both types of law would unjustifiably intrude upon rights of marital privacy which are constitutionally protected.

MR. JUSTICE BLACK, with whom MR. JUSTICE STEWART joins, dissenting.

I agree with my Brother STEWART'S dissenting opinion. And like him I do not to any extent whatever base my view that this Connecticut law is constitutional on a belief that the law is wise or that its policy is a good one. In order that there may be no room at all to doubt why I vote as I do, I feel constrained to add that the law is every bit as offensive to me as it is to my Brethren of the majority and my Brothers HARLAN, WHITE and GOLDBERG who, reciting reasons why it is offensive to them, hold it unconstitutional. There is no single one of the graphic and eloquent strictures and criticisms fired at the policy of this Connecticut law either by the Court's opinion or by those of my concurring Brethren to which I cannot subscribe—except their conclusion that the evil qualities they see in the law make it unconstitutional.

The Court talks about a constitutional "right of privacy" as though there is some constitutional provision or provisions forbidding any law ever to be passed which might abridge the "privacy" of individuals. But there is not. There are, of course, guarantees in certain specific constitutional provisions which are designed in part to protect privacy at certain times and places with respect to certain activities. Such, for example, is the Fourth Amendment's guarantee against "unreasonable searches and seizures." But I think it belittles that Amendment to talk about it as though it protects nothing but "privacy." To treat it that way is to give it a niggardly interpretation, not the kind of liberal reading I think any Bill of Rights provision should be given. The average man would very likely not have his feelings soothed any more by having his property seized openly than by having it seized privately and by stealth. He simply wants his property left alone. And a person can be just as much, if not more, irritated, annoyed and injured by an unceremonious public arrest by a policeman as he is by a seizure in the privacy of his office or home.

One of the most effective ways of diluting or expanding a constitutionally guaranteed right is to substitute for the crucial word or words of a constitutional guarantee another word or words, more or less flexible and more or less restricted in meaning. This fact is well illustrated by the use of the term "right of privacy" as a comprehensive substitute for the Fourth Amendment's guarantee against "unreasonable searches and seizures." "Privacy" is a broad, abstract and ambiguous concept which can easily be shrunken in meaning but which can also, on the other hand, easily be interpreted as a constitutional ban against many things other than searches and seizures. I like my privacy as well as the next one, but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional

provision. For these reasons I cannot agree with the Court's judgment and the reasons it gives for holding this Connecticut law unconstitutional.

The due process argument which my Brothers HARLAN and WHITE adopt here is based, as their opinions indicate, on the premise that this Court is vested with power to invalidate all state laws that it considers to be arbitrary, capricious, unreasonable, or oppressive, or on this Court's belief that a particular state law under scrutiny has no "rational or justifying" purpose, or is offensive to a "sense of fairness and justice." If these formulas based on "natural justice," or others which mean the same thing, are to prevail, they require judges to determine what is or is not constitutional on the basis of their own appraisal of what laws are unwise or unnecessary. The power to make such decisions is of course that of a legislative body. Surely it has to be admitted that no provision of the Constitution specifically gives such blanket power to courts to exercise such a supervisory veto over the wisdom and value of legislative policies and to hold unconstitutional those laws which they believe unwise or dangerous.

I repeat so as not to be misunderstood that this Court does have power, which it should exercise, to hold laws unconstitutional where they are forbidden by the Federal Constitution. My point is that there is no provision of the Constitution which either expressly or impliedly vests power in this Court to sit as a supervisory agency over acts of duly constituted legislative bodies and set aside their laws because of the Court's belief that the legislative policies adopted are unreasonable, unwise, arbitrary, capricious or irrational. The adoption of such a loose, flexible, uncontrolled standard for holding laws unconstitutional, if ever it is finally achieved, will amount to a great unconstitutional shift of power to the courts which I believe and am constrained to say will be bad for the courts and worse for the country. Subjecting federal and state laws to such an unrestrained and unrestrainable judicial control as to the wisdom of legislative enactments would, I fear, jeopardize the separation of governmental powers that the Framers set up and at the same time threaten to take away much of the power of States to govern themselves which the Constitution plainly intended them to have.

I realize that many good and able men have eloquently spoken and written, sometimes in rhapsodical strains, about the duty of this Court to keep the Constitution in tune with the times. The idea is that the Constitution must be changed from time to time and that this Court is charged with a duty to make those changes. For myself, I must with all deference reject that philosophy. The Constitution makers knew the need for change and provided for it. Amendments suggested by the people's elected representatives can be submitted to the people or their selected agents for ratification. That method of change was good for our Fathers, and being somewhat old-fashioned I must add it is good enough for me. And so, I cannot rely on the Due Process Clause or the Ninth Amendment or any mysterious and uncertain natural law con-

cept as a reason for striking down this state law. The Due Process Clause with an "arbitrary and capricious" or "shocking to the conscience" formula was liberally used by this Court to strike down economic legislation in the early decades of this century, threatening, many people thought, the tranquility and stability of the Nation. See, e. g., *Lochner v. New York*, 198 U.S. 45. That formula, based on subjective considerations of "natural justice," is no less dangerous when used to enforce this Court's views about personal rights than those about economic rights. I had thought that we had laid that formula, as a means for striking down state legislation, to rest once and for all.

MR. JUSTICE STEWART, whom MR. JUSTICE BLACK joins, dissenting.

Since 1879 Connecticut has had on its books a law which forbids the use of contraceptives by anyone. I think this is an uncommonly silly law. As a practical matter, the law is obviously unenforceable, except in the oblique context of the present case. As a philosophical matter, I believe the use of contraceptives in the relationship of marriage should be left to personal and private choice, based upon each individual's moral, ethical, and religious beliefs. As a matter of social policy, I think professional counsel about methods of birth control should be available to all, so that each individual's choice can be meaningfully made. But we are not asked in this case to say whether we think this law is unwise, or even asinine. We are asked to hold that it violates the United States Constitution. And that I cannot do.

## Document Analysis

The question before the Court was this: do individual citizens have a fundamental right to privacy within a marriage, and if so, does the Connecticut law violate this right? The Court interpreted the Constitution as protecting a fundamental right to privacy, specifically in marriage, as their basis for the ruling. The justices were certain no one specific provision found within the Bill of Rights was applicable to the question they were facing, and nowhere does the Constitution discuss or identify a person's right to privacy. Justice Douglas, writing for the Court, stated there were "penumbras" found within the Constitution that created zones of privacy. In other words, within the shadowy language of the Constitution there can be found a protection of marital privacy. Justice Douglas wondered, if the marital right to privacy was not honored, would laws such as Connecticut's allow the police to search married couple's homes "for telltale signs of the use of contraceptives"? Concurring justices' opinions supported the general idea of a right to privacy, but there was disagreement on the source for interpreting this right.

In dissenting opinions, Justices Black and Stewart argued that while the Connecticut law may be "uncommonly silly," the right to privacy is nowhere to be found in the Constitution. Both Black and Stewart found the Connecticut law offensive in its purpose, but both justices felt strongly the Court did not have the authority to create rights not reasonably interpreted as being found within the Constitution. Regardless of the dissents and the lack of specific language citing privacy, the right to privacy was interpreted as existing through the First, Third, Fourth, Fifth, and Ninth Amendments to the Constitution. Additionally, the concurring justices believed the notion of privacy could be interpreted through the Due Process Clause found in the Fourteenth Amendment. These amendments, taken together, should be interpreted to mean citizens have a fundamental right to privacy within a marriage. These zones of privacy work together to protect the marital relationship from legal scrutiny. Because the zones of privacy were found to exist, and due to the fact Connecticut was unable to prove the law criminalizing birth control was mandatory and compelling, the Court struck down the law by a vote of 7-2, five years after the FDA approved oral birth control medication and forty-nine years after the first birth control clinic was opened in this country. Moreover, the ruling made it possible for women to access birth control without fear of legal punishment. This case proved to be extraordinarily important not only to women and the women's rights movement as a whole, but to anyone who values their right to privacy as we know it today.

## Essential Themes

The significance of *Griswold v. Connecticut* still holds major importance, not just for women, but for all citizens of America today. The case of *Griswold v. Connecticut* established the notion that our rights, as protected by the Constitution, include a fundamental right to privacy. While privacy in itself is arguably a valued right, the ruling of this case had other major repercussions, particularly when examining women's rights associated with reproduction. This case was the predecessor of important women's rights cases like *Roe v. Wade* and *Planned Parenthood v. Casey*, and without the precedent set in the *Griswold* case, the struggle for women's reproductive rights could have been prolonged even further. Just eight years later in the case of *Roe v. Wade* the zones of privacy cited in the *Griswold* case were used to make a ruling on a woman's right to have an abortion. Without the ruling in *Griswold v. Connecticut,* it is reasonable to wonder whether the *Roe* ruling would have been the same, thereby altering the scope of women's reproductive rights in America.

Women's reproductive rights issues will always be a political point of contention in American whether women have a fundamental right to make certain choices regarding reproduction. Since the Court's decision in the *Griswold* case, women have been able to control whether or not they reproduce, which has had major beneficial impacts on society. For example, there have been positive changes associated with infant health, including a drop in the infant mortality rate. Women have been able pursue educational or professional goals they may have been unable to engage in if their attention had been focused solely on

motherhood. Moving forward, the case of *Griswold v. Connecticut* will undoubtedly serve as a fundamental basis for decisions regarding women's rights debates and other issues of privacy as they move to the forefront of political and legislative agendas across the country.

*—Amber R. Dickinson, PhD*

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