

Griswold v.
connecticut: women's
rights and
reproductive
decisions



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Women's rights have evolved over the years. With women's health being one of the main concerns in the United States during the late 1960s many women's groups and activists pushed to get a country wide legalization on abortion and contraceptives. In the 1960s it was believed that contraception violated the privacy of married couples. In the case of *Griswold v. Connecticut*, it proved that this was not the case and that women should be allowed to make these decisions for herself without needing the consent of her husband or worrying that she might face jail time for seeking these services.

Women have made great strides and have suffered some setbacks throughout history, but many of their gains were made during activism in favor of women's rights. The women's rights movement, which was also known as the women's liberation movement, was a diverse social movement in the United States in the 1960s and 70s. It sought out to gain equal rights and opportunities for women. During this time, it was known to be the "second wave" of feminism. While the first wave was during the 19th and early 20th centuries, which focused on women's legal rights which included voting and reproductive rights.[1]

The social movement for women's rights was influenced and inspired by the Civil Rights Movement. This created a climate of protest as activists claimed rights and new positions that they felt they deserve, especially for people of color. This ignited a fire in women of all ages to begin to fight to obtain a stronger and more powerful role in American society. After the *Griswold v. Connecticut* case ruling women activist groups formed such as National

Organization for Women (NOW). They asserted their rights and stood for equality for themselves and many women like them. They uprooted many of society's norms and set a groundbreaking both social and legal changes were put into motion.[2]

With the passing of Title VII of the Civil Rights Act of 1964, it is a federal law that does not allow employers to discriminate against employees on the basis of sex, color, race, gender, national origin and religion. It applied to employers and companies with 15 or more employees, which included federal, state and local governments. Title VII helped take a stance for discrimination and also brought justice and awareness for not only these issues but the discrimination that women faced during these times.[3]

The first birth control clinic was opened in the United States by Margaret Sanger in 1916. The following year she was found guilty of operating a public nuisance and sentenced to jail time of thirty days. Once she was released, she re-opened her clinic and continued to obtain more arrests and prosecutions. In a case involving Sanger, a judge lifted the federal ban on birth control, ending the Comstock era. Diaphragms, which were also known as womb veils, became a popular method of birth control during this time. While in her later years, Margaret started the research necessary to create the first human birth control pill. She raised around \$150,000 to get fund the research needed.[4]

The first oral contraceptive, Enovid, was approved by the US Food and Drug Administration (FDA) as a form of contraception. Shortly after, the *Griswold v. Connecticut* case gave married couples the legal right to use birth control.

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However, millions of unmarried women in 26 states were still being denied the use of contraceptives. The FDA approved intrauterine devices (IUDs), bringing the very first prototypes to the market. In 1972, the Supreme Court legalized birth control for all citizens of the country, despite their marital status. Once this happened birth control became available quickly. Improvements in safety and effectiveness, including introduction of new devices to test out, these included: Nuvaring, Mirena, Ortho Evra, Essure and many others.[5]

The Comstock Act/Era, which was named after Anthony Comstock, who was a passionate advocate against what he believed to be obscenity, the act of criminalized publication, distribution and holding and finding of information about devices and medicines for unlawful abortions or contraception. Those found guilty of violating these “ laws” could receive up to five years of incarceration. This act also banned the distribution of contraceptives through the mail and the import of materials from overseas. In 1971 Congress removed the language that surrounded contraception, in which federal courts ruled that it applied only to “ unlawful” abortions. After the Roe v. Wade case in 1973, laws illegalized transporting of information about abortions, which could remain in books. Although, they have not been enforced they were expanded to ban distribution of abortion-related information on the internet.[6]

In *Griswold v. Connecticut* , the Supreme Court ruled that a state's ban on the use of contraceptives violated the rights to marital privacy. A

Connecticut law criminalized the encouragement or use of birth control. A right to privacy can be concluded from several Amendments in the Bill of <https://assignbuster.com/griswold-v-connecticut-womens-rights-and-reproductive-decisions/>

Rights. This right prevents states from making the use of contraception by married couples illegal (Justia). The 1879 law prohibited the use of any drugs, medicinal article or instruments for the purposes of preventing conception and if found doing so they would be fined or imprisoned. The law goes on to further say that any person who helps assists or commands another person to do so may be prosecuted and punished.[7]

Following the decision in the case of Poe v. Ulmin in 1961, a Planned Parenthood Center was opened in New Haven in November of 1961. The center's purpose was to provide information, instructions and medical advice to married couples as a means of preventing conception, and to educate married people of the means and methods that was the doing and finding of the court. At the Planned Parenthood Center, a married woman came seeking information and forms of contraceptives. She was interviewed, case history was taken, and then different forms of contraception were explained to her.[8]

Estelle Griswold, who was the executive director of Planned Parenthood League of Connecticut, and Dr. Lee Buxton, who is a doctor and professor at Yale Medical School, were arrested and both found guilty as accessories to providing illegal contraception. The evidence that was presented showed that Mrs. Griswold had taken previous case histories and discussed methods of contraception with married women to had come to the center. She even went on to give a woman contraceptive materials. There were three women who would testify that they had come to the center as well and had gone through the procedure, which they were given contraceptive materials and afterwards used them. Griswold and Buxton appealed to the Supreme Court <https://assignbuster.com/griswold-v-connecticut-womens-rights-and-reproductive-decisions/>

of Connecticut, stating that the law violated the U. S. Constitution. The original court in which they were found guilty upheld their conviction, so they proceeded to appeal to the U. S. Supreme Court, in which the case was reviewed in 1965. Their plan was to open the clinic to challenge the constitutionality of the statute under the Fourteenth Amendment before the Supreme Court.[9]

During the trial, Thomas Emerson brought up the point that in Minnesota and New York contraceptives could be sold with a doctor's prescription. The court in New York in the Sanger case and many cases that would come interpreted that the language meant " for the purpose of promoting general health and well-being." There are statutes prohibiting the sale of contraceptives, but yet they have never been interpreted that way. " They have never been applied that way in those States and there are in those States birth control clinics operating, either by the government or Planned Parenthood, Emerson states." [10]

It was argued that by abridging the freedom to practice medicine, the statute impeded on the pursuit of investigation, which involved the elements of free speech and that it was difficult to draw the line between speech and action. The brief written by Emerson argued that the action taken was similar to expression in that the pursuit of scientific knowledge involves the same values and includes the facilitation of social change. Emerson presented this argument and later admitted that is rationale was weak at best. A commentator argued that the First Amendment rights may have been infringed in that the denial to married couples of access to birth control and information pertaining to it. Only a few weeks earlier the court had rejected a <https://assignbuster.com/griswold-v-connecticut-womens-rights-and-reproductive-decisions/>

similar rationale for invoking the First Amendment in relation to travel as curtailed by the refusal to issue passports. Furthermore, going on to apply that the First Amendment would apply to this case would have affected the state's authority to regulate the practice of medicine.

The Supreme Court, with a 7-2 decision, ruled that the law violated the right to marital privacy and could not be enforced against married people. Justice William Douglas presented that the Bill of Rights guarantees to have "penumbras," created by emissions from these guarantees that help give them life and opinion. The First Amendment which is free speech, Third Amendment, Fourth Amendment, Fifth Amendment and Ninth Amendment applied against the states by the Fourteenth Amendment. This creates a general right to privacy that cannot be violated. Furthermore, this right to privacy is fundamental when it concerns the actions of married couples because it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of our civil and political institutions (Skelton). Due to the fact that a married couple's use of contraceptives constitutes a fundamental right, Connecticut must prove to the court that its law is compelling and necessary to overcome that right. Connecticut failed to prove this so in the end the law was struck down as applied.[11]

Other justices, who agreed that marital privacy is a fundamental right. They also agreed that the Connecticut law should be disagreed with due to the fact that they disagreed with Justice Douglas as to where in the Constitution this fundamental right exists. Justice Arthur Goldberg argued that the ninth Amendment, which states that the Bill of Rights does not execute all the rights contained by the people, allows the Court to find the fundamental

rights to marital privacy without having to ground it in a specific amendment. Justice John Marshall stated that a fundamental right to marital privacy only exists because marital privacy has traditionally been protected by American society. Another justice stated that a fundamental right to marital privacy constitutes a liberty under the Due Process Clause and is protected by the Fourteenth Amendment against the states.[12]

The *Griswold v. Connecticut* case indicates judicial sensitivity to state efforts to regulate family size. If government authorities did not forbid the use of drugs and devices by married couples, a total prohibition upon the sale or distribution of such drugs may be of questionable validity. Following the decision, New York's statute was amended to eliminate the prohibition and to permit contraceptives to be dispensed by prescription. On the very day after the decision in the *Griswold* case, the Corporation Counsel for the City Council of Chicago declared that the decision provided ample legal basis for approving the city's contract to purchase contraceptive supplies for the board of health. Several states have repealed or amended their birth control laws, and thirty-nine states are "active in providing birth control information and/or services." [13]

The significance of this decision may be somewhat misguided by the lack of a real majority opinion, for the use of the Ninth Amendment and how it breaks new ground in the development of constitutional law. The opinions indicate that a majority of the court limits the application of the due process clause to the absorption, if not total incorporation, of the Bill of Rights. Which now it encompasses only the first eight amendments. The court is not excluded from protecting rights that have not been specified in those eight

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amendments. The decision indicates a particular concern by the court for legislation and government action affecting the family relationship. The protection of the family within the context of a right of privacy is a position significantly in accordance with article twelve of the Universal Declaration of Human Rights as adopted by the General Assembly of the United Nations.

Currently, the main issue is the extent to which the government may act to promote the use of birth control. Although, in Justice Arthur Goldberg's opinion that the state could not limit family size, this didn't mean that this would keep the federal or local authorities from advising public-assistance recipients and others about the use of birth control drugs and devices or even making contraceptives available. The case confers a constitutional right on married couples to determine their family size and governmental authorities are obligated to provide couples having limited resources with the means for exercising this right.

The majority in *Griswold v. Connecticut* agreed that the "right to privacy," in addition to being fundamental, was substantive. The court then rejected the idea that the Constitution ever protect "substantive rights," as in protecting certain activities from government interference that are not entirely mentioned in the Bill of Rights. In *Griswold*, however, it ruled that substantive rights do exist in non-economic areas. Over the next ten years, the Supreme Court expanded this fundamental, substantive "right to privacy" beyond a married couple's bedroom, ruling that the state could not ban the use of contraceptives by anyone and that the state could not ban most abortions.[14]

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