NAME _____ CLASS _____ DATE _____

SUPREME COURT CASE 25

Griswold v. *Connecticut*, 1965

HISTORICAL BACKGROUND

ONE single theme ties the decisions of the Warren Court together across a broad judicial landscape. Nearly all the landmark decisions made during its 15-year history—in cases ranging from civil rights and equal representation to the freedom of speech and the rights of the accused—can be viewed as a series of affirmations of the rights of the individual. Time and again, when the laws of the States came into conflict with the rights of individuals—that is, when the principle of federalism conflicted with the Bill of Rights—a majority of Warren Court justices came down on the side of the individual (see *Brown*, 1954; *Mapp*, 1961; *Bakera*, 1962; *Schempp*, 1963; and *Escobedo*, 1964). By way of the 14th Amendment, the Court repeatedly extended these rights to apply to the States as well as to the federal judiciary, completing the "nationalization" of the Bill of Rights.

Thirty years ago issues of "public morality" were often regulated by the States. The belief that these matters are for individuals to decide for themselves is based on the presumption that people have a basic "right" to privacy. Before the case of *Griswold* v. *Connecticut*, the U.S. judicial system recognized no such basic right.

CIRCUMSTANCES OF THE CASE

In the early 1960s, the use of any "drug, medicinal article or instrument" for birth control was prohibited by a State law in Connecticut. The law declared: "Any person who assists, abets, counsels, causes, hires or commands another" to use these forms of birth control could be "prosecuted and punished as if he were the principal offender." The Planned Parenthood League of Connecticut, a nonprofit agency which disseminated birth control information and counseled people about various birth control methods, defied the law by continuing to operate its New Haven clinic. Estelle Griswold, the clinic's executive director, and Dr. Buxton, its medical director, were arrested, tried, and convicted of giving information, instruction, and medical advice about birth control to married persons. Although the fines were not large (100 dollars each), Griswold and Buxton appealed their convictions on the grounds that the Connecticut statute was unconstitutional.

CONSTITUTIONAL ISSUES

The case centered on whether Amendments 1, 3, 4, 5, and 9 *implied* a constitutional "right to privacy" and whether that right was extended to the States by the 14th Amendment. Does the Constitution guarantee a right to privacy even though it never specifically mentions such a right? Do other guarantees—freedom of religion, speech, assembly; protection against unreasonable search and seizure, and against self-incrimination; rights to due process and protections of private property—imply such a right to privacy? Is the right to privacy protected by the 9th Amendment, which prohibits constitutional rights from being used to "to deny or disparage other rights retained by the people" not specifically mentioned in the Constitution?

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ARGUMENTS

For Griswold: The Constitution protects a fundamental right to privacy. Although it is not mentioned specifically, certain guarantees of the Bill of Rights contain "penumbras," or implications, which extend from specific rights to include some rights not specifically mentioned. By writing the 9th Amendment, the Framers implicitly recognized the right to privacy. The 14th Amendment's Equal Protection Clause extends that right to all people of all States. Previous decisions by the Supreme Court protecting such rights as the right to educate a child in the school of a parent's choice and the right to "the sanctity of a man's home and the privacies of life" recognize a fundamental right to privacy. The Connecticut law violates this right by intruding on the privacy of married persons.

For Connecticut: Nowhere in the Constitution is the right to privacy mentioned. Specific examples of rights are provided, but these should not be extended to create a new right not intended by the Framers. The 9th Amendment, in fact, should be read as *prohibiting* the Court from reviewing State laws that it finds unjustified or unreasonable. Making laws is one of the rights "retained by the people" through the legislative branch and should not be "denied or disparaged" by the Court. Furthermore, the assessment of community standards is not the function of the Court. It should be left to the people, through their legislative bodies, to assess community standards and change the laws accordingly. They have not done so in regard to this law.

DECISION AND RATIONALE

By a 7–2 vote, the Court struck down the Connecticut law and reversed the convictions of Griswold and Buxton. The decision clearly recognized a basic "right to privacy"—a precedent that would be cited in many subsequent decisions.

Justice William O. Douglas, writing for the majority, listed many decisions in which the Court had affirmed rights that were implied, but not stated, in the Constitution or its amendments. From that list, he concluded that the Court had previously recognized 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 *Griswold* case, he stated, involved "a relationship within the zone of privacy created by several fundamental constitutional guarantees. . ." which no State had the right to invade.

Justices Potter Stewart and Hugo Black dissented. About the Connecticut law against birth control, Black wrote, "I think this is an uncommonly silly law. As a practical matter, the law is obviously unenforceable. . . ." Black believed that "the use of contraceptives should be left to personal and private [choice], . . ." and that "professional counsel about methods of birth control should be available to all. . . . But we are not [asked] whether we think the law is unwise, or even asinine. We are asked to hold that it violates the United States Constitution. And that I cannot do."

QUESTIONS FOR DISCUSSION

1. This case presents conflict between those who feel the Court must reinterpret the Constitution (within the bounds of the fundamental rights and freedoms) to meet current standards, and those who believe that the Constitution must be interpreted more strictly (according to the original intent of the Framers). If you were a justice, which way would you lean?
2. Do you think the Framers intended to guarantee the "right to privacy" in the Bill of Rights? Why or why not? What does the vagueness of the 9th Amendment suggest about their thinking in this respect?
3. What other decisions and activities might be covered by the "right to privacy"? Do you know of any that have been?

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