

# Griswold v. Connecticut 1965

## And the idea of Penumbral Rights

The following appeared in Time Magazine in 1965:

After three trips to the Supreme Court in 23 years, Connecticut's archaic (1879) birth-control law was ruled unconstitutional 7 to 2—but in a judicial free-for-all that produced six opinions and a shaky new "right of privacy" concept that is bound to baffle judges for many more years.

All nine Justices denounced the only state law in the U.S. that banned the use of contraceptives by anyone, including married couples (**but not all nine agreed that it was unconstitutional**).

The Constitution is utterly mute on the subject, but Justice Douglas heard echoes in the Bill of Rights (the first eight amendments): "Specific guarantees in the Bill of Rights have penumbras [fringe areas or a right not clearly seen but still there] that can be implied," he said, "formed by emanations from those guarantees that help give them life and substance." According to Douglas, "zones of privacy" emanate from the First Amendment's "penumbra" right of association, the Third Amendment's prohibition against the quartering of soldiers "in any house" without consent in peacetime, the fourth's guarantee against "unreasonable searches and seizures," and the fifth's privilege against self-incrimination.

In addition, argued Douglas, the Ninth Amendment implies a right of privacy by providing that "enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." So does the 14th Amendment guarantee of due process of law. Said Douglas: "Would we allow the police to search the sacred precincts of marital bedrooms for tell-tale signs of the use of contraceptives? The very idea is repulsive."

"Shocking Doctrine." All these emanations failed to impress dissenting Justice Stewart, who could find no constitutional infringements whatever in the law. In what conceivable way, asked he, did Connecticut's birth-control law violate the Third Amendment ban against quartering soldiers in private homes? How could a federal court use the Ninth Amendment to take away rights assigned to the people's elected state representatives? "We are not asked in this case to say whether we think this law is unwise, or even asinine," said Stewart. "We are asked to hold that it violates the United States Constitution. And that I cannot do." Stewart's solution: Let Connecticut citizens persuade their legislature to repeal the law.

Meanwhile, lawyers can now spend years happily fighting over just what else the new right of privacy covers.

NOTE: Roe v. Wade became the famous abortion case that based its decision on this idea of a penumbra right.