

*Griswold v. Connecticut*

**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.

In the course of its opinion, the Court refers to no less than six Amendments to the Constitution: the First, the Third, the Fourth, the Fifth, the Ninth, and the Fourteenth. [Page 381 U. S. 528](#)

But the Court does not say which of these Amendments, if any, it thinks is infringed by this Connecticut law.

We are told that the Due Process Clause of the Fourteenth Amendment is not, as such, the "guide" in this case. With that much, I agree. There is no claim that this law, duly enacted by the Connecticut Legislature, is unconstitutionally vague. There is no claim that the appellants were denied any of the elements of procedural due process at their trial, so as to make their convictions constitutionally invalid. And, as the Court says, the day has long passed since the Due Process Clause was regarded as a proper instrument for determining "the wisdom, need, and propriety" of state laws. *Compare Lochner v. New York*, [198 U. S. 45](#), with *Ferguson v. Skrupa*, [372 U. S. 726](#). My Brothers HARLAN and WHITE to the contrary, "[w]e have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." *Ferguson v. Skrupa*, *supra*, at [372 U. S. 730](#)

As to the First, Third, Fourth, and Fifth Amendments, I can find nothing in any of them to invalidate this Connecticut law, even assuming that all those Amendments are fully applicable against the States. [\[Footnote 3/1\]](#) It has [Page 381 U. S. 529](#) not even been argued that this is a law "respecting an establishment of religion, or prohibiting the free exercise thereof." [\[Footnote 3/2\]](#) And surely, unless the solemn process of constitutional adjudication is to descend to the level of a play on words, there is not involved here any abridgment of "the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." [\[Footnote 3/3\]](#)"

No soldier has been quartered in any house. [\[Footnote 3/4\]](#) There has been no search, and no seizure. [\[Footnote 3/5\]](#) Nobody has been compelled to be a witness against himself. [\[Footnote 3/6\]](#)

The Court also quotes the Ninth Amendment, and my Brother GOLDBERG's concurring opinion relies heavily upon it. But to say that the Ninth Amendment has anything to do with this case is to turn somersaults with history. The Ninth Amendment, like its companion, the Tenth, which this Court held "states but a truism that all is retained which has not been surrendered," *United States v. Darby*, [312 U. S. 100](#), [312 U. S. 124](#), was framed by James Madison and adopted by the States simply to make clear that the adoption of the Bill of Rights did not alter the plan that [Page 381 U. S. 530](#) the *Federal* Government was to be a government of express and limited powers, and that all rights and powers not delegated to it were retained by the people and the individual States. Until today, no member of this Court has ever suggested that the Ninth Amendment meant anything else, and the idea that a federal court could ever use the Ninth Amendment to annul a law passed by the elected representatives of the people of the State of Connecticut would have caused James Madison no little wonder.

What provision of the Constitution, then, does make this state law invalid? The Court says it is the right of privacy "created by several fundamental constitutional guarantees." With all deference, I can find no such general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever before decided by this Court. [[Footnote 3/7](#)]

At the oral argument in this case, we were told that the Connecticut law does not "conform to current community standards." But it is not the function of this Court to decide cases on the basis of community standards. We are here to decide cases "agreeably to the Constitution and laws of the United States." It is the essence of judicial [Page 381 U. S. 531](#) duty to subordinate our own personal views, our own ideas of what legislation is wise and what is not. If, as I should surely hope, the law before us does not reflect the standards of the people of Connecticut, the people of Connecticut can freely exercise their true Ninth and Tenth Amendment rights to persuade their elected representatives to repeal it. That is the constitutional way to take this law off the books. [[Footnote 3/8](#)]

[[Footnote 3/1](#)]

The Amendments in question were, as everyone knows, originally adopted as limitations upon the power of the newly created Federal Government, not as limitations upon the powers of the individual States. But the Court has held that many of the provisions of the first eight amendments are fully embraced by the Fourteenth Amendment as limitations upon state action, and some members of the Court have held the view that the adoption of the Fourteenth Amendment made every provision of the first eight amendments fully applicable against the States. *See Adamson v. California*, [332 U. S. 46](#), [332 U. S. 68](#) (dissenting opinion of MR. JUSTICE BLACK).

[[Footnote 3/2](#)]

U.S. Constitution, Amendment I. To be sure, the injunction contained in the Connecticut statute coincides with the doctrine of certain religious faiths. But if that were enough to invalidate a law under the provisions of the First Amendment relating to religion, then most criminal laws would be invalidated. *See, e.g.*, the Ten Commandments. The Bible, Exodus 20:2-17 (King James).

[\[Footnote 3/3\]](#)

U.S. Constitution, Amendment I. If all the appellants had done was to advise people that they thought the use of contraceptives was desirable, or even to counsel their use, the appellants would, of course, have a substantial First Amendment claim. But their activities went far beyond mere advocacy. They prescribed specific contraceptive devices and furnished patients with the prescribed contraceptive materials.

[\[Footnote 3/4\]](#)

U.S. Constitution, Amendment III.

[\[Footnote 3/5\]](#)

U.S. Constitution, Amendment IV.

[\[Footnote 3/6\]](#)

U.S. Constitution, Amendment V.

[\[Footnote 3/7\]](#)

Cases like *Shelton v. Tucker*, [364 U. S. 479](#) and *Bates v. Little Rock*, [361 U. S. 516](#), relied upon in the concurring opinions today, dealt with true First Amendment rights of association, and are wholly inapposite here. *See also, e.g., NAACP v. Alabama*, [357 U. S. 449](#); *Edwards v. South Carolina*, [372 U. S. 229](#). Our decision in *McLaughlin v. Florida*, [379 U. S. 184](#), is equally far afield. That case held invalid under the Equal Protection Clause, a state criminal law which discriminated against Negroes.

The Court does not say how far the new constitutional right of privacy announced today extends. *See, e.g.,* Mueller, *Legal Regulation of Sexual Conduct*, at 127; Ploscowe, *Sex and the Law*, at 189. I suppose, however, that, even after today, a State can constitutionally still punish at least some offenses which are not committed in public.

[\[Footnote 3/8\]](#)

*See Reynolds v. Sims*, [377 U. S. 533](#), [377 U. S. 562](#). The Connecticut House of Representatives recently passed a bill (House Bill No. 2462) repealing the birth control law. The State Senate has apparently not yet acted on the measure, and today is relieved of that responsibility by the Court. *New Haven Journal-Courier*, Wed., May 19, 1965, p. 1, col. 4, and p. 13, col. 7.