

Constitutional Law—Connecticut Birth Control Act—Validity Contested by Physician (Tileston v. Ullman, State's Attorney, 63 Sup. Ct. 493 (1943))

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RECENT DECISIONS

CONSTITUTIONAL LAW—CONNECTICUT BIRTH CONTROL ACT—VALIDITY CONTESTED BY PHYSICIAN.—A physician seeking to prescribe contraceptives for certain of his patients was informed that the law-enforcement officers of the state intended to prosecute any offense against the statute, and that they claimed, or might claim, that the proposed professional advice would constitute such an offense. Whereupon the physician brought an action against them for a declaratory judgment to determine whether the statutes¹ taken together were applicable to him, and if so, whether, where the life of the patient depended upon such advice, these statutes were constitutional. The Supreme Court of Errors of Connecticut held² that the state legislature, with full knowledge of patients and of contraceptives, had decided that there was a morally preferable alternative—*i.e.*, abstinence, within the choice of the patient; that the language of the legislature was clear, plain, and unequivocal;³ that the determination of morals was for the legislature;⁴ and that to read into the statutes any exception of physicians not expressed therein would require, for the maintenance of the legislative safeguards intended, additional restrictions which judicial decision could not impose. The court further held that neither prior dissents on the same issue which had already been authoritatively decided,⁵ nor change of personnel in the court offered any grounds for reopening the issue. Upon appeal, by the physician, to the Supreme Court of the United States on the question as to whether these statutes constituted a valid exercise by the state within the meaning and intent of Amendment XIV of the Constitution of the United States prohibiting a state from depriving any person of life without due process of law; the Supreme Court was of the opinion that the proceedings in the state courts presented no constitutional question which the physician had standing to assert, since the constitutional attack upon the statutes was confined to the deprivation of life only and that the life alleged to be endangered was obviously not the life of the physician who was appealing but was alleged to be the lives of his patients, and that these people, thus concerned, had not been made parties to this proceeding.⁶ *Tileston v. Ullman, State's*

¹ CONN. GEN. STAT. 1930 § 6246 (use of contraceptives an offense); CONN. GEN. STAT. 1930 § 6562 (counsellor of offense liable as principal).

² *Accord*, *Commonwealth v. Gardener*, 300 Mass. 372, 15 N. E. (2d) 222 (1938).

³ *Cf.* *United States v. One Package*, 13 F. Supp. 334, *aff'd*, 86 F. (2d) 737 (C. C. A. 2d, 1936).

⁴ *Accord*, *People v. Byrne*, 99 Misc. 1, 163 N. Y. Supp. 682 (1917); *see* (1932) 45 HARV. L. REV. 723.

⁵ *Nelson v. State*, 126 Conn. 412, 11 A. (2d) 856 (1940).

⁶ *Blair v. United States*, 250 U. S. 273, 39 Sup. Ct. 468, 63 L. ed. 979, 983 (1919); *Bosley v. McLaughlin*, 236 U. S. 385, 395, 35 Sup. Ct. 345, 348, 59 L. ed. 632, 637 (1915); *Standard Stock Food Co. v. Wright*, 225 U. S. 540, 550, 32 Sup. Ct. 784, 786, 56 L. ed. 1197, 1199 (1912); *The Winnebago*, 205

Attorney, 63 Sup. Ct. 493 (1943).

It is a well established principle of constitutional law that, in conformity with the separation of the powers of the Government under the Constitution, the judicial branch will not usurp the powers of the legislature by expressing an opinion as to what the law either is, or ought to be, unless, in addition to the court acquiring original or appellate jurisdiction in the manner provided for by the Constitution, the expression of such opinion is actually necessary to the adjudication of the *bona fide* litigation of a personal or property right, protected by the Constitution, and which right is possessed by one of the parties to the proceeding.⁷ Statutes prohibiting the use of contraceptives have been held⁸ to be constitutionally within the police power of state sovereignty to prevent immorality,⁹ and have been held not to violate the due process clause of the Fourteenth Amendment prohibiting the deprivation of personal or property rights. And neither do they constitute class legislation, nor do they violate the right to enjoyment, pursuit of happiness, or freedom of conscience guaranteed by the Constitution.¹⁰ It has been further intimated that where the advice of physicians was included in the prohibition of the statute such statutes would be constitutional.¹¹ Federal statutes prohibit transmission and receipt of contraceptives through the mail, in either export, import, or interstate commerce.¹² This prohibition also applies to transmission by or through public carriers.¹³

H. P. W.

CONSTITUTIONAL LAW—EXTRATERRITORIAL VALIDITY OF DIVORCES—FULL FAITH AND CREDIT DOCTRINE.—Petitioners Williams and Hendrix, domiciled in the state of North Carolina with their spouses for more than twenty-four years and twenty years respectively, went to Nevada, and having satisfied the six-weeks' statutory residence requirement period were granted decrees of divorce based

U. S. 354, 360, 27 Sup. Ct. 509, 511, 51 L. ed. 836, 840 (1907); *Cronin v. Adams*, 192 U. S. 108, 114, 24 Sup. Ct. 219, 220, 48 L. ed. 365, 368 (1904); *Davis & Farnum Mfg. Co. v. Los Angeles*, 189 U. S. 207, 220, 23 Sup. Ct. 498, 501, 47 L. ed. 778, 782 (1903).

⁷ *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 56 Sup. Ct. 466, 80 L. ed. 688 (1936). "The court will not pass upon the validity of a statute upon the complaint of one who fails to show that he is injured by its operation. Among the many applications of this rule, none is more striking than the denial of the right to challenge, to one who lacks a personal or property right."

⁸ (1941) 50 YALE L. J. 682.

⁹ *People v. Sanger*, 222 N. Y. 192, 194, 118 N. E. 637 (1918); *People v. Byrne*, 99 Misc. 1, 163 N. Y. Supp. 682 (1917).

¹⁰ *People v. Byrne*, cited *supra* note 9.

¹¹ (1939) 6 U. OF CHI. L. REV. 261.

¹² 18 U. S. C. § 334, c. 8 (1942).

¹³ 18 U. S. C. § 396, c. 9 (1942).