**Griswold v Connecticut**

Excerpted from the **Opinion** Authored by Justice Douglas

June 7, 1965

person bringing case

interpreted

related

gray area

emitting, radiating

listing

Appellant Griswold is Executive Director of the Planned Parenthood League of Connecticut. Appellant Buxton is a licensed physician and a professor … They gave information, instruction, and medical advice to *married persons* as to the means of preventing **conception**….We think that appellants have **standing** to raise the constitutional rights of the married people with whom they had a professional relationship.

…The **association** of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice -- whether public or private or **parochial** -- is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the [First Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmenti) has been construed to include certain of those rights.

…The right of freedom of speech and press includes not only the right to **utter** or to print, but the right to distribute, the right to receive, the right to read and freedom of inquiry, freedom of thought, and freedom to teach… Without those peripheral rights, the specific rights would be less secure.

In *NAACP v. Alabama,* we protected the "freedom to associate and privacy in one's associations," noting that freedom of association was a peripheral [First Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmenti) right. …In other words, the [First Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmenti) has a penumbra where privacy is protected from governmental intrusion….

…The right of "association," like the right of belief, is more than the right to attend a meeting; it includes the right to express one's attitudes or **philosophies** by membership in a group or by **affiliation** with it or by other lawful means. Association in that context is a form of expression of opinion, and, while it is not expressly included in the [First Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmenti), its existence is necessary in making the **express** guarantees fully meaningful.

…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 right of association contained in the penumbra of the [First Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmenti) is one, as we have seen. The [Third Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentiii), in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner, is another facet of that privacy. The [Fourth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentiv) explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The [Fifth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentv), in its **Self-Incrimination** Clause, enables the citizen to create a zone of privacy which government may not force him to surrender to his **detriment**. The [Ninth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentix) provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or **disparage** others retained by the people."

The Fourth and [Fifth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentv)s were described in *Boyd v. United States,* as protection against all governmental invasions "of the **sanctity** of a man's home and the privacies of life." We recently referred in *Mapp v. Ohio,* to the [Fourth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentiv) as creating a "right to privacy, no less important than any other right carefully and particularly reserved to the people."

…The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar **principle**…that a governmental purpose to control or prevent activities constitutionally subject to state **regulation** may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.

birth control

ridiculously stupid

We deal with a right of privacy older than the Bill of Rights -- older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being **sacred**. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a **bilateral** loyalty, not commercial or social projects. Yet it is an association for as **noble** a purpose as any involved in our prior decisions. ***Reversed.***

**EXCERPTED FROM THE DISENT BY JUSTICE STEWART**

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

As to the First, Third, Fourth, and [Fifth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentv)s, I can find nothing in any of them to invalidate this Connecticut law… 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. No soldier has been quartered in any house. There has been no search, and no seizure. Nobody has been compelled to be a witness against himself.

The Court also quotes the [Ninth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentix)…But to say that the [Ninth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentix) has anything to do with this case is to turn somersaults with history. The [Ninth Amendment](http://www.law.cornell.edu/supct-cgi/get-const?amendmentix) … 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 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](http://www.law.cornell.edu/supct-cgi/get-const?amendmentix) meant anything else…

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.

…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 duty to **subordinate** our own personal views, our own ideas of what legislation is wise and what is not.

**Teacher Guide**

Name of Text: Griswold v. Connecticut

Grade Level: This is meant to coincide with a U.S. Government curriculum. In the state of Nevada, U.S. Government is a 12th grade course.

Text Complexity:

* ***Quantitative Measurement:*** Fleisch-Kinkaid 11.4. / Lexile 1270L
* ***Qualitative Measurements:*** Complex structure, high language and vocabulary demands with Tier 2 and Tier 3 vocabulary, sophisticated themes, multiple perspectives, high knowledge of discipline specific content in U.S. government and Constitutional understanding
* ***Reader & Task***: Analyzing and interpreting Supreme Court cases is a cognitively demanding exercise, as this type of text is structured in a non-traditional way and makes use of history, precedent, and appeals to logic to make an argument. This type of reading is not typical in earlier grades. In addition, this particular case sets critical precedent for future Supreme Court cases that affect the lives of Americans, including young people, making it an engaging topic. The precedent from this case is based on a conceptual understanding of a “penumbra of rights,” which is highly controversial and open to multiple interpretations. Students will need background knowledge in the area of American Government and Constitutional history to be able to deeply analyze this text and to complete the culminating writing activity. However, even without background, the following lesson would permit access and surface understanding for all students.

Question Composers: Angela Orr and Andrew Yoxsimer

Standards:

Nevada State Social Studies Standards C13.5, C14.2, C14.12

CCSS RHST.11-12.1, RHST.11-12.2, RHST.11-12.4, RHST.11-12.5, RHST.11-12.8, RHST.11-12.10, WHST.11-12.2, WHST.11-12.4, WHST.11-12.9; SL.11-12.1; L.11-12.1, L.11-12.2

Objectives: SWBAT – 1) Analyze a complex text and derive meaning from it while discussing the merits of the arguments presented with their peers and teacher. 2) Discuss with peers the implicit and explicit meanings of words, phrases, and sections of the text. 3) Be able to explain the differing viewpoints of Justices in this case on ways to interpret the constitution. 4) Conduct a short research project stemming from this reading.

| Text Dependent Questions | Possible Answers and Textual Evidence |
| --- | --- |
| *Teacher note: This text may be especially difficult for some language learners. Based on the knowledge of your students, think about the following:*1. Allow students an opportunity to hear the text read aloud by a fluent reader (support teacher, yourself, a recording of you reading) a day or two before class.
2. Consider making certain cognates for English/Spanish words transparent for students. Some examples from this text include: conception (line 7)/concepción; association (lines 9, 22, 24, 29, etc.)/asociacion; and secure (lines 17, 33)/seguro. Note that “opinion” is a false cognate, because a judicial opinion in Spanish is verdicto.
 |
| What do you learn about this text from lines 1-8? | This is an orientation to the document. It establishes the date (1965). The author is Justice Douglas. Students should note that it is a court case between a people (Griswold and Buxton) and a state (Connecticut). Each of the appellants’ occupations is listed to demonstrate their standing to bring the issue for their clients, married people who want to prevent conception.  |
| *Teacher note: The answers to the following questions can be drawn from large areas of the Justices’ arguments. They do not necessarily focus only on specific paragraphs from the text. Use your professional judgment in determining if students have answered one of the later questions while addressing an earlier one. Also, bring attention to the logical progression of ideas so often used in Supreme Court opinions. For instance, Justice Douglas cannot go straight to the zone of privacy aspect of his argument without first outlining the precedents for penumbras.* |
| Justice Douglas states that the “First Amendment has been construed to include certain” rights. Which rights does he mention? What does the word “construed” tell us about the rights mentioned? | The heart of the argument to follow is that there are already rights acknowledged by the courts that are not specifically mentioned in the Constitution. It’s important that students understand this concept early in the piece.* Association of people
* Right to educate a child in a school of the parents’ choice
* Study particular subjects or languages

*Students might also mention rights listed further in the document including:** *Right to distribute, receive, read*
* *Freedom of inquiry, thought, to teach*
* *Right of belief and expression of attitudes*
* *Belonging to a group (association)*

*The teacher should probe students further, though, if they begin to list the right of freedom of speech and press, as these are rights specifically listed in the Bill of Rights.*The word construed is important, because the courts have had to “interpret” these rights as the language of the Constitution does not explicitly include them. |
| According to Justice Douglas, how do penumbras give “life and substance” to the explicitly stated rights?  | There will likely be a range of answers. These rights are “peripheral,” not “express,” but these rights are needed to make the others “secure” (line 17). They will likely go back to NAACP v. Alabama (line 19) where the freedom to associate was linked with “privacy in one’s associations.” Association is more than just “the right to attend a meeting;” it includes the ability to express the attitudes and philosophies of the group. Students should note the sentence beginning on line 24 and ending in “its existence is necessary in making the express guarantees fully meaningful.” That is, without recognizing penumbras of certain rights, the government would infringe on the explicit rights, because the essence of the right would be meaningless.  |
|  Justice Douglas identifies “several fundamental constitutional guarantees” that create “zones of privacy.” What are these guarantees? How are they related to privacy? | Douglas’ argument in creating a penumbra of privacy and a zone of privacy rests on his ability to demonstrate that although the word “privacy” is not written in the Constitution, its essence is found in many other fundamental rights.* Association in First Amendment
* Prohibition of quartering of soldiers in 3rd Amendment
* Right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures in the Fourth Amendment
* No self-incrimination in the 5th Amendment
* The entire 9th Amendment: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”
 |
| According to Justice Douglas in lines 43-50, what makes the particular law under consideration unconstitutional? | Marriage lies in the zone of privacy. The law is overly broad and has a “maximum destructive impact” on marriage because instead of regulating the manufacture or sale of contraceptives, the law does not allow married couples to practice birth control. State laws that unnecessarily “invade the area of protected freedoms” are unconstitutional because they are too broad. |
| *Teacher note: The three questions that follow this note together focus on the unique structure of the dissenting opinion in this case. Help students use the next two questions to develop this understanding. Return to the bold question in this box if students do not fully comprehend the structural differences in the opinions.* ***How does Justice Stewart structure his dissent to discredit the majority opinion? How is the structure of the dissent different than that of the majority opinion?*** *Students should note that Justice Stewart begins his dissent in a flippant and casual tone when he calls the law in question silly. He then attacks the majority opinion’s use of Amendment 1, 3, 4, 5, 9, as nothing in the actual words of these amendments would invalidate the law. He leads the reader to understand that his job is to focus on the explicit, rather than on the implied, meaning of the words in the Constitution. In the final paragraph, Stewart returns to his comments about his personal views, but states that regardless of these views and “community standards of decency,” “it is the essence of the judicial duty to subordinate our personal views of what legislation is wise and what is not.”* *The dissent differs structurally from the majority opinion, because the majority opinion seeks to logically unite the meanings of various amendments to establish an argument for the right of privacy, which is nowhere actually mentioned. The majority opinion is linear and makes use of many precedents in the case law to substantiate the decision.*  |
| In lines 58-61, how does Justice Stewart explain his opinion of this case? | Justice Stewart describes the law on contraception as “uncommonly silly,” “unwise,” “asinine.” But he says that his job is not to assert whether the law is good but if it violates the Constitution. He believes this is something he cannot do. |
| Why does Justice Stewart dismiss Justice Douglas’ argument that zones of privacy emanate from the 1st, 3rd, 4th, 5th, and 9th Amendments? | He states that none of the actual rights listed in the amendments has been infringed by the Connecticut law. He goes into specifics of this in lines 67-71.He also rebukes Justice Douglas with the following: “And surely, unless the solemn proves of constitutional adjudication is to descend to the level of a play on words…” Douglas believes that Constitutional interpretation must rely upon interpreting the actual words and rights instead of inferring rights as penumbras.He also says that using the 9th Amendment to speak of privacy “is to turn somersaults with history,” as the original purpose of the 9th Amendment, and all of the case law precedent, never had anything to do with privacy.Students should cite lines 80-81 as the crux of the argument. |
| What is Justice Stewart’s view of the role of the Supreme Court? | Stewart believes the court should: “decide cases “agreeably to the Constitution and laws of the United States,” “judicial duty to subordinate our own personal views, our own ideas of what legislation is wise and what is not.”He does not believe the court should “decide cases on the basis of community standards.”  |

Vocabulary

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| --- | --- |
| **These words merit LESS time and attention** (They are concrete and easy to explain, or describe events/processes/ideas/concepts/experiences that are familiar to your students ) | **These words merit MORE time and attention**(They are abstract, have multiple meanings, and/or are a part of a large family of words with related meanings. These words are likely to describe events, ideas, processes or experiences that most of your student will be unfamiliar with) |
| **Line #** | **Word** | **Definition** | **Line #** | **Word** | **Definition** |
| 7 | conception | Beginning of pregnancy.  | 2 | opinion | In law, a formal document written by a judge or court stating the reasons and principles of law that informed a particular decision on a case.  |
| 15 | utter | To speak   | 7 | standing | Rank; position; status.  |
| 34 | facet | An angle, aspect, or phase, as of a problem or situation.  | 10 | association |  A group of people joined together for a common purpose or by a mutual interest. |
| 36 | self-incrimination | To show or testify as to one’s involvement in a crime.  | 12 | parochial | Of or concerning a church parish  (a district having its own church and priest) |
| 38 | detriment |  Harm, injury, or loss. | 24 | philosophies | A set of personal or cultural beliefs or values, or particular beliefs that service as a rule to live by.  |
| 39 | disparage |  To lower in esteem or rank; degrade. | 25 | affiliation | To be associated with or connected to (especially) an organization  |
| 52 | regulation | A principle, rule, or law designed to regulate behavior or conduct.  | 27 | express |  Clear, precise, and fully stated; explicit. |
| 56 | sacred | Worthy of reverence; holy.  | 42 | sanctity | The quality or state of being holy or sacred.  |
| 59 | noble | Of high or excellent mind, character, or virtues; not motivated by low or petty concerns.  | 50 | principle | A law, doctrine, or assumption on which action or behavior is based.  |
| 72 | redress | Compensation or reparation; amends. | 58 | bilateral | Concerning or equally obligating two parties.  |
|  |  |   | 59 | reversed |  In law, to revoke or cancel (a decision such as a verdict). |
|  |  |   | 67 | infringed | To violate, break, or go beyond the limits of.  |
|  |  |   | 70 | adjudication | Something settled by a judge or judges or in a judicial procedure.  |
|  |  |   | 71 | abridgment | The act or process to lessen, curtail, or deprive. |
|  |  |   | 83 | deference | Respectful or polite regard.  |
|   |   |   | 87 | subordinate | To treat as or put in a position of lesser rank or importance. |

**Writing Task:**

In the dissent in Griswold, Justice Stewart makes a clear claim against the majority: “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. No soldier has been quartered in any house. There has been no search, and no seizure. Nobody has been compelled to be a witness against himself.“

In approximately 300-400 words, explain how the Supreme Court majority in this case decided that it was appropriate to use the 1st, 3rd, 4th, 5th, and 9th Amendments to justify a penumbra of privacy and find in favor of Griswold. In other words, where did the justices “find” the right to privacy? (Your audience for this is other 12th grade students who have not yet learned about this case.)

**Writing Checklist:**

* In this informational piece, please make sure to cite the case opinion with at least two quotes and three paraphrases.
	+ For each, remember to appropriately introduce and explain the quote or paraphrase.
* Consider the ways in which the justices on the majority used the case law on each amendment together in unison to produce the penumbra of privacy. Use a logical model to trace this argument rather than treating each amendment separately and creating a laundry list of evidence.
	+ Use connecting and transition words and phrases in your writing.

**Writing Sample:**

Justice Potter Stewart’s dissent in the Supreme Court case, Griswold v. Connecticut, is biting. He believes that the majority on the Court overstepped their authority to decide cases based upon the Constitution, using instead modern community standards. But the majority opinion uses a persuasive line of reasoning to sidestep the words of the Constitution and rather to rule on the basis of a zone of privacy by stating, “specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance” (lines 29-30). In order to justify these penumbras, the Court explains how many of the amendments in the Bill of Rights suggest privacy, even though the word itself is not present. First, the Court explains that it has previously found many rights to be construed by amendments, rather than found in them literally. For instance, it cites the precedent in the case, NAACP v. Alabama where “we protected the ‘freedom to associate and privacy in one’s associations,’ noting that freedom of association was a peripheral First Amendment right” (lines 19-20). Then, the court demonstrates that the 3rd, 4th, and 5th Amendments have elements of privacy in protecting a) people’s homes in times of peace from quartering soldiers (line 33), b) against unreasonable search and seizures (lines 35-36), and c) against self-incrimination. Finally, the Court uses the text of the 9th Amendment to vindicate their finding of a penumbra of privacy, as the 9th Amendment states, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people” (lines 38-40).

*(Teacher Note: The extension writing task that follows is a longer research project, which would allow students to follow case law over time and see the ways in which precedence is used by the courts. It would highlight important Supreme Court case law (e.g. Roe v. Wade, Lawrence v. Texas) as well as the strategies necessary for research and informational writing. Further guidance and support would be necessary for this portion. Teachers should employ this option only if they are familiar with this case law and will reference it in later teaching and learning.)*

**Extension Writing:**

Conduct a short research project to gather sufficient evidence to answer the following questions. Use appropriate sources that are both credible and accurate. Detail between three and four cases in your project.

***How has the right to privacy established in Griswold v. Connecticut affected later Supreme Court jurisprudence? For what future cases was this case a major precedent? How has the controversy over the penumbra of privacy played out in Supreme Court case law since 1970?***

**Extension Writing Checklist:** *Please refer to this checklist as you develop your short research project.*

* Introduce the project with a paragraph that explains the decision in Griswold and emphasizes the discussion of the penumbra of privacy.
* Identify two to three cases that use Griswold as a precedent for privacy (from 1970 to present). For each case:
	+ Briefly describe the Constitutional question and main details of the case.
	+ Describe how Griswold was used as precedent in the decision (or dissent/concurrence).
	+ Evaluate the manner in which the precedent was used (used to support the argument, counter the argument, enlarged view of the penumbra of privacy, narrower view of the penumbra of privacy, etc.).
* Cite evidence (paraphrases and short quotations) to support your analysis of each case.
	+ At least one piece of evidence should come from the Supreme Court Opinion.
	+ Other sources used to support your argument (at least one per case) should be evaluated for credibility and cited appropriately.
* Reasoning is the most essential component of your analysis. Ensure that for every piece of evidence and conjecture you make, you provide details, elaboration, explanation, and make clear your thinking. Your reasoning will likely come from your understanding of Griswold from this close reading.
* Conclude with your own interpretation of the final question: How has the controversy over the penumbra of privacy played out in Supreme Court case law since 1970?
* See 4 point rubric for essential components including: purpose, focus, organization, development of language and elaboration of evidence, and proper grammar and conventions.

