

PHIL 102  
Ethics, Politics, & Law  
Spring Quarter 2008  
Lecture Two  
**Constitutional  
Privacy**

# Connecticut Laws

53-32 and 54-196 of the General Statutes of Connecticut (1958 rev.). The former provides:

"Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

Section 54-196 provides:

"Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender."

*Do these laws make sense?*

*Should the one remain on the books?*

*Does it violate anyone's rights?*

*Is it unconstitutional?*

## Some Quick History

- **Law was 100 years old**
- ***State v. Nelson* (1939)**
- ***Poe v. Ullman* (1961)**
- **ACLU and Yale University**

## Justice William O. Douglas



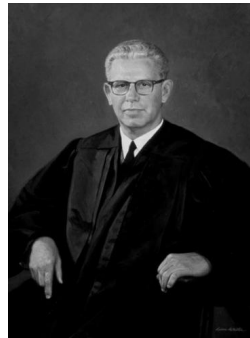
- **Majority opinion**
- **Law violates the right to marital privacy**
- **Right to privacy is found in the penumbra of the Bill of Rights**
- **Only one other agreed**

## Ninth Amendment

**The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.**

## Justice Arthur Goldberg

- **Joined by Chief Justice Warren and Justice Brennan**
- **Right to privacy is an un-enumerated right under the Ninth Amendment**
- **Breathtaking argument**

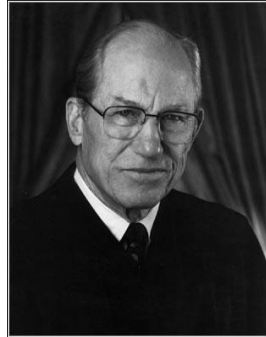


## Fourteenth Amendment

**Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

## Justice Byron White

- Proper procedure in the law – Procedural Due Process
- Law is incoherent
- Protects marriage, but applies to married couples



## Justice John M. Harlan

- Substance of the rights – Substantive Due Process
- Dissent in *Poe v. Ullman*
- “the enactment violates basic values ‘implicit in the concept of ordered liberty’”
- Really a conservative justice



## Justice Hugo Black Justice Potter Stewart

- Joined each other’s dissents
- Laws are “silly,” “asinine,” etc.
- Majorities have the right to pass stupid laws
- No right to privacy in the Constitution

