Carey v. Population Services International

431 U.S. 678 (1977)

Country: United States
Region: Americas
Year: 1977
Court: Supreme Court
Health Topics: Child and adolescent health, Health care and health services, Health information, Medicines, Sexual and reproductive health
Human Rights: Right to due process/fair trial, Right to privacy, Right to social security

Facts

The Respondent, Population Planning Associates (PPA) was a corporation primarily engaged in the mail-order retail sale of nonmedical contraceptive devices. PPA regularly advertised its products in periodicals, and accepted and filled orders by mailing contraceptives to purchasers. The advertisements and order forms did not limit the availability of PPAâ€™s products to persons of any particular age.

Section 6811(8) of the New York Education Law criminalized the sale or distribution of any contraceptive of any kind to a minor under the age of 16 years; the distribution of contraceptives to persons 16 years or over by anyone other than a licensed pharmacist; and the advertisement or display of contraceptives by anyone, including licensed pharmacists.

The District Court held the law unconstitutional in its entirety under the First and Fourteenth Amendments, insofar as it applied to nonprescription contraceptives.

Decision and Reasoning

The Court first examined whether the prohibition of the distribution of nonmedical contraceptives to adults (those over the age of 16 years) other than through licensed pharmacists was constitutionally valid. The Court held that the â€œthe Constitution protects individual decisions in matters of childbearing from unjustified intrusion by the State,â€• relying on Griswold v Connecticut, 381 U.S. 479 (1965), read in conjunction with Eisenstadt v Baird, 405 U.S. 438 (1972) and Roe v Wade, 410 U.S. 113 (1973). Applying the highest level of judicial review, the Court found no compelling State interest justified the intrusion by the State.

The Court held that limiting the distribution of nonprescription contraceptives to licensed pharmacists â€œclearly impose[d] a significant burden on the right of individuals to use contraceptives if they [chose] to do so.â€• The Court acknowledged that â€œthe burden is . . . not as great as that under a total ban on distribution.â€• However, it noted that â€œthe restriction of distribution channels to a small fraction of the total number of possible retail outlets renders contraceptive devices considerably less accessible to the public, reduces the opportunity for privacy of selection and purchase, and lessens the possibility of price competition.â€• The Court drew an analogy to decisions subsequent to Roe v. Wade that held unconstitutional laws that, while not prohibiting abortions outright, nonetheless limited a woman's access to abortion in a variety of impermissible ways. The Court further held that, in accordance with Roe v Wade, â€œinterests . . . in maintaining medical standards and in protecting potential life cannot be invoked to justify the [New York law],â€• adding that the law â€œbear[ed] no relation to the Stateâ€™s interest in protecting health.â€•

The Court then investigated whether the prohibition of the sale and distribution of contraceptives to those under the age of 16 years was constitutionally valid. The Court held that â€œsince the State may not impose a blanket prohibition, or even a blanket requirement of parental consent, on the choice of a minor to terminate her pregnancy,â€• it may not impose an absolute prohibition on the distribution of contraceptives to minors. The Court noted the holding in Planned Parenthood v. Danforth, 428 U.S. 52 (1976). It held that â€œthe right to privacy in connection with decisions affecting procreation extends to minors as well as to adults,â€• and that restrictions on such rights â€œare valid only if they serve [a] significant State interest . . . that is not present in the case of an adult.â€•

The Court rejected the argument that the restriction would serve significant State interests by discouraging sexual activity among the young, noting that this argument â€œwould support a ban on abortions for minors, or

indeed support a prohibition on abortions, or access to contraceptives, for the unmarried, whose sexual activity is also against the public policy of many states.â€• The Court also noted the lack of evidence supporting the Stateâ€™s assertion.

Finally, the Court examined whether the prohibition of any â€œadvertisement or displayâ€• of contraceptives was constitutionally valid? The Court held that the â€œcomplete suppression of any information about the availability and price of contraceptivesâ€• was analogous to the holding in Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, 425 U. S. 748 (1976) that a State may not â€œcompletely suppress the dissemination of [] truthful information about [] lawful activity.â€• The Court noted that where obscenity is not involved it had â€œconsistently held that the fact that protected speech may be offensive to some does not justify its suppression.â€• The Court rejected the Stateâ€™s argument that the advertisements legitimized â€œillicit sexual behavior.â€• The Court declared that the advertisements in the record â€œmerely stated the availability of products and services that [were] not only entirely legal, but constitutionally protected.â€•

Decision Excerpts

â€œGriswold may no longer be read as holding only that a State may not prohibit a married couple's use of contraceptives. Read in light of its progeny, the teaching of Griswold is that the Constitution protects individual decisions in matters of childbearing from unjustified intrusion by the State.â€• 431 U.S., p. 687.

â€œRestrictions on the distribution of contraceptives clearly burden the freedom to make such decisions. A total prohibition against sale of contraceptives, for example, would intrude upon individual decisions in matters of procreation and contraception as harshly as a direct ban on their use. Indeed, in practice, a prohibition against all sales, since more easily and less offensively enforced, might have an even more devastating effect upon the freedom to choose contraception. Cf. Poe v. Ullman, 367 U. S. 497 (1961).â€• 431 U.S., pp. 687 - 688.

â€œAn instructive analogy is found in decisions after Roe v. Wade, supra, that held unconstitutional statutes that did not prohibit abortions outright but limited in a variety of ways a woman's access to them. Doe v. Bolton, 410 U. S. 179 (1973); Planned Parenthood of Central Missouri v. Danforth, 428 U. S. 52 (1976). See also Bigelow v. Virginia, 421 U. S. 809 (1975). The significance of these cases is that they establish that the same test must be applied to state regulations that burden an individual's right to decide to prevent conception or terminate pregnancy by substantially limiting access to the means of effectuating that decision as is applied to state statutes that prohibit the decision entirely. Both types of regulation â€˜may be justified only by a â€˜compelling state interestâ€™ . . . and . . . must be narrowly drawn to express only the legitimate state interests at stake.â€™ Roe v. Wade, supra, at 155.[5] See also Eisenstadt v. Baird, 405 U. S., at 463 (WHITE, J., concurring in result). This is so not because there is an independent fundamental â€˜right of access to contraceptives,â€™ but because such access is essential to exercise of the constitutionally protected right of decision in matters of childbearing that is the underlying foundation of the holdings in Griswold, Eisenstadt v. Baird, and Roe v. Wade.â€• 431 U.S., pp. 688 - 689.

â€œSince the State may not impose a blanket prohibition, or even a blanket requirement of parental consent, on the choice of a minor to terminate her pregnancy, the constitutionality of a blanket prohibition of the distribution of contraceptives to minors is a fortiori foreclosed. The State's interests in protection of the mental and physical health of the pregnant minor, and in protection of potential life are clearly more implicated by the abortion decision than by the decision to use a nonhazardous contraceptive.â€• 431 U.S., p. 694.

â€œMoreover, there is substantial reason for doubt whether limiting access to contraceptives will in fact substantially discourage early sexual behavior. Appellants themselves conceded in the District Court that "there is no evidence that teenage extramarital sexual activity increases in proportion to the availability of contraceptives," 398 F. Supp., at 332, and n. 10, and accordingly offered none, in the District Court or here. Appellees, on the other hand, cite a considerable body of evidence and opinion indicating that there is no such deterrent effect.â€• 431 U.S., p. 695.

â€œAppellants contend that advertisements of contraceptive products would be offensive and embarrassing to those exposed to them, and that permitting them would legitimize sexual activity of young people. But these are classically not justifications validating the suppression of expression protected by the First Amendment. At least where obscenity is not involved, we have consistently held that the fact that protected speech may be offensive to some does not justify its suppression. See, e.g., Cohen v. California, 403 U. S. 15 (1971). As for the possible â€˜legitimationâ€™ of illicit sexual behavior, whatever might be the case if the advertisements directly incited illicit sexual activity among the young, none of the advertisements in this record can even remotely be characterized as â€˜directed to inciting or producing imminent lawless action and . . . likely to incite or produce

such action.â€™ Brandenburg v. Ohio, 395 U. S. 444, 447 (1969). They merely state the availability of products and services that are not only entirely legal, cf. Pittsburgh Press Co. v. Human Relations Comm'n, 413 U. S. 376 (1973), but constitutionally protected. Cf. Bigelow v. Virginia, supra. These arguments therefore do not justify the total suppression of advertising concerning contraceptives.â€• 431 U.S., pp. 701 - 702.