

# 1901 Arizona Comstock Law

In 1901, the Arizona Territorial Legislature codified territorial law that illegalized advertising, causing, or performing abortions anywhere in Arizona. The 1901 code, in conjunction with the federal Comstock Act, regulated the advertisement and accessibility of abortion services and contraceptives in Arizona. The Federal Comstock Act of 1873 had illegalized the distribution of material on contraceptives and abortions through the US Postal Services by labeling contraceptive and abortive material as obscene. After the passage of that federal law, many states and territories, including Arizona, enacted or codified state or territory-level anti-obscenity laws to augment the federal law's effects. Those laws became called Comstock laws, and Arizona's 1901 laws was its Comstock law. The Arizona Comstock law hindered Arizona women's access to abortion services until the mid twentieth century, when state and federal court decisions dismantled Comstock laws nationwide.

In 1873, Anthony Comstock, a member of the Young Man's Christian Association in New York City, New York, lobbied US Congress in Washington, D.C., to strengthen existing anti-obscenity laws that he claimed were too weak. Comstock and others argued that contraception enabled immoral behavior, such as prostitution or sex outside of marriage, by protecting women engaged in those behaviors from becoming pregnant.

On 3 March 1873, US Congress passed the Act of the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use, also called the Comstock Act. The Comstock Act illegalized the distribution of allegedly obscene materials and articles, including those used to prevent contraception or promote abortion, through the US Postal Service.

Following the enactment of the Comstock Act, many states and territories kept or created their own anti-obscenity laws. However, instead of similarly restricting the distribution of material through the postal services as the federal law did, many state and territory laws restricted contraceptive and abortion services and advertisements altogether. Throughout the 1870s, Arizona passed anti-obscenity legislation restricting access to abortions and contraceptives.

In 1901, the twenty-first Arizona Territorial Legislature in Phoenix, Arizona, codified anti-obscenity legislation related to abortion and birth control. Section 288, title 9, of the Arizona Revised Statutes illegalized the creation, distribution, or advertising of materials and information promoting abortion or the prevention of contraception. The law further specified that persons who violated that law were guilty of a misdemeanor, which was punishable by up to six months in jail or a fine of three hundred dollars.

Arizona enforced its law restricting access to contraceptives and abortions until 1936, when individuals involved in *United States v. One Package of Japanese Pessaries* challenged the federal Comstock Act. In that case, the US Court of Appeals for the Second Circuit in New York City, New York, ruled that contraceptives distributed to ensure the health of a woman were not obscene and therefore did not violate the Comstock Act. In effect, the ruling weakened regulations on contraceptives in many states and territories. The Court's decision enabled physicians to distribute contraceptives as long as they believed women's health required it. Although the Arizona law was not officially affected by the 1936 case, the federal ruling set a precedent that weakened state legislation restricting contraception.

In the 1962 case *Planned Parenthood Committee v. Maricopa County*, Planned Parenthood in Phoenix, Arizona, questioned the constitutionality of the Arizona Comstock law, by then labeled as Arizona Revised Statute section 13-213, which illegalized abortion and birth control advertising. Planned Parenthood argued that the law was unconstitutional as it violated rights to free speech

and freedom of the press guaranteed by the First and Fourteenth Amendments to the US Constitution. The Supreme Court of Arizona in Phoenix ruled against Planned Parenthood, stating that the section was constitutional as the state had the authority to regulate advertisements. The Arizona Comstock law restricting access to abortions and contraceptives remained intact.

Though cases challenging the constitutionality of the Arizona Comstock law were largely unsuccessful, two federal court cases impacted the constitutionality of the federal law. In 1965, the US Supreme Court case *Griswold v. Connecticut* legalized contraception for married couples. The 1972 US Supreme Court case *Eisenstadt v. Baird* legalized access to contraception for unmarried individuals. After the decisions in both those cases, contraceptives were legalized in all states, because the Supreme Court rulings applied in all states. The Arizona law no longer had any authority to regulate the distribution of information relating to birth control. However, because abortion itself was still illegal, the Arizona Comstock law continued restricting abortion.

In 1973, the US Supreme Court case *Roe v. Wade* obviated the Arizona Comstock law by legalizing abortion. In 1970, lawyers Linda Coffee and Sarah Weddington filed a court case against Henry Wade, the Dallas County District Attorney, on behalf of Norma L. McCorvey. McCorvey, assuming the alias Jane Roe for the case, was an unwed pregnant woman seeking an abortion in Texas. In the case, Roe's attorneys' argued that the Texas state abortion laws violated her constitutional rights. In 1973, the US Supreme Court ruled that women had the right to access abortions.

Following that decision, the Arizona Court of Appeals in Phoenix, Arizona, ruled in *State v. New Times* (1973) that the Arizona Comstock law was unconstitutional, as determined by the US Supreme Court in *Roe v. Wade*.

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