

The People of the State of New York v. Margaret H. Sanger (1918)

In 1918, the New York State Court of Appeals in Albany, New York, broadened the justification physicians could use to prescribe contraceptives to married patients in the case *The People of the State of New York v. Margaret H. Sanger* (*People v. Sanger*). The presiding judge of *People v. Sanger*, Frederick Crane, ruled that under Section 1145 of the New York Penal Code physicians could provide contraceptives to married couples for the prevention of disease. However, he supported a criminal conviction against birth control activist Margaret Sanger, who had distributed contraceptives, because she was not a physician. In his ruling, Crane broadened New York's legal definition of disease to include any situation affecting the health of married people, increasing physicians' ability to prescribe contraceptives in New York. The case also influenced the US Supreme Court when it legalized contraception for married couples in the mid-twentieth century.

Prior to the late 1800s, few federal laws restricted the distribution of contraception. However, beginning in the 1870s, Anthony Comstock, a store clerk and member of the Young Men's Christian Association in New York City, New York, lobbied US Congress in Washington, D.C., to pass more stringent restrictions against the distribution of what he considered to be obscene materials. In 1873, Congress passed Comstock's proposed law, the Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use, popularly called the Comstock Act. The Comstock Act prohibited distribution or mailing of any items, advertisements, or literature related to sex, contraceptives, or abortion through the US Postal Services. Violators of the law could either be fined or sentenced to jail time.

After the passage of the Comstock Act, many states, including New York, passed anti-obscenity laws to supplement the federal law. New York passed Section 1142 of the New York State Penal Code, which made the distribution, advertisement, or sales of materials or information about contraception illegal. Section 1142 also restricted individuals from discussing information about contraceptives. However, Section 1145 of the New York State Penal Code stipulated that physicians were exempt from Section 1142 if their actions were to cure or prevent disease.

On 16 October 1916, Margaret Sanger established one of the first birth control clinics in the US in the Brownsville district of Brooklyn, New York. The clinic became called the Brownsville Clinic. Sanger's sister, Ethel Byrne, and another birth control advocate, Fania Mindell, worked with Sanger to open the clinic. Individuals working at the clinic taught women about the female reproductive system and about various methods of contraception. However, because none of the individuals working at the clinic were physicians, they violated Section 1142 of the New York State Penal Code. Ten days after the clinic was opened, an undercover policewoman, Margaret Whitehurst, arrived at the clinic and arrested Sanger for distributing prohibited material. Sanger was released from jail the next morning after her bail was posted. On 14 November 1916, she reopened the clinic. However, two days later, Sanger, Byrne, and Mindell were arrested again for violating the New York Penal Code.

In January 1917, the Court of Special Sessions in Brooklyn tried all three women separately. The Court determined that all three women had violated the New York Penal Code, Section 1142. The Court ruled that Byrne had violated the law by distributing information on contraceptives, Sanger for opening the birth control clinic, and Mindell for distributing a pamphlet on reproductive health and sex education. The Court sentenced Byrne to thirty days in a prison on Blackwell Island on the East River in New York, and Sanger to thirty days in the Queens County Penitentiary in Queens County, New York. The same Court fined Mindell fifty dollars instead of sentencing her to jail

because the pamphlet she distributed, "What Every Girl Should Know," did not contain specific information about contraceptives. Upon her release from jail in March, Sanger appealed the Court's decision that opening the clinic violated Section 1142 of the New York Penal Code.

On 31 July 1917, the Appellate Division of the New York Supreme Court affirmed the judgment of the Court of Special Sessions convicting Sanger. Following that decision, Sanger appealed the case to New York State Court of Appeals in Albany, the state's highest court.

The New York State Court of Appeals decided the case *People v. Sanger* on 8 January 1918. Jonah Goldstein argued on behalf of Sanger, and Harry Lewis argued on behalf of the state of New York. Goldstein asserted that Section 1142 of the New York Penal Code's limitations on the distribution of birth control were unconstitutional. Goldstein argued that the law infringed on women's liberties by forcing them to conceive more children than they wanted. Goldstein also noted that physicians were barred from providing patients with information about contraceptives, unless it was to cure or prevent a specific disease, even when contraception was essential to the patient's wellbeing, thus putting patients at risk for unsafe pregnancies.

Judge Frederick Crane wrote the Court's opinion for the case. Judges Frank Hiscock, Emory Chase, Benjamin Cardozo, William Andrews and John Hogan concurred. The Court upheld the original decision that Sanger had violated Section 1142 of the New York Penal Code by opening the birth control clinic and distributing material on contraception. Crane ruled that the New York law was not unconstitutional, as it protected the morals of society. In response to Goldstein's argument that the law prevented physicians from prescribing contraception to patients for the sake of their health, Crane argued that Sanger could not legally make that argument, as she was not a physician. Furthermore, Crane ruled that Sanger could not legally contest the constitutionality of Section 1142 of the New York State Penal Code because she was neither a physician nor directly affected by the law. In his ruling, Crane noted that Section 1145 of the Penal Code already exempted physicians from Section 1142 if they were providing contraceptives to cure or prevent disease.

According to historian Peter Engelman, Crane's interpretation of Section 1145 of the Penal Code broadened the justifications physicians could use to prescribe contraceptives. Section 1145 had been originally passed as a public health measure to reduce the spread of sexually transmitted diseases. However, in his decision, Crane cited the definition of disease from Webster's New International Dictionary 1909 as being any change in the state of the body or an organ that causes a disturbance in function or health. Under the original interpretation of disease, physicians could only prescribe contraceptives to prevent venereal diseases. Under Crane's interpretation, physicians could prescribe contraceptives to prevent general disturbances from health. That ruling meant that physicians could prescribe contraception if a woman had a medical reason for needing to avoid pregnancy. Crane's decision also permitted pharmacists to distribute contraceptives when under the advisement of a physician.

Crane's support for physicians to have legal rights to prescribe contraceptives laid groundwork for legal birth control clinics managed by physicians. On 2 January 1923, Sanger established the Clinical Research Bureau in New York City, New York, under the supervision of Dorothy Bocker, a physician. It was later renamed the Birth Control Clinical Research Bureau. According to Engelman, the Bureau, which dispensed contraceptives and conducted research on various methods of birth control, was one of the first legal birth control clinics in the US. As a physician supervised the clinic and consulted with patients, the clinic did not violate Section 1142 of the Penal Code. After the creation of the Clinical Research Bureau, individuals in many other states began establishing birth control clinics to educate and provide resources about contraception to women.

People v. Sanger was cited in several federal court decisions. In *United States v. One Package of Japanese Pessaries* (1936), the US Court of Appeals for the Second Circuit in New York City, ruled that physicians had the right to distribute contraceptives through the US Postal Services, further increasing the availability of birth control. According to New York legal historian Maria Vullo, *People v. Sanger* also impacted the US Supreme Court cases *Griswold v. Connecticut* (1965) and *Eisenstadt v. Baird* (1972), which legalized contraception for married couples and for all individuals nationwide, respectively.

Although Sanger lost her appeal of the original 1917 court decision, Crane's decision in the appeal

case broadened the definition of disease, allowing physicians to distribute contraception to protect the overall health of married women, not just to prevent diseases.

Sources

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