

United States v. One Package of Japanese Pessaries (1936)

In the 1936 case *United States v. One Package of Japanese Pessaries*, the US Court of Appeals for the Second Circuit in New York City, New York, confirmed that physicians had the right to distribute contraceptives to patients for medical purposes. In January 1933, US Customs confiscated a package of contraceptives imported from Japan by US physician Hannah Stone. They claimed that the package violated section 305 of the Tariff Act of 1930, which, like the 1873 anti-obscenity Comstock Act, granted the US government authority to seize contraceptive materials imported into the country or sent through the mail. The court ruled that US Customs was not justified in confiscating the package and ordered its return to Stone. *United States v. One Package* exempted physicians from the restrictions surrounding the distribution of contraceptives and contributed to the subsequent dismantling of the Comstock Act in later court cases.

In the US, the Comstock Act of 1873 prohibited the dissemination of items considered obscene. The act was written and lobbied for by Anthony Comstock, a dry goods merchant in New York City, New York. Comstock claimed that anything related to sex, gambling, or drinking was obscene, and supported the strengthening of anti-obscenity laws. In 1872, he lobbied US Congress to pass a bill that would more effectively enforce anti-obscenity laws. In 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 act defined obscene correspondence as material of a sexual nature that supported abortion, or that promoted, discussed, or distributed methods of contraception. The act also enabled the government to penalize the sender of such materials with a fine or imprisonment.

In response to the restrictions enforced by the Comstock Act, activists for women’s reproductive health fought for the legalization and distribution of birth control. On 16 October 1916, birth control activist Margaret Sanger opened a birth control clinic in New York City, New York, staffed by nurses. However, ten days later on 26 October, the police closed the clinic and the state of New York charged Sanger with violating a state anti-obscenity law prohibiting the distribution of information about birth control. After Sanger was convicted under the New York law, Sanger appealed the ruling to the New York State Court of Appeals in New York City.

In the case *People v. Sanger* (1918), the New York State Court of Appeals concluded that physicians could distribute contraception for valid medical reasons without violating the state law. However, the court affirmed Sanger’s conviction, as she was not a physician. Sanger appealed the case to the US Supreme Court in Washington, D.C. In 1919, the US Supreme Court dismissed her case, claiming that it did not raise a substantial federal question.

In 1923, Sanger opened another birth control clinic, the Clinical Research Bureau, in New York City. At that time, the state permitted only clinics with dispensary licenses to legally distribute contraceptives. To circumvent that requirement, the Clinical Research Bureau presented itself as a research institution studying various birth control methods. Sanger hired physician Dorothy Bocker to serve as medical director of the Bureau. Hannah Stone replaced Bocker several years later, and in 1928, Sanger changed the name of the clinic to the Birth Control Clinical Research Bureau.

US Congress further deterred the circulation of birth control in 1930 by passing the Tariff Act of 1930. Section 305 of the Tariff Act of 1930, which contained language from the Comstock Act, reaffirmed the classification of birth control as obscene and identified its importation as illegal. The law gave US Customs the ability to seize imported birth control materials.

Sanger sought a federal ruling about the constitutionality of both the Tariff Act of 1930 and its predecessor, the Comstock Act of 1873. In 1933, Sanger deliberately violated the Tariff Act by arranging for 120 pessaries, a type of diaphragm inserted into the vagina to prevent conception, to be imported from Japan to Stone, the medical director of the Birth Control Clinical Research Bureau. That violation resulted in US Customs officials confiscating the pessaries before they reached Stone.

On 8 February 1933, Morris Ernst and Alexander Lindey, attorneys who represented Sanger and the Birth Control Research Bureau, filed a complaint to the US District Court for the Southern District of New York in response to the confiscation of the pessaries. He argued that the physicians at the Birth Control Research Bureau required the pessaries for preventing disease, which the Comstock Act recognized as a medically valid reason for importing contraceptives. US Customs officials responded by arguing that the Tariff Act of 1930 illegalized all importation of contraceptives, even by physicians.

On 10 December 1935, judge Grover M. Moscowitz of the US District Court heard the case *United States v. One Package*. Because the Customs officials confiscated the package of pessaries before it reached Stone, Stone never violated the Tariff Act. For that reason, the US government filed the case against the package of pessaries rather than the pessaries' intended recipient. However, Stone stood in for the package with Ernst and Lindey as her attorneys. John F. Davidson, Lamar Hardy, and William F. Young represented the US.

The case started with oral arguments from both sides. Ernst, representing Stone and the package of pessaries, procured various doctors as witnesses, including Stone. The physicians explained the health benefits of contraceptives, citing cases of women with epilepsy or neurological diseases whose health would be compromised if they became pregnant. In particular, Stone, who claimed that she was the intended recipient of the pessaries, argued that pessaries were important for patients with health issues that required them to space out the conception and birth of children. Referencing the Comstock Act and previous court cases, Ernst argued that the government had to prove that the pessaries were intended for inappropriate use and not for the maintenance of health. He argued that the US government had to show that the pessaries were intended for immoral use to declare them obscene. Davidson, representing the US government, argued that the Tariff Act illegalized the importation of birth control and that the law applied to all citizens of the US, including physicians. Therefore, according to Davidson, the Tariff Act had clearly been violated.

On 6 January 1936, judge Moscowitz ruled that the Tariff Act of 1930 did not apply to the package of pessaries. In his ruling, Moscowitz cited *United States v. Dennett* (1930), heard in the US Court of Appeals for the Second Circuit in New York City, New York, which determined that an object's potential for indecent use did not negate its original purpose. Comparing the *United States v. Dennett* case to the current situation, Moscowitz claimed that the Tariff Act could not limit a physician's access to contraceptives used to treat patients just because non-physicians could potentially use the contraceptives unlawfully.

After that ruling, the US government appealed the decision and the *United States v. One Package* case went to the US Court of Appeals for the Second Circuit in New York City. In the US, courts of appeal are responsible for evaluating the decisions of other courts and determining if the decisions reached by those other courts were justified.

The Court of Appeals in the case of *United States v. One Package* investigated whether or not the Tariff Act of 1930 applied to physicians. On 7 December 1936, the appeals judge Augustus N. Hand affirmed the initial ruling of Moscowitz in *United States v. One Package* by ruling that the Tariff Act of 1930 did not pertain to physicians, because physicians had the knowledge to use contraceptives for the well-being of patients and not for obscene reasons, such as inducing unlawful abortions. According to Hand, unlawful abortions referred to those conducted for any reason other than for the health of the patient. In his ruling, Hand stated that the Tariff Act of 1930 originated with the Comstock Act of 1873, which attempted to suppress the distribution of materials meant for immoral use. The Comstock Act classified birth control as obscene when used to prevent conception or induce abortion. Hand claimed that saving a patient's life was not an immoral use of contraceptives and noted that the original draft of the Comstock Act had contained a clause, deleted in the final draft of the act, exempting physicians. He argued that the drafters of the Comstock Act omitted that

clause to leave room for future interpretation. Consequently, Hand concluded that the Comstock Act of 1873, and subsequently section 305 of the Tariff Act of 1930, did not pertain to physicians and for that reason the package of pessaries should be released to Stone.

Historians note that the ruling of *United States v. One Package* essentially legalized birth control in the US. Prior to the case, physicians had to justify their distribution of birth control as either preventing or treating disease. After *United States v. One Package*, physicians could prescribe contraceptives without justifying its purpose. It was no longer illegal for information and material relating to contraception to be distributed through the mail as long as a physician sent the information. The *United States v. One Package* ruling allowed physicians to acknowledge birth control as a part of medicine. In particular, the American Medical Association officially recognized the importance and role of contraceptives in medicine in 1937, one year after the decision in *United States v. One Package*. The recognition of contraception by the American Medical Association influenced the support of education about birth control methods and provided legitimacy for birth control clinics operating under medical control.

The ruling of *United States v. One Package* also contributed to the collapse of the Comstock Act's restriction of birth control. In 1971, contraception was removed from the items listed as obscene in the Comstock Act. Historian Roy Weinberg noted that while subsequent federal cases, such as *United States v. Nicholas* (1938), *Consumer's Union v. Walker* (1944), and *United States v. H.L. Blake Co.* (1960), further obviated the Comstock Act, *United States v. One Package* made the largest impact on striking down the law because it questioned the original intentions of the Comstock Act. *United States v. One Package* also set the foundation for future cases in which the Comstock Act was finally dismantled, in particular US Supreme Court case *Griswold v. Connecticut* (1965), which granted married couples the right to access birth control.

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