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Index

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Editor

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work, Sanger fled to England, where she continued researching birth control advances and policies. On her return to the United States in 1916, Sanger and others opened the nation's first birth control clinic, a direct challenge to the Comstock regulations. The clinic remained open for ten days before Sanger and her cofounders were arrested.

Although Sanger served jail time, the resulting case was a partial victory. On appeal, the state law was interpreted to allow doctors to give contraceptive advice to married women for whom pregnancy might endanger their health. Sanger focused subsequent lobbying on winning support for birth control from the medical profession, social workers, and the liberal wing of the eugenics movement. This increased emphasis on the medicalization of birth control was evident in her championing the medical prescription of the diaphragm and her helping to open a clinic in 1923 that not only dispensed information to individual women but also served as an educational venue for physicians. Physicians were among those who defended Sanger after her clinic was raided in 1929, criticizing the police for interfering with the privacy of the doctor-patient relationship.

In 1921, Sanger founded the American Birth Control League, which would later become the Planned Parenthood Federation of America, a national lobbying and educational clearinghouse organization. The league was often frustrated as it pressed for legislative change, although it saw measured success through litigation, as multiple cases over many years gradually eroded restrictions on the dissemination of birth control information in the United States. Sanger also consistently advocated for the development of simpler and more affordable contraceptives. She helped arrange for the American manufacture of diaphragms she had been smuggling in from Europe, and in subsequent years she helped arrange for funding of research efforts to develop spermicidal gels and hormonal contraceptives. After World War II, Sanger concentrated on international aspects of the birth control movement, helping to found the International Planned Parenthood Federation in 1952.

Sanger died in Tucson, Arizona, on September 6, 1966, only a few months after the Supreme Court's decision in *Griswold v. Connecticut* (1965) found that the right to privacy made birth control legal for married couples. Sanger was eighty-six years old.

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Griswold v. Connecticut, 381 U.S. 479 (1965)

See also **Birth Control; Comstock, Anthony; *Griswold v. Connecticut*, 381 U.S. 479 (1965); Reproductive Freedom**

SANTA CLARA PUEBLO v. MARTINEZ, 436 U.S. 49 (1978)

Julia Martinez sued the Santa Clara Pueblo in federal court, alleging that the Pueblo's membership ordinance violated the Indian Civil Rights Act. Martinez was an enrolled member of the Pueblo, but her daughter had been denied enrollment on the grounds that her father, a Navajo Indian, was not a member. The membership ordinance denied enrollment to the children of female members who married outside the tribe, but not children of male members who married outside the tribe. Membership rights included the right to vote in tribal elections, land use rights, hunting and fishing rights, rights to irrigation water, and the right to reside in the Pueblo.

At trial, the district court held that the Indian Civil Rights Act conferred federal court jurisdiction on the claim and that the Pueblo was not entitled to sovereign immunity. On the merits, however, the district court ruled in favor of the Pueblo, holding that the ordinance was traditional tribal law and did not violate the equal protection clause in the Act. The Tenth Circuit reversed on the merits, holding that the Pueblo's ordinance, enacted only in 1970, was not justified under the compelling interest test of the equal protection clause.

The Supreme Court, per Justice Marshall, reversed, holding that Congress did not intend to waive the sovereign immunity of Indian tribes through the enactment of the Act and further holding that the Act did not confer subject matter jurisdiction over claimed violations of the Act. The Court relied heavily on the notion that, although Congress had imposed certain constitutional limitations on Indian tribes, the federal policy in favor of tribal self-determination required that claims of alleged violations must be brought in tribal fora, such as tribal courts.

Martinez has far-reaching implications for Indian tribes. It is easily the most heavily cited Indian law case of the modern era and is one of the strongest judicial statements in favor of tribal self-determination and preservation of tribal culture. Although *Martinez* was undeniably an accurate statement of federal Indian law, many scholars are troubled by how it operated to legitimate sex discrimination in Indian Country. Many Indian women affected by its outcome have defended the decision, arguing that real change must come from within, not from Congress or the federal courts.

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Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978)

See also **Indian Bill of Rights; MacKinnon, Catharine; Marshall, Thurgood**

SANTA FE INDEPENDENT SCHOOL DISTRICT v. DOE, 530 U.S. 290 (2000)

Santa Fe Independent School District is an important case on the controversial subject of prayer in public schools. In it the Supreme Court reiterated that any state-promoted prayer in public schools is unconstitutional, even in arguably less intrusive settings. At the same time the Court clarified that truly voluntary student prayer in schools is constitutionally permissible.

Santa Fe involved a challenge to a school district policy governing prayer at football games. The policy, which was enacted as an attempt to shift the decision on whether to have a prayer from school administrators to students, provided for a bifurcated student election on prayer. Students would first vote by secret ballot on whether to have a prayer at games, and if the students chose to have a prayer, a second election was held to elect a student to pray. Pursuant to this

policy the students elected to have a prayer at games and chose a student to say the prayer.

The Supreme Court, in a six-to-three decision, held the policy violated the Establishment Clause, primarily applying a two-part coercion analysis previously developed in *Lee v. Weisman* (1992). That test first examines whether the prayer can be attributed to the state, and second examines whether it results in substantial coercion of nonadherents. The Court found both prongs met.

The Court's analysis began with an extended discussion of why the prayers in question were not merely private student speech but were the result of significant state involvement. It rejected the school district's primary argument that having the students decide whether to pray acted as a "circuit breaker" that cut off any state involvement. It noted that even posing the question promoted prayer, because it initiated a process that in all likelihood would result in a decision to pray. In addition, the setting in which the pregame prayer was delivered, including being part of a school-sponsored function and use of the school's public address system, fostered perceptions of the state's involvement. The Court concluded that an "objective observer" would perceive the prayer as approved by the school.

After establishing that the pregame prayer was attributable to the government and not merely private student speech, the Court explained why it was coercive and therefore unconstitutional. It rejected the school's argument that football games were voluntary and therefore lacked state coercion, noting that many students, such as players, band members, and cheerleaders, were required to attend the games. More importantly, the Court noted the important role played by extracurricular activities in high school, which creates a strong desire to participate and even social pressure to be involved. The Court stated that the state cannot take advantage of this pressure to coerce those in attendance to participate in a religious exercise.

The Court concluded its opinion by giving two additional reasons why the prayer policy was invalid. First, the Court stated the clear purpose of the policy was to promote prayer, which violated the establishment clause requirement that government acts have a secular purpose. Both the terms of the policy and the history leading to its adoption left no doubt that the school district was endorsing the practice of prayer. Second, the Court said the policy was also invalid because the election process permitted a majoritarian view to be imposed on religious minorities.

The Court's decision in *Santa Fe* fits within the Court's previous establishment clause jurisprudence, but is important in several respects. First, it made