

or distribute contraceptives to a minor under 16.<sup>654</sup> The Court significantly extended the *Griswold-Baird* line of cases so as to make the “decision whether or not to beget or bear a child” a “constitutionally protected right of privacy” interest that government may not burden without justifying the limitation by a compelling state interest and by a regulation narrowly drawn to express only that interest or interests.

For a time, the limits of the privacy doctrine were contained by the 1986 case of *Bowers v. Hardwick*,<sup>655</sup> where the Court by a 5–4 vote roundly rejected the suggestion that the privacy cases protecting “family, marriage, or procreation” extend protection to private consensual homosexual sodomy,<sup>656</sup> and also rejected the more comprehensive claim that the privacy cases “stand for the proposition that any kind of private sexual conduct between consenting adults is constitutionally insulated from state proscription.”<sup>657</sup> Heavy reliance was placed on the fact that prohibitions on sodomy have “ancient roots,” and on the fact that half of the states still prohibited

<sup>654</sup> 431 U.S. at 684–91. The opinion of the Court on the general principles drew the support of Justices Brennan, Stewart, Marshall, Blackmun, and Stevens. Justice White concurred in the result in the voiding of the ban on access to adults while not expressing an opinion on the Court’s general principles. *Id.* at 702. Justice Powell agreed the ban on access to adults was void but concurred in an opinion significantly more restrained than the opinion of the Court. *Id.* at 703. Chief Justice Burger, *id.* at 702, and Justice Rehnquist, *id.* at 717, dissented.

The limitation of the number of outlets to adults “imposes a significant burden on the right of the individuals to use contraceptives if they choose to do so” and was unjustified by any interest put forward by the state. The prohibition on sale to minors was judged not by the compelling state interest test, but instead by inquiring whether the restrictions serve “any significant state interest . . . that is not present in the case of an adult.” This test is “apparently less rigorous” than the test used with adults, a distinction justified by the greater governmental latitude in regulating the conduct of children and the lesser capability of children in making important decisions. The attempted justification for the ban was rejected. Doubting the permissibility of a ban on access to contraceptives to deter minors’ sexual activity, the Court even more doubted, because the State presented no evidence, that limiting access would deter minors from engaging in sexual activity. *Id.* at 691–99. This portion of the opinion was supported by only Justices Brennan, Stewart, Marshall, and Blackmun. Justices White, Powell, and Stevens concurred in the result, *id.* at 702, 703, 712, each on more narrow grounds than the plurality. Again, Chief Justice Burger and Justice Rehnquist dissented. *Id.* at 702, 717.

<sup>655</sup> 478 U.S. 186 (1986). The Court’s opinion was written by Justice White, and joined by Chief Justice Burger and by Justices Powell, Rehnquist, and O’Connor. The Chief Justice and Justice Powell added brief concurring opinions. Justice Blackmun dissented, joined by Justices Brennan, Marshall, and Stevens, and Justice Stevens, joined by Justices Brennan and Marshall, added a separate dissenting opinion.

<sup>656</sup> “[N]one of the rights announced in those cases bears any resemblance to the claimed constitutional right of homosexuals to engage in acts of sodomy.” 478 U.S. at 190–91.

<sup>657</sup> Justice White’s opinion for the Court in *Hardwick* sounded the same opposition to “announcing rights not readily identifiable in the Constitution’s text” that underlay his dissents in the abortion cases. 478 U.S. at 191. The Court concluded