

# BIRTH LAW UPSET IN MASSACHUSETTS

## U.S. Court Rules That Ban on Contraceptives Curbs Single Persons' Rights

By **BILL KOVACH**

Special to The New York Times

**BOSTON, July 6**—The United States Court of Appeals for the First Circuit ruled unconstitutional today the Massachusetts law designed to withhold contraceptive devices from unmarried persons.

In a unanimous opinion, the court vacated the 1967 conviction of William R. Baird, a birth control crusader, who openly violated the statute in a test of its constitutionality. The court said the law was an "infringement on basic human rights."

Just last week the Supreme Judicial Court of Massachusetts, in another test case, upheld the constitutionality of the same statute, which forbids anyone from exhibiting, selling, giving or lending birth control devices to unmarried persons.

The 125-year-old law is designed to punish "crimes against decency, chastity, morality and good order." It permits birth control devices to be prescribed by physicians to married couples. Only Wisconsin has a

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**The New York Times**

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Originally published July 7, 1970

# Birth Control Law in Massachusetts Is Overturned by U.S. Court

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birth control law equally restrictive.

Immediately following today's ruling, the Suffolk County District Attorney, Garrett H. Byrne, said he would consult the State Attorney General's office about an appeal to the United States Supreme Court. Under today's ruling the way is open for unmarried persons to make legal purchases of birth control devices that until now were available legally only to married couples.

While the Legislature, which is still in session, could pass a new law, that course is considered unlikely. One legislative leader said privately today that such action "is not likely this year."

"It would be exceedingly difficult to bring the matter up this late," he said.

Chief Judge Bailey Aldrich, in his nine-page opinion today, made it clear that the law had been overturned because its intent was not to control a health



Associated Press

William R. Baird

hazard but to regulate morality.

"We are led inevitably to the conclusion that so far as morals

are concerned, it is contraceptives per se that are considered immoral," the court said.

"Such a view of morality," the court concluded, "is not only the very mirror image of sensible legislation; we consider that it conflicts with fundamental human rights. In the absence of demonstrated harm, we hold it is beyond the competency of the state."

## 21 Judges to Date

The ruling was the first victory in a three-year struggle against the law that has seen Mr. Baird's case argued through six courts before 21 state and Federal judges.

It began in April, 1967, when Mr. Baird — who had successfully challenged restrictive birth control laws in both New York and New Jersey — flouted the law by giving a tube of nonprescriptive contraceptive foam to an unmarried Boston University coed. The act took place after a lecture on birth control devices given at the university by Mr. Baird at the invitation of students.

He was convicted of displaying and giving such devices in violation of the law and sentenced to three months in jail. After 36 days in the Charles Street jail here, Mr. Baird, 37 years old, of Valley Stream, L.I., was released while appealing.

His conviction was subsequently upheld by the Massachusetts Supreme Court and an appeal to the United States Supreme Court was denied. Today's decision came as a result of a writ of habeas corpus filed following the United States Supreme Court decision not to hear the original challenge.

Mr. Baird's case has become something of a cause among liberals here, and he has been a frequent guest on radio and television shows since in his role as director of the Parents Aid Society, which he organized here for a more liberal birth control law.

The New York Times

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Originally published July 7, 1970