

**Plaintiffs' First Amended Complaint in *Doe v. Wade*,
CA-3-3691-C (N.D. Tex., Filed Apr. 22, 1970)**

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
Civil Action No. CA-3-3691

JOHN DOE and MARY DOE, suing on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

HENRY WADE, DISTRICT ATTORNEY OF DALLAS COUNTY,

Defendant.

I. PARTIES

1. Plaintiffs, John and Mary Doe, are citizens of the State of Texas, and residents of Dallas County.

2. Defendant Henry Wade is the District Attorney of Dallas County, Texas, charged with the enforcement and administration of the criminal laws of the State of Texas in Dallas County.

II. JURISDICTION

1. Plaintiffs invoke the jurisdiction of this Court under the First, Fourth, Fifth, Eighth, Ninth, and Fourteenth

Amendments to the United States Constitution; and under Title 28, United States Code, Sections 1331 and 1343, 2201 and 2202, and 2281 and 2284; and Title 42, United States Code, Section 1983.

2. Plaintiffs seek (a) a declaratory judgment that Articles 1191, 1192, 1193, 1194, and 1196 of the Texas Penal Code (hereinafter sometimes collectively referred to as the Texas Abortion Laws) are unconstitutional on their face; and (b) a permanent injunction against the future enforcement of these statutes.

III. FACTS

1. Plaintiffs John and Mary Doe are a childless married couple.

2. Plaintiff Mary Doe is presently suffering from a neural-chemical disorder. Her physician has advised her to avoid pregnancy until such time as her condition has materially improved, (although a pregnancy at the present time would not present a serious risk to Mary Doe's life).

3. In view of the medical advice received from Mary Doe's physician, Plaintiffs feel that it is inadvisable for them to become parents unless and until Mary Doe's condition has improved. For other highly personal reasons Plaintiffs do not wish to become parents at any time in the near future.

4. Also pursuant to medical advice, Plaintiff Mary Doe has discontinued use of the most effective means of contraception, the birth control pill. Plaintiffs are now conscientiously practicing an alternative method of contracep-

tion, but understand that there is nevertheless a significant risk of contraceptive failure.

5. Plaintiffs fear that due to contraceptive failure, they may face the prospect of becoming parents before they are properly prepared to accept the responsibilities of parenthood and before Mary Doe is able to undergo pregnancy without suffering considerable harm to her health and well-being. In such event, Plaintiffs would want to terminate the pregnancy by means of an operation, generally referred to as an abortion (within the meaning of Article 1191 of the Texas Penal Code), performed by a competent, licensed physician, under safe, clinical conditions.

6. Plaintiffs could not at the present time obtain a legal abortion in Dallas County, or anywhere else in Texas, in view of the Texas Abortion Laws which appear to limit legal abortions to those performed under medical advice in order to preserve the mother's life.

7. Should Mary Doe become pregnant, Plaintiffs' only alternative in Texas to carrying an unwanted pregnancy to term would be to secure an illegal abortion. Plaintiffs fear that the latter alternative would expose Mary Doe to an unnecessarily high risk of death, maiming, sterility, or serious infection. In addition, Plaintiffs would thereby suffer the extreme humiliation of participating in a furtive act, declared by the Texas Legislature to be a felony offense. And John Doe might risk prosecution under Article 70 of the Texas Penal Code as an accomplice to the crime of abortion.

8. Should Mary Doe become pregnant and Plaintiffs decide to secure a legal abortion, Plaintiffs would be forced

to undergo the emotional trauma of contacting numerous persons to ascertain jurisdictions where they could meet the legal requirements, to contact a doctor or clinic at the expense of long distance calls to make arrangements for the operation, and to expend considerable sums in travel, etc. Further, by the time Plaintiffs ascertained the fact of pregnancy, made the medical arrangements, arranged for time off from work, and gathered the necessary funds, in all likelihood the first trimester of pregnancy would have passed and the operation would then involve considerably greater risk to Mary Doe's health and require a lengthier recuperation.

9. The possibility of having to choose between the above-mentioned alternatives is presently having a detrimental effect upon Plaintiffs' marital happiness.

10. Since the birth control methods available to plaintiffs involve a risk of pregnancy, the Texas Abortion Laws, by eliminating the possibility of obtaining an abortion with reasonable ease, force upon Plaintiffs the choice of refraining from normal sexual relations or of endangering Mary Doe's health through a possible pregnancy.

11. In addition, Plaintiffs want to actively participate in various organizations, the activities of which include the giving of advice and counseling to both married and unmarried pregnant women, including the giving of information to assist in securing abortions, if desired.

12. Plaintiffs fear that any participation on their part in the above-mentioned organizational activities might subject them to prosecution under either (a) Article 70 of the Texas Penal Code, as accomplices to the crime of Abortion;

or (b) Article 1628 of the Texas Penal Code for conspiring to commit the crime of abortion. Therefore, Plaintiffs have refrained from participating in these activities.

13. This is a proper case to be heard by a Three-Judge Court in that Plaintiffs are challenging State Statutes as invalid on their face under the United States Constitution, and are seeking an injunction against the enforcement of the statutes.

14. Plaintiffs sue on behalf of themselves and all couples similarly situated, where they would seek an abortion were the woman to become pregnant and where the pregnancy would not constitute a critical threat to the woman's life. The number of members of the class is large and joinder of all members is impractical; there are questions of law and fact common to each class; the overall claims of Plaintiffs are typical of the claims of the class; and the named Plaintiffs will fairly and adequately protect the interests of the class.

IV. CAUSES OF ACTION

1. The Texas Abortion Laws are unconstitutionally vague and uncertain on their face.

2. Said statutes deprive plaintiffs and their physicians of rights protected by the First, Fourth, Fifth, Ninth and Fourteenth Amendments, in that the statutes are neither narrowly drawn nor supported by any overriding and compelling state interest.

(i) They infringe upon Plaintiffs' right to safe and adequate medical advice pertaining to the decision of whether to carry a given pregnancy to term.

(ii) They infringe upon Plaintiffs' right to choose whether and when to have children.

(iii) They infringe upon Plaintiffs' right to privacy in the physician-patient relationship.

(iv) They infringe upon Plaintiffs' right to personal and marital privacy.

3. Said statutes on their face infringe upon Mary Doe's right to life and liberty in violation of the Due Process Clause of the Fourteenth Amendment.

4. Said statutes on their face violate the First Amendment's prohibition against laws respecting an establishment of religion.

5. Said statutes on their face deny Plaintiffs the equal protection of the laws.

V. RELIEF REQUESTED

1. Plaintiffs pray that a Three-Judge Court be convened to hear this cause.

2. Plaintiffs pray that a declaratory judgment be issued holding the Texas Abortion Laws to be unconstitutional on their face.

3. Plaintiffs further pray for a permanent injunction, restraining Defendant, his agents and successors from enforcing the challenged statutes; that costs be taxed against the Defendant; and for such further relief, at law or in equity, to which Plaintiffs may be entitled.

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[Certification of service omitted in printing.]