

**Plaintiff-Intervenor Hallford's Original Complaint,  
Filed March 23, 1970**

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION  
Civil Action No. CA-3-3690-B

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[TITLE OMITTED IN PRINTING]

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I. PARTIES

1. Plaintiff, James Hubert Hallford, M.D., is a citizen of the State of Texas, and a resident of Dallas County, and is engaged in the active practice of medicine in the County of Dallas.

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

II. JURISDICTION

1. Plaintiff invokes the jurisdiction of this Court under the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution; Title 28, U.S. Code, Sections 1331 and 1343; the Declaratory Judgment Act, Title 28, United States Code, Sections 2201 and 2202; the three-Judge Court Statute, Title 28, United

States Code, Sections 2281 and 2284; and Title 42, Section 1983.

2. Plaintiff seeks a declaratory judgment that Articles 1191, 1192, 1193, 1194, and particularly 1196 of the Texas Penal Code (hereinafter sometimes collectively referred to as the Texas Abortion Laws) are unconstitutional on their face; and a permanent injunction against the enforcement of these statutes. The plaintiff expressly reserves the right to apply for a temporary restraining order, in the future, under Title 28, United States Code, Section 2284, if such action is necessary to prevent irreparable damage to him.

### III. STATUTES

1. The provisions of the Texas Penal Code, concerning the laws of abortion, being Articles 1191 through 1196 provide for and read as follows:

Article 1191—"If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By 'abortion' is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused. Acts 1907, p. 55."

Article 1192—"Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice."

Article 1193—"If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars."

Article 1194—"If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder."

Article 1195—"Whoever shall during parturition of the mother destroy the vitality or life in a child in a state of being born and before actual birth, which child would otherwise have been born alive, shall be confined in the penitentiary for life or for not less than five years."

Article 1196—"Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother."

2. The above abortion laws do not define the meaning of "for the purpose of saving the life of the mother," nor the meaning of "an abortion procured or attempted by medical advice." Furthermore, the case law of the State of Texas as reflected in the opinions of the Texas Court of Criminal Appeals does not define the meaning of said phrases.

3. The abortion laws do not establish a formal administrative mechanism for interpreting and enforcing its provisions.

4. The abortion laws in effect create a presumption that any abortion performed by a licensed practicing medical

doctor is illegal and unlawful and the physician has the burden of proving the lawfulness of the abortion if he is arrested or charged with violating the Texas Abortion Laws. In this regard, there are no provisions in the Texas Abortion Laws which require the State to rebut any medical opinion justifying an abortion and a Judge or Jury may convict a defendant under the Texas Abortion Laws simply because they do not believe the testimony of the defendant and/or any other expert opinion offered on his behalf.

5. The Texas Abortion Laws do not elaborate on their applicability or lack of same to the common situation in which a patient seeks an abortion, such as psychiatric indications, cardiac complications, kidney disease, rape, German measles, contraceptive failure, genetic complications, gastrointestinal diseases, neurologic diseases, diabetes, pulmonary disease, cancer, exposure to radiation, and socio-economic conditions such as those encountered by parents who have neither the means nor the desire to have more children, but the wife is pregnant.

#### IV. FACTS

1. A therapeutic abortion performed under hospital or clinic conditions is a safe and simple procedure which presents less danger to the pregnant woman, particularly in the first trimester of pregnancy, than ordinary childbirth.

2. An abortion performed outside of the clinical setting by unqualified personnel is extremely dangerous to a woman, and may result in death, maiming, sterility or serious infection.

3. The threat and uncertainty of the Texas Abortion Laws are a principal deterrent to physicians and patients which delimits the number of therapeutic hospital and clinical abortions.

4. The plaintiff is not able to treat his patients according to the high standards of medical practice because of the uncertainty, potential sweep, and application of the challenge laws.

5. Pregnant women patients thereupon seek abortion outside of the hospital and clinical setting, risking their lives and health.

6. Hospitals in Dallas County treat numerous cases each year of women who have had septic, incomplete, and badly bungled abortions at the hands of unqualified, often non-medical abortionists.

7. The plaintiff in his regular practice as a physician receives, on a frequent and recurring basis, appeals from pregnant women who desire a therapeutic abortion in safe hospital or clinical surroundings.

8. Plaintiff must, in each case, decide whether and how he can advise and treat these patients in light of their overall physiological, psychological, and other personal needs.

9. Plaintiff's prospective patients come within a wide variety of conditions, which have included in the past and will include in the future the following:

(a) Serious danger of death to the woman unless an abortion is performed within a short period of time;

- (b) Serious danger of suicide;
- (c) Possible danger of suicide;
- (d) Uncertain danger of suicide;
- (e) Pregnancy caused by rape or incest;
- (f) Patient ill with cancer;
- (g) Patient had been infected with German measles in early pregnancy and would not like to risk the danger that continued pregnancy would lead to a serious malformed and sick infant;
- (h) Patient would prefer to postpone pregnancy to a later date for a wide variety of reasons, including contraceptive failure, extreme youth, and others;
- (i) Uncertain danger of death to the woman unless an abortion is performed within a short period of time;
- (j) Possible danger of death to the woman unless an abortion is performed within a short period of time.

10. Plaintiff is not able to ascertain in a vast majority of cases whether the challenge laws prohibit advice and medical treatment, because the statutes do not in any way correlate with the regular and recurring medical indications present in his patients.

11. Plaintiff is deterred, hindered, chilled, and hampered in advising and treating his patients as a direct consequence of the statutes involved.

12. There is no medical committee, administrative agency or any other group that the plaintiff can apply to for an approval to perform a therapeutic abortion so that

he can be sure that his patient comes within the medical exceptions to the Texas Abortion Law or whether or not he has complied with Article 1196 in performing an abortion.

13. If the plaintiff was not subject to the threat of the vague and sweeping statutes challenged here, the medical practice of the plaintiff and other similar situated would be better able to serve the health needs of large numbers of women who are also affected by the statutes.

14. The plaintiff in the past has been arrested for violating the Texas Abortion Laws and at the present time stands charged by indictment with violating said laws in the Criminal District Court of Dallas County, Texas to-wit: (1) The State of Texas vs. James H. Hallford, No. C-69-5307-IH, and (2) The State of Texas vs. James H. Hallford, No. C-69-2524-H. In both cases the defendant is charged with abortion and the indictment does not allege that the defendant does not come under the protection of Article 1196 of the Texas Penal Code nor does the indictment set out any facts which would negate the exceptions provided by Article 1196 of the Texas Penal Code and under the laws of the State of Texas the defendant has the burden of proving that he comes under the vague, ambiguous and indefinite provisions of Article 1196 of the Texas Penal Code, and furthermore, under the laws of the State of Texas even if the defendant offers testimony from himself and other physicians that the alleged abortion comes under the exception set out by Article 1196, the Judge and/or Jury may simply disbelieve such testimony without any expert medical opinion being offered to the contrary and convict the defendant.

## V. CAUSES OF ACTION

1. The Texas Abortion Laws and in particular Article 1196 are unconstitutionally vague and uncertain on their face, and in violation of the specificity requirements of the Fourteenth Amendment to the United States Constitution.

2. Said laws, on their face and as applied, deprive plaintiff and his patients of the right to privacy in the physician-patient relationship, as protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution.

3. Said laws, on their face and as applied, deprive plaintiff of the right to practice medicine according to the highest standards of medical practice, as guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution.

4. Said laws, on their face and as applied, deprive plaintiff's patients of "the fundamental right of a woman to choose whether to bear children . . ." *People v. Belous*, 458 P.2d 194, 199, 80 Cal. Rptr. 354, 359 (1969), as protected by the Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution.

5. Said laws, on their face and as applied, infringe upon plaintiff's patients' right to safe and adequate medical advice and treatment pertaining to the decision of whether to carry a given pregnancy to term, in violation of the First, Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution.

6. Said laws, on their face and as applied, infringe upon the stated constitutional rights of plaintiff and his patients, because said rights are protected and fundamental, and no compelling or overriding justification can be offered for the potentially drastic sweep of the laws.

7. Said laws, on their face, and as applied, deprive plaintiff and his patients of the equal protection of the laws, by treating similarly situated classes differently with no compelling justification for classification.

8. Said laws, on their face and as applied, violate the First Amendment free speech guarantee in their broad and indiscriminate sweep which deters and chills discussion and advice pertaining to abortion.

9. Said laws, on their face and as applied, violate the First Amendment prohibition against laws respecting an establishment of religion, in that the challenged statutes have no independent and compelling secular justification.

10. Said laws violate the Eighth Amendment in that they operate to impose a cruel and unusual punishment upon women by forcing them to bear each child they conceive, regardless of other surrounding circumstances short of immediate and obvious death if an abortion is not performed.

11. The enforcement of the said laws places the physician and this plaintiff in a position of decision-making beset with such inherent possibility of bias and conflict of interest as to deprive the plaintiff and his patients of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

12. The abortion laws and in particular Article 1196 are unconstitutional in that they provide no exceptions or justifications for abortions performed by a licensed physician wherein the plaintiff's patients are suffering from any one of the following:

- (a) Pregnancy caused by rape or incest;
- (b) Pregnancy complicated by various physiological and psychological conditions;
- (c) Patients infected with German measles in early pregnancy and would not like to risk the prospect of serious and permanent fetal deformatives;
- (d) Patients being the victims of contraceptive failure and for other medical reasons than have been set out above, highly likely or in all probability likely to bear serious and permanent fetal deformatives;
- (e) Patients who for psychological or physiological reasons are in some danger of death if an abortion is not performed but where the risk or immediacy of such is not so great that it can medically or legally be said that the abortion is "for the purpose of saving the life of the mother;"

13. The Texas Abortion Laws create a legal and factual presumption that any abortion performed by a licensed physician is unlawful and place upon the defendant physician the burden of showing privilege or a lawful abortion was performed and the presumption of guilt created by the Texas Abortion Laws is in violation of the laws and the Constitution of the United States of America.

14. The language in Article 1196 reciting that "nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother" is unconstitutionally vague and uncertain on its face and forbids the doing of an act in terms so vague that the plaintiff physician and others similarly situated must necessarily guess at its meaning and differ as to its application.

#### VI. RELIEF REQUESTED

1. Plaintiff prays that a three-Judge Court be convened to hear this cause.

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

3. Plaintiff prays for a permanent injunction, restraining defendant, his agents, and successors, from enforcing the challenged statutes.

4. Plaintiff reserves the right to make application for and pray for an interlocutory injunction granting a temporary restraining order to prevent irreparable damage, i.e., the actual trial of the felony cases now pending against this plaintiff in the Criminal District Court of Dallas County, Texas, because such a trial would cause irreparable damage to the plaintiff.

5. The plaintiff further prays that costs be taxed against the defendant; and for such further relief, at law or in equity to which plaintiff may be entitled.

Respectfully submitted,

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