

**Motion of Plaintiffs Roe, Doe, and Hallford to Hold
Appeal to Fifth Circuit by Defendant Wade in Abey-
ance Pending Decision by the Supreme Court of the
United States, Filed October 13, 1970**

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 30329

[TITLE OMITTED IN PRINTING]

I. INTRODUCTION

The present appeal to this Court was taken by Appellant Wade from a declaratory judgment rendered below by a statutory three-judge federal district court that the Texas Abortion Laws violate the federal constitution by reason of unconstitutional vagueness and overbreadth. The judgment below, while granting declaratory relief, denied an injunction against future enforcement of the aforesaid statutes. From that portion of the judgment, Appellees here have taken an appeal directly to the Supreme Court of the United States pursuant to 28 U.S.C. §1253 (1964 ed.). Appellees make the present motion to hold the appeal in abeyance pending disposition by the Supreme Court. In the event that the Supreme Court's action allows the appeal here to go forward, Appellee respectfully requests an additional 20 days time within which to file a brief, and leave to file a brief of 50 pages.

II. REASONS FOR HOLDING APPEAL IN ABEYANCE

Title 28, U.S. Code §1253, authorizes an appeal from a three-judge district court order "granting or denying . . . an interlocutory or permanent injunction . . ." The decision below denied such an injunction. While it is unusual that declaratory relief is granted, and an injunction denied, there have been such cases from time to time in the past, and the Supreme Court has heard such appeals. *See, e.g., Carter v. Jury Comm'n of Greene County*, 396 U.S. 320, 328 (1970); *Williams v. Rhodes*, 393 U.S. 23, 26-28 (1968). It is the action on the injunction which governs appealability.

When the appeal goes up properly, the entire case is opened for review. As *Dandridge v. Williams*, 397 U.S. 471 (1970) teaches:

"The prevailing party may, of course, assert in a reviewing court any ground in support of his judgment" 397 U.S. at 475 n. 6.

Hence Appellant Wade may contest the declaratory judgment in the Supreme Court by way of defense to the propriety of not granting an injunction. Wade is in no way prejudiced by the holding of the present appeal in abeyance. He need do little more than change the heading on the brief already submitted to this Court.

III. RELIEF REQUESTED

Accordingly, Appellee respectfully requests the following:

- (1) That the present appeal be held in abeyance pending disposition of this case by the Supreme Court of the United States, in an appeal filed by Appellee (See Jurisdictional Statement attached hereto);

(2) That the record on this appeal be certified to the District Court for transmission to the Supreme Court of the United States for use in the appeal of this case docketed there as No. 808, October 1970 Term;

(3) That in the event this appeal is ultimately allowed to go forward, Appellee be granted an additional 20 days within which to file a brief, and that leave be granted to file a printed brief of 50 pages length, exclusive of indices and appendices.

Respectfully submitted,

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Attorney for Appellees

[Affidavit of Service by mail and Jurat
omitted in printing.]