

Opinion in Chambers

WALTERS, ADMINISTRATOR OF VETERANS
AFFAIRS, ET AL. v. NATIONAL ASSOCIATION
OF RADIATION SURVIVORS ET AL.

ON APPLICATION FOR STAY

No. A-214. Decided September 27, 1984

An application to stay the District Court's injunction prohibiting on constitutional grounds the enforcement of 38 U. S. C. §§ 3404 and 3405—which forbid the payment of a fee of more than \$10 by a veteran to an agent or attorney in connection with a claim for monetary benefits under laws administered by the Veterans Administration—is granted pending applicants' timely filing of a jurisdictional statement and the disposition of the same by this Court. Respondents' contention that the balance of hardships militates against the granting of a stay is not persuasive under the circumstances of the case.

JUSTICE REHNQUIST, Circuit Justice.

Applicants request that I stay an injunction issued by the United States District Court for the Northern District of California prohibiting on constitutional grounds the enforcement of 38 U. S. C. §§ 3404 and 3405. These sections prohibit the payment of a fee of more than \$10 by a veteran to an agent or attorney in connection with a claim for monetary benefits under laws administered by the Veterans Administration.

The statute which the single District Judge found unconstitutional has been on the books in some form for 122 years. Within the past decade, this Court has summarily affirmed a decision of a three-judge District Court upholding the constitutionality of 38 U. S. C. § 3404(c). *Gendron v. Levi*, 423 U. S. 802 (1975), *aff'g Gendron v. Saxby*, 389 F. Supp. 1303 (CD Cal.). The Court of Appeals for the Ninth Circuit has also recently upheld the validity of § 3404(c). *Demarest v. United States*, 718 F. 2d 964 (1983), *cert. denied*, 466 U. S. 950 (1984).

The application for a stay is granted. Respondents urge that the balance of hardships militates against the granting of a stay. It would take more than the respondents have presented in their response, however, to persuade me that the action of a single District Judge declaring unconstitutional an Act of Congress that has been on the books for more than 120 years should not be stayed pending consideration of the jurisdictional statement of applicants by this Court. The presumption of constitutionality which attaches to every Act of Congress is not merely a factor to be considered in evaluating success on the merits, but an equity to be considered in favor of applicants in balancing hardships. *Marshall v. Barlow's, Inc.*, 429 U. S. 1347 (1977) (REHNQUIST, J., in chambers).

The application for a stay is accordingly granted pending the timely filing of a jurisdictional statement and the disposition of the same by this Court.