

OPINION OF INDIVIDUAL JUSTICE  
IN CHAMBERS

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EDWARDS, GOVERNOR OF LOUISIANA, ET AL. *v.*  
HOPE MEDICAL GROUP FOR WOMEN ET AL.

ON APPLICATION FOR STAY

No. A-124. Decided August 17, 1994

An application to stay the District Court's order is denied. That court enjoined applicants, Louisiana officials, from enforcing a state law prohibiting the use of public funds for abortion except when medically necessary to prevent the mother's death, finding that the law is inconsistent with what the court termed the requirement of Title XIX of the Social Security Act that States participating in the Medicaid program fund abortions for women whose fetuses were conceived by acts of rape or incest. The premise that Title XIX requires participating States to fund abortions unless federal funding for those procedures is proscribed by the Hyde Amendment has been uniformly supported by those Courts of Appeals that have addressed this question. It is certain that four Justices will not be found to vote for certiorari on this question until there is a Circuit conflict.

JUSTICE SCALIA, Circuit Justice.

Applicants, officers of the State of Louisiana, ask that I stay an order entered by the United States District Court for the Eastern District of Louisiana which enjoins them from enforcing La. Rev. Stat. Ann. § 40:1299.34.5 (West 1992) while at the same time accepting federal Medicaid funds pursuant to Title XIX of the Social Security Act, as added, 79 Stat. 343, 42 U. S. C. § 1396 *et seq.* (1988 ed. and Supp. IV). The District Court stayed its judgment until 5 p.m. on August 19, 1994. Yesterday, the Court of Appeals for the Fifth Circuit unanimously denied the applicants' motion for stay pending appeal.

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Section 40:1299.34.5 provides in relevant part:

“[N]o public funds . . . shall be used in any way for, to assist in, or to provide facilities for an abortion, except when the abortion is medically necessary to prevent the death of the mother.”

The District Court concluded that this statute was inconsistent with what it determined to be the requirement of Title XIX, as modified by the 1994 version of the Hyde Amendment, Pub. L. 103–112, § 509, 107 Stat. 1113, that States participating in the Medicaid program fund medically necessary abortions upon fetuses conceived by acts of rape or incest. Accordingly, it ordered applicants either to cease enforcing § 40:1299.34.5 or to withdraw from participation in the Medicaid program. *Hope Medical Group for Women v. Edwards*, No. 94–1129 (ED La., July 28, 1994).

The practice of the Justices has consistently been to grant a stay only when three conditions obtain. There must be a reasonable probability that certiorari will be granted, a significant possibility that the judgment below will be reversed, and a likelihood of irreparable harm (assuming the applicants’ position is correct) if the judgment below is not stayed. *Barnes v. E-Systems, Inc. Group Hospital Medical & Surgical Ins. Plan*, 501 U. S. 1301, 1302 (1991) (SCALIA, J., in chambers). Moreover, when a district court judgment is reviewable by a court of appeals that has denied a motion for a stay, the applicant seeking an overriding stay from this Court bears “an especially heavy burden,” *Packwood v. Senate Select Comm. on Ethics*, 510 U. S. 1319, 1320 (1994) (REHNQUIST, C. J., in chambers).

Under this standard, I have no authority to stay the judgment here. The only issue potentially worthy of certiorari is the premise underlying the District Court’s decision: that Title XIX requires States participating in the Medicaid program to fund abortions (at least “medically necessary” ones) unless federal funding for those procedures is proscribed by

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the Hyde Amendment. The Courts of Appeals to address this question have uniformly supported that premise. See *Roe v. Casey*, 623 F. 2d 829, 831, 834 (CA3 1980); *Hodgson v. Board of County Comm'rs of Hennepin*, 614 F. 2d 601, 611 (CA8 1980); *Zbaraz v. Quern*, 596 F. 2d 196, 199 (CA7 1979), cert. denied, 448 U. S. 907 (1980); *Preterm, Inc. v. Dukakis*, 591 F. 2d 121, 126–127, 134 (CA1), cert. denied, 441 U. S. 952 (1979). We have already denied certiorari in two of those cases, and it is in my view a certainty that four Justices will not be found to vote for certiorari on the Title XIX question unless and until a conflict in the Circuits appears.

Accordingly, the application for a stay of the judgment of the District Court for the Eastern District of Louisiana is denied.