

OPINION OF INDIVIDUAL JUSTICE IN
CHAMBERS

CALIFORNIA *v.* VELASQUEZ

ON APPLICATION FOR STAY

No. A-773. Decided March 24, 1980

California's application for a stay, pending review by certiorari, of enforcement of the California Supreme Court's judgment reversing the imposition of a death sentence but upholding respondent's conviction, is granted.

MR. JUSTICE REHNQUIST, Circuit Justice.

Applicant seeks a stay of the enforcement of the judgment of the Supreme Court of California in *People v. Velasquez*, 26 Cal. 3d 425, 606 P. 2d 341 (1980), pending the filing of a petition for certiorari and its disposition by this Court. Applicant contends that the Supreme Court of California has reversed the imposition of a sentence of death, although upholding the conviction, because the trial was conducted in violation of this Court's decision in *Witherspoon v. Illinois*, 391 U. S. 510 (1968).

This Court has granted certiorari in *Adams v. Texas*, No. 79-5175, 444 U. S. 990, and that case is presently set for argument today. The issues presented there are sufficiently related to the issues which the applicant State says it will raise in its petition for certiorari in this case that I have decided to grant the State's application for stay pending (1) consideration and decision of *Adams v. Texas*, *supra*, by this Court, and (2) the filing and disposition of a timely petition for certiorari in this case by the applicant.

I am not persuaded by the response that the decision below rests upon a reading of state law by the Supreme Court of

California. Neither *In re Anderson*, 69 Cal. 2d 613, 447 P. 2d 117 (1968), which was cited by the court below, nor *People v. Wheeler*, 22 Cal. 3d 258, 583 P. 2d 748 (1978), which was not, supports respondent's position. *Anderson*, as I read it, was based primarily upon this Court's decision in *Witherspoon*. *Wheeler*, while itself based on state law, seems clearly distinguishable from the present case.

The application for stay is accordingly granted.