

GREGORY-PORTLAND INDEPENDENT SCHOOL
DISTRICT *v.* UNITED STATES ET AL.

ON REAPPLICATION FOR STAY

No. A-203. Decided September 8, 1980

A reapplication to stay, pending appeal to the Court of Appeals, the District Court's decision ordering the busing of students within the applicant school district, is denied.

MR. JUSTICE REHNQUIST.

Applicants have requested me to grant a stay pending appeal to the Court of Appeals for the Fifth Circuit of a decision by the District Court ordering the busing of students within the applicant district. The application, as was proper, was first submitted to MR. JUSTICE POWELL, the Circuit Justice for the Fifth Circuit, and denied by him. It has now been resubmitted to me. As indicated by the cases discussed in the application for stay, *e. g.*, *Columbus Board of Education v. Penick*, 439 U. S. 1348 (1978), this Court has been divided for a number of years as to the constitutional propriety of busing orders. If I were casting my vote as a single Justice of this Court, rather than as an individual Justice empowered to grant a stay, I would in all likelihood not only vote to grant certiorari in the case if the Court of Appeals for the Fifth Circuit affirmed it, but would also give the most serious consideration to voting on the merits to reverse that decision. However, as has been frequently pointed out, that is not the role of an individual or Circuit Justice in a case such as this. That obligation is to determine whether four Justices would vote to grant certiorari, to balance the so-called "stay equities," and to give some consideration as to predicting the final outcome of the case in this Court.

For these reasons, and because MR. JUSTICE POWELL is the Circuit Justice for the Fifth Circuit, and more familiar with the situation of any case in it than I could be, I am unwilling to "second-guess" his own denial of the application in this case. I accordingly deny the reapplication for a stay.