

92 S.Ct. 8
Supreme Court of the United States

UNITED STATES

v.

Dr. J. W. EDGAR, Commissioner of Education,
and the Texas Education Agency.

July 29, 1971.

Synopsis

Proceeding on application to Mr. Justice Black, as Circuit Justice, for stay of judgment of United States Court of Appeals for the Fifth Circuit, 447 F.2d 441, affirming order of the United States District Court for the Eastern District of Texas, 321 F.Supp. 1043. Mr. Justice Black held that where district court order which directed state commissioner of education and state education agency to withhold funds and accreditation from school districts which failed to eliminate remaining vestiges of dual school system did no more than endeavor to realize directive of Fourteenth Amendment that racial discrimination in public schools must be eliminated root and branch and stay would mean inordinate delay and would unjustifiably postpone termination of dual school systems, stay of judgment of the Court of Appeals which affirmed the district court order pending action by Supreme Court on unfiled petition for certiorari would be denied.

Stay denied.

Opinion

****8 *1206** Mr. Justice BLACK, Circuit Justice.

The Commissioner of Education of the State of Texas and the Texas Education Agency make application for a stay of the judgment of the United States Court of Appeals for the Fifth Circuit, 447 F.2d 441, affirming the order of the United States District Court for the Eastern District of Texas, 321 F.Supp. 1043, which directed the applicants to take certain affirmative action to eliminate all vestiges of discrimination from the public schools within the State. The State of Texas provides for the supervision of state education and the distribution of state educational funds through the Texas Education Agency under the direction

of the Commissioner of Education. The United States ****9** brought this action against applicants on March 6, 1970, to enforce Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. s 2000d et seq., and the Fourteenth Amendment of the United States Constitution. The District Court, on April 20, 1971, issued its order directing the Commissioner and the Texas Education Agency to take certain specified steps to withhold funds and accreditation from school districts which failed to ***1207** meet their constitutional obligation to eliminate remaining vestiges of the dual school system. The District Court order dealt with the areas of student transfers, changes in school district boundaries, school transportation, extracurricular activities, faculty and staff practices, student assignment, curricula and compensatory education. The United States Court of Appeals for the Fifth Circuit, with certain minor alterations, unanimously affirmed the order of the District Court. The Commissioner and the Texas Education Agency then applied to the Fifth Circuit for a stay of its order pending action by this Court on the applicants' petition for certiorari yet to be filed. The circuit court refused the stay. The application for stay has now been presented to me as the Circuit Justice for the Fifth Circuit.

It would be very difficult for me to suspend the order of the District Court that, in my view, does no more than endeavor to realize the directive of the Fourteenth Amendment and the decisions of this Court that racial discrimination in the public schools must be eliminated root and branch. *Green v. County School Board of New Kent County*, 391 U.S. 430, 437—438, 88 S.Ct. 1689, 1693—1694, 20 L.Ed.2d 716, 723—724 (1968); see *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); *United States v. Montgomery County Board of Education*, 395 U.S. 225, 89 S.Ct. 1670, 23 L.Ed.2d 263 (1969). I cannot say that four Members of this Court are likely to vote to hear this case and undo what has been ordered by the District Court and Court of Appeals below.

My views need not be expressed at length. The question of granting certiorari will have to be decided by this Court when the petition properly reaches us. For me, as one Member of this Court, to grant a stay now would mean inordinate delay and would unjustifiably further postpone the termination of the dual school system that the order below was intended to accomplish. The District ***1208** Court's opinion and order are comprehensive and well reasoned. In my judgment the facts found by the District Court, which do not appear to be materially disputed by the applicants, fully justify the order.

Under these circumstances I deny the stay and let the

matter await final decision before the full Court when the petition for certiorari is properly presented for consideration. The stay is denied.

It is so ordered.

Stay denied.

All Citations

404 U.S. 1206, 92 S.Ct. 8, 30 L.Ed.2d 10