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IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,

Appellee,

DONNY BRURELL BUCKLEY and
ALYCIA MARQUESE BUCKLEY, etc.,

Intervening Appellees, .

v.

THE BOARD OF SCHOOL COMMISSIONERS
OF THE CITY OF INDIANAPOLIS,
INDIANA, et al.,

Appellants.

NO. 75-1765

MEMORANDUM OF THE UNITED STATES
IN RESPONSE TO VARIOUS APPLICA-
TIONS FOR STAY OF AUGUST 1, 1975
ORDER OF THE DISTRICT COURT OF
THE SOUTHERN DISTRICT OF INDIANA,
INDIANAPOLIS DIVISION

On August 11 and 12, 1975, certain of the defendants in this case filed motions with this Court requesting a stay of the August 1, 1975 order of the district court. The United States of America, plaintiff herein, pursuant to Rule 8(a) of the Federal Rules of Appellate Procedure, hereby responds to those applications.

The normal rule in school desegregation cases is that stays pending appeal of the remedial steps directed by the district court will not be granted. See, e.g., Alexander v. Holmes County Board

of Education, 396 U.S. 19 (1969); Carter v. West Feliciana School Board, 396 U.S. 290 (1970); Kelley v. Metropolitan County Board of Education of Nashville, 436 F. 2d 856 (C.A. 6, 1970). Thus, this Court and the Supreme Court denied all stay requests in 1973 where partial relief involving only IPS was concerned, even though the timing and administrative burdens involved were as difficult or more difficult than in the present situation. As in the cases involving southern dual school systems, the remedial obligations were clear and further delay was intolerable.

However, in cases involving unsettled questions of law relating to the authority to require interdistrict desegregation, courts have considered the traditional balancing of interests test ^{*/} applicable to a stay motion and have found stays appropriate. A stay of purchase of buses in order to implement a metropolitan-wide plan in Detroit was granted by the Sixth Circuit in Bradley v. Milliken, No. 72-1809, July 20, 1972 (unreported). In the instant case, the district court stayed the interdistrict aspects (requiring transfer of black IPS students to surrounding defendant school districts) of its 1973 order.

^{*/} See, e.g., Beverly v. United States, 468 F. 2d 732, 741 (C.A. 5, 1972).

Although the movants here have not made a strong showing that the district court's findings of fact in its latest order are likely to be overturned on appeal, the legal issue relating to the showing necessary to support an interdistrict remedy is unsettled today just as it was when the 1973 stay was granted by the district court. Indeed, the possible theories supporting interdistrict relief have diminished since 1973. Milliken v. Bradley, 418 U.S. 717.

Accordingly, although the question is a close one, we do not oppose appellants' stay petitions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing
have been served on all the parties in this case by
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This the 21 day of August, 1975.

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