1. ADMISSIONS

2. OPINIONS

74-6257 - Gregg v. Georgia

Affirmed

The Chief Justice and Mr. Justice Rehnquist filed a statement concurring in the judgment.

Mr. Justice White, with whom the Chief Justice and Mr. Justice Rehnquist join, filed an opinion concurring in the judgment.

Mr. Justice Blackmun filed a statement concurring in the judgment.

Mr. Justice Brennan filed a dissenting opinion, together with
75-5394 - Jurek v. Texas
and
75-5706 - Proffitt v. Florida

Mr. Justice Marshall filed a dissenting opinion, together with
75-5394 - Jurek v. Texas
and
75-5706 - Proffitt v. Florida

MR. JUSTICE STEWART
(for Stewart, Powell, Stevens, JJ., announced the judgment of the Court and filed an opinion.)
2. OPINIONS (cont.)

75-5706 - Proffitt v. Florida

Affirmed

Mr. Justice White, with whom the Chief Justice and Mr. Justice Rehnquist joined, filed an opinion concurring in the judgment.

Mr. Justice Blackmun filed a statement concurring in the judgment.

Mr. Justice Brennan filed a dissenting opinion, together with 74-6257 - Gregg v. Georgia and 75-5394 - Jurek v. Texas.

Mr. Justice Marshall filed a dissenting opinion, together with 74-6257 - Gregg v. Georgia and 75-5394 - Jurek v. Texas.

75-5394 - Jurek v. Texas

Affirmed

The Chief Justice filed an opinion concurring in the judgment.

Mr. Justice White, with whom the Chief Justice and Mr. Justice Rehnquist joined, filed an opinion concurring in the judgment.

Mr. Justice Blackmun filed a statement concurring in the judgment.

Mr. Justice Brennan filed a dissenting opinion, together with 74-6257 - Gregg v. Georgia and 75-5706 - Proffitt v. Florida.

Mr. Justice Marshall filed a dissenting opinion, together with 74-6257 - Gregg v. Georgia and 75-5706 - Proffitt v. Florida.

MR. JUSTICE POWELL

(for Stewart, Powell, Stevens, J.J., announced the judgment of the Court and filed an opinion.)

MR. JUSTICE STEVENS

(for Stewart, Powell, Stevens, J.J., announced the judgment of the Court and filed an opinion.)
75-5491 - Woodson v. North Carolina

Reversed and Remanded

Mr. Justice Brennan filed a statement concurring in the judgment.

Mr. Justice Marshall filed a statement concurring in the judgment.

Mr. Justice White, with whom the Chief Justice and Mr. Justice Rehnquist joined, filed a dissenting opinion.

Mr. Justice Blackmun filed a dissenting statement.

Mr. Justice Rehnquist filed a dissenting opinion.

75-5844 - Roberts v. Louisiana

Reversed and Remanded

Mr. Justice Brennan filed a statement concurring in the judgment.

Mr. Justice Marshall filed a statement concurring in the judgment.

The Chief Justice filed a dissenting statement.

Mr. Justice White, with whom the Chief Justice and Mr. Justice Blackmun, and Mr. Justice Rehnquist joined, filed a dissenting opinion.

Mr. Justice Blackmun filed a dissenting statement.

3. RECESS COURT

Mr. Justice Stevens (for Stewart, Powell, Stevens, JJ., announced the judgment of the Court and filed an opinion.)

Mr. Justice Brennan (for Stewart, Powell, Stevens, JJ., announced the judgment of the Court and filed an opinion.)
MEMORANDUM

TO: Gail and Chris
FROM: Justice Powell

Capital Cases - My Files

As these are historic cases, in which future historians will have a special interest, it is important for my files to be prepared carefully before they are taken to our storage room downstairs.

I visualize six files, one for each of the five cases plus a general file that should be identified in some proper way - (might be just called "general file" and underneath it put Capital Cases - 1975 Term: and then list the numbers) On the inside of the file - maybe pasted to the inside of the folder you might simply say that there are separate files on each of the cases.

The separate files should have the usual information. The cert memo, the docket sheet on the granting of cert, any internal memos prepared by me or the clerks, and perhaps a Xerox copy of my yellow notes reflecting the voting at the Conference after the arguments.

My recollection is that, during the oral arguments,
specifically
I simply took notes without identifying the cases. If so, these notes can go into the general file. Also, I do not think that I kept a docket sheet on the voting in each separate case. Rather, I took notes on yellow pad stationery that indicated the voting. If these are not too elaborate, perhaps a Xerox copy should be put in each one of the separate files.

The most difficult task, one which I hope Chris can perform, is to sort out the drafts of opinions that were circulated, and determine which we should keep. As I was responsible primary for Gregg, we should keep in our file on that case, a copy of each draft of the opinion - both typewritten and printed.

It is not necessary to do this in the other cases. I do suggest that Chris write a file memorandum, with copies for each of the other files, to the effect that our primary responsibility was for Gregg, but that the five opinions were joint efforts, and that we took part in their preparation and editing.

L.F.P., Jr.
CAPITAL CASES -- 1975 TERM

In these cases, our primary responsibility was for
Parts I, II, and III in No. 74-6257, Gregg v. Georgia.
The development of the analysis for all five opinions, however,
was a joint effort of the Powell, Stewart, and Stevens chambers.
Justice Stewart's chambers took primary responsibility for
Part IV of Gregg and Part III in the other four cases. Justice
Stevens took primary responsibility for Part I in the four
non-Gregg cases. Substantial editing was done by all
three chambers on all parts of the five opinions.
To: File  Date: July 12, 1976
From: Chris Whitman

CAPITAL CASES -- 1975 TERM

In these cases, our primary responsibility was for Parts I, II, and III in No. 74-6257, *Gregg v. Georgia*. The development of the analysis for all five opinions, however, was a joint effort of the Powell, Stewart, and Stevens chambers. Justice Stewart's chambers took primary responsibility for Part IV of *Gregg* and Part III in the other four cases. Justice Stevens took primary responsibility for Part I in the four non-*Gregg* cases. Substantial editing was done by all three chambers on all parts of the five opinions.
IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976

No. 74-6257

TROY LEON GREGG,
Petitioner,
v.
STATE OF GEORGIA,
Respondent.

No. 75-5706

CHARLES WILLIAM PROFFITT,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

No. 75-5394

JERRY LANE JUREK,
Petitioner,
v.
STATE OF TEXAS,
Respondent.

APPLICATION FOR A STAY OF ISSUANCE OF MANDATE
PENDING CONSIDERATION OF PETITIONERS' CONSOLIDATED PETITION FOR REHEARING
To the Honorable Lewis F. Powell, Jr., Associate Justice of the United States and Circuit Justice for the Fifth Circuit:

Petitioners Troy Leon Gregg, Charles William Proffitt and Jerry Lane Jurek, pray that an order be entered pursuant to Rule 59(2) staying the issuance of mandate pending consideration and disposition of the attached petition for rehearing, filed this day.

1. On July 2, 1976, this Court affirmed petitioners' death sentences, ruling that capital punishment for murder was not per se violative of the Eighth Amendment and that the procedures under which petitioners were condemned met the constitutional requirements for capital sentencing recognized in the five capital punishment decisions announced that day, Gregg v. Georgia, 44 U.S.L.W. 5230; Proffitt v. Florida, 44 U.S.L.W. 5256; Jurek v. Texas, 44 U.S.L.W. 5262; Woodson v. North Carolina, 44 U.S.L.W. 5267; and Roberts v. Louisiana, 44 U.S.L.W. 5281.

2. Petitioners are applying for rehearing only upon narrow grounds challenging specific features of the Georgia, Florida and Texas capital-sentencing systems and their application upon the present records in the new light of the Court's July 2 opinions. The conformity of the complex state statutes involved with the standards for constitutional imposition of death sentences announced by the Court on July 2, was, by necessity, unexamined in the briefing and argument of petitioners' cases. Moreover, the expedited schedule upon which these five wide-ranging capital-punishment cases were considered precludes assurance that specific issues determinative of the validity of petitioners' death sentences in particular were presented by counsel in a manner fully consistent with the high
standard of review which this Court demands when life is at
stake. See, e.g., Reid v. Covert, 354 U.S. 1, 77 (1957) (con-
curring opinion of Justice Harlan); Williams v. Georgia, 349
U.S. 375, 391 (1955); Stein v. New York, 346 U.S. 156, 196
(1953); Andres v. United States, 333 U.S. 740, 752 (1948).

3. Petitioners are incarcerated, and their execution
has been stayed pending the final decision of this Court.*
Delay in putting them to death while the Court considers their
petition for rehearing will therefore cause the States no pre-
judice, whereas their improvident execution would be irre-
parable.

WHEREFORE, petitioners respectfully pray that the mandate
in these cases be stayed pending consideration of their
petition for rehearing.

Respectfully submitted,

G. Hughel Harrison
Post Office Box 88
Lawrenceville, Georgia 30245

Attorney for Petitioner Gregg

Clinton A. Curtis
Jack O. Johnson
Dennis P. Maloney
Steven P. Denman
Office of the Public Defender
Hall of Justice Annex
Bartow, Florida 33830

Attorneys for Petitioner Proffitt
[Names of counsel continue on
following page]

* Mr. Justice Powell has entered an order staying execution
of petitioner Proffitt and petitioner Jurek "pending
issuance of the mandate of this Court." The Supreme Court
of Georgia is holding remittitur in petitioner Gregg's
case pending this Court's final decision.
Emmett T. Summers, III
Post Office Box 784
Cuero, Texas 77954

George I. Middaugh
Post Office Box 228
Cuero, Texas 77954

Jack Greenberg
James M. Nabrit, III
David E. Kendall
Peggy C. Davis
10 Columbus Circle
New York, New York 10019

Anthony G. Amsterdam
Stanford University Law School
Stanford, California 94305

Attorneys for Petitioner Jurek
July 19, 1976

MEMORANDUM FOR MR. JUSTICE POWELL

Subject: Gregg v. Georgia
       Proffitt v. Florida
       Jurek v. Texas
       (Application for stay pending petition for rehearing)
       State/Criminal

CAPITAL CASE

Petrs, in this single application, seek a stay of the Court's mandates pending consideration and disposition of a petition for rehearing which has been filed with the application. Petrs rehearing petition argues that the state statutes at issue in the cases do not conform with the standards announced by the Court. Petrs note that a comparison could not be made earlier. They also note the expedited briefing schedule.

The first of the mandates is to issue July 27.

COMMENT: A procedural question is presented. Although the three cases originated from CA 5, the usual practice regarding applications for stay pending petitions for rehearing in argued cases is that the Justice authorizing the majority opinion takes action. The opinions here, of course, were a joint venture.

In accordance with your instructions Friday, I have notified the Chambers of Justices Stewart and Stevens and provided the Chambers copies of the application and rehearing petition. I was unable to contact the Justices, however.

Justice Stevens is in Washington and can be reached through his office.

James B. Cinti

*Stay also flowing in other cases*
TO:  Mr. Justice Powell

Application for stay of issuance of mandates pending action on petition for rehearing

Time expires: July 27, 1976 when mandate is due to issue

Extension Requested: pending action on petition for rehearing

Reason: .........................................

July 16, 1976       Frank Lorson
MEMORANDUM FOR MR. JUSTICE POWELL

July 19, 1976

Subject: Gregg v. Georgia
        Proffitt v. Florida
        Jurek v. Texas
        (Application for stay pending petition for rehearing)
        State/Criminal

CAPITAL CASE

Petrs, in this single application, seek a stay of the Court's mandates pending consideration and disposition of a petition for rehearing which has been filed with the application. Petrs rehearing petition argues that the state statutes at issue in the cases do not conform with the standards announced by the Court. Petrs note that a comparison could not be made earlier. They also note the expedited briefing schedule.

The first of the mandates is to issue July 27.

COMMENT: A procedural question is presented. Although the three cases originated from CA 5, the usual practice regarding applications for stay pending petitions for rehearing in argued cases is that the Justice authoring the majority opinion takes action. The opinions here, of course, were a joint venture.

In accordance with your instructions Friday, I have notified the Chambers of Justices Stewart and Stevens and provided the Chambers copies of the application and rehearing petition. I was unable to contact the Justices, however,

Justice Stevens is in Washington and can be reached through his office.

James H. Ginty

JBG/cms
July 19, 1976

MEMORANDUM FOR MR. JUSTICE POWELL

Subject: Smith v. Georgia, A-37 (75-6250) (Suspension of order denying cert pending petition for rehearing State/Criminal CAPITAL CASE

This case adds a dimension to the Gregg, Proffitt, and Jurek application. The Court denied cert in approximately 15 Florida and Georgia cases. The orders denying cert in those cases have issued.

If a stay is granted in Gregg et al., to be consistent, the orders denying cert in the held cases should be suspended. Absent suspension, Florida and Georgia can issue death warrants in the held cases. And, they can do it now since the Court's order is "final."

I wonder whether the Court should trust counsel in the held cases to apply for suspension, or whether an order covering all the cases would be appropriate. I realize the petitions still have their collateral remedies to exhaust and that stays will probably be granted pending such actions, but I would not like to see one fall through the cracks.

James B. Ginty

JBG/cms
Capital Case

Application for Stay of Warden

Telegram to...
Regard stay unless

you think there may be 4 votes to grant
her petition, but

We also consider whether
implementation of the judgment will
result in irreparable
harm.

As to jurisdictional effect,

I think it wise to allow the
process to run its course through
a formal consideration & action
—in essence—Pet. for Rehearing.
This is nearly a perfect way.
A stay of mandate will allow this

Blackmun — Deny

White — absent some substantially ground
would Deny.

Rehearing — Deny.

Brennan — Grant

My view has not changed but:
If 5 justices tell me they will Deny
Pet. for Rehearing, I would request to Grant Stay.
Stewart "could take it either way" - "leaning towards my view." Stewart conceded he had not given consideration to "false expectation." Special session self-defeating.

Of routine - no recitation of consultation, no writing.
Of conversation, no writing.
CJ said not to convene Court.
He will talk to Byron, Harry
and request to let me know.

He wanted to see my program.
Stewart - 4:30  7/21

"Has talked to C.J. - she has decided not to have a special term."

Alternative suggested by P.S.:

1. Ask for Opposition
   (they may say no one will be executed - we could then deny or their representation)

2. Deny but assumption without prejudice to a further motion in event a state indicates an intention to proceed prior to consideration by the Ct. of Ret. for Rehearing

Consider there only if the present plan fails through
Talk with Stuart

Stevens 7/20

Stewart
916-426-3591

Until then

On them will be

Coming to Boteman

Groves will call

Roe stern thru afternoon

Call 9 shall call other justices

We should mandate in stay there's every

Exempt but not thru cut backs.

stay of

mandate

(not

stay of

execution)

Stevens:

Most routine way - Lewis

a circuit justice should act.

Stewart:

I should call other justice

+ receive "after conferring

with the justice,

But both will back me up 100%
In each of these cases the petitioner has filed a petition for rehearing and has requested a stay of the mandate heretofore scheduled to issue on July 27, pending the disposition of the petition for rehearing by the Court. Since the Court is now in recess, the petitions cannot be acted upon until the Court reconvenes. As petitioners correctly point out, their execution would moot the cases before the petitions for rehearing could be acted on by the Court. On the other hand, a stay of the mandates until the petitions for rehearing can be acted on will not prejudice the interests of the respondent states. Accordingly, the issuance of the mandate in each of these cases is hereby stayed until further order of this Court.
In each of these cases the petitioner has filed a petition for rehearing, and has requested a stay of the mandate, hereafter scheduled to issue on July 27, pending the disposition of the petition for rehearing by the Court. Since the Court is now in recess, the petition cannot be acted upon until the Court reconvenes. As petitioners correctly point out, their election would meet the cases before the petitions for rehearing could be acted on by the Court; on the other hand, a stay of the mandates until the petitions for rehearing can be acted on will not prejudice the interests of the respondent states. Accordingly, the issuance of the mandate in each of these cases is hereby stayed until further order of this Court.

7/21/76
first draft
In each of these cases the petitioner has filed a petition for rehearing, and has requested a stay of the mandate heretofore scheduled to issue on July 27, pending the disposition of those petitions for rehearing by the Court. Since the Court is now in recess, the petitions cannot be acted upon by the full Court. As petitioners point out, were the executions in these cases carried out before the petitions for rehearing could be acted on by the Court the harm to petitioners would be irreparable. In addition, the cases would then be moot. On the other hand, granting a stay of the mandates until the petitions for rehearing can be acted on will not prejudice the interests of the respondent states. Accordingly, the issuance of the mandate in each of these cases is hereby stayed until further order of this Court.

The decision to grant this stay is not suggestive of my position on the merits. It reflects, rather, only my belief that in view of the special nature of these cases the petitions for rehearing merit consideration by the full Court when we have reconvened.
In each of these cases the petitioner has filed a petition for rehearing and has requested a stay of the mandate heretofore scheduled to issue on July 27, pending the disposition of these petitions for rehearing by the Court.

Since the Court is now in recess, the petitions cannot be acted upon by the full Court. As petitioners point out, were the executions in these cases carried out before the petition for rehearing could be acted on by the Court, the harm to petitioners would be irreparable. In addition, the cases would then be moot. On the other hand, granting a stay of the mandates until the petitions for rehearing can be acted on will not
prejudice the interests of the respondent states. Accordingly, the issuance of the mandate in each of these cases is hereby stayed until further order of this Court.

The decision to grant this stay is not suggestive of my position on the merits. It reflects, rather, only my belief that in view of the special nature of these cases these petitions for rehearing merit consideration by the full Court when we have reconvened.

7/22/76
ORDER STAYING ISSUANCE OF MANDATE

The petitioners in these cases have filed with the Court a consolidated petition for rehearing, and also have presented to me as Circuit Justice for the Fifth Circuit an application for a stay of the mandate heretofore scheduled to issue in these cases on July 27, the stay to be effective pending the disposition of the consolidated petition for rehearing. Under controlling statutes, such petition cannot be acted upon except by the full Court in regular or special session. If the executions in these cases were carried out before the petition for rehearing could be acted on by the Court, the harm to petitioners obviously would be irreparable. In addition, the cases would then be moot. Nor is there reason to believe that the granting of a stay, until the petition for rehearing can be duly considered, will prejudice the interests of the respondent States. Accordingly, the issuance of the mandate should be, and hereby is, stayed until further order of this Court.

The decision to grant this stay is not suggestive of my position on the merits. It reflects, rather, only my belief that in view of the special nature of these cases the petition for rehearing merits consideration by the full Court when we have reconvened.

Filed, July 22, 1976

[Signature]

[Note: The text contains a handwritten correction that appears to be related to the nature of the cases and the petition for rehearing. The exact nature of the correction is not clear due to handwriting.]
To the Committee:

[Handwritten text that is not legible due to handwriting]

Sincerely,
[Handwritten text that is not legible due to handwriting]
MEMORANDUM FOR MR. JUSTICE POWELL

Subject: Learie Leo Alford v. Florida, A-44 (74-6717)
John A. Spenkelink v. Florida, A-45 (75-5209)
Robert Austin Sullivan v. Florida, A-46 (74-6377)
Clifford Hallman v. Florida, A-47 (74-6168)
(Suspension of orders denying cert.)
State/Criminal
CAPITAL CASES

These are four more of the Florida capital holds in which cert was denied. The orders denying cert have issued.

I understand that some questions have arisen regarding applications for stay of the Court's mandates. I regret not having referred to Rule 59 earlier. The Rule sets out the procedure in these situations:

2. . . mandates shall issue as of course after the expiration of twenty-five days. . . unless the time is shortened or enlarged by an order of the court or of a justice thereof. . . The filing of a petition for rehearing will . . . stay the mandate until disposition of such petition. . . . When, however, a petition for rehearing is . . . filed after the court adjourns, the judgment or mandate of the court will not be stayed unless specifically so ordered by the court or a justice thereof.

The Rule does not direct to whom the application is to be submitted, but accordingly to my experience and as I am informed by the Clerk, the practice in argued cases has been to refer the application to the Justice who wrote the opinion for the Court. [The petitioner is asking that the mandate of this Court be stayed, not of a circuit court.] See also Stern and Gressman at 514. Stern and Gressman further state that "if no opinion was written, the motion should be addressed to the appropriate Circuit Justice." And, the authors further state the applicable standard as being "good cause."
Rule 25 deals with the suspension of orders denying cert:
"The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the court or of a justice thereof." Applications for such suspensions are submitted to the Circuit Justice.

On the merits, the application rely on the petition for rehearing filed in Proffitt v. Florida. In addition, petitioner Hallman argues that the decisions in Woodson and Roberts raise a substantial issue as to the exclusion for cause during the selection of his jury of a venireman with conscientious scruples against capital punishment.

James B. Clinto
MEMORANDUM TO THE CONFERENCE:

Re: Capital Cases

I learned early today that a petition for rehearing and for a stay had been filed in the Georgia, Louisiana and Texas cases in which the convictions were affirmed. Pursuant to our established procedures, the motion for a stay pending the decision of the Court on the petition for rehearing was addressed to Lewis Powell as the Circuit Justice. When I found that no disposition had been made as of today, I called Lewis to inquire as to the status of the matter since we were getting inquiries. He informed me that he and John Stevens had consulted and both of them thought a stay was indicated. At that point, I believe Lewis told me he had not been able to reach Potter in California.

I expressed my view, to which I still adhere, that, analytically, the first step was to decide whether or not the Court would vote to grant rehearing; if a majority were firm in a decision not to grant rehearing, denial of the stay would ordinarily follow as a matter of course. Obviously in a capital case, we would approach the questions with greater caution and sensitivity. A countervailing consideration is the importance of not creating false expectations, which might render these decisions open to a charge by petitioners that our action is inherently "cruel" unless we really intend to grant rehearing.

Later in the afternoon, shortly before preparing this memorandum, Lewis called me to advise that he had reached Potter and that Potter concurred with his view and John's that the stay should be granted.

It seems to me that there are institutional problems in this situation. Obviously, analysis of the Furman case and the five cases
that came down two weeks ago today, will continue to arouse a certain amount of speculation as to possible shifts in individual positions. To grant a stay at this time opens a genuine risk that some will read into it a willingness on the part of the Court to reconsider the three cases in which convictions and judgments were affirmed.

In talking to Lewis, I expressed my tentative view that I considered the matter of such gravity and such possible institutional importance that a special session might be called for. To this end, I put in calls for Potter and Byron (as July 6 authors of the two plurality opinions) to determine whether, if necessary, they would be able to return to Washington for a hearing on this. Meanwhile, Bill Rehnquist called and I reported to him. Time has not allowed me to reach the others up to now. The problem of calling a special session is one which I do not, in any sense, relish and one of the negative aspects is that it would focus undue attention on the petition for rehearing and probably lead to speculation as to whether the Court was in the process of changing its decision from the holdings two weeks ago today. As soon as copies of the petition are available, each reader will be able to judge whether any new matter is presented to warrant rehearing. On that score, I am prepared, for the moment, to rely on Lewis’ statement that the petition for rehearing presented no new matter or any matter not considered and resolved by the Court on July 6. No papers have yet reached my office and, of course, I would not be willing to take any position finally until I have read the petition.

Given Lewis’ view that a stay be entered, it seems to me that we should now each examine the petition for rehearing and decide, either individually or if necessary around the table, whether rehearing should be granted. If the petition has no merit, of course, a stay should not be granted under well established standards. At least I have always thought that to be the approach and I am not impressed with the idea that we should grant a stay pending consideration of a non-meritorious petition for rehearing. As soon as I have returns on my calls to Potter in California and Byron in Colorado, I will have an opportunity to explore their availability for a special sitting should that be indicated.

I will try to reach Bill Brennan and Thurgood as soon as possible.

P.S. Lewis advises me he will be calling all members of the Court tomorrow and this may make it unnecessary to pursue calls to you.
Nos. 75-5706 - Proffitt v. Florida; 75-5394 - Jurek v. Texas; 74-6257 - Gregg v. Georgia

In each of these cases the petitioner has filed a petition for rehearing and has requested a stay of execution pending the disposition of the petition for rehearing by the Court. Since the Court is now in recess, the petitions cannot be acted upon until the Court reconvenes. As petitioners correctly point out, their execution would moot the cases before the petitions for rehearing could be acted on by the Court. On the other hand, a stay of execution until the petitions can be acted on will not prejudice the interest of the respondent States. Accordingly, the execution in each of these cases is hereby stayed until further order of this Court.

*probable success on the merits* (?)}
Order Staying Issuance of Mandate

The petitioners in these cases have filed with the Court a consolidated petition for rehearing, and also have presented to me as Circuit Justice for the Fifth Circuit an application for the stay of the mandate heretofore scheduled to issue on July 27, the stay to be effective pending the disposition of the consolidated petition for rehearing. Under controlling statutes, such petition cannot be acted upon except by the full Court in regular or special session. If the executions in these cases were carried out before the petition for rehearing could be acted on by the Court, the harm to petitioners obviously would be irreparable. In addition, the cases would then be moot. Nor is there reason to believe that the granting of a stay, until the petition for rehearing can be duly considered, will prejudice the interests of the respondent States. In these circumstances, I conclude that the issuance of the mandate in each of these cases should be and is hereby is, stayed until further order of this Court.

The decision to grant this stay is not suggestive of my position on the merits.
1. Circuit Justice

2. No other Justice wishes to write.

Chief:  

\[
\begin{align*}
&\text{will say} \\
&\text{nothing} \\
&\text{or} \\
&\text{no session} \\
&\text{specifically if}
\end{align*}
\]
Nos. 75-576 Proffitt v. Florida; 75-5394 Jurek v. Texas,
74-6257 Gregg v. Georgia

In each of these cases the petitioner has filed a petition for rehearing and has requested a stay of the mandate heretofore scheduled to issue on July 27 pending the disposition of those petitions for rehearing by the Court. Since the Court is now in recess, the petitions cannot be acted upon by the full Court. As petitioners point out, were the executions in these cases carried out before the petitions for rehearing could be acted on by the Court the harm to petitioners would be irreparable. In addition, the cases would then be moot. On the other hand, granting a stay of the mandates until the petitions for rehearing can be acted on will not prejudice the interests of the respondent States. Accordingly, the issuance of the mandate in each of these cases is hereby stayed until further order of this Court.

The decision to grant this stay is not suggestive of my position on the merits. It reflects, rather, only my belief that in view of the special nature of these cases these petitions for rehearing merit consideration by the full Court when we have reconvened.
Nos. 75-3706 Proffitt v. Florida; 75-5394 Jurek v. Texas,
74-6257 Gregg v. Georgia

In each of these cases the petitioner has filed a petition for rehearing and has requested a stay of the mandate—heretofore scheduled to issue on July 27—pending the disposition of those petitions for rehearing by the Court. Since the Court is now in recess, the petitions cannot be acted upon by the full Court. As petitioners point out, were the executions in these cases carried out before the petitions for rehearing could be acted on by the Court the harm to petitioners would be irreparable. In addition, the cases would then be moot. On the other hand, granting a stay of the mandates until the petitions for rehearing can be acted on will not prejudice the interests of the respondent States. Accordingly, the issuance of the mandate in each of these cases is hereby stayed until further order of this Court.

The decision to grant this stay is not suggestive of my position on the merits. It reflects, rather, only my belief that in view of the special nature of these cases these petitions for rehearing merit consideration by the full Court when we have reconvened.
Nos. 75-5706 Proffitt v. Florida; 75-5394 Jurek v. Texas, 74-6257 Gregg v. Georgia

In each of these cases the petitioner has filed a petition for rehearing and has requested a stay of mandate pending the disposition of those petitions for rehearing by the Court. Since the Court is now in recess, the petitions cannot be acted upon by the full Court. As petitioners point out, were the executions in these cases carried out before the petitions for rehearing could be acted on by the Court the harm to petitioners would be irreparable. In addition, the cases would then be moot. On the other hand, granting a stay of the mandate until the petitions can be acted on will not prejudice the interests of the respondent States. Accordingly, the mandate in each of these cases is hereby stayed until further order of this Court. [See, e.g., Goldfarb v. Virginia Board, No. 74-70, Order of July 14, 1975, staying issuance of judgment pending disposition of petition for rehearing. (Burger, C.J.).]

The decision to grant this stay is not suggestive of my position on the merits. It reflects, rather, only my belief that in view of the special nature of these cases these petitions for rehearing merit consideration by the full Court when we have reconvened.
Re: Capital Cases

Dear Lewis:

This will supplement our telephone conversation of July 21. I have now carefully reviewed the Consolidated Rehearing Petition and the Application for a Stay of Issuance of Mandate. There is nothing here that would prompt me to vote for rehearing. I suppose you are not asking for a formal vote from me, but if you were I would vote to deny the Application for a Stay.

Sincerely,

[Signature]

Mr. Justice Powell

cc: The Conference
July 22, 1976

CAPITAL CASES

MEMORANDUM TO THE CONFERENCE:

I enclose herewith a copy of my Order of this date, issued as Circuit Justice, granting a Stay of Mandate in the above cases.

My thanks to each of you for your advice and assistance.

L.F.P., Jr.

LFP/88