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Brockington v. Rhodes

396 U.S. 41 (1969)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

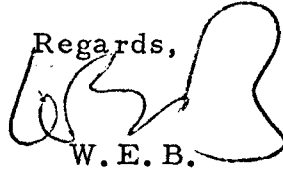
November 19, 1969

Re: No. 31 - Brockington v. Rhodes

Dear Potter:

I concur in your per curiam.

Regards,



W. E. B.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN M. HARLAN

November 4, 1969

Re: No. 31 - Brockington v. Rhodes

Dear Potter:

I agree entirely with the result you reach in this case, and with all of the opinion, except that I have trouble with two minor matters.

First, the considerations recited in the last paragraph on page 3 appear to relate only to the difficulty of obtaining mandamus relief, rather than to the impossibility at this date of ordering Brockington placed on the November 1968 ballot. While those considerations might provide the basis for an adequate-state-ground holding, would it not be better to delete all but the first sentence of that paragraph, in order to make clear our holding on the mootness ground?

Second, footnote 3 appears to suggest that appellant's having voted in the Democratic primary was possibly the ground for the trial court's denial of mandamus. However, I understand the appellees to concede that this would not be a proper ground for denial under state law, and the trial judge did not expressly rely on that ground. I believe that deletion of this footnote might eliminate a possible source of confusion without undermining the holding in the case.

Sincerely,


J. M. H.

Mr. Justice Stewart

CC: The Conference

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November 10, 1969

Re: No. 31 - Brockington v. Rhodes

Dear Potter:

This is simply to confirm my earlier verbal communication to you of my agreement with your opinion as recirculated on November 5, 1968.

Sincerely,

J.M.M.

Mr. Justice Stewart



U.S. SUPREME COURT

NOV 10 1969

November 4, 1889

RE: No. 31 - Brockington v. Rhodes

Dear Potter:

I voted the other way at conference

but you've convinced me.

Sincerely,

W. F. B. W.

W. F. B. W.
of the Conference

James

SUPREME COURT OF THE UNITED STATES

No. 31.—OCTOBER TERM, 1969

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: Stewart, J.
OCT 31 1969

Paul M. Brockington, Appellant,
v.
James A. Rhodes, Governor of Ohio, et al.

On Appeal from the Supreme Court of Ohio.

Circulated: _____

Recirculated: _____

[October —, 1969]

PER CURIAM.

The appellant sought to run in the November 1968 election as an independent candidate for the United States House of Representatives from the Twenty-First Congressional District of Ohio. His nominating petition bore the signatures of 899 voters in the congressional district, a little over 1% of those in the district who had voted in the gubernatorial contest at the last election. The Board of Elections ruled that the appellant's petition was insufficient to put his name on the November ballot, because it did not contain the signatures of 7% of the qualified voters, as Ohio law then required.¹ The appellant petitioned the Court of Common Pleas for a writ of mandamus, challenging the 7% requirement as "unreasonably high and excessive, . . . disproportionate when compared to the 100 signatures required for party candidates,² . . . arbitrary and capricious, . . . [and] an

¹ Ohio Rev. Code Ann. § 3513.257 (1968 Supp.) provided in pertinent part:

"The nominating petition of an independent candidate for the office of . . . district representative to congress, shall be signed by not less than seven per cent of the number of electors who voted for governor at the next preceding regular state election for the office of governor in the district."

² Under Ohio law a candidate for the nomination of a political party to the office of United States Representative must, in order to enter the *party primary*, obtain from the party membership

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To: The Chief Justice
Mr. Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
~~Mr. Justice Fortas~~
Mr. Justice Marshall

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SUPREME COURT OF THE UNITED STATES

No. 31.—OCTOBER TERM, 1969

From: Stewart, J.

Paul M. Brockington, Appellant,
v.
James A. Rhodes, Governor of
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Circulated: _____
On Appeal from the
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Re-circulated: **NOV 5 1969**

[October —, 1969]

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² Under Ohio law a candidate for the nomination of a political party to the office of United States Representative must, in order to enter the *party primary*, obtain from the party membership

November 6, 1969

Re: No. 31 - Brockington v. Rhodes

Dear Potter:

Please join me.

Sincerely,

S.R.H.

Mr. Justice Stewart

cc: The Conference

