The Burger Court Opinion Writing Database

Hall v. Beals

396 U.S. 45 (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

October 30, 1969

Re: No. 39 - Hall v. Beals

Dear Potter:

I join in your excellent per curiam in the above.

Regards,

W.E.B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

October 31, 1969

Dear Potter:

Re: No. 39- Richard Hall, et ux. v. Harriet Beals, Clerk, etc. - Per Curiam

I want to agree to your Per Curiam but would like for you to eliminate the citation to United Public Workers v. Mitchell. I dissented in that case and do not think it has ever been cited here with full approval since.

Sincerely,

H. L. B.

Mr. Justice Stewart

cc: Members of the Conference

October 29, 1969

Re: No. 39 - Hall v. Beals

Dear Potter:

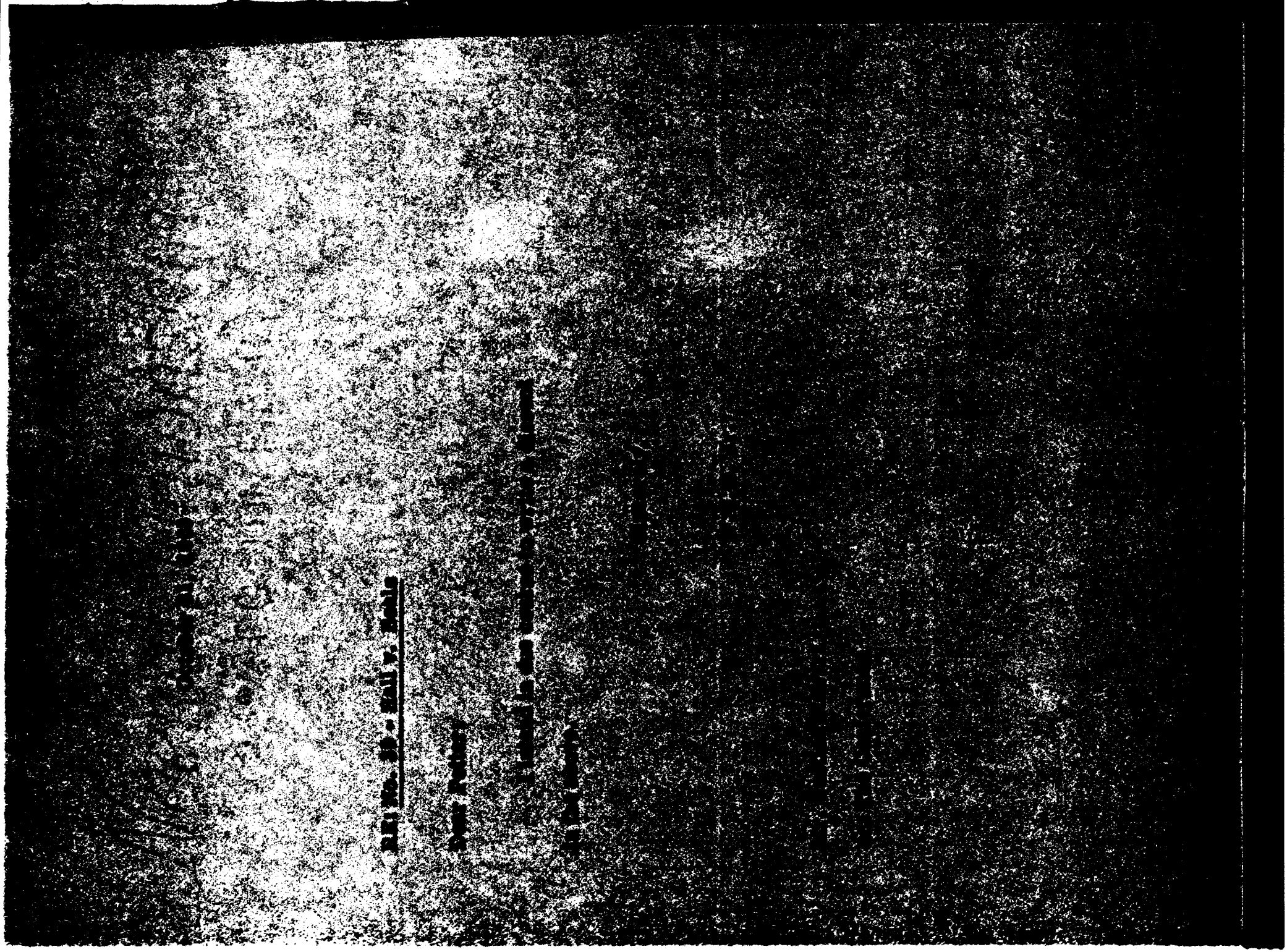
I am glad to join your per curiam.

Sincerely,

T. M. M.

Mr. Justice Stewart

cc: The Conference



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SUPREME COURT OF THE UNITED STATES

No. 39.—October Term, 1969.

Richard Hall et ux., Appellants, *v.* Harriet Beals, Clerk and Recorder of El Paso County, et al.	On Appeal From the United States District Court for the District of Colorado.

[November —, 1969]

Mr. Justice Brennan, dissenting.

I dissent from the direction to dismiss this case as moot. *Moore* v. *Ogilvie,* 394 U. S. 814 (1969), involved a challenge to the constitutionality of a statute which had been invoked to deny the appellants a place on the 1968 ballot. We were not persuaded in that case by the argument that the appeal should be dismissed since the 1968 election had been held and there was no possibility of granting any relief to appellants. Even though appellants did not allege they would seek a place on the ballot at future elections, we held that the constitutional question was one "capable of repetition, yet evading review," *So. Pacific T. Co.* v. *ICC,* 219 U. S. 498, 515, and therefore that mootness would not prevent our decision of its merits. In my view the present case is an even stronger one for application of that principle. At stake here is the fundamental right to vote—the right "preservative of other basic civil and political rights . . . ." *Reynolds* v. *Sims,* 377 U. S. 533, 562 (1964); see also *Harper* v. *Virginia Board of Elections,* 383 U. S. 663, 670 (1966), and the constitutional challenge to the amended Colorado statute is peculiarly evasive of review. This is because ordinarily a person's standing to raise that question would not mature unless he had become a Colorado resident within two months prior to

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[October —, 1969.]

Per Curiam.

The appellants moved from California to Colorado in June 1968. They sought to register to vote in the ensuing November presidential election, but were refused permission because they would not on election day have satisfied the six-month residency requirement that Colorado then imposed for eligibility to vote in such an election.[1] The appellants then commenced the present

[1] Colo. Rev. Stat. Ann. § 49–24–1 (1963) provided:

"*Eligibility of new resident to vote.*—Any citizen of the United States who shall have attained the age of twenty-one years, shall have resided in this state not less than six months next preceding the election at which he offers to vote, in the county or city and county not less than ninety days, and in the precinct not less than fifteen days, and shall have been duly registered as required by the provisions of this article, shall have the right to vote as a new resident for presidential and vice-presidential electors."

The appellant Richard Hall went to the office of the appellee Beals on or about August 1, 1968, to request that his wife and he be allowed to vote in the presidential election. Upon denial of his application, he wrote to the Colorado Secretary of State to ask that his wife and he be allowed to vote despite the six-month residency requirement. On September 6 the State Election Office informed the appellants they would not be permitted to vote.

Apart from the special provision relating to the eligibility of new residents to vote in a presidential election, Colorado requires that persons desiring to vote in general, primary, and special elections must have resided in the State for one year. Colo. Rev. Stat. Ann. § 49–3–1 (1)(c) (1963).

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cc: Conference

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Mr. Justice Marshall, dissenting.

I agree with my Brother Brennan that this case is not moot. It involves one of those problems "capable of repetition, yet evading review," which calls for relaxation of traditional concepts of mootness so that appellate review of important constitutional decisions not be permanently frustrated. *Moore* v. *Ogilvie,* 394 U. S. 814, 816 (1969).

Indeed one of the unfortunate consequences of a rigid view of mootness in cases such as this is that the state and lower federal courts tend to be left as the courts of last resort for challenges to relatively short state residency requirements. Those courts may, as the District Court apparently did in this case, consider themselves bound by this Court's summary *per curiam* affirmance in *Drueding* v. *Devlin,* 380 U. S. 125 (1965), affirming 234 F. Supp. 721 (D. C. D. Md., 1964), which upheld a one-year residency requirement for voting in a presidential election. It seems to me clear that *Drueding* is not good law today. The difficulties of achieving review in this Court in cases of this sort, combined with this misleading precedent, lead me to indicate briefly my view of the merits of the case before us.

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