

11-11-1969

## 11-04-1969 Correspondence from Harlan to Stewart

John Harlan  
*US Supreme Court Justice*

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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

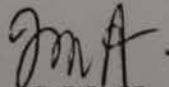
Dear Potter:

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