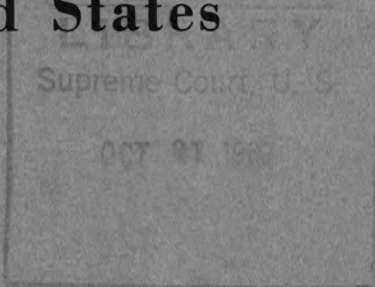


Supreme Court of the United States

OCTOBER TERM, 1969



In the Matter of:

-----X
 RICHARD HALL ET UX,^o
 Appellants,
 vs.
 HARRIET BEALS, CLERK AND
 RECORDER OF EL PASO COUNTY
 ET AL,^o
 Appellees.
 -----X

Docket No. 39

RECEIVED
 SUPREME COURT, U.S.
 MARSHALL'S OFFICE
 OCT 21 2 58 PM '69

Duplication or copying of this transcript by photographic, electrostatic or other facsimile means is prohibited under the order form agreement.

Place Washington, D. C.
 Date October 14, 1969

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.
 Washington, D. C.

C O N T E N T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ORAL ARGUMENT OF:

PAGE

Richard Hall, Esquire
on behalf of appellant (pro se)

2

Bernard R. Baker, Esquire
on behalf of Appellee

23

REBUTTAL ARGUMENT OF:

Richard Hall, Esquire
on behalf of Appellant (pro se)

43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1969

RICHARD HALL ET UX.,)	
)	
Appellants)	
)	No. 39
vs)	
)	
HARRIET BEALS, CLERK AND)	
RECORDER OF EL PASO COUNTY,)	
ET AL,)	
)	
Appellees)	

Washington, D. C.
Tuesday, October 14, 1969

The above-entitled matter came on for argument at
11:05 a.m.

BEFORE:

WARREN E. BURGER, Chief Justice
 HUGO L. BLACK, Associate Justice
 WILLIAM O. DOUGLAS, Associate Justice
 JOHN M. HARLAN, Associate Justice
 WILLIAM J. BRENNAN, JR., Associate Justice
 POTTER STEWART, Associate Justice
 BYRON R. WHITE, Associate Justice
 THURGOOD MARSHALL, Associate Justice

APPEARANCES:

RICHARD HALL
 Colorado Springs, Colorado
 (pro se)

BERNARD R. BAKER, Esq.
 Deputy District Attorney
 El Paso County
 Colorado Springs, Colorado
 On behalf of the Appellees

P R O C E E D I N G S

1
2 CHIEF JUSTICE BURGER: Number 39, Hall against Beals
3 and others.

4 Mr. Hall?

5 MR. HALL: Yes, sir.

6 CHIEF JUSTICE BURGER: Proceed whenever you are
7 ready.

8 MR. HALL: Mr. Chief Justice, may it please the
9 Court, I am Richard Hall, Appellant pro se in this case. I
10 appear this morning to appeal from a decision of the United
11 States District Court for the District of Colorado, which
12 decision upheld the constitutionality of a Colorado law which
13 requires that a voter be a resident of the State of Colorado
14 for six months before being allowed to vote for President and
15 Vice President.

16 I must state to the Court that the law has, since
17 been amended by Colorado Legislature, and it now requires two
18 months residence.

19 Q But your position is that two months is just as
20 bad as six months or one year?

21 A Yes, sir.

22 The facts in this case are --

23 Q

24
25 A I would -- but at the time I was disenfranchised

1 and I am now the representative of the class of all voters
2 who are disenfranchised by similar requirements.

3 Q Well, we both know there is ^a mootness question
4 in this case.

5 A YES, sir.

6 Q You can be representative of a class and not
7 be a member of that class?

8 A I was a member of the class at the time of the
9 -- of my case, Your Honor. I was disenfranchised and was
10 prevented from voting.

11 Q By a residence requirement, it wouldn't matter
12 as to the class, what the length of the residence requirement
13 was. Is that your position?

14 A Residence requirements vary.

15 Q In other words, at the time you brought the
16 lawsuit.

17 A It was six months and I was disenfranchised.

18 Q You couldn't appeal for anyone except a
19 resident of Colorado, I take it?

20 A Well, Your Honor, I believe the problem is
21 similar in all states.

22 Q I know it is a nationwide problem. But as a
23 class, actually, could you appear for a class of residents of
24 New York, for example?

25 A No, sir; my class is the class in Colorado.

1 Q So, at that time it was six months. Now it is
2 two months.

3 A That is correct.

4 Q Did you represent, at the time you brought the
5 action, anyone for less than two months?

6 A I would have represented everyone, from six
7 months on down, which would have included people who have
8 been there two months.

9 Q How far down do you go?

10 A Well, it is my contention, Your Honor, that
11 no period longer than the registration period should be re-
12 quired by a state. Colorado allows people to appear and
13 register up until the Friday before the election. They
14 evidently feel that that's the amount of time they need to
15 process the applications.

16 Q Did you say your class is limited to people in
17 Colorado?

18 A I beg your pardon, Your Honor?

19 Q Did you say your class is limited to people in
20 Colorado?

21 A Well, I think as a technical matter in the
22 drafting of my complaint that the class I attempted to
23 represent.

24 Q Well, your class rather be people who at the
25 present time are in Colorado, but who weren't there when you

1 brought the case? Because all those who were there when you
2 brought the case are now franchised.

3 A That's correct, Your Honor, and of course, the
4 question won't come up again.

5 Q You have a technical problem.

6 A YES, sir, the question won't come up again
7 until 1972 and maybe people who are in Colorado now will not
8 be there then or maybe people who will move into Colorado --

9 Q What would be the status if you leave Colorado
10 next week and then come back two years from now. You wouldn't
11 be allowed to vote, as it now stands; is that right?

12 A If I acquired residence in another state and
13 then moved back into Colorado less than two months before the
14 national election, no, I would not be allowed to vote.

15 Q Would that not give you status?

16 A I would feel it does, Your Honor.

17 Q I was worried about you giving up so quick.

18 A Well, Your Honor, I do think -- first, I do
19 face the problem, as pointed out in the limitless briefs, that
20 I may move again in the future. I now have the situation of the
21 taxpayer, Cipriano v. Houma. I have an interest in other
22 people being allowed to vote. Their ability to register and
23 become a qualified elector, affects their right to join a
24 political party and other items. And I do believe that the
25 class that I represent is, first, nationwide; secondly, it

1 affects people who will be affected -- we don't know who they
2 are, but we know as a statistical matter, that they certainly
3 will exist in 1972. The question every one of those voters
4 will face will be the same.

5 Q Mr. Hall, is one of the purposes of residence
6 requirements the integrity of the elective process?

7 A Yes, sir; I believe that is one of the
8 purposes.

9 Q If you could vote in Colorado by arriving there
10 on Friday in time to register, with no other requirement, this
11 would mean that you can vote by absentee ballot in New York
12 and move to Colorado and vote in Colorado again; isn't that
13 possible?

14 A Well, if one attempted that he would be in
15 violation of the law, because when you apply in Colorado --

16 Q I suppose any time anybody ever votes twice,
17 he is violating some law.

18 A Yes, sir. The question is whether the waiting
19 period serves that purpose. Colorado has determined that you
20 don't have to apply for the ballot until the Friday before the
21 election, so they don't evidently feel that they need six
22 months or two months in which to process the application or
23 perform any checks. Nor does Colorado attempt to contact the
24 old state from which one moves. They make no attempt to con-
25 tact California, in my case. So, I don't believe, Your Honor,

1 that they use the waiting period for the purpose you ascribe
2 to it.

3 Q Well, how about other states?

4 A Some states, Your Honor, do have the new
5 resident fill out what amounts to a postcard --

6 Q You are asking us to decide on the basis of
7 the Constitution that anything as long as two months is invalid,
8 which has some impact beyond Colorado. Colorado may think it
9 only needs three days, but everybody else may think they need
10 two months.

11 A Well, the question is whether the waiting
12 period serves any state purpose.

13 Q Well, you admit the need for some waiting
14 period? I think I read your brief that way.

15 A Yes, Your Honor, I think --

16 Q Why?

17 A I think the question of the purity of the
18 election is a legitimate state concern. The question is how
19 long a period the state needs to serve that concern.

20 Q Any state?

21 A Well, I think the question is similar for all
22 the states; yes, sir.

23 In particular, Colorado. Colorado, first, does not
24 make the attempt to contact the old state and they feel that
25 three days is sufficient time for their purposes, and I would

1 suggest to the Court that that might be an appropriate period.

2 Q You came from California?

3 A That is correct, Your Honor.

4 Q What's the rule in California, do you know?

5 A Fifty-four days, Your Honor.

6 Q Do you think that is unreasonable?

7 A Well, the State of New York as amicus for the
8 State of Colorado, say that they have more people. Maybe the
9 state could show that they have added problems because of an
10 increased population --

11 Q You are suggesting, then, that we might hold
12 this waiting period unconstitutional in Colorado, but wholly
13 constitutional in California and New York?

14 A The particular states would have to have a
15 legitimate state interest to support their particular re-
16 quirement. New York claims in its brief that they have added
17 problems that Colorado evidently feels it does not have.

18 So we would contend, Your Honor --

19 Q As I understand it, you said there is some
20 sort of a burden, and I gather you think a rather heavy burden,
21 on a state to show a need for this sort of a residence require-
22 ment?

23 A Yes, sir.

24 Q Why, in view of Article II, Section I and of
25 the 12th Amendment of the United States Constitution, which

1 effectively provides that this is up to each state legislature.
2 Why do you think the state has to --

3 A Well, Your Honor, I think that Article II,
4 Section 1 provides that the state can choose the manner in
5 which Presidential electors are appointed, but once they
6 decide that it is to be done by popular election, I would
7 suggest that Harper versus Virginia Board of Elections case,
8 for example, which says that once the franchise is granted the
9 electorate, you can't have classifications that invidiously
10 discriminate and I think this case affects both the right to
11 vote and the right to travel, both of which have been held by
12 Court very recently to be among the most fundamental and
13 precious rights we have.

14 Q The right of free interstate travel, of course,
15 is a constitutional right, as has been held repeatedly and very
16 recently by this Court. I know, that so far as I do know, that
17 it has never been held that the right to vote is a constitutional
18 right, a Federal Constitutional right. In fact, there are
19 statements that it is not.

20 A Well, I believe those statements come from
21 cases that were decided in an earlier day, Your Honor.

22 Q Yes; under the same constitution.

23 A But, I believe the recent cases such as:
24 Kramer and Williams versus Rhodes and others suggest that the
25 right to vote is a fundamental right that the court protects

1 with the most rigid scrutiny and applies a compelling interest
2 test. The question is whether the waiting period portion of
3 the residence requirement serves a compelling state interest.
4 And my question is what interest it serves at all. I don't
5 it serves, as applied in the State of Colorado, any administra-
6 tive purpose.

7 Furthermore, the traditional justifications that
8 one should be a member of the community in which he seeks to
9 vote and that he be familiar with the candidates and issues,
10 I don't believe apply in the particular context of a Presiden-
11 tial election, because the would-be voter is a member of the
12 community which would contend is a national one.

13 The President and Vice President are the only people
14 elected by the nation as a whole; that govern the nation as a
15 whole.

16 Q Well, are they elected by the people as a
17 whole under the Constitution, as it now stands?

18 A Well, they are elected at the present time,
19 under the Electoral College.

20 Q That's not the people as a whole; that's what
21 the great debate is about.

22 A That's correct, Your Honor, but I believe that
23 the popular view is that they are elected by the people. It
24 is expression of the national will --

25 Q Well, the popular view may be one thing, but

1 the fact is another, as you know.

2 A Well, that may be, Your Honor, but in the
3 Williams versus Rhodes case, for example, the state attempted
4 to rely on Article II, Section 1 and this Court said that
5 Article II, Section 1 does not allow a state to set up require-
6 ments that violate the Equal Protection Clause. So, the
7 question then turns, whether it does violate the Equal
8 Protection Clause. My contention, under the compelling in-
9 terest test which has been developed by this court in the right
10 to vote cases, that is does not; it does not serve any state
11 purpose in the State of Colorado.

12 Q The two months' restriction doesn't? You'd
13 say some kind of a restriction would serve a compelling state
14 interest.

15 A The state of Colorado, Your Honor, has said
16 you can register up until the Friday before the election.

17 Q Would you say they can have the three-day period?

18 A Yes, sir, if they feel that serves a compelling
19 state interest. They apparently feel it does, Your Honor --
20 I feel that that would be sufficiently short. I would be in
21 favor of having as many people vote as possible, Your Honor.

22 Q But, if they only had a three-day waiting
23 period, would you attack that?

24 A I doubt it, Your Honor.

25 Q So that would serve a compelling state interest?

1 A Arguably(?) Your Honor, and I don't -- and I
2 think that there are no special voting lists to be made up or
3 polling places to be established. In the State of Colorado
4 you go to vote at the County Clerk's office, not a special
5 machine.

6 Q Would you have a different view if this was
7 for a state office; this election was for a state office?

8 A Yes, sir, I would.

9 Q Why? What compelling state interest would it
10 serve?

11 A I think there it's a question of insuring that
12 the voter is familiar with the state candidate and state issues
13 so that he can vote intelligently.

14 Q Don't you think that's relevant in voting for
15 electors?

16 A No, sir; I think --

17 Q You don't think electors should really under-
18 stand the problems of the state?

19 A The electors, perhaps, Your Honor, but the
20 people who vote for the electors vote on the basis of national
21 issues, for a national candidate. The information they learn
22 about the candidates comes FROM national sources.

23 Q They obviously ought to know the difference
24 between presidential candidates in terms of say, their views on
25 reclamation of water or natural resources?

1 A I feel the dominant issues in, for example,
2 last year's campaign, Your Honor, were national in scope. I
3 think critical issues were the law and civil rights, inflation
4 and crime. I think those are national problems. I don't
5 believe that the effect of state issues plays that large a
6 part in whether it's national --

7 Q On whether the President carries a state?

8 A I don't believe so, Your Honor. I think
9 the majority of the voters vote on national issues. They may
10 have a different feel about some of those national issues, but
11 I think that the paramount issues are national in scope, so I
12 think a voter is able to cast an intelligent ballot. And I
13 think that meets the interest of the state on that particular
14 question. And that's why it's different than a state or local
15 election.

16 Q Well, that is contrary, is it not, both to the
17 original theory of the Constitution, of Article II, Section 1,
18 as well, I suppose, to a statistical fact; even in modern con-
19 temporary elections, whole areas will go -- a series of states
20 will be for one candidate and other areas for another and you
21 really cannot conceive that a person who is familiar with the
22 particular problems of the western slope of the Rock Mountains
23 in Colorado, might be quite differently attuned to a national
24 election, based upon the candidate's views of the issues that my
25 brother has mentioned: reclamation, conservation, water. Then

1 that same person might be, if he lived in the Lower East Side
2 of New York City and was familiar with the problems of that
3 kind of an urban society.

4 A I believe that the problems you mentioned are
5 local instances of other national problems. The question of
6 conservation and water usage is a national one. I think the
7 question of gun control, for example, might be looked at one
8 way in the western states, as opposed to the eastern states,
9 but nevertheless, it is a national problem. The people in
10 the eastern states are aware of the problem and furthermore,
11 Your Honor, I don't believe that if that is the justification
12 a state wishes to apply, as expressed in Carrington versus
13 Rash, I don't believe the state has the right to prevent
14 people from voting because of the concern as to which way they
15 would vote..

16 Q No, no, no, but one of the justifications
17 asserted here is that a state has an interest and a right in
18 seeing to it that its voters are familiar with local problems
19 and it's your submission, as I understand it, that local
20 problems, the local impact, if you will, of national issues,
21 is of absolutely no relevance, whatever.

22 A I don't claim it's of absolutely no relevance,
23 Your Honor, but I do think that the dominant influence on a
24 voter in a presidential election are national issues. Local
25 issues may have an effect, but I don't believe a controlling

1 effect. I don't believe they have a sufficient effect to meet
2 a compelling state interest.

3 I contend, Your Honor, that the question is whether
4 the residence waiting period serves a legitimate interest, in
5 that it affects both the right to vote and the right to travel
6 and that both of these rights are protected by the compelling
7 interest test.

8 I contend that the residence requirements, particu-
9 larly as applied by the State of Colorado, serves none of these
10 purposes, but it therefore sets up a discrimination between
11 voters that is not supported by any reason, and therefore,
12 would be a violation of the Constitution. This is a problem,
13 I contend, some national significance. Figures have shown
14 recently that disenfranchised voters number into the millions
15 and I would simply point out to the court that two of the last
16 three elections were very, very close, and I would contend
17 first that just the magnitude of the civil liberties problem
18 involved, 5 million voters are disenfranchised, and I would
19 contend for no legitimate reason. But this is a problem that
20 merits correction.

21 The District Court in Colorado, itself, recognized
22 that the situation was, in their words, "unfair and unjust."
23 And I would hope that the problem could be corrected. I feel
24 that the requirement is unconstitutional, both the original
25 six months requirement and as amended down to two months. I

1 don't believe the State of Colorado can say that it needs the
2 two months for any purpose. They do not attempt to use the
3 two months for any purpose. They do not attempt to notify the
4 old state and take the voter off the rolls to prevent double
5 voting. It may be that that would be a good idea, but they
6 don't attempt to do it, so I don't believe they could claim at
7 this time that that is one of the justifications for the law.

8 I don't believe that the case of Drueding versus
9 Devlin, which was affirmed by this Court pro curiam, four
10 years ago on a similar situation, necessitates an affirmance
11 in this case. I believe the law since Drueding has been modi-
12 fied; the compelling interest test has come into play by this
13 Court. The right to travel in the Shapiro versus Thompson
14 case, involving welfare residence requirements --

15 Q When you say that the decision of Drueding
16 doesn't -- against Devlin, doesn't necessitate a decision
17 against you, I suppose you do concede we would have to over-
18 rule Drueding and decide this case in your favor; would we not?

19 A Well, first, Your Honor, the right to travel
20 theory that came up in the Shapiro versus Thompson was not
21 before the Drueding court, so there is a different theory in-
22 volved.

23 Q Yes, we would have to overrule that decision
24 in order to rule in this case in your favor, assuming this case
25 is not moot; is not that correct?

1 A Yes, sir, I believe that is correct. But I
2 believe that a different theory is present here. A different
3 standard of evaluation has come into effect since then. I
4 believe that Article II, Section 1, has been --

5 Q Downgraded.

6 A -- downgraded somewhat since then, so I don't
7 believe there are any obstacles to it. Furthermore, I believe
8 the District Court in *Drueding* failed to analyze the national
9 community doctrine. And of course, the case wasn't argued here;
10 wasn't submitted on briefs, so the Court didn't have an oppor-
11 tunity to consider it as fully as they have here.

12 So, I don't believe that it constitutes the scope of
13 an obstacle that some cases might.

14 Q Well, we would have to overrule it.

15 A Yes, sir.

16 Q For whatever obstacle that might constitute for
17 the various members of this court.

18 A Yes, sir.

19 Nor do I believe, Your Honors, that the question is
20 moot. First, the fact that the election is over, I don't
21 believe makes the case moot, because another presidential
22 election will occur in 1972. As a matter of statistical cer-
23 tainty we know, under the present framework of the laws, that
24 millions of voters will be disenfranchised. This is what the
25 statistics show us.

1 Q Are there any reliable records anywhere on how
2 many people who moved and sought and could not vote in the
3 new place of residence -- reliable statistics?

4 A Well, I have referred in my brief, Your Honor,
5 to statistics introduced by Senator Kennedy in support of a
6 bill he introduced in Congress, which he had prepared by the
7 Bureau of the Census and those figures are set forth on a
8 particular page in the Congressional Record.

9 Q I know; those are people who move. That
10 doesn't go to the -- that's an objective factor. That doesn't
11 go to the subjective factor of how many of them applied for
12 and were denied the permission to vote.

13 A No, sir; I don't believe any figures would show
14 how many people actually applied. It may be that they made
15 private inquiries, found out what the rule was, and didn't
16 bother to apply. But the rule was there.

17 Qq But the fact of millions of people being dis-
18 enfranchised, we don't know whether they were disenfranchised
19 or whether they just didn't care one way or the other.

20 A Well, we don't know that, Your Honor, but as I
21 say, they may have made private inquiry or articles come out in
22 the paper before election of what the registration requirements
23 are and they could, just in the privacy of their living room,
24 read if they are not eligible and not make the effort to go
25 down and apply. So, I don't believe that we could hold that

1 against the question. There are reliable statistics that a
2 substantial number, anywhere from 2 million, which is what
3 Senator Kennedy figures; 5 million which were the result of
4 a statistical survey by the Gallup Poll; 8 million which is
5 the result of a Presidential Commission which studied the
6 problem. So, I would suggest, Your Honor, that the figure is
7 in the millions, of people who could have been disenfranchised,
8 and we have no way of knowing how many people actually made
9 application.

10 So, I would suggest that the question is not moot
11 because the 1968 election is over, because we are going to
12 have another presidential election in four years.

13 Q You are not asking that the 1968 election be
14 set aside?

15 A Nor do I feel that the amendment of the law
16 down to two months makes the case moot. First, because I feel
17 that the two month requirement still has the question of being
18 unreasonable, and secondly, there are 20 States in the Union
19 that still have a requirement of six months or longer. So, as
20 a national problem -- and I would contend that it is a national
21 problem -- the issues involved are the same for all of the
22 states. But six months, as a standard, is still present in
23 the United States; it's still affecting voters.

24 If I represent the class of voters throughout the
25 United States, which I would certainly suggest, then the

1 question of six months is still before the Court.

2 So, I don't believe that the question is moot; I
3 do feel that the law since *Drueding* undercuts the theory of
4 that case. The right to vote and the right to travel have both
5 been protected by very strict scrutiny, a compelling interest
6 test and I would ask that this Court accept the matter and
7 declare the Colorado requirement unconstitutional on that
8 basis.

9 Q What is the lowest requirement of any state,
10 Mr. Hall?

11 A The lowest?

12 Q Yes.

13 A The State of Wisconsin has no requirement at
14 all, Your Honor. As I understand Wisconsin Law, you can come
15 in the day of the election and sign up.

16 Nebraska and -- Nebraska has two days; Alaska and
17 Ohio have four days; North Dakota has ten days.

18 Q For both national and state?

19 A No, sir; just for the presidential election.

20 Q Oh.

21 A Many states have made special provision for
22 just the presidential election because they realize that the
23 issues involved are different.

24 Q As has Colorado.

25 A As has Colorado; yes, sir.

1 Q There is no very clear definition that I can
2 find in complaint or elsewhere, as to the class that you pur-
3 portedly represent. You talk about other similarly situated,
4 and that could be broader than our definition.

5 A Your Honor, that question wasn't decided by
6 the District Court, because they decided against me, per-
7 sonally. I would contend that the class is everyone who is
8 disenfranchised by similar state or precinct and county. I
9 think the issues are the same.

10 Q In any of the 50 states?

11 A Yes, sir; that would be my contention.

12 Q You were representing a future class -- at the
13 time --

14 A At the time I was representing people trying
15 to vote in 1968 but I would contend that the question is the
16 same; that it constantly exists.

17 Q It's constantly changing every year.

18 A It constantly exists and we know that it will
19 exist in 1972.

20 Q That all the people you represented are not
21 qualified to vote, but there are some new ones?

22 A We know that there will be new ones, Your
23 Honor; that's just what statistics tell us. They will move
24 and 1972 they will be disenfranchised.

25 Q Then you represent, I suppose you might say,

1 every adult in the United States because anybody in any state
2 might want to move shortly before the next presidential
3 election.

4 A That's true and also --

5 Q You are representing everybody in the United
6 States?

7 A Prospectively, you could say that; yes, sir.
8 Also, as the amicus brief of Mr. Harvey Berg points out the
9 District Court for the District of Massachusetts is presently
10 withholding a decision in a case that has been filed there
11 pending a determination of this case, so we have at least one
12 District Court in the United States specifically waiting to see
13 how this comes out, because they feel it will affect their
14 decision.

15 So, the question is still this, Your Honor, and I
16 don't believe it's moot and I would ask that the Court decide
17 it and that the unfairness and the injustice as the District
18 Court puts it, of disenfranchising that many voters in the most
19 important election in the country, be removed.

20 If the Court please, I shall close at this time and
21 perhaps will have a few closing remarks after Mrs. Baker is
22 finished.

23 CHIEF JUSTICE BURGER: Thank you, Mr. Hall.

24 Mr. Baker.

1 ORAL ARGUMENT OF BERNARD R. BAKER,

2 ON BEHALF OF THE APPELLEES

3 MR. BAKER: Mr. Chief Justice, may it please the
4 Court, I would like to briefly introduce my associates who
5 have worked with me on this case: Mr. Carroll Multz, Deputy
6 District Attorney of El Paso County, Colorado and the District
7 Attorney, Mr. Robert Russel.

8 Gentlemen: Colorado is not trying to disenfranchise
9 anyone; Colorado is merely trying to protect the electoral
10 process for presidential elections. Colorado, in furtherance
11 of a constitutional delegated responsibility under Article II,
12 Section 1, Colorado in furtherance of that responsibility has
13 enacted legislation. Of course, the history of the legislation
14 going back to the time when it became a state. And this
15 legislation's primary purpose is to protect the purity of the
16 election process, in keeping with the Constitution.

17 Colorado maintains that when there is responsibility
18 under the Constitution -- in this case, Article II, Section 1,
19 that there must be the corresponding authority to carry out the
20 responsibility and do it in an equitable way, and we maintain
21 that this is what Colorado has done.

22 Your Honors, before I get into the substance of my
23 argument, I would like to clarify the Colorado election law.
24 It has been misstated.

25 The Colorado election law at issue, Colorado Revised

1 Statutes 49-24-1, with reference to the three days that Mr.
2 Hall makes reference to, Your Honors, this three days refers
3 to the time a new resident can vote. He must vote three days
4 preceding to the regular election under Colorado law, because
5 a special voting place has been set up for him, since they are
6 in a status by themselves. Since our general requirement is
7 one year for our local elections, we, like many states have
8 enacted a special legislation for presidential and vice
9 presidential electors. And under that special provision, the
10 new resident casts his vote, applies for his ballot, not later
11 than three days before the election for president.

12 However, as the law reads, such new residents must
13 have been duly registered as required by the provisions of
14 this article. This goes back to the general registration
15 provision: namely, 20 days. So, a new resident must have
16 registered to vote in order to pick up his ballot the three
17 days prior to the election; must have been registered 20 days
18 prior to the election, as every other elector in the state. So
19 we're talking about 20 days where the registration is cut off.
20 The new resident must comply with that, also.

21 So, Colorado has not cut themselves down to three
22 days, in view of the two months residence requirement for new
23 residents.

24 We also would contend that Mr. Hall does not
25 represent even a class in Colorado. On October 22, 1968, after

1 filing his original complaint, on October 4, 1968, Mr. Hall
2 filed a motion that he be considered a member of a class. This
3 was done the 22nd of October, 1968. The District Court never
4 ruled as to whether he was or was not a representative of a
5 class. The motion was never ruled upon. Therefore, we would
6 have to say under the law, since he wasn't affirmatively de-
7 clared by the District Court to represent a class, that he is
8 not, in fact, representative of a class in the State of
9 Colorado.

10 Q. Suppose this fellow leaves town tomorrow and
11 returns thirty days before election day in '72. He couldn't
12 vote?

13 A Oh, yes, Your Honor, if he is duly registered
14 to vote now.

15 Q And leaves tomorrow --

16 A And becomes a resident of another state.

17 Q Becomes a resident of another state and returns
18 to Colorado. What would that be -- 59 days before --

19 A YES, Your Honor. He would then, once again,
20 having lost his residence, he would have to pick it up once
21 again and be such a resident for two months prior to the
22 election.

23 Q And he would not be able to vote?

24 A Not if he returned within thirty days and
25 established a residency in Colorado.

1 Q This case is moot.

2 A Your Honor, we certainly declare -- maintain
3 that this case is moot as to all of the issues.

4 Q Well, would you think for a moment and tell me
5 how a person in Mr. Hall's situation could ever mitigate this
6 matter?

7 A He can mitigate it as he did at the District
8 Court level.

9 Q If he loses there, is there any way under the
10 sun for him to get here before election?

11 A Your Honor, I would feel that the suit should
12 have been filed in a timely manner so that time could have been
13 allowed for review, although your point is certainly well
14 taken, Mr. Justice. Namely, that it would be very difficult
15 for the matter to be heard when the suit is filed in October
16 and the election is held in November.

17 Q You wouldn't go as far as impossible, would
18 you?

19 A No, sir.

20 Going to this mootness question, we rely upon the
21 authority of the landmark case of Mills v Green, that case
22 holding, of course, that it was not impossible to grant any
23 effectual relief, and that did involve an election. The old
24 Mills v Green case, decided in 1805 in this court and I am sure
25 the Court is well aware of the law in this case. That when it

1 is impossible to give an effective remedy because of changed
2 conditions, the Court is reluctant. Well, this case says, "we
3 will not consider the -- will not proceed to a formal judgment
4 but will dismiss the appeal.

5 Your Honors, in view of the six month amendment
6 down to two months, we feel this is really the telling point
7 in this case. Colorado, by its legislative enactment on
8 April 23 of this year, amended its statute down to two months.
9 Apparently the legislature of Colorado, themselves, thought
10 action needed to be taken to lower that requirement. They took
11 such action; it was signed into law; we now have a two-month
12 requirement. And under the precedents in this court, namely:
13 *Carpenter*, , 309 U.S. 23 (194) and *Hines v.*
14 *Davidowitz*, outlined in our brief, in 312 U.S. 52 (1941) case,
15 this Court held that when a subsequent legislative enactment
16 occurs which has the bearing upon a case, the case when it
17 goes up in appeal, must be considered in light of the sub-
18 sequent legislation and therefore, the issue before this Court
19 now is merely moving into the equal protection argument, the
20 reasonableness of two months; the reasonableness of two months.

21 Q Has it ever been passed on by the State Courts
22 in Colorado?

23 A No, Your Honor. Six months was the basis of
24 the Federal Court decision in Denver in October of --

25 Q They held the six months reasonable.

1 A They held the six months reasonable, Your
2 Honor, yes.

3 We go back to the Constitution itself; we don't feel
4 that any part of the Constitution should be downgraded, as the
5 term was used here. The Constitution is a living instrument
6 all alive, and Article II, Section 1, of course, gives the
7 states the power, the responsibility, to establish voter
8 qualifications, both in Federal and state elections. Now,
9 with this constitutional prerogative, many cases, of course,
10 have interpreted this prerogative and have not downgraded this
11 prerogative one iota. This is a viable prerogative of
12 responsibility.

13 Going as far back, of course, as Pope v. Williams and
14 Minor v. Happersett, an 1875 case; Pope v. Williams, 1904, and
15 then working forward all the way up to Drueding v. Devlin,
16 where Drueding took this same case, the same facts almost
17 identical; the issues, certainly identical. There a one-year
18 residence requirement in the State of Maryland was held
19 affirm pro curiam by this Court in March of 1965, upholding a
20 three-judge District Court for the District of Maryland. And
21 the District Court in Maryland said that the one year is not
22 unreasonable.

23 Now, I'm not going to argue for one year; I'm not
24 really going to argue for six months. Colorado argues for its
25 present law; El Paso County, Colorado, is the Appellee in this

1 case and we have a two month law and we are here to uphold
2 that law.

3 Q Isn't there in the last paragraph
4 that we have been assured by the Attorney General that the
5 General Assembly of Maryland is going to change the law.

6 A There was some mention.

7 Q And didn't he also say that the
8 did a wonderful job in getting it changed, assuming it changes?

9 A Yes, I recall there was some reference to that,
10 Mr. Justice, and who knows what the motives of our legislature
11 were; I certainly would not. I do know that they changed this
12 law and Colorado, of course, is not unhappy that it was
13 changed.

14 Now, going from this fundamental power that rests
15 with the states, we move to the traditional equal protection
16 test. Is there a rational relationship? What state interest
17 is Colorado trying to protect here?

18 And very briefly, Your Honors, if I may refer to our
19 brief, the interest that Colorado is furthering is: One, to
20 preserve the purity of the elections; to identify the voter so
21 that double voting can be prevented. Take in the situation of
22 a Manhattan precinct and Newark, New Jersey, across the Hudson,
23 and Greenwich, Connecticut up the line, a short distance away.
24 There, if there were no state residence requirements whatsoever
25 there would be no check upon wholesale moving across state

1 lines. We really feel this is a legitimate fear. And if there
2 were no residency requirements whatsoever, our state lines
3 would be a mecca for voter fraud; we really feel this.

4 Now, if one day is not sufficient to ensure some
5 check on a voter, how can we say that two months is unreason-
6 able?

7 Q Isn't that voter who went from New York to New
8 Jersey, subject to the same penalties of the voter that went
9 from Ward 6 to Ward 8 in New York?

10 A Yes, Your Honor.

11 Q And you are sure that that happens, that there
12 is illegal voting in every state, I would assume.

13 A Yes, Your Honor.

14 Q And they are punishable and this person would
15 be punishable here.

16 A He would be punishable, but the election would
17 be over and no doubt the Electoral College would have met on
18 the 5th day of December in a particular presidential election
19 year and we would have an election on the books.

20 Q That goes where they have great Congressional
21 investigations as to vote frauds in certain states; it doesn't
22 affect the election. Now, why is two months necessary?

23 A Two months is necessary, Your Honor, for this
24 reason: We have a new resident coming into the state. As a
25 new resident, of course, he has a residence.

1 Q This resident here bought a home, registered
2 his car and paid taxes. Now, what else do you need to find
3 out about him?

4 A Well, we feel that time -- all these other
5 requisites you mentioned, Your Honor, go to status and we don't
6 feel that that's at all legitimate. In other words, reason-
7 able residence requirement would go to whether he owns a car
8 or whether he has bought a house -- certainly this status
9 cries in the face of our system. So, time is the most fair.

10 Q What makes him such a good citizen in two
11 months?

12 A In two months, Your Honor, there is --

13 Q What else could he do in two months, other
14 than buy a home, register his car, pay his taxes and do every-
15 thing that any other resident does. What else could he do in
16 a two-month period?

17 A Well, two months is not giving him status to
18 vote, Your Honor. The two months is time to check out whether
19 he is a legitimate resident. This is the primary purpose.
20 This is an administrative reason to protect the purity of the
21 election.

22 Q How long does it take to find out that he
23 owned a home, car and registered the car and paid his taxes?

24 A A full-scale basis, Your Honor, in the legis-
25 lature, these indicia our legislature has determined that it

1 takes two months on a new resident to legitimately check out
2 these things. These things take time. We're talking about
3 many people now. We have people employed by our county to
4 check out these things. And a new resident, because his ties
5 to the community are newer, it is reasonable it takes longer
6 to check out his legitimate residence.

7 Q In changing from six to two months, because
8 obviously they thought six months was wrong; there was a mis-
9 take about six months -- can I assume that?

10 A I won't concede that.

11 Q I could assume that, couldn't I?

12 A I will concede that in order to make it as
13 fair as possibly, humanly possible, they took it down to two
14 months.

15 Q Without the fact that the difference between
16 the six month period and the two months period you have an
17 increase in population, haven't you?

18 A Colorado, like many western states, is --

19 Q So, there is a good possibility they were
20 wrong about the six months? I say that because --

21 A I can't second-guess the legislature, Your
22 Honor. Whether they were wrong or not --

23 Q Speaking for myself, if I assume that they
24 admitted that they were wrong about the six months, a few years
25 from now they might find they were wrong about the two.

1 Would that follow?

2 A Well, it could follow, Your Honor.

3 Q You apparently don't place any reliance at all
4 upon the factor of identification?

5 A We certainly do. This is secondary. As a
6 western state, to get back to the states under our system of
7 electing a president. This is the way it's set up, and since
8 the states elect the president, each state, when our Constitu-
9 tion was formulated, the framers knew that each state had cer-
10 tain interests, but the states elected the president. In
11 Colorado we certainly had a unique interest, the western slope
12 reclamation of water, our atomic energy experiments that are
13 going on out there, have caused a great deal of concern, our
14 poisonous gas storage in Colorado at the Rocky Mountain Arsenal.
15 I could go on with many other interests and I am sure each
16 state has its own unique issues where the state feels that
17 there should be some identification. We don't don't want that
18 identification to be burdensome and we don't feel that two
19 months is burdensome identification.

20 Q Let me ask you this question: is there a
21 difference in the residence requirement between the state voter,
22 a voter in state elections and the national elections?

23 A Yes, Your Honor. Like the great majority of
24 states, Colorado has a one-year residency requirement for their
25 so-called elections -- all elections other than presidential

1 and vice presidential. Wherefore, it was necessary in order
2 to separate these people, because Colorado did recognize the
3 problem, it was necessary to enact special legislation
4 knocking their requirement down to two months, because these
5 people only vote for presidential and vice presidential
6 electors only. The two months, as opposed to one year for
7 all other elections.

8 Q But, in terms of the state interest that you
9 have been arguing just a moment ago, what's the basis of the
10 differentiation between presidential voters and state voters?
11 Namely: knowledge of state concerns and state interests.

12 A We would maintain that when it's wholly local,
13 of course, the local interests predominate in that particular
14 election, therefore, it requires a one-year identification
15 with these particular local problems. A presidential election,
16 of course, being the embodiment of the Federal system, that is:
17 the national issues and the state issues and the nexus between
18 the two, that the ballot goes to these national issues enough
19 to bring it down to two months.

20 Q A matter of degree.

21 A Yes, Your Honor.

22 Q Does Colorado have a residence retention law
23 in the event -- assume a Colorado resident moves out to Kansas.
24 Does Colorado permit him to retain his residence for voting
25 purposes for any time? Some states do, don't they?

1 A Colorado -- if a person manifests his desire
2 to establish residence elsewhere, of course, he has lost his
3 Colorado residence. So we go back to fundamental common-law
4 tests, Your Honor, as to whether one has lost his residence or
5 not; I believe that's our law.

6 Q I suppose you might argue that the proper
7 defendant in a case like this should have been California.

8 A We've often thought that, Your Honor.

9 Q That would have accommodated everybody's
10 interest.

11 A California very much was in issue in this
12 case, also.

13 If I may, moving on to my example of the Manhattan
14 precinct. We feel that since one day is not sufficient,
15 certainly two months -- can we say the two months is an un-
16 reasonable period of time? And we must maintain that two
17 months is certainly reasonable under this equal protection
18 test.

19 Now, whether it's the compelling state interest test
20 here or the traditional test, this, of course is a very new
21 development in the decisions of this Court. In the com-
22 pelling state interest test we maintain does not apply in
23 this particular instance, even under the Kramer v. Union Free
24 School District case; the City of Cipriano versus Houma,
25 quoted by Mr. Hall and Williams v. Rhodes, because these cases

1 place these other requirements on voting, namely: property
2 and so on, over and above the superstructure that you have;
3 over and above the fundamental requirements of residency,
4 United States citizenship and age. These three fundamental
5 things are fundamental. Now, these other cases dealt with
6 things superimposed over and above different requirements.
7 There they require the compelling state interest test.

8 Q Which test is critical to this case?

9 A We feel it's the rational, the traditional
10 reasonable furtherance of legitimate status.

11 Q The question of which test to be applied
12 isn't critical?

13 A We feel that it is not, Your Honor, because we
14 do have compelling interest. That's a for sure --

15 Q I take it the Appellant concedes that some
16 period of time is justified by compelling state interest.

17 A We know that he mentions in his brief that
18 some period of time is necessary.

19 Q Couldn't it be set at three days?

20 A Pardon me, Your Honor?

21 Q Didn't he fix that at three days?

22 A He mentioned the three days; he didn't
23 specifically hang his hat on three days, reading his brief, but
24 he mentioned the three days as -- Colorado only needs three
25 days, which is incorrect; 20 days for everybody, at the

1 minimum, because the three-day person, the new resident, must
2 have a 20-day registration.

3 Your Honor, moving on to the Privileges and
4 Immunities clause, we hold that there's no case that has ever
5 held that the right to vote for president and vice president,
6 is a Federal privilege and immunity. There is no case that
7 has ever held that, in fact, the cases hold that the right
8 to vote for president and vice president is something spring-
9 ing out of state citizenship.

10 And you take the Congressional elections, your
11 Congress, there, under Article I, Section 4, setting up the
12 Congress originally, there the Federal Government was given
13 certain prerogatives of control. It was a dual thing, that
14 the president and vice president was given exclusively to the
15 states, so they are in a different category. And those cases
16 like ex parte Yarborough and so on that are quoted by the
17 Appellant apply only to Congressional elections, and do not
18 apply to the presidential and vice presidential elections.

19 And I ask that you please consider this in your
20 decision.

21 Very briefly, to conclude ---

22 MR. CHIEF JUSTICE BURGER: Can we terminate at this
23 point, unless you are ready to conclude.

24 (Whereupon, at 12:00 o'clock p.m. the proceeding was
25 recessed to reconvene at 12:30 o'clock p.m. this day)

1 AFTERNOON SESSION

2 12:30 o'clock p.m.

3 MR. CHIEF JUSTICE BURGER: You were not quite
4 finished, I think before the recess.

5 MR. BAKER: If it please the Court, Mr. Chief
6 Justice, and may it please the other members of the Court, to
7 synopsize what Colorado's position is in this matter, we have
8 outlined the state interests that we feel are wholly legitimate
9 and reasonable; that we are trying to further in our two
10 month residency requirement, the administrative reasons for
11 feeling that it takes two months when thousands of voters a
12 day in El Paso County register on the last days prior to the
13 election. With a new resident, since his ties to the community
14 are two, it takes that much additional time to check his
15 legitimate residence status out.

16 Then, going to the "member of the community"
17 argument, weighing the state citizenship on the one hand, the
18 Federal citizenship on the other hand, the dual citizenship of
19 a new resident of Colorado, we feel that two months does, in
20 some small degree, identify him with the problems in Colorado,
21 so that when he casts his vote, the Colorado interests have
22 some bearing on his decision as a new resident of that state,
23 since of course, the states elect the president under the Con-
24 stitution.

25 Q What was the reasoning behind the passage of

1 this Act?

2 A The two month act, Your Honor?

3 Q Yes.

4 A The reason behind it: to further the state
5 interest, as I have mentioned. First we have the one-year
6 general residency requirement, going down to two months to the
7 new resident for president and vice president.

8 Q Only?

9 A Yes. And the reasoning is to bring it down
10 to two months since his Federal citizenship has such a pre-
11 dominant interest in his vote, as well as some balance to the
12 state citizenship aspect, two months was a reasonable require-
13 ment to fulfill both objectives -- to fill both aspirations;
14 both citizenships; both state and Federal.

15 Q Is he required to have been a resident with
16 the intention of remaining a resident?

17 A Oh, yes. Our test for residency, of course
18 we utilize the traditional common-law test for residency.
19 That is: actual physical presence, plus the intention to
20 remain.

21 Q When was the six months statute passed?

22 A That was passed, Your Honor, back in 1963, to
23 the best of my knowledge.

24 Q It came from one year down to six months and
25 then down to two?

1 A Right.

2 Q I suppose modern communication, modern
3 methods --

4 A We are computerized now.

5 Q -- modern methods of getting this information
6 around, enters into this, too.

7 A We have been computerized in that interim,
8 which I would feel would be one of the reasons the legislature
9 amended it down. We are now computerized in many counties in
10 Colorado. El Paso County is partially computerized and will
11 become more so.

12 Q What was the reasoning behind the six months
13 statute?

14 A Again, going down, starting with the one-year
15 to come down to six months to give those new residents --

16 Q You mean you started out with one year with
17 reference to residence?

18 A One year being the general requirement for
19 local elections.

20 Q The general requirement?

21 A Yes, sir, Your Honor.

22 Q That didn't distinguish between the -- those
23 voting for president and those voting for others.

24 A The six months statute, I think, was between
25 those voting for president --

1 Q Was it the first one?

2 A It was the first one, Your Honor; yes.

3 Filing a recommendation at the National Council of Commission-
4 ers on Uniform State Laws. In other words, six months was
5 the time they were talking about in the early sixties, and
6 whether they have come off of that or not, I don't know.

7 Q What reason did they give?

8 A The reason being that we are a more mobile
9 society and the state, in protecting its interests, make
10 every possible concession to lower those voting requirements
11 down so that more people could vote for president and vice
12 president and not be disenfranchised.

13 In other words, on the one hand, preserve the com-
14 pelling state interests, the reasonable requirements. On the
15 other hand, giving that voter as much of a break as possible,
16 that new resident, so that he can vote if he fulfills certain
17 minimum residency requirements.

18 Q I presume that if some way could be found to
19 prevent duplication of voting in different states, by always being
20 closer together, that argument would support a one day-s --

21 A Well, this is the problem, Your Honor. The
22 states have this responsibility under the Constitution and
23 one day certainly would not be enough --

24 Q Wouldn't be enough to show a residence.

25 A Yes, Your Honor.

1 (Inaudible portion)

2 Q we'd let him vote. If that's your
3 argument behind the whole law.

4 A Our argument is that it takes a certain amount
5 of time to ensure that this voter votes once and only once in
6 a presidential election. He votes through a state and we have
7 determined that two months is a reasonable time to make these
8 checks to ensure that he is, in fact, a resident of Colorado
9 and will not vote elsewhere.

10 Q But that's not your only interest?

11 A Oh, no, Your Honor, but that's a compelling
12 one.

13 Q How can we be sure who votes someplace else?

14 A We, in that two month period can check back
15 to the state of his former residence to see whether -- to
16 inform that other state that he is going to vote in Colorado;
17 that he is registered as a resident, that therefore, that you,
18 California, or you, New York, or you, Illinois, he is not
19 going to vote there. And this is done. And the states are
20 sending out letters and doing this.

21 Q Can you do that in 20 days?

22 A Twenty days cuts it awfully short, Your Honor.

23 Q There must be some reason for the twenty-day
24 rule.

25 A The twenty-day rule is the general

1 registration requirement, Your Honor.

2 Q What is the reason for that?

3 A That's the general registration requirement.
4 The new resident, of course, would need more indicia of
5 evidence of his residence.

6 MR. CHIEF JUSTICE BURGER: Thank you very much,
7 Counsel.

8 MR. BAKER: Thank you very much, Mr. Justice.

9 MR. CHIEF JUSTICE BURGER: Mr. Hall, do you need
10 any more time? You may have one minute, Mr. Hall.

11 MR. HALL: Just briefly, Your Honor. I am sorry if
12 I misstated the Colorado Law. I quoted what I thought was
13 the controlling statute on Page 31 of my brief and I did under-
14 stand that they could apply up to three days before the
15 election.

16 On the question of mootness, Mr. Baker relies on
17 Mills versus Green, which was decided in 1895. I would rely
18 on Moore versus Ogilvie, which was decided six months ago,
19 which held that a continuing problem such as this -- in that
20 case involving Illinois election law, was not moot.

21 I think the fact that the District Court upheld the
22 reasonableness of six months was not controlling, because they
23 did so under the traditional test and did not apply the com-
24 pelling interest test that now applies to the right to vote.
25 Any reliance on the case of Pope versus Williams is misplaced,

1 because that particularly left open the question of presiden-
2 tial electors.

3 This question of voting in more than one state, we
4 do not argue against the requirement that you be a resident
5 of the state in which you vote, and as in Carrington versus
6 Rash, the state can impose reasonable requirements to see that
7 you are a resident. But, we would contend that the waiting
8 period is not reasonable.

9 Thank you very much, Your Honors.

10 MR. CHIEF JUSTICE BURGER: Thank you.

11 Thank you, gentlemen, for your submissions. The
12 case is submitted.

13 (Whereupon, at 12:40 o'clock p.m. the oral argument
14 in the above-entitled matter was concluded)