

# The Burger Court Opinion Writing Database

*Mandel v. Bradley*

432 U.S. 173 (1977)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

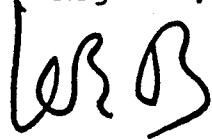
March 10, 1977

Re: 76-128 - Mandel v. Bradley

Dear Byron:

In light of Potter's memo today, will you take on a Per Curiam in this case? This assumes for the moment that the Conference discussion of a Per Curiam is feasible.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 1, 1977

Re: 76-128 Mandel v. Bradley

Dear Byron:

I join.

Regards,

WSB

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

✓  
✓

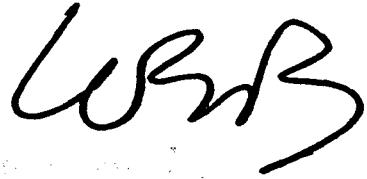
June 13, 1977

Re: 76-128 - Mandel v. Bradley

Dear Potter:

I join in the Per Curiam dated June 8.

Regards,



Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 11, 1977

RE: No. 76-128 Mandel v. Bradley

Dear Potter:

Please join me in your excellent dissent. I  
may add a few words of my own.

Sincerely,

*Brennan*

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

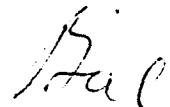
June 6, 1977

RE: No. 76-128 Mandel v. Bradley

Dear Potter:

Please join me in the dissenting opinion you  
have prepared in the above.

Sincerely,



Mr. Justice Stewart

cc: The Conference

## SUPREME COURT OF THE UNITED STATES

No. 76-128

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: ~~6/6/77~~

Recirculated: \_\_\_\_\_

Marvin Mandel, Governor of Maryland, et al., Appellants, )  
v. ) On Appeal from the United States District Court for the District of Maryland.  
Bruce Bradley, et al. )

[June \_\_\_\_\_ 1977]

MR. JUSTICE BRENNAN.

In a dissent from the denial of certiorari in Colorado Springs Amusement Ltd. v. Rizzo, 428 U.S. 913 (1976), I stated why, in my view, the federal and state courts should give "appropriate, but not necessarily conclusive, weight to our summary dispositions," id., at 923, rather than be required, as the Court held in Hicks v. Miranda, 422 U.S. 332 (1975), "to treat our summary dispositions of appeals as conclusive precedents regarding constitutional challenges to like state statutes or ordinances." Id., at 913.

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

June 8, 1977

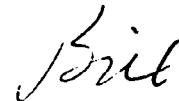
RE: No. 76-128 Mandel v. Bradley

Dear Potter:

I've already circulated a typed opinion in the above. I am adding the word "concurring" after my name and the following introductory sentence:

"I join the opinion of the Court but write separately to emphasize the Court's treatment of the rule announced in Hicks v. Miranda, 422 U.S. 332 (1975)."

Sincerely,



Mr. Justice Stewart

cc: The Conference

To: The Chief Justice  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

## 1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

sent Mr. Justice Brennan

No. 76-128

Circulated:

Circulated: 6/10/77

Marvin Mandel, Governor of  
 Maryland, et al., Appellants,  
 v.  
 Bruce Bardley et al.

An Appeal from the United  
 States District Court for  
 the District of Maryland.

[June —, 1977]

MR. JUSTICE BRENNAN, concurring.

I join the opinion of the Court but write to emphasize the Court's treatment of the rule announced in *Hicks v. Miranda*, 422 U. S. 332 (1975).

In a dissent from the denial of certiorari in *Colorado Springs Amusement Ltd. v. Rizzo*, 428 U. S. 913 (1976), I stated why, in my view, the federal and state courts should give "appropriate, but not necessarily conclusive, weight to our summary dispositions," *id.*, at 923, rather than be required, as the Court held in *Hicks*, "to treat our summary dispositions of appeals as conclusive precedents regarding constitutional challenges to like state statutes or ordinances." *Id.*, at 913.

The Court in the instant case effectively embraces that view, vividly exposing the ambiguity inherent in summary dispositions and the nature of the detailed analysis that is essential before a decision can be made whether it is appropriate to accord a particular summary disposition precedential effect. After today, judges of the state and federal systems are on ~~notice~~, that before deciding a case on the authority of a summary disposition by this Court in another case, they must (a) examine the jurisdictional statement in the earlier case to be certain that the constitutional questions presented were the same, and, if they were, (b) determine that the judgment in fact rests upon decision of those questions and

7/8/77

5/

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated:

ccirculated: *6/13/77*

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 76-128**

Marvin Mandel, Governor of Maryland, et al., Appellants,  
v.  
Bruce Bradley et al. } An Appeal from the United States District Court for the District of Maryland.

[June —, 1977]

**MR. JUSTICE BRENNAN, concurring.**

I join the opinion of the Court but write to emphasize the Court's treatment of the rule announced in *Hicks v. Miranda*, 422 U. S. 332 (1975).

In a dissent from the denial of certiorari in *Colorado Springs Amusement Ltd. v. Rizzo*, 428 U. S. 913 (1976), I stated why, in my view, the federal and state courts should give "appropriate, but not necessarily conclusive, weight to our summary dispositions," *id.*, at 923, rather than be required, as the Court held in *Hicks*, "to treat our summary dispositions of appeals as conclusive precedents regarding constitutional challenges to like state statutes or ordinances." *Id.*, at 913.

The Court by not relying on our summary affirmation in *Tucker v. Salera*, 424 U. S. 929 (1976), and *Auerbach v. Mandel*, 409 U. S. 808 (1972), effectively embraces that view, and vividly exposes the ambiguity inherent in summary dispositions and the nature of the detailed analysis that is essential before a decision can be made whether it is appropriate to accord a particular summary disposition precedential effect. After today, judges of the state and federal systems are on notice that, before deciding a case on the authority of a summary disposition by this Court in another case, they must (a) examine the jurisdictional statement in the earlier case to be certain that the constitutional questions presented

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

M  
CHAMBERS OF  
JUSTICE POTTER STEWART

✓

March 10, 1977

Re: No. 76-128, Mandel v. Bradley

Dear Chief,

My Conference notes, which I think are accurate, indicate that five members of the Court voted to reverse on the merits. I, on the other hand, would vacate the judgment and remand the case to the District Court with directions to consider the statute as a whole rather than the single statutory provision upon which the District Court exclusively focused. It seems evident, therefore, that the opinion in this case, now assigned to me, should be reassigned to one of the five who voted to reverse. Needless to say, I shall be more than willing to have some other opinion reassigned to me.

Sincerely yours,

P.S.  
P.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 28, 1977

Re: No. 76-128, Mandel v. Bradley

Dear Byron,

In due course, I shall circulate a dissenting opinion in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

27  
14/2

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_

Circulated: \_\_\_\_\_

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-128

Marvin Mandel, Governor of  
 Maryland, et al., Appellants, } On Appeal from the United  
 v.  
 Bruce Bradley et al. } States District Court for  
 the District of Maryland,

[April —, 1977]

MR. JUSTICE STEWART, dissenting.

I agree that the District Court misjudged the import of our summary affirmance in *Tucker v. Salera*, 424 U. S. 929. But instead of reversing the judgment before us, I would remand the case to the District Court so that it may consider the appellees' claims under the proper constitutional standards.

In reversing the judgment, the Court states that it "adhere[s] to the summary affirmance in *Auerbach v. Mandel*, 409 U. S. 808." In my view that decision is not controlling here. Although "[a]n unexplicated summary affirmance settles the issues for the parties," *Fusari v. Steinberg*, 419 U. S. 379, 391-392 (BURGER, C. J., concurring), it decides only those issues that were "presented and necessarily decided," *ante*, at 6 (emphasis supplied). Determination of what issues, if any, necessarily were resolved by a summary disposition "itself presents issues of real substance . . . ." *Hicks v. Miranda*, 422 U. S. 332, 345 n. 14. I know of no alternative in making that determination other than to examine with care the jurisdictional papers and the decision appealed from. See *Cantor v. Detroit Edison Co.*, — U. S. —, — n. 5 (dissenting opinion); P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, *The Federal Courts and the Federal System* 113-114 (2d ed., 1977 Supp.). That examination leads me to conclude that the Court—or individual Members of it—may have relied on any of a variety of grounds in *Auerbach*, and that the Court

*PS  
Don't tell with  
you*

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
No. 76-128  
\_\_\_\_\_

Marvin Mandel, Governor of Maryland, et al., Appellants, v. Bruce Bradley et al. ) On Appeal from the United States District Court for the District of Maryland,

MR. JUSTICE STEWART, dissenting.

I agree that the District Court misjudged the import of our summary affirmance in Tucker v. Salera, 424 U. S. 929. But instead of reversing the judgment before us, I would remand the case to the District Court so that it may consider the appellees' claims under the appropriate constitutional standards.

With all respect, I cannot agree with the Court that the District Court's holding was based not merely on the precedential weight it assigned to Salera, but also on an independent examination of the merits. I think it is plain from the opinion of the District Court that because of its preoccupation with Salera it failed to undertake such an independent examination.

144

Mr. Justice Marshall  
Mr. Justice Rehnquist  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Brennan  
Mr. Justice Stevens

FROM: Mr. Justice Stewart  
APR 7 1977  
Circulated:

2nd DRAFT

Recirculated:

## SUPREME COURT OF THE UNITED STATES

No. 76-128

Marvin Mandel, Governor of Maryland, et al., Appellants,  
v.  
Bruce Bradley et al. } On Appeal from the United States District Court for the District of Maryland,

[April —, 1977]

MR. JUSTICE STEWART, dissenting.

I agree that the District Court misjudged the import of our summary affirmance in *Tucker v. Salera*, 424 U. S. 929. But instead of reversing the judgment before us, I would remand the case to the District Court so that it may consider the appellees' claims under the proper constitutional standards.

In reversing the judgment, the Court states that it "adhere[s] to the summary affirmance in *Auerbach v. Mandel*, 409 U. S. 808." In my view that decision is not controlling here. Although "[a]n unexplicated summary affirmance settles the issues for the parties," *Fusari v. Steinberg*, 419 U. S. 379, 391-392 (BURGER, C. J., concurring), it decides only those issues that were "presented and necessarily decided," *ante*, at 6 (emphasis supplied). Determination of what issues, if any, necessarily were resolved by a summary disposition "itself presents issues of real substance . . . ." *Hicks v. Miranda*, 422 U. S. 332, 345 n. 14. I know of no alternative in making that determination other than to examine with care the jurisdictional papers and the decision appealed from. See *Cantor v. Detroit Edison Co.*, 428 U. S. 572, 617 n. 5 (dissenting opinion); P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, *The Federal Courts and the Federal System* 113-114 (2d ed., 1977 Supp.). That examination leads me to conclude that the Court—or individual Members of it—may have relied on any of a variety of grounds in *Auerbach*, and that the Court

18

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

P 3

## 3rd DRAFT

From: Mr. Justice Stewart

## SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

No. 76-128

Recirculated: \_\_\_\_\_

JUN 06 1977

Marvin Mandel, Governor of Maryland, et al., Appellants,  
*v.*  
 Bruce Bradley et al. } On Appeal from the United States District Court for the District of Maryland.

[April —, 1977]

MR. JUSTICE STEWART, dissenting.

I agree that the District Court misjudged the import of our summary affirmance in *Tucker v. Salera*, 424 U. S. 929. But instead of reversing the judgment before us, I would remand the case to the District Court so that it may consider the appellees' claims under the appropriate constitutional standards.

With all respect, I cannot agree with the Court that the District Court's holding was based not merely on the precedential weight it assigned to *Salera*, but also on an independent examination of the merits. I think it is plain from the opinion of the District Court that because of its preoccupation with *Salera* it failed to undertake such an independent examination.<sup>1</sup>

<sup>1</sup> This much is clear from repeated statements in, and the very structure of, the District Court's opinion. Immediately after reciting the facts, the court stated that the *Salera* case "is the controlling authority, and . . . requires that plaintiffs be granted relief." After describing the holding in *Salera*, the court remarked that "we are bound by the summary affirmance in *Salera*, if it can be fairly said that *Salera* decides the issues before us and is not distinguishable on any other ground." Finding that *Salera* had decided the same issue and was not distinguishable, the District Court concluded its analysis as follows:

"Legally, for the reasons we have stated, we think that *Salera* decides the issue before us, and as the latest expression of the Supreme Court, we are bound to follow it."

In suggesting that, despite its repeated reliance upon *Salera*, the District Court in fact independently reached the merits, the Court relies on a

*Re*  
*Re*  
*Re*  
**SUPREME COURT OF THE UNITED STATES**

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

June 1977  
Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

Marvin Mandel, Governor of )  
Maryland, et al., Appellants, ) On Appeal from the United  
v. ) States District Court for  
Bruce Bradley et al. ) the District of Maryland  
                            )

[June \_\_\_, 1977]

PER CURIAM.

Candidates for statewide or federal office in Maryland may obtain a place on the general election ballot by filing with the State Administrative Board of Election Laws a certificate of candidacy 70 days before a political party's primary election and then by winning the primary. Alternatively, under provisions of the Maryland Election Code, a candidate for statewide or federal office may qualify for a position on the general election ballot as an independent by filing, 70 days before the date on which party primaries are held, nominating petitions signed by at least 3% of the State's registered voters and a

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_

Recirculated: UN 13 15/11/2014

## 1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-128

Marvin Mandel, Governor of Maryland, et al., Appellants,  
v.  
Bruce Bradley et al. } On Appeal from the United States District Court for the District of Maryland.

[June —, 1977]

PER CURIAM.

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The appellee, Bruce Bradley, decided in the spring of 1975 to run as an independent candidate for the United States Senate in 1976, a presidential election year. Starting in the fall of 1975 Bradley collected signatures on nominating petitions. The requisite number was 51,155. On March 8, 1976, the deadline for filing, Bradley submitted 53,239 signatures and filed a certificate of candidacy for the Senate seat. However, on April 15, 1976, the State Administrative

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 21, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 76-128, Mandel v. Bradley,  
No. 76-680, Jernigan v. Lendall

In 1974, Jim Lendall, an independent candidate for the state legislature, filed suit against the Arkansas Secretary of State, challenging Arkansas' ballot access requirements. At that time independent candidates were required to file nominating petitions signed by 15% of the qualified electors in the relevant district, and the petitions had to be submitted by the first Tuesday in April -- roughly 210 days before the general election. A three-judge court ruled that the scheme was unconstitutional, specifically finding that support for independent candidates does not crystallize until after party nominees and positions are known, and that it is unduly burdensome to require so substantial a number of petition signatures to be filed so early. 387 F. Supp. 397 (ED Ark.). No appeal was taken.

The Arkansas legislature amended its ballot access scheme in 1975 to require signatures of only 10%, rather than 15% of the qualified electors in the district. According to a 1975 survey of state election laws, only one other state -- North Carolina -- requires that large a percentage of signatures. See *Developments in the Law -- Election Law*, 88 Harv. L. Rev. 1111, 1124 n. 11 (1975).

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr. Justice Marshall~~  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 3-28-77

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-128

Marvin Mandel, Governor of Maryland, et al., Appellants,  
*v.*  
Bruce Bradley et al. | On Appeal from the United States District Court for the District of Maryland.

[April —, 1977]

**PER CURIAM.**

Candidates for statewide or federal office in Maryland may obtain a place on the general election ballot by filing with the State Administrative Board of Election Laws a certificate of candidacy 70 days before a political party's primary election and then by winning the primary. Alternatively, under provisions of the Maryland Election Code a candidate for statewide or federal office may qualify for a position on the general election ballot as an independent by filing, 70 days before the date on which party primaries are held, nominating petitions signed by at least 3% of the State's registered voters and a certificate of candidacy. Article 33, 3B Ann. Code of Maryland, § 7-1 (a), (b), (e). In presidential election years this filing date occurs approximately 230 to 240 days before the general election. In other years it occurs about 120 days before the general election.

Appellee Bradley decided in the spring of 1975 to run as an independent candidate for the United States Senate in 1976, a presidential election year. Starting in the fall of 1975 Bradley collected signatures on nominating petitions. The requisite number was 51,155. On March 8, 1976, the deadline date for filing, Bradley submitted 53,239 signatures and filed a certificate of candidacy for the Senate seat. However, on April 15, 1976, the State Administrative Board of Election

✓  
STYLISTIC CHANGES THROUGHOUT.

SEE PAGES:

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 4-4-77**2nd DRAFT****SUPREME COURT OF THE UNITED STATES****No. 76-128**

Marvin Mandel, Governor of Maryland, et al., Appellants,  
 v.  
 Bruce Bradley et al. | On Appeal from the United States District Court for the District of Maryland.

[April —, 1977]

**PER CURIAM.**

Candidates for statewide or federal office in Maryland may obtain a place on the general election ballot by filing with the State Administrative Board of Election Laws a certificate of candidacy 70 days before a political party's primary election and then by winning the primary. Alternatively, under provisions of the Maryland Election Code a candidate for statewide or federal office may qualify for a position on the general election ballot as an independent by filing, 70 days before the date on which party primaries are held, nominating petitions signed by at least 3% of the State's registered voters and a certificate of candidacy. Article 33, 3B Ann. Code of Maryland, § 7-1 (a), (b), (e). In presidential election years this filing date occurs approximately 230 to 240 days before the general election. In other years it occurs about 120 days before the general election.

Appellee Bradley decided in the spring of 1975 to run as an independent candidate for the United States Senate in 1976, a presidential election year. Starting in the fall of 1975 Bradley collected signatures on nominating petitions. The requisite number was 51,155. On March 8, 1976, the deadline date for filing, Bradley submitted 53,239 signatures and filed a certificate of candidacy for the Senate seat. However, on April 15, 1976, the State Administrative Board of Election

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 11, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 76-128, Mandel v. Bradley

On page seven of the per curiam in this case I shall add the following footnote:

The dissent argues that the affirmance of the judgment in Auerbach v. Mandel is not authoritative on the constitutional issue because in its view the District Court gave an alternative, non-constitutional ground for its judgment--that plaintiffs were guilty of laches. But as its opinion and judgment reveal, the District Court did not consider laches to be completely dispositive of the issues in the case. As its judgment states, laches did disentitle one of the plaintiffs, Peoples Party, "from obtaining an extension of the March 6, 1972 deadline for filing certificates of candidacy for the 1972 general election." But the District Court obviously did not consider that the Peoples Party was foreclosed from obtaining a declaratory judgment on the validity of the party structure and filing deadline issues in the case, for its judgment declared, as its opinion had, that the provisions of the Maryland statutes challenged by the Peoples Party "are not unreasonable or unconstitutionally burdensome and are not invalid."

Even if laches had been a completely dispositive ground the District Court's ruling on the constitutional issue was itself an authoritative precedent. Woods v. Realty Co., 337 U.S.

-2-

535, 537 (1949); Massachusetts v. United States, 333 U.S. 611, 623 (1948). Furthermore, in stating the "Questions Presented" in the jurisdictional statement filed here, only constitutional issues were specified. The State did not urge affirmance by reason of laches, there was hence no genuine dispute on that issue before us and it is reasonable to conclude that the Court's affirmance rejected the constitutional claims formally asserted in the jurisdictional statement. Finally, the Court has crossed this bridge once before since, as indicated in the text, Auerbach v. Mandel was cited in Storer v. Brown, and the citation was on the merits of the constitutional issue.



B.R.W.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 31, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 76-128 - Mandel v. Bradley

The first circulations in this case did not fare well, to say the least. Here is another try.

  
B.R.W.

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice White

Circulated:

Recirculated: *5-31-77*

3rd DRAFT

No. 76-128 - Mandel v. Bradley

PER CURIAM.

Candidates for statewide or federal office in Maryland may obtain a place on the general election ballot by filing with the State Administrative Board of Election Laws a certificate of candidacy 70 days before a political party's primary election and then by winning the primary. Alternatively, under provisions of the Maryland Election Code, a candidate for state-wide or federal office may qualify for a position on the general election ballot as an independent by filing, 70 days before the date on which party primaries are held, nominating petitions signed by at least 3% of the State's registered voters and a certificate of candidacy. Md. Election Code Ann. § 7-1. In presidential election years this filing date occurs approximately 230 to 240 days before the general election. In other years it occurs about 120 days before the general election.

Appellee Bradley decided in the spring of 1975 to run as an independent candidate for the United States Senate in 1976, a presidential election year. Starting in the fall of 1975 Bradley collected signatures on nominating petitions. The requisite number was 51,155. On March 8, 1976, the deadline for filing, Bradley submitted 53,239 signatures and filed a certificate of candidacy for the Senate seat. However, on April 15, 1976, the State Administrative Board of Election Laws determined that only 42,049 of the signatures were valid and denied him a place on the ballot.

Two weeks later, Bradley and the other appellees--petition signators and other voter supporters of Bradley--filed the instant suit, alleging that the procedures mandated by § 7-1 of the Maryland Election Code constitute an unconstitutional infringement on their associational and voting rights under the First and Fourteenth Amendments. They complained that Maryland's early filing date made it more difficult for Bradley to obtain the requisite number of signatures than for a party member to win a primary and sought, inter

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 9, 1977

Re: No. 76-128 - Mandel v. Bradley

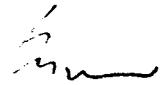
Dear Potter:

I shall file a brief concurring statement as follows:

"Mr. Justice White, concurring.

"Although there are many indications in the District Court's opinion that it not only considered Salera controlling, but also independently invalidated the Maryland law on grounds similar to or the same as those employed in Salera--in which event, a remand would be inappropriate--it is fairly arguable that the District Court should unmistakably record its opinion as to the validity of the Maryland law. A number of my Brethren are of this view, and I defer to their judgment."

Sincerely,



Mr. Justice Stewart

Copies to Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Brennan  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 6-15-77

1st DRAFT

**SUPREME COURT OF THE UNITED STATES** Recd

No. 76-128.

Marvin Mandel, Governor of Maryland, et al., Appellants,  
*v.*  
Bruce Bradley et al. } On Appeal from the United States District Court for the District of Maryland.

[June —, 1977]

MR. JUSTICE WHITE, with whom MR. JUSTICE POWELL joins, concurring.

Although there are many indications in the District Court's opinion that it not only considered *Salera* controlling, but also independently invalidated the Maryland law on grounds similar to or the same as those employed in *Salera*—in which event, a remand would be inappropriate—it is fairly arguable that the District Court should unmistakably record its opinion as to the validity of the Maryland law. A number of my Brethren are of this view, and I defer to their judgment.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

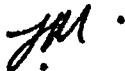
April 12, 1977

Re: No. 76-128, Mandel v. Bradley

Dear Potter:

Please join me.

Sincerely,



T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 6, 1977

Re: No. 76-128, Mandel v. Bradley

Dear Potter:

I am still with you.

Sincerely,

*J.H.*  
T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 9, 1977

Re: No. 76-128, Mandel v. Bradley

Dear Potter:

Please join me.

Sincerely,

*J.M.*  
T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 31, 1977

Re: No. 76-128 - Mandel v. Bradley

Dear Byron:

On further reflection, I have concluded that we should vacate and remand and let the three-judge court review the matter in light of the entire statute.

Sincerely,

*Harry*  
—

*This is the  
lowest I will  
do*

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 8, 1977

Re: No. 76-128 - Mandel v. Bradley

Dear Potter:

Please join me in your circulation of today which would remand the case to the District Court for further proceedings.

Sincerely,

*H. A. B.*

Mr. Justice Stewart

cc: The Conference

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

CC: COUNCIL OF  
THE SUPREME COURT  
BY: JAMES A. BLACKMUN

June 6, 1977

Re: No. 76-128 - Mandel v. Bradley

Dear Potter:

Will you please add my name to your dissenting opinion.

Sincerely,

*J.A.B.*

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 8, 1977

Re: No. 76-128 - Mandel v. Bradley

Dear Potter:

Please join me in your per curiam circulated June 8.

Sincerely,

*Har.*

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
~~Mr.~~ Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: APR 15 1977

1st DRAFT

Recirculated: \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
 No. 76-128  
 \_\_\_\_\_

Marvin Mandel, Governor of Maryland, et al., Appellants,  
 v.  
 Bruce Bradley et al. } On Appeal from the United States District Court for the District of Maryland.

[April —, 1977]

MR. JUSTICE POWELL, concurring in the judgment.

I agree with MR. JUSTICE WHITE that the legislative scheme by which Maryland permits independents to gain access to the ballot in a presidential election year does not violate the Constitution. Although the independent candidate must qualify early in March, the requirements for qualification as an independent are not so burdensome in their totality as to violate the First and Fourteenth Amendments. As MR. JUSTICE WHITE observes: "An independent candidate needs signatures from only 3% of the State's registered voters; those signing the petitions need not support the candidate; and the candidate has an unlimited amount of time in which to obtain the signatures." *Ante*, at 8. These relatively relaxed signature gathering requirements make it clear that the early filing deadline is not a burden "so severe as to confer an effective political monopoly on the two major parties." *Storer v. Brown*, 415 U. S. 724, 729 (1974).

I do not agree, however, that the District Court was bound to view this case as controlled by the summary affirmance in *Auerbach v. Mandel*, 409 U. S. 808 (1972). As MR. JUSTICE STEWART persuasively demonstrates, *post*, at 3-4, the unexplained affirmance in *Auerbach* might have rested on any one of a number of alternative grounds. Reliance on *Auerbach* as dispositive in this context would be no more

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 31, 1977

No. 76-128 Mandel v. Bradley

Dear Byron:

I have just read your recirculation, and am happy to join it.

As my little concurring statement is now largely redundant, I am withdrawing it.

If, as I hope, your recirculation attracts a Court, I think it should be a Court opinion rather than a Per Curiam, and I so "move".

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 10, 1977

No. 76-128 Mandel v. Bradley

Dear Byron:

Please add my name to your concurring statement.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 28, 1977

Re: No. 76-128 - Mandel v. Bradley

Dear Byron:

Please show me as not participating in the consideration or decision of this case.

Sincerely,

*[Handwritten signature]*

Mr. Justice White

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 6, 1977

Re: No. 76-128 - Mandel v. Bradley

Dear Byron:

Please note that I took no part in the consideration  
or decision of this case.

Sincerely,

W.W.

Mr. Justice White

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

MAR 30 1977

Circulated:

1st DRAFT

Recirculated:

## SUPREME COURT OF THE UNITED STATES

No. 76-128

Marvin Mandel, Governor of Maryland, et al., Appellants,  
v.  
Bruce Bradley et al.,

On Appeal from the United States District Court for the District of Maryland.

[April —, 1977]

MR. JUSTICE STEVENS, dissenting.

In my judgment the Maryland statute unfairly discriminates against independent candidates in one respect. It requires the independent to make his decision to become a candidate much sooner than a member of a national political party.

A party member is merely required to file a certificate of candidacy 70 days before the primary election. That procedure is so simple that he may postpone his decision until that very day and still satisfy all legal requirements for candidacy. In contrast, the independent must *complete* the signature gathering process by the 70th day preceding the primary election. Since the task of obtaining the signatures of 3% of the registered voters inevitably will require a significant amount of time, the independent must make his decision to run well in advance of the filing deadline.

In my opinion, the State has not put forward any justification for this disparate treatment. Moreover, it is potentially a matter of great significance. The decision to become a candidate may be prompted by a sudden, unanticipated event of great national or local importance. If such an event should occur on the 71st day before a primary, national party members could make a timely decision to run but independents could not.

The statute should be evenhanded in its impact on the timing of the most important decision any candidate must

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated:

JUN 8 77

Recirculated:

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-128

Marvin Mandel, Governor of Maryland, et al., Appellants,  
 v.  
 Bruce Bradley et al. } On Appeal from the United States District Court for the District of Maryland.

[June —, 1977]

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The statute should be evenhanded in its impact on the timing of the most important decision any candidate must

P.2

to: The Chief Justice  
 ✓ Mr. Justice Brennan  
 ✓ Mr. Justice Stewart  
 ✓ Mr. Justice White  
 ✓ Mr. Justice Marshall  
 ✓ Mr. Justice Blackmun  
 ✓ Mr. Justice Powell  
 ✓ Mr. Justice Rehnquist

from: Mr. Justice Stevens

Circulated: \_\_\_\_\_

3rd DRAFT

Recirculated: 2/25/1977

## SUPREME COURT OF THE UNITED STATES

No. 76-128

Marvin Mandel, Governor of Maryland, et al., Appellants,  
 v.  
 Bruce Bradley et al. } On Appeal from the United States District Court for the District of Maryland.

[June —, 1977]

MR. JUSTICE STEVENS, dissenting.

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The statute should be evenhanded in its impact on the timing of the most important decision any candidate must