

# The Burger Court Opinion Writing Database

## *Secretary of State of Maryland v. Joseph H Munson Co.*

467 U.S. 947 (1984)

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

November 11, 1983

Re: 82-766 - Secretary of State of Maryland v. Munson Co., Inc.

82-825 - EEOC v. Shell Oil Co.

82-1432 - Pulliam v. Allen

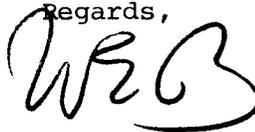
MEMORANDUM TO THE CONFERENCE:

In sending me assignments of the three cases listed above, Bill Brennan had not yet seen Sandra's memo of late Thursday in Pulliam. I read her memo as changing her "tentative affirm" to "tentative reverse," as set out in her memo.

Bill now suggests we confer Monday, November 14, at 10:15 a.m. after we rise to clarify the situation.

Since I am confronted with several "bloc" assignments, there could be a "domino" problem and I will defer all assignments until we confer.

Regards,



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

CHAMBERS OF  
THE CHIEF JUSTICE

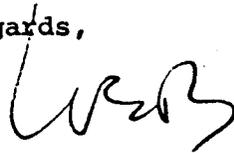
November 14, 1983

Re: 82-766 - Secretary of State of Maryland v. Jos. H. Munson Co., Inc.

Dear Sandra:

Will you take on a dissent in the above?

Regards,



Justice O'Connor

Copies to: Justice Powell  
Justice Rehnquist

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

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
THE CHIEF JUSTICE

May 16, 1984

84 MAY 17 19:28

Re: No. 82-766 - Secretary of State of Maryland v.  
Joseph H. Munson Co., Inc.

Dear Bill:

I join your dissent.

Regards,



Justice Rehnquist

Copies to the Conference

MA

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

November 11, 1983

No. 82-766

Secretary of State of Maryland  
v. Munson Co., Inc.

---

Dear Chief,

Harry has agreed to take the  
opinion for the Court in the above.

Sincerely,



The Chief Justice

Copies to the Conference

RECEIVED  
Supreme Court of the United States  
SUPREME COURT U.S.  
MAY 4 1984  
MARSHALL

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

84 MAY -4 P1:05

May 4, 1984

No. 82-766

Secretary of State of Maryland  
v. Joseph H. Munson Co., Inc.

Dear Harry,

I agree.

Sincerely,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 4, 1984

Re: 82-766 -

Secretary of State of Maryland v.  
Joseph H. Munson Company, Inc.

---

Dear Harry,

I have not been a great fan of striking down state or local laws because of the so-called discretion of a licensing authority and have thought that labelling any restriction a prior restraint is often a fuzzy, result-oriented makeweight contributing little to First Amendment analysis. Hence, I could do without these considerations in this case and would prefer to rely on overbreadth alone. I would not, in particular, import the rigors implied by prior restraint characterization into a case involving charitable solicitations, which are surely subject to various kinds of regulations that would be inappropriate in dealing with newspapers. Otherwise, your draft went down quite well and I could join almost all of it in its present form.

Sincerely yours,



Justice Blackmun

cpm

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 8, 1984

Re: 82-766 - Secretary of State of Maryland  
v. Joseph H. Munson Company, Inc.

---

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 4, 1984

Re: No. 82-766-Sec. of State of Maryland v. Munson

Dear Harry:

Please join me.

Sincerely,

*TM*  
T.M.

Justice Blackmun

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

May 3, 1984

Re: No. 82-766, Secretary of State of Maryland  
v. Joseph H. Munson Company, Inc.

Dear Byron:

Because you were the author of Schaumburg, I shall  
very much value your reactions to this one. It is  
tricky going in the area.

Sincerely,

HAB

Justice White



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 7, 1984

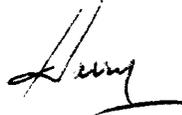
Re: No. 82-766, Secretary of State of Maryland  
v. Joseph H. Munson Co., Inc.

Dear Bill and Thurgood:

The votes in this case are tough and go. Byron, whose vote is essential, has expressed concern in a letter, a copy of which I enclose.

A second draft of my opinion will be around, perhaps tomorrow. I think it meets his concerns and it provides an answer to Bill Rehnquist's dissent.

Sincerely,



Justice Brennan  
Justice Marshall

HAE

May 8, 1984

Re: No. 82-766, Secretary of State of Maryland  
v. Joseph H. Munson, Co., Inc.

Dear Byron:

We have attempted in this draft to accommodate the concerns you expressed in your letter of May 4 and, in addition, to provide an answer to the dissent that is circulating. I hope this meets with your approval.

Sincerely,

HAB

Justice White

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Stylistic Changes  
Pages: 14, 15, 16, 18, 19  
Footnotes Renumbered

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Blackmun

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

Recirculated:       MAY 8 1984      

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-766

SECRETARY OF STATE OF MARYLAND,  
PETITIONER *v.* JOSEPH H. MUNSON  
COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

[May —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

In *Village of Schaumburg v. Citizens For Better Environment*, 444 U. S. 620 (1980), this Court, with one dissenting vote, concluded that a municipal ordinance prohibiting the solicitation of contributions by a charitable organization that did not use at least 75% of its receipts for "charitable purposes" was unconstitutionally overbroad in violation of the First and Fourteenth Amendments. The issue in the present case is whether a Maryland statute with a like percentage limitation, but with provisions that render it more "flexible" than the *Schaumburg* ordinance, can withstand constitutional attack. The Court of Appeals of Maryland concluded that, even with this increased flexibility, the percentage restriction on charitable solicitation was an unconstitutional limitation on protected First Amendment solicitation activity. We agree with that conclusion and affirm the judgment of the Court of Appeals.

I

Joseph H. Munson Co., Inc. (Munson), an Indiana corporation, instituted this action in the Circuit Court for Anne Arundel County, Md., seeking declaratory and injunctive relief against the Secretary of State of Maryland (Secretary). Munson is a professional for-profit fundraiser in the business

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STYLISTIC CHANGES

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Blackmun

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

Recirculated:     MAY 9 1984    

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-766

SECRETARY OF STATE OF MARYLAND,  
PETITIONER *v.* JOSEPH H. MUNSON  
COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

[May —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

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pp. 15, 17, 19  
footnotes renumbered

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Blackmun

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

Recirculated: MAY 15 1984

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-766

SECRETARY OF STATE OF MARYLAND,  
PETITIONER *v.* JOSEPH H. MUNSON  
COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

[May —, 1984]

Jan

JUSTICE BLACKMUN delivered the opinion of the Court.

In *Village of Schaumburg v. Citizens For Better Environment*, 444 U. S. 620 (1980), this Court, with one dissenting vote, concluded that a municipal ordinance prohibiting the solicitation of contributions by a charitable organization that did not use at least 75% of its receipts for "charitable purposes" was unconstitutionally overbroad in violation of the First and Fourteenth Amendments. The issue in the present case is whether a Maryland statute with a like percentage limitation, but with provisions that render it more "flexible" than the *Schaumburg* ordinance, can withstand constitutional attack. The Court of Appeals of Maryland concluded that, even with this increased flexibility, the percentage restriction on charitable solicitation was an unconstitutional limitation on protected First Amendment solicitation activity. We agree with that conclusion and affirm the judgment of the Court of Appeals.

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REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

May 29, 1984

Re: No. 82-766 - Secretary of State of Maryland  
v. Joseph H. Munson Co., Inc.

Dear John:

I gather from our telephone conversation the other day that your concerns have to do with the relationship between the principles this Court applies in assessing First Amendment "overbreadth" challenges and the fact that the decision below, striking down the statute on First Amendment grounds, was by a state court. Two points occur to me that might be worth further explanation. I wonder if these touch on your concerns.

The first that might be addressed is whether the standing question in Munson's case is solely a prudential inquiry. The result of imposing prudential constraints here on this Court's exercise of its own jurisdiction would be that the state court judgment striking down a statute on federal constitutional grounds would be left standing. It might be questioned whether, in such a circumstance, it is appropriate for this Court to engage in a prudential standing inquiry at all.

On the other hand, it might also be asked whether it is appropriate to consider the standing question in this case as a solely "prudential" inquiry. As my analysis suggests, I am reluctant simply to label Munson's standing "overbreadth standing." "Overbreadth standing" is used to describe so many different results that it does little to explain why the particular result is reached. Nevertheless, the same principles that lead us to strike a statute on its face to avoid the chilling effect it may have on free speech lead us to give Munson standing here. In light of that, it is arguable that as long as there is an overbreadth doctrine, the First Amendment compels both this Court and the Maryland court to accord Munson standing.

Because of our determination that Munson does have standing, I do not think it is necessary to resolve those questions in this case. I would not be averse, however, to pointing out the issues and indicating that we do not intend the opinion to be taken as resolving them.

The second point at which the fact that the decision came up from a state court is relevant is in the determina-

tion whether the statute on its face is substantially overbroad. In making that determination, the possibility of a narrowing construction by the state courts, of course, must be considered. I noted at p. 17, n. 12, the fact that the state court has had an opportunity to provide a narrowing construction and has failed to do so. If this is a point of concern, however, the point could be made more forcefully in the text.

I hope I have hit on some of your concerns.

Sincerely,

HAB

Justice Stevens

May 30, 1984

Re: No. 82-766, Secretary of State of Maryland  
v. Joseph H. Munson Company, Inc.

Dear Bill:

Mr. Stevas has sent me the enclosed communication from the Maryland Assistant Attorney General. It speaks for itself. I am, as a consequence, dropping a footnote in my opinion making reference to the enactment of the new statute effective July 1, 1984.

Sincerely,

HAB

Justice Rehnquist

pp. 2, 17  
Footnotes Renumbered

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Blackmun

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

Recirculated: MAY 31 1984

5th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-766

SECRETARY OF STATE OF MARYLAND,  
PETITIONER *v.* JOSEPH H. MUNSON  
COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

[June —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

In *Village of Schaumburg v. Citizens For Better Environment*, 444 U. S. 620 (1980), this Court, with one dissenting vote, concluded that a municipal ordinance prohibiting the solicitation of contributions by a charitable organization that did not use at least 75% of its receipts for "charitable purposes" was unconstitutionally overbroad in violation of the First and Fourteenth Amendments. The issue in the present case is whether a Maryland statute with a like percentage limitation, but with provisions that render it more "flexible" than the *Schaumburg* ordinance, can withstand constitutional attack. The Court of Appeals of Maryland concluded that, even with this increased flexibility, the percentage restriction on charitable solicitation was an unconstitutional limitation on protected First Amendment solicitation activity. We agree with that conclusion and affirm the judgment of the Court of Appeals.

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P.2

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JUSTICE MARSHALL

'84 JUN 12 P1:49

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Blackmun

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

Recirculated: JUN 12 1984

6th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-766

SECRETARY OF STATE OF MARYLAND,  
PETITIONER *v.* JOSEPH H. MUNSON  
COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

[June —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

In *Village of Schaumburg v. Citizens For Better Environment*, 444 U. S. 620 (1980), this Court, with one dissenting vote, concluded that a municipal ordinance prohibiting the solicitation of contributions by a charitable organization that did not use at least 75% of its receipts for "charitable purposes" was unconstitutionally overbroad in violation of the First and Fourteenth Amendments. The issue in the present case is whether a Maryland statute with a like percentage limitation, but with provisions that render it more "flexible" than the *Schaumburg* ordinance, can withstand constitutional attack. The Court of Appeals of Maryland concluded that, even with this increased flexibility, the percentage restriction on charitable solicitation was an unconstitutional limitation on protected First Amendment solicitation activity. We agree with that conclusion and affirm the judgment of the Court of Appeals.

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Supreme Court of the United States

Washington, D. C. 20543

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JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

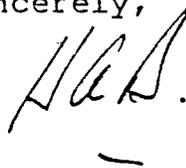
'84 JUN 21 P2:10 June 21, 1984

Re: No. 82-766 - Secretary of State of Maryland  
v. Joseph H. Munson Co., Inc.

Dear Bill:

In view of the fact that your footnote 6 has now been dropped, it will be necessary for me to make a corresponding change in my footnote 1. I shall drop everything in that footnote after the middle of the fifth line.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 4, 1984

82-766 Secretary of State of Maryland v. Joseph H. Munson  
Co., Inc.

Dear Harry:

As you know from what I said at Conference, I would like to "come out" the other way on this case.

I may try to write a dissent - though you have written a strong opinion.

Sincerely,



Justice Blackmun

Copies to the Conference

LFP/vde

24 MAY 10 1984

200

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

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JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

84 MAY 10 P3:03

May 10, 1984

82-766 Secretary of State v. Joseph Munson Company, Inc.

Dear Bill:

Please join me in your dissent.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference



Changes

1, 3, 4, 5, 7-11

10. The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: **Justice Rehnquist**

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

Recirculated: May

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-766

SECRETARY OF STATE OF MARYLAND,  
PETITIONER *v.* JOSEPH H. MUNSON  
COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

[May —, 1984]

JUSTICE REHNQUIST, with whom JUSTICE POWELL joins,  
dissenting.

Four terms ago, the Court struck down an ordinance of the Village of Schaumburg, Illinois, which prohibited "the solicitation of contributions by charitable organizations that do not use at least 75 percent of their receipts for 'charitable purposes,' those purposes being defined to exclude solicitation expenses, salaries, overhead, and other administrative expenses." *Schaumburg v. Citizens for Better Environ.*, 444 U. S. 620, 622 (1980). Today, on the authority of that decision, the Court strikes down a markedly different Maryland statute, whose primary and legitimate effect is to prohibit professional fundraisers from charging charities a fee of more than 25% of the amount raised. The Court, invoking the doctrine of "overbreadth," reaches this result not at the behest of any affected charity, but at the behest of a professional fundraising organization. Believing that in this case the overbreadth doctrine is not merely "strong medicine," *Broadrick v. Oklahoma*, 413 U. S. 601, 613 (1973), but "bad medicine," I dissent.

Recently, this Court reaffirmed its commitment to "[t]he traditional rule" that, except in the rarest circumstances, "a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may con-

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

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JUSTICE MARSHALL

'84 MAY 14 AIO :05

STYLISTIC CHANGES THROUGHOUT

From: Justice Rehnquist

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Recirculated: MAY 12 1984

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-766

SECRETARY OF STATE OF MARYLAND,  
PETITIONER *v.* JOSEPH H. MUNSON  
COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

[May —, 1984]

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Page 1

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

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

Recirculated: \_\_\_\_\_ MAY 17 1984

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-766

SECRETARY OF STATE OF MARYLAND,  
PETITIONER *v.* JOSEPH H. MUNSON  
COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

[May —, 1984]

JUSTICE REHNQUIST, with whom CHIEF JUSTICE BURGER, JUSTICE POWELL, and JUSTICE O'CONNOR join, dissenting.

Four terms ago, the Court struck down an ordinance of the Village of Schaumburg, Illinois, which prohibited "the solicitation of contributions by charitable organizations that do not use at least 75 percent of their receipts for 'charitable purposes,' those purposes being defined to exclude solicitation expenses, salaries, overhead, and other administrative expenses." *Schaumburg v. Citizens for Better Environ.*, 444 U. S. 620, 622 (1980). Today, on the authority of that decision, the Court strikes down a markedly different Maryland statute, whose primary and legitimate effect is to prohibit professional fundraisers from charging charities a fee of more than 25% of the amount raised. The Court, invoking the doctrine of "overbreadth," reaches this result not at the behest of any affected charity, but at the behest of a professional fundraising organization. Believing that in this case the overbreadth doctrine is not merely "strong medicine," *Broadrick v. Oklahoma*, 413 U. S. 601, 613 (1973), but "bad medicine," I dissent.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 8, 1984

MEMORANDUM TO THE CONFERENCE

RE: No. 82-766, Maryland v. Munson

The following is a new footnote which I plan to add at the end of my dissent in response to Harry's treatment of the new charitable solicitation law passed by the Maryland legislature and effective July 1, 1984. Due to the backlog at the printer, I am circulating the change in manuscript form first. A printed version of the revised dissent will follow shortly.

"Effective July 1, 1984, the Maryland legislature has repealed the statute at issue in this case and enacted another, substantially similar law in its place. The Court purports to strike down this new law anticipatorily by stating that the "changes do not affect our analysis of this case." Ante, at 2 n. 1. We have recently noted the impropriety of just such a preemptive strike against a statute which has not yet taken effect and is not before the Court. Davis v. Scherer, \_\_\_ U.S. \_\_\_, \_\_\_ (1984) [See Proposed Op., at 5-6.] However similar the new statute might be to the one actually at issue, the Court has no jurisdiction to adjudicate its constitutionality.

The impropriety in this instance is compounded by the fact that the new statute differs from the current statute in at least one important respect. Effective July 1, the definition of "charitable organization" has been clarified so that it now explicitly does not include an organization such as the Montgomery County Chapter of the Fraternal Order of Police (Montgomery FOP), which is the organization with which respondent Munson hopes to contract. This change would, given the record in this case, completely deprive Munson of Article III standing to challenge the statute.

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Section 103A(b)(1) of the new Act reads in relevant part: "Fraternal organizations of fire fighters, police, or other law enforcement organizations are not included as a 'charitable organization' unless the fraternal organization or law enforcement organization is soliciting for charitable purposes." "Charitable purpose" is then defined in the next section to mean "any charitable or benevolent purpose." The state legislature explicitly struck from the bill language that would have included in that definition any "fraternal purpose." See House Bill No. 1342, at 3.

The stipulations in this case--which constitute the only factual record--state that the Montgomery FOP "is engaged in the dissemination of information and the advocacy of causes on behalf of police officers." Pet. App., at 39a. It seems clear that such dissemination and advocacy is for a "fraternal purpose" and not for a "charitable or benevolent purpose" as those terms are used in the new statute. Thus, the Montgomery FOP apparently is not a "charitable organization" under the new law and is not covered by the fundraising limitations in §103D.

It follows that even if the new statute were in effect, Munson would be without Article III standing to challenge §103D. The stipulations indicate only that Munson wishes to enter into a fundraising contract with the Montgomery FOP calling for a fee in excess of 25%. If §103D does not apply to that contract, then there is no injury-in-fact and, hence, no Article III standing. Thus, the Court is not only purporting to strike down a statute that has not yet taken effect, but it is doing so at the behest of someone who would have no Article III standing to challenge that statute even if it were in effect.

Even the Article III standing of Munson to challenge the current statute in this case may be called into question by the new bill. The Secretary of State of Maryland argued to the court below that the Montgomery FOP had not demonstrated that it is a "charitable organization" within the meaning of the law as currently written. See Pet. App., at 10a. The Maryland Court of Appeals did not find it necessary to consider that question, noting that in attacking the statute on its face Munson was not obliged to seek a prior administrative determination that the statute actually would preclude its proposed contract with the Montgomery FOP. *Id.*, at 11a. The Court today indicates that the Montgomery FOP's stipulated "reluctance" to enter into a contract with Munson, as well as warnings issued by

the Secretary to Munson, are sufficient to constitute both "threatened and actual injury as a result of the statute." Ante, at 6-7. But if the Maryland legislature has now made it clear that the statute does not, in its new form, apply to organizations like the Montgomery FOP, the implication is a strong one that the outgoing statute was never intended to apply to such organizations either. In any event, with the new statute due to take effect in a matter of days, any injury to Munson, whether actual or threatened, appears to have dissipated. Without some clearer indication that Munson is actually suffering a current injury as a result of the limitations in §103D, our jurisdiction to consider this case at all is in serious doubt."

Sincerely,

A handwritten signature in dark ink, appearing to be the initials 'WM' or similar, written in a cursive style.

Pp 11412

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

'84 JUN 11 10:58

From: Justice Rehnquist

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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-766

SECRETARY OF STATE OF MARYLAND,  
PETITIONER v. JOSEPH H. MUNSON  
COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

[June —, 1984]

JUSTICE REHNQUIST, with whom CHIEF JUSTICE BURGER, JUSTICE POWELL, and JUSTICE O'CONNOR join, dissenting.

Four terms ago, the Court struck down an ordinance of the Village of Schaumburg, Illinois, which prohibited "the solicitation of contributions by charitable organizations that do not use at least 75 percent of their receipts for 'charitable purposes,' those purposes being defined to exclude solicitation expenses, salaries, overhead, and other administrative expenses." *Schaumburg v. Citizens for Better Environ.*, 444 U. S. 620, 622 (1980). Today, on the authority of that decision, the Court strikes down a markedly different Maryland statute, whose primary and legitimate effect is to prohibit professional fundraisers from charging charities a fee of more than 25% of the amount raised. The Court, invoking the doctrine of "overbreadth," reaches this result not at the behest of any affected charity, but at the behest of a professional fundraising organization. Believing that in this case the overbreadth doctrine is not merely "strong medicine," *Broadrick v. Oklahoma*, 413 U. S. 601, 613 (1973), but "bad medicine," I dissent.

Recently, this Court reaffirmed its commitment to "[t]he traditional rule" that, except in the rarest circumstances, "a person to whom a statute may constitutionally be applied

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P. 11

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JUSTICE MARSHALL

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

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6th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 82-766

SECRETARY OF STATE OF MARYLAND, PETITIONER *v.* JOSEPH H. MUNSON COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

[June —, 1984]

JUSTICE REHNQUIST, with whom CHIEF JUSTICE BURGER, JUSTICE POWELL, and JUSTICE O'CONNOR join, dissenting.

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Recently, this Court reaffirmed its commitment to "[t]he traditional rule" that, except in the rarest circumstances, "a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-766

SECRETARY OF STATE OF MARYLAND,  
PETITIONER *v.* JOSEPH H. MUNSON  
COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF MARYLAND

[June —, 1984]

JUSTICE STEVENS, concurring.

With increasing frequency this Court seems prone to disregard the important distinctions between cases that come to us from the highest court of a State and those that arise in the federal system. The discussion of standing by the majority and the dissent illustrates the point.

What may loosely be described as the "standing" issue in this case actually encompasses three distinct questions: (1) Is the dispute between the Secretary of State of Maryland and Munson Company a "case" or "controversy" within the meaning of Article III of the United States Constitution; (2) are there "prudential reasons" for refusing to allow Munson to base his claim for relief on the fact that the statute is unconstitutional as it applies to the company's potential clients; and (3) is this a proper case for overbreadth analysis? The fact that this case comes to us from the Court of Appeals of Maryland is of critical significance with respect to the first two issues, but is of less importance with respect to the third. The three separate questions, however, clearly merit separate discussion.

I

Respondent unquestionably has "standing" in a jurisdictional sense. The Court appears to be unanimous on the

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

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JUSTICE MARSHALL

84 JUN 18 P1:08

June 18, 1984

Re: 82-766 - Secretary of State of Maryland  
v. Joseph H. Munson Co., Inc.

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 19 A9:53

7-3

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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Recirculated: \_\_\_\_\_ JUN 18 1984

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-766

SECRETARY OF STATE OF MARYLAND,  
PETITIONER *v.* JOSEPH H. MUNSON  
COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF  
MARYLAND

[June —, 1984]

JUSTICE STEVENS, concurring.

With increasing frequency this Court seems prone to disregard the important distinctions between cases that come to us from the highest court of a State and those that arise in the federal system. The discussion of standing by the majority and the dissent illustrates the point.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 4, 1984

No. 82-766 Secretary of State of Maryland  
v. Joseph H. Munson Co., Inc.

Dear Harry,

For the present, I will wait to see the other writing before reaching a decision on whether to join.

Sincerely,



Justice Blackmun

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SV 101-4 2-23 4

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Washington, D. C. 20543

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JUSTICE MARSHALL

84 MAY 17 19:28

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 16, 1984

No. 82-766 Secretary of State of Maryland  
v. Munson

Dear Bill,

Please join me in your dissent.

Sincerely,



Justice Rehnquist

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