

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

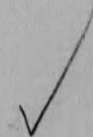
DKT/CASE NO. 82-766

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

PLACE Washington, D. C.

DATE October 31, 1983

PAGES 1 thru 49



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(202) 628-9300
440 FIRST STREET, N.W.
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IN THE SUPREME COURT OF THE UNITED STATES

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SECRETARY OF STATE OF MARYLAND, :
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Petitioner :
 :
v. : No. 82-766
 :
JOSEPH H. MUNSON COMPANY, INC. :
 :
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Washington, D.C.

Monday, October 31, 1983

The above-entitled matter came on for oral
argument before the Supreme Court of the United
States at 10.02: a.m.

APPEARANCES:

MS. DIANA GRIBBON MOTZ, ESQ., Assistant Attorney
General of Maryland, Baltimore, Maryland; on
behalf of the Petitioner.

YALE L. GOLDBERG, ESQ., Rockville, Maryland; on
behalf of the Respondent.

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C O N T E N T S

ORAL ARGUMENT OF

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on behalf of the Petitioner	
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on behalf of the Respondent	
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on behalf of the Petitioner -- rebuttal	

1 charities and because of its obligations to protect its
2 citizens to ensure the integrity of charitable
3 organizations.

4 The statute, which was invalidated by the Court
5 below, was enacted in response to precisely these concerns
6 as noted in its preamble for prior to its enactment in
7 1976 Maryland law provided, as it does now, for annual
8 registration and disclosure of certain information by
9 non-exempt charitable organizations and paid solicitors
10 and for strict criminal penalties for fraudulent mis-
11 representation.

12 However, the Maryland legislature determined
13 that these measures were not sufficient in light of the
14 activities of some ostensibly charitable organization that
15 had raised millions in contributions but had such
16 excessively high expenses that little of that money had
17 been used for charitable purposes.

18 QUESTION: Ms. Motz, at some point in your
19 argument are you going to discuss the standing question?

20 MS. MOTZ: Yes, sir. I will address the
21 standing question right now, Justice Rehnquist.

22 QUESTION: Whenever you plan to get to it is
23 fine. I was hoping you would cover something about it.

24 MS. MOTZ: Well, Justice Rehnquist, perhaps I
25 can address it right now.

1 I believe there are really sort of three
2 standing questions here before the Court today. There is
3 the question of whether there is a case of ^{or} controversy. I
4 don't think that there is really any dispute about that.
5 It seems to me there clearly is. This is classically an ✓
6 adverse case. We have on one side the State, who has its
7 statute declared unconstitutional, and the other side, a
8 party which may be suffer possible criminal prosecution
9 under the statute and which may suffer economic injury if
10 the statute is, in fact, validated by this Court.

11 The second type of standing -- issue here is the
12 jus tertii standing, the opportunity to present the rights
13 of the Fraternal Order of Police by Munson in this case.

14 It is the State's position that there is no jus
15 tertii standing here. However, I am not sure that that
16 issue is terribly important except in one respect and that
17 is because in any event Munson is going to have to
18 demonstrate overbreadth and it is the State's position
19 that there is no overbreadth standing and there is not an
20 overbreadth challenge on the merits here. And, the
21 determination of those two questions, it seems to me, are
22 linked to the same kind of considerations.

23 QUESTION: Do you think the Maryland Court of
24 Appeals' ruling on standing was based on Maryland law or
25 on federal law?

1 MS. MOTZ: I believe it was clearly based on
2 federal law, Your Honor.

3 QUESTION: They certainly cited mostly federal
4 cases.

5 MS. MOTZ: This is the first case in Maryland in
6 which there was ever found any jus tertii standing, the
7 first case. And, it was based, I think, quite clearly on
8 Craig versus Boren and a series of cases of this Court and
9 most particularly ,of course, the Schaumburg case.

10 I was talking about the preamble to the
11 legislation that we have at issue here. The Maryland
12 legislature determined --

13 QUESTION: May I just ask one other question on
14 standing?

15 MS. MOTZ: Yes, sir.

16 QUESTION: If you are right on standing, that
17 there is no jus tertii, whatever you call it, standing,
18 what shall we do with the case?

19 MS. MOTZ: Well, Your Honor, I think that it is
20 very, very clear that the question of whether -- The real
21 question here is whether there is overbreadth standing.

22 QUESTION: We don't even have to reach that if
23 we agree with on jus tertii standing.

24 MS. MOTZ: Well, I believe you do because it
25 seems to me that whether or not there is jus tertii

1 standing the Respondent here could make an overbreadth
2 challenge separate and apart from any jus tertii standing.

3 And, it would be the State's submission that the
4 overbreadth challenge is not a good challenge, that the
5 merits determination on overbreadth should be a finding by
6 this Court that this statute is not substantially over-
7 broad and this court should do exactly what it did in New
8 York versus Ferber. That case came to you from the Court
9 of Appeals of New York, the highest Court of the state,
10 and that Court found that the statute was, indeed,
11 overbroad. This Court reversed and sent it back to the
12 state court for proceedings consistent with that reversal
13 and that is what I submit should be done here.

14 QUESTION: So, really there is no difference in
15 your view between the standing issue and the merits issue
16 on the overbreadth question?

17 MS. MOTZ: It took us a long time to get there,
18 Justice Stevens, but that is, in fact, our position now,
19 yes, sir.

20 The General Assembly, recognizing the activities
21 of some ostensibly charitable organizations that have
22 raised millions of dollars in contributions, but have had
23 such excessively high expenses, that little of that money
24 had been used for charitable purposes, enacted reform
25 legislation, of which the statute challenged here was a

1 principal feature, to provide a more effective regulation
2 over fundraising expenses without imposing and intolerable
3 burden on charity and, in the words of the preamble of the
4 statute, "to assure the contributions will be used to
5 benefit the intended purpose."

6 The challenged statute operates as follows:
7 First, it provides that a charity may spend on fundraising
8 expenses no more than 25 percent of the income raised by
9 the fundraising activity.

10 The statute, however, in no way limits a
11 charity's administrative expenses, thus, management,
12 overhead and general staff salaries are subjected to no
13 limitation.

14 In addition, the Maryland statute excludes from
15 the fundraising limitation a number of major items which
16 are ordinarily regarded as fundraising expenses. For
17 example, the cost of all goods, food or drink or
18 entertainment sold or provided to the public, the cost of
19 pre-planning and feasibility studies, and the cost of
20 postage and printing are expressly excluded from the fund-
21 raising limitation and so may be freely incurred without
22 limits.

23 Moreover, a statute can gain -- a charity can
24 gain a complete exemption from the 25 percent limitation
25 when the limitation would effectively prevent the charity

1 from raising contributions and this exemption may be
2 applied for even if the charity has already exceeded the
3 fundraising limitation.

4 Prior to the decision in the court below, the
5 Secretary of State's records show 14 organizations
6 requested and exemption and 13 waivers from the 25 percent
7 limitation were granted.

8 If a waiver is granted, then a charity must
9 disclose to the public every time it solicits on the
10 telephone, in the mail, or in person, that it has been
11 granted a waiver from the 25 percent limitation and the
12 amount that it has been authorized to spend or has spent
13 on fundraising expenses. Of course, any decision denying
14 a waiver is subject to judicial review.

15 The Respondent, Joseph H. Munson Company, at
16 whose behest, the court below held the statute I have just
17 described unconstitutional, is an Indiana-for-profit
18 corporation whose sole business, according to its amended
19 bill of complaint, is to advise charitable organizations
20 how to go about promoting an entertainment event.

21 Also according to the bill of complaint, Munson
22 regularly collects from charities for its services more
23 than 25 percent of the income raised by these services.

24 The firm's only client in Maryland is the
25 Fraternal Order of Police, one of whose chapters, it has

1 been stipulated, was reluctant to enter into a fundraising
2 contract with Munson because of the 25 percent limitation
3 at issue here.

4 In this respect it is significant that a number
5 of other chapters of the same charity, the Fraternal Order
6 of Police, have on several occasions applied for a waiver
7 from the 25 percent limitation and on each occasion the
8 waiver has been granted.

9 Finally, while it has been stipulated that the
10 Fraternal Order of Police engages in the dissemination of
11 information and the advocacy of causes on the behalf of
12 police officers, there is no stipulation and the record
13 shows no connection between such activities and the
14 fundraising activities at which the Maryland statute is
15 directed.

16 The basis upon which --

17 QUESTION: Ms. Motz, may I ask you whether it is
18 your position now that there are -- Are there any limits
19 in your view on the circumstances in which the exemption
20 is available to a charity?

21 MS. MOTZ: Yes, ma'am. I believe, Justice
22 O'Connor, there are limits. In our view, the exemption is
23 only available, as it says in the statute, when the
24 charity can show that without the exemption, with the
25 limitation, contributions would -- I don't have exactly

1 the words of the statute here, but in those instances
2 which the limitation would effectively prevent the
3 charitable organization from raising contributions.

4 In our view and in practice before the
5 Secretary, it is an economic determination. The Secretary
6 has in front of her the case that the charity makes that
7 the need the exemption for economic reasons.

8 Now, there are any number of economic reasons
9 for which the charity has granted the exemption, a new
10 organization, an organization with new activities, an
11 organization with a new program, an organization that
12 wants to pursue a program in a different way, a one-time
13 or extraordinary expense, any one of those kinds of
14 things, but they are all economically grounded.

15 QUESTION: May I ask what that means,
16 effectively prevent from raising contributions? Does it
17 mean they couldn't raise any contributions or they would
18 raise less money without the limitation?

19 MS. MOTZ: I think that the practice has been
20 they would raise less money. They have had an
21 unsuccessful track record. They haven't been able to
22 raise --

23 QUESTION: As long as they can show that by
24 exceeding the limit they would raise an extra dollar than
25 if they didn't have the 25 percent they would be exempt.

1 MS. MOTZ: Well, Justice Stevens, I am not sure
2 I would go that far, but the Secretary has been liberal in
3 granting the exemptions and if a charity comes in with a
4 showing --

5 QUESTION: How many of these exemptions were
6 granted before this lawsuit was filed?

7 MS. MOTZ: There were 14 organizations that
8 requested exemption and 13 of those were granted.

9 QUESTION: How many before this lawsuit was
10 filed?

11 MS. MOTZ: Before this lawsuit -- The lawsuit
12 was filed in 1978. For two years nothing happened at all.

13 QUESTION: So those are all post-litigation
14 exemptions?

15 MS. MOTZ: Post the beginning of this
16 litigation.

17 QUESTION: Yes.

18 MS. MOTZ: The statute was not enacted until
19 1976, so the regulations, in fact, were not promulgated
20 until February of '78. So, it has taken awhile to get a
21 record, if you will, of the practice here.

22 QUESTION: Do you feel the regulations are con-
23 sistent with the statute as interpreted by your highest
24 court?

25 MS. MOTZ: I do, Your Honor. Our highest court

1 said, which, it seems to me, is absolutely true, that the
2 regulations can go no further than the statute and it is a
3 matter that this Court and, indeed, every court I am
4 familiar with has ever held. And, we believe the way in
5 which those regulations have been interpreted by the
6 Secretary, the practice is entirely consistent with the
7 statute and has gone no further than the statutory
8 authority.

9 And, indeed, Respondent makes no contention to
10 the contrary. His contention is not that the regulations
11 go further than the statute. He simply says that the
12 regulations and the statute don't give enough discretion,
13 don't give enough exemption authority.

14 QUESTION: I take it you are satisfied with the
15 so-called narrow interpretation of the statute. I guess
16 you have to be.

17 MS. MOTZ: I think that is right. I have no --
18 The General Assembly has spoken it seems to me.

19 QUESTION: Ms. Motz, I would like to ask you a
20 question about the statute also. On page eight of your
21 brief, you say there is no limit whatever on adminis-
22 trative expenses.

23 MS. MOTZ: That is right, Justice Powell.

24 QUESTION: Will you tell me about some of the
25 normal administrative expenses. What about salaries of

1 personnel who work in the headquarters, say, of the Fund?

2 MS. MOTZ: Those expenses, those salaries are
3 not touched by the Maryland statute.

4 QUESTION: Nor is rent?

5 MS. MOTZ: Nor is rent, no, sir.

6 QUESTION: Nor is travel expense of executives?

7 MS. MOTZ: No, sir. None --

8 QUESTION: What is touched?

9 MS. MOTZ: What is touched are what is defined
10 as explicitly fundraising expenses. And, the way the
11 Maryland statute directs that a charity -- that these be
12 allocated is consistent with standards of --

13 QUESTION: Could you give some illustration?
14 Printing is not included.

15 MS. MOTZ: Printing of materials that are mailed
16 is not included. Printing of other materials is included.
17 The cost of telephone solicitors is included.

18 QUESTION: What about radio?

19 MS. MOTZ: Radio cost, advertising cost, yes,
20 sir, all of those are limited by the exemption -- by the
21 limitation.

22 QUESTION: Yes.

23 MS. MOTZ: But, none of what would be thought of
24 as administrative costs, attorney's fees, bookkeeping, the
25 salaries of people that are at headquarters, researchers,

1 none of that is touched by the Maryland statute.

2 QUESTION: What if the organization just hired a
3 fundraiser and the fundraisr charges a fee or per-
4 centage? I suppose that would be covered.

5 MS. MOTZ: That would be covered, Justice White,
6 except if the fundraiser was doing a feasibility or pre-
7 planning study, the professional fundraiser. If they were
8 doing that kind of study, that expense is expressly
9 excluded from the fundraising limitation.

10 QUESTION: What about expense accounts of the
11 staff?

12 MS. MOTZ: The staff of the charity --

13 QUESTION: The expense accounts.

14 MS. MOTZ: Of the United Fund, for example, the
15 charities' expense accounts, the administrative expense
16 accounts?

17 QUESTION: I am talking about unlimited expense
18 accounts --

19 MS. MOTZ: Sir, if --

20 QUESTION: -- where you raise money for somebody
21 and you don't charge any fee, but your expense accounts
22 run about twice what you raise?

23 MS. MOTZ: I don't think that problem -- Well,
24 if all that this person does --

25 QUESTION: You evidently don't have some of the

1 sharp ones around here then.

2 (Laughter)

3 MS. MOTZ: Well, I don't suggest, Justice
4 Marshall, that this statute covers every problem. I think
5 if that person is only working on soliciting con-
6 tributions, then the expense account money would, indeed,
7 be covered by this limitation. If that person is working
8 in the central staff office on administration, his expense
9 account would not be.

10 QUESTION: Let's assume in this case there was a
11 specific case for an exemption which was denied and then
12 this suit is brought. I suppose you would say the State's
13 interest in enforcing this statute is sufficient to
14 override whatever First Amendment interest there is here.

15 MS. MOTZ: Well, in point of fact, we don't
16 have -- We don't have any showing here --

17 QUESTION: I know. I said, let's assume, let's
18 assume, assume there is no overbreadth issue whatsoever,
19 just that this charity says this is what it does to me.
20 And, I would suppose your position has to be that the
21 State's interest in that is sufficient to warrant the
22 statute.

23 MS. MOTZ: Well, Justice White, if we assume
24 further that the group that is denied the waiver is an
25 advocacy organization, then I think we -- I don't

1 necessarily think that the Maryland statute can be applied
2 constitutionally. I don't think it necessarily would be
3 applied unconstitutionally. I think that would be a
4 matter for case-by-case determination.

5 We are talking about an advocacy group --

6 QUESTION: Well, if you say that -- If the
7 statute is applied to some advocacy groups would be
8 unconstitutional, I take it you are saying it might be.

9 MS. MOTZ: I am saying --

10 QUESTION: If an exemption were forbidden or if
11 there was a prosecution for raising money without a permit
12 of some advocacy organizations, the statute would be
13 unconstitutional, is that right?

14 MS. MOTZ: I am not sure of that, Your Honor. I
15 think it, Your Honor. I think that may be possible.

16 QUESTION: Well, you are not -- I take it then
17 we should judge the case as though that were the case,
18 unless you want to take a position on it.

19 MS. MOTZ: Let me try to articulate my position
20 on it. I think the position I would take, Justice White,
21 is there has been no showing here. I think it is highly
22 unlikely that this statute is ever going to be applied
23 unconstitutionally against any group.

24 QUESTION: Well, you say that you can imagine
25 some advocacy groups which would -- to which the statute

1 could not be applied constitutionally.

2 MS. MOTZ: No, sir. I thought that I was taking
3 your hypothetical which was an advocacy group that had
4 been denied the exemption.

5 QUESTION: All right, I will take that. I will
6 take that. An advocacy group denied the exemption and
7 without the permit they cannot raise money. You would say
8 that in some circumstances the statute could not be
9 applied.

10 MS. MOTZ: I think it is arguable that the
11 statute would be unconstitutional. I think it is highly
12 unlikely that the advocacy group is ever going to be
13 denied the exemption.

14 QUESTION: On your submission then we must
15 assume that in some circumstances the statute could not be
16 constitutionally applied.

17 MS. MOTZ: I think that one can assume here, as
18 one did in Broadrick, that it is possible the statute may
19 have a limited number of impermissible contributions.

20 QUESTION: How do you avoid the overbreadth
21 argument then?

22 MS. MOTZ: Well, it seems to me that we avoiding
23 it exactly as it was avoided in Broadrick, that the chance
24 of -- The likelihood of that happening is so infinitest-
25 imal that we would reserve that case to a case-by-case

1 determination. If there was ever a statute built for a
2 case-by-case determination, I submit, Justice White, it is
3 this one.

4 QUESTION: Well, did your court agree with your
5 assessment?

6 MS. MOTZ: Well, no, sir, that is why we are
7 here before you.

8 QUESTION: Well, I know, but don't they know
9 more about the possibilities in the great State of
10 Maryland than we do?

11 MS. MOTZ: Well, I think, Justice White, what
12 they did was try to apply the Schaumburg analysis in a
13 mechanistic way and not look at the true and substantial
14 differences between this case and Schaumburg.

15 It is the State's submission that the Schaumburg
16 holding does not require invalidation of the Maryland
17 statute.

18 QUESTION: You are not suggesting that the
19 author of Broadrick and the author of Schaumburg disagree
20 with one another, are you?

21 MS. MOTZ: Well, I would certainly hope not,
22 Justice Rehnquist. I am dismayed that there might be a
23 chance of that and that is why I have tried to address
24 that point right now.

25 That is because, we submit, there are

1 substantial, significant differences between the statute
2 we have here and the ordinance in Schaumburg. Perhaps the
3 most obvious one is that while the Schaumburg ordinance
4 was a direct regulation of door-to-door solicitation,
5 conduct which has been recognized as often so intertwined
6 with advocacy as to be protected under the First Amend-
7 ment.

8 The Maryland statute is not directed to
9 door-to-door solicitation, but rather at charitable fund-
10 raising expenses.

11 Fundraising, as you know, may be conducted in a
12 variety of ways that has nothing to do with advocacy like
13 dances, garden tours, bingo games, things like this, and,
14 of course, the entertainment shows which are the
15 speciality of the Respondent here.

16 Now, true, fundraising may include solicitation
17 intertwined with advocacy. This is the point we were
18 getting at earlier. But, there is no showing here that
19 any solicitation intertwined with advocacy has been or
20 will be or is likely to be threatened by the Maryland
21 statute or that any group engaging in any solicitation
22 intertwined with advocacy has even needed to apply for a
23 waiver from the fundraising limitation, let alone been
24 denied one.

25 The second important difference, I think,

1 between the statute and the ordinance in Schaumburg is the
2 situation I was discussing with Justice Powell as few
3 minutes ago and that is the fact that the Schaumburg
4 ordinance limited a charity to -- limited its adminis-
5 trative as well as fundraising expenses; that is general
6 staff salary, rents, telephones, attorney's fees. All of
7 those general expenses were limited by the Schaumburg
8 ordinance as well as fundraising expenses.

9 The Maryland statute does not attempt to limit
10 the administrative expenses, rather it attempts to strike
11 at the heart of the problem of excessive fundraising
12 without unduly intruding into the internal affairs of a
13 charitable organization by limiting only fundraising
14 expenses.

15 Thirdly, the Schaumburg ordinance required a
16 charity, prior to any solicitation, to obtain a permit and
17 in order to obtain the permit the charity had to prove
18 that at least 75 percent of its income in the previous
19 year had been used directly for charitable purposes, thus,
20 there was no way a charity could, in the words of this
21 Court, alter its spending patterns in the short term to
22 comply with the 75 percent requirement.

23 The Maryland statute imposes neither of these
24 serious burdens on a charity. First, it does not require
25 a charity to prove compliance with the percentage

1 limitation prior to engaging in fundraising activities.

2 And, second, the Maryland statute allows a
3 charity to apply the limitation retrospectively on an
4 annual or a campaign-by-campaign basis. So that even in a
5 short run, a charity can, indeed, alter its spending
6 patterns to comply with the Maryland statute.

7 Fourth, the Schaumburg ordinance flatly bans the
8 solicitation by charities that spent more than a certain
9 percentage on non-program expenses.

10 In contrast, the Maryland statute simply
11 subjects expenses in excess of the percentage limitation
12 to scrutiny. If a charity can demonstrate the limitation
13 effectively prevents it from raising funds, it can obtain
14 a complete exemption from the waiver, something that was
15 simply impossible under the Schaumburg ordinance.

16 QUESTION: May I ask a question that is based on
17 something you said earlier? You said "complete
18 exemption." When they get the exemption and then they
19 thereafter solicit, are they required by the terms of the
20 exemption to disclose the fact that over -- So it is
21 really not a complete exemption.

22 MS. MOTZ: It is not a -- Well, it is a complete
23 exemption, but --

24 QUESTION: It is subject to disclosure.

25 MS. MOTZ: -- there is a disclosure requirement.

1 QUESTION: And, I take it the thought behind the
2 disclosure requirement is that would avoid any danger of
3 fraudulent --

4 MS. MOTZ: Well, it would let the prospective
5 donor know.

6 QUESTION: Know what was happening.

7 MS. MOTZ: Yes.

8 QUESTION: Why would not such a blanket
9 requirement of disclosure, whenever over 25 percent is
10 used for administrative expenses, why would that not
11 adequately serve the State's interest in avoiding fraud?

12 MS. MOTZ: Well, I think there are two reasons,
13 Justice Stevens. First, and probably the one that is
14 most persuasive to us is that I am not just sure that
15 disclosure works. In a variety of situations, from
16 cigarette packs to securities regulations, disclosure, no
17 matter how full it is, no matter when it is given, just
18 simply doesn't really do the trick all the time.

19 Now, it is a part of our statute. It is hoped
20 that it does inform --

21 QUESTION: How can you say it doesn't do the
22 trick? Maybe it doesn't prevent people from buying
23 cigarettes, but they are not being defrauded if they know
24 the risks involved in the purchase.

25 MS. MOTZ: Well, the problem --

1 QUESTION: And that is your only interest, to
2 avoid the risk of fraud as I understand it.

3 MS. MOTZ: Well, the problem here though is it
4 raises -- We are telling people we spend 10 percent on
5 fundraising expenses -- raises more questions than it
6 answers. It tells people that and then it immediately
7 invites questions.

8 And, the person who is often doing the
9 soliciting is either a volunteer, who doesn't know very
10 much about the innerworkings of the charity or why the 10
11 percent is high or the 10 percent is low, or a paid
12 solicitor paid at a minimum wage rate whose in the same
13 situation, although for different reasons, and it is the
14 charities themselves who have almost across-the-board -- I
15 notice they don't say it in their amici briefs to this
16 Court, but they have, for example, testified before the
17 Maryland General Assembly that disclosure requirements,
18 point of solicitation disclosure requirements raise more
19 questions than they answer and, therefore, put an undue
20 burden on the charity and don't give the public the real
21 story.

22 Now I think there is some truth in that, Your
23 Honor. I think they tell you something. They don't tell
24 you everything and they are not -- It seems to us they are
25 not as protective of Maryland's interest as the statute we

1 have here. And, we believe the statute we have here does
2 not impose very much burden, more burden on charities than
3 that would.

4 Finally, it is the State's position that the
5 court below not only erred in failing to recognize the
6 substantive differences between the ordinance struck down
7 in Schaumburg and the statute involved here, but it also
8 failed to apply the correct test of validity, the test
9 that was applied by this Court in Schaumburg, the sub-
10 stantial overbreadth test.

11 In Schaumburg this Court held the ordinance bad
12 because it constituted a substantial limitation on
13 protected activity. Subsequent to the decision in
14 Schaumburg, this Court has reiterated the test of sub-
15 stantiality in New York versus Ferber where it said that a
16 statute would be stricken as overbroad under the First
17 Amendment only if it were shown to have a substantial
18 number of impermissible applications.

19 There is no showing in this case that the
20 Maryland statute has had, will have, or is likely to have
21 any impermissible applications.

22 QUESTION: Except in the opinion of your court.

23 MS. MOTZ: The Court of Appeals' decision,
24 Justice White, rests entirely upon conjecture. There is
25 neither the Respondent nor the Fraternal Order of Police

1 nor any of the amici who have presented a point of view to
2 this Court has shown that this statute has limited or
3 threatens to limit the dissemination of information or the
4 advocacy of ideas.

5 If I could compare the Court of Appeals --

6 QUESTION: Do you think the overbreadth argument
7 must always be supported by evidence in the record?

8 MS. MOTZ: Sir, if I -- No, I don't think it
9 need be supported by evidence in the record. I think in
10 order to show substantial overbreadth one must find that it
11 is realistic to expect the statute will, in fact, be
12 overbroad. Here, I submit, it is not realistic to expect
13 that.

14 I think what one --

15 QUESTION: So, what do we say -- If we agree
16 with you, what do we say about the conclusion of the Court
17 of Appeals about the substantiality of the overbreadth?.
18 You say it is wrong because we know more about -- We have
19 got better judicial notice than they have.

20 MS. MOTZ: I think what you say is -- While in
21 Schaumburg it was likely, it was almost inevitable.
22 Indeed, this Court found it was a group to which this
23 statute could not constitutionally be applied. I think it
24 is impossible, particularly with the waiver provision, to
25 ever find that about this statute; that there is a group

1 to which it cannot constitutionally be applied. It simply
2 isn't here. That is a question of federal constitutional
3 law I submit.

4 If there are no further questions, I think I
5 will try to reserve my remaining time.

6 Thank you.

7 CHIEF JUSTICE BURGER: Very well.

8 Mr. Goldberg?

9 ORAL ARGUMENT OF YALE L. GOLDBERG

10 ON BEHALF OF THE RESPONDENT

11 MR. GOLDBERG: Mr. Chief Justice Burger, with
12 the Court's permission:

13 First, if I may, let me say that notwithstanding
14 the remarks contained in the reply brief filed by the
15 Petitioner, neither the Respondent nor any of the amici
16 suggests to this honorable Court or to anyone else that
17 the state doesn't have a right to regulate in this area,
18 because truly, surely it does.

19 Nor shall I come before you today to reargue the
20 Schaumburg case. I don't think it needs rearguing. I
21 think your findings in the Schaumburg case were quite
22 clear.

23 I would submit to you that if you look at the
24 statute in the Schaumburg case, that is that portion of it
25 which sets up in that case 75 percent formula, and in the

1 case of the State of Maryland, the 25 exemption, I think
2 you will find them substantially the same. You will find
3 some allocations of costs slightly different, but their
4 intrusiveness on First Amendment rights are almost equal
5 and I say the word "almost," because it is my contention
6 that the Maryland statute is not, in fact, less intrusive
7 of First Amendment rights, but, in fact, more intrusive of
8 First Amendment rights.

9 QUESTION: Now, going back to your statement
10 that the states do have the power to regulate, con-
11 stitutional power --

12 MR. GOLDBERG: Yes, sir.

13 QUESTION: -- do you mean by that if the
14 states -- at least 50 percent of the money must go to the
15 charitable organization -- that the expenses can't exceed
16 50 percent that might be satisfactory?

17 MR. GOLDBERG: No, no, indeed, Mr. Chief --

18 QUESTION: How about 75 --

19 MR. GOLDBERG: Mr. Chief Justice --

20 QUESTION: Wait a minute.

21 MR. GOLDBERG: I am sorry, sir.

22 QUESTION: If 25 percent must go to the
23 principal, that expenses can't exceed 75 percent? What
24 about that?

25 MR. GOLDBERG: Your Honor, respectfully I would

1 suggest that any percentage, any, whether the percentage
2 were 25, 50, 75 or --

3 QUESTION: Even 90?

4 MR. GOLDBERG: Even 90, yes, sir. In fact, you
5 raise a point that was raised in the court below when it
6 was asked of me suppose 90 percent was the determinative
7 factor? And, I said to the court below, the Court of
8 Appeals of Maryland, that any percentage that takes away
9 the right of the public to makes it own decision whether
10 or not to contribute to a particular organization or cause
11 or whatever advocacy group, such a percentage would be
12 invalid, period.

13 Why do I say that? Because the purpose of these
14 statutes, all of them, the Schaumburg statute, by the
15 evidence of counsel here this morning, this statute, they
16 are designed to help prevent fraud.

17 QUESTION: Mr. Goldberg, what if a legislature
18 were to say that our statute is not only designed to
19 prevent fraud, but we think it is against public policy
20 for charitable solicitors to make 90 percent of what they
21 take. So, even if they completely disclose it, we are not
22 going to let them operation in Maryland. Do you think
23 that would be unconstitutional?

24 MR. GOLDBERG: Yes, I do, Your Honor. I think
25 that would be just as intrusive, and with your permission,

1 Justice Rehnquist, I would like to tell you why.

2 QUESTION: What do you mean by intrusive? Is
3 there something in the Constitution that says an ordinance
4 can't be intrusive?

5 MR. GOLDBERG: Well, no, Your Honor, but if it
6 is, it has to be minimally intrusive of a First Amendment
7 right of freedom of speech. And, I would suggest to this
8 Court an example of what I am talking about. I would
9 suggest to this Court if this year, as an example, the
10 particular charity succeeded in raising \$10,000 for a
11 particular advocacy group and they did it right within the
12 25 percent limitation that was provided by the Maryland
13 statute and everybody was happy, and the next year they
14 decided, well, we want to bring our message across to a
15 greater number of people, we want to raise more money, and
16 instead of using the mail as we had done before and
17 perhaps a few speeches around town -- The Super Bowl is
18 coming up and we want to take some time and buy some
19 advertisement and we want to raise a quarter of a million
20 dollars. Well, our cost on there looks like is going to
21 be about \$750,000. Well, we will pay the \$750,000 because
22 we are going to raise \$250,000.

23 So, as a result, we have gone far beyond the
24 Maryland statute, but what we haven't done, Your Honor, is
25 committed any fraud. And, there is no implication of

1 fraud.

2 QUESTION: But, you seem to insist that only
3 fraud can be a permissible motive, legislative motive, for
4 a statute like this. Certainly a state can regulate the
5 fees charged by employment agencies, can it not,
6 regardless of how much the employment agency discloses?
7 It can say, whatever you disclose, you still can't collect
8 a referral fee of more than 10 percent. Isn't that so?

9 MR. GOLDBERG: Your Honor, that is so, but I
10 don't think it is applicable in the area in First Amend-
11 ment and freedom of speech.

12 QUESTION: But, what if a state said that we
13 think literary agents are just getting too much money from
14 authors, so we are going to forbid any literary agent from
15 collecting more than 10 percent by way of a commission
16 from an author's royalties on a book? Now, supposing you
17 could make all the showing that the agent had been getting
18 kind of grabby, the same sort of thing you make for an
19 employment agency, do you think there is anything wrong
20 under the Constitution with that statute?

21 MR. GOLDBERG: I think, Your Honor, that it con-
22 ceivably could be challenged, yes.

23 QUESTION: Well, all statutes conceivably could
24 be challenged.

25 MR. GOLDBERG: Yes.

1 QUESTION: What do you think would be the
2 outcome of the challenges?

3 MR. GOLDBERG: I frankly, Your Honor, would feel
4 that perhaps the outcome of the statute, I think, would be
5 declared perhaps unconstitutional as an unjustified
6 intrusion into the right to deal freely in business in the
7 absence of any suggestion of fraud or wrongdoing. We have
8 a market place system here in our society --

9 QUESTION: If that analysis is true, the cases
10 of holding of regulation on employment agency fees must be
11 wrong if it is just a market place analysis.

12 MR. GOLDBERG: Your Honor, I don't stand before
13 this Court and suggest that I would be a sage in
14 suggesting that I would agree or disagree with all past
15 holdings of this Court or any other court and hope that
16 what my position is with respect to a particular issue is
17 the correct one.

18 I address myself to those issues this morning
19 that have to do with a statute which is baldly on its face
20 overly broad and that it reaches out and sweeps in
21 organizations who have a right of freedom of speech and
22 presentation.

23 We are dealing with a percentage statute and I
24 know the statement that I have made in response to the
25 Chief Justice's statement is a rather strong one, but,

1 nonetheless, when you are talking about First Amendment
2 rights, I think it has been the tradition of this Court to
3 be very, very strong in its protection of those rights.

4 I would suggest that not only is the statute in
5 Maryland stronger than that -- stronger in the sense that
6 it violates First Amendment rights to a greater extent.

7 If you compare the Village of Schaumburg
8 statute, it only really related to door-to-door
9 solicitations, though the court didn't rest its opinion on
10 the door-to-door permit requirement.

11 In the Maryland statute, may I draw your
12 attention to the fact that the solicitation is any form of
13 solicitation, whether it be by radio broadcast, whether it
14 be by telephone, whether it be by mail or whatever
15 media --

16 QUESTION: Maryland wasn't attempting to tell
17 them how to do it. It wasn't addressing specific methods
18 as in Schaumburg.

19 But, going back to your statement that the state
20 has a constitutional authority to regulate, could you give
21 some examples of what you think would be reasonable or
22 constitutional regulations?

23 MR. GOLDBERG: Certainly, Your Honor. I don't
24 have the statute here before me, but I am quite sure it is
25 the statute which is in effect in Indiana that I had

1 occasion to take a look at which is a very strict dis-
2 closure statute which requires an organization to present
3 a statement of its financial affairs in connection with
4 all contributions made to it.

5 I would further suggest to the Court that as
6 this Court stated in its Schaumburg decision there are
7 many, many, very, very strong penal statutes that can be
8 drawn, and some have been drawn already, which deal with
9 fraud. If fraud is the thing that raises the concern of
10 the state, as well it should --

11 QUESTION: Let me put this hypothetical to you.
12 Suppose Maryland has provided in its statute that during
13 the period of the solicitation the soliciting organization
14 and the ultimate beneficiary must publish once a week in
15 the local newspaper the record of the last previous
16 solicitation as to how much it cost to raise the money,
17 how much of it was going to the charitable organization and
18 how much was going to the promoters. Would that be a
19 valid regulation?

20 MR. GOLDBERG: I would suggest to the Court, if
21 I understood your question correctly, and I think it was
22 whether or not if they required them to do it on a weekly
23 basis, would that be a fair statute.

24 QUESTION: So that the people being solicited
25 would understand where their money was going.

1 MR. GOLDBERG: I would suggest to the Court,
2 Your Honor, that in that form, in that form, such a
3 disclosure law might be considered overburdensome in that
4 not knowing what funds that they were going to be able to
5 obtain, to expend the monies necessary to effectively
6 publish, I would suppose, in a local paper on a weekly
7 basis might be in itself such a heavy obligation as to be
8 prohibitive.

9 On the other hand, to require an organization to
10 give out to a perspective donor a statement of what it has
11 done with its money, I see no problem with that
12 whatsoever. I think it is entirely within the proper
13 realm for a state to so regulate and doesn't on its face,
14 at any rate, appear that there would result in any
15 infringement of First Amendment rights.

16 QUESTION: Well, how much publication would you
17 have to give?

18 MR. GOLDBERG: Your Honor, in the statute in
19 effect --

20 QUESTION: I mean on your statement -- You have
21 just said it would be perfectly all right to compel them
22 to make a public disclosure. Is that what you said?

23 MR. GOLDBERG: Yes, sir.

24 QUESTION: How often and how detailed?

25 MR. GOLDBERG: Your Honor, I wouldn't suggest

1 that I know the answer to that question, however, I would
2 suggest this. Some jurisdictions, that is some states, I
3 have been advised, though I don't know the particular
4 states, publish this information as a public service on
5 behalf of --

6 QUESTION: That is not my question. My question
7 is the statute compels the organization to disclose it.
8 You said you agreed with that.

9 MR. GOLDBERG: Yes, I do.

10 QUESTION: Well, how often, once every thousand
11 years?

12 MR. GOLDBERG: No, sir, absolutely not. I would
13 suggest, Your Honor, if you had such a statute, that if
14 they were compelled to forward a copy of their financial
15 statement of the preceding year, I think that would
16 certainly be fair and adequate.

17 QUESTION: I thought you said to the public.

18 MR. GOLDBERG: Sir?

19 QUESTION: I thought you said they could be
20 compelled to report to the public not some agency.

21 MR. GOLDBERG: If they were compelled to report
22 to the public, Your Honor, I would suggest that once a
23 year would not be unreasonable.

24 QUESTION: In how much detail? For example,
25 unlimited expense accounts, would that be included?

1 MR. GOLDBERG: Your Honor, I honestly can't
2 address that to you, because how detailed a statute -- a
3 state ultimately comes --

4 QUESTION: You really didn't mean what you said,
5 to give it to the public, did you? You meant to give it
6 to the public on your terms.

7 MR. GOLDBERG: No, sir. No, sir, that is not
8 what I meant at all, not what I meant at all. I am not a
9 legislator. I have seen statutes such as the Indiana
10 statute which requires the information to be given at the
11 time a solicitation is made and a donor agrees to give
12 money. That would appear to me --

13 QUESTION: Did you ever look at the New York
14 statute?

15 MR. GOLDBERG: Sir?

16 QUESTION: Did you ever look at the New York
17 statute?

18 MR. GOLDBERG: No, sir, I have not.

19 QUESTION: I don't know how you ever got to the
20 Indiana one.

21 (Laughter)

22 MR. GOLDBERG: Well, it was forwarded to me,
23 Your Honor, if the Court please.

24 QUESTION: Oh!

25 MR. GOLDBERG: And, I would take a few moments

1 at this time to further try to distinguish the two
2 statutes.

3 It is our position that, of course, the Maryland
4 statute is truly overbroad and stands foursquare along
5 side that statute in the Schaumburg case and it is our
6 position --

7 QUESTION: Mr. Goldberg, what about the
8 exemptions that are allowed under the Maryland statute.
9 Isn't that a substantial difference?

10 MR. GOLDBERG: Thank you, Justice O'Connor. I
11 was just coming to that very point and I would suggest to
12 you that these or this "limited exemptions" provision
13 doesn't cleanse this statute of any overbreadth. In fact,
14 this exemption further burdens this statute to a point
15 that I would suggest is, based on the law of this Court in
16 the past, is just totally unacceptable.

17 It leaves a clear-cut discretion in the hands of
18 the Secretary of the State of Maryland.

19 You know, they can say as frequently as they
20 might like that we have given 14 exceptions. All someone
21 has to do is come in and apply. Well, that is what has
22 been done today and that is what was done yesterday. But,
23 what we don't know is and what we cannot allow to be
24 speculated upon is what is going to be done tomorrow.
25 Perhaps tomorrow an organization will come in who is not

1 particularly favored by this particular Secretary of State
2 and then we go --

3 QUESTION: But, you say the Maryland Statute
4 would be fine under Schaumburg if the exemption provision
5 set forth some standards.

6 MR. GOLDBERG: Your Honor, I would suggest to
7 this Court that any attempt at curing the overbreadth by
8 way of an exemption provision, which in itself leaves a
9 discretion in the administrative body, that is a secretary
10 of state or other administrative officers, notwithstanding
11 that there may be an appeal to a judicial body, is no less
12 offensive, in fact, perhaps more offensive of First
13 Amendment Rights as anything could possible be, because
14 you are talking about leaving discretion -- I refer now to
15 Justice Rehnquist's dissent in the Schaumburg case in
16 which he so eloquently pointed out that it is almost
17 academic that if you have a First Amendment right involved
18 you cannot have discretion.

19 The Maryland courts have interpreted the statute
20 which, as the Court pointed out earlier, the State
21 unfortunately is bound with, that it is much too narrow so
22 that it does not at all clear up the issue of overbreadth
23 which is so terribly apparent in the other portion of the
24 statute.

25 QUESTION: Mr. Goldberg, may I ask you a

1 question right there?

2 MR. GOLDBERG: Yes, sir.

3 QUESTION: If your position is the statute is
4 overbroad and the exemption doesn't help, I take it you
5 are arguing that even if you had applied for an exemption
6 and you had received the exemption and you were able to
7 solicit on behalf of this organization, you would still
8 have this lawsuit that you would be able to maintain?

9 MR. GOLDBERG: I am sorry, sir, I didn't hear.

10 QUESTION: You would still make your overbreadth
11 attack on this statute even if you had applied for an
12 exemption and obtain an exemption, is that correct?

13 MR. GOLDBERG: Of course.

14 QUESTION: Why didn't you ask for an exemption
15 then?

16 MR. GOLDBERG: Because, Your Honor, we didn't
17 feel that the statute was constitutional. We didn't feel
18 that --

19 QUESTION: But, you wouldn't have lost your
20 right to challenge it.

21 MR. GOLDBERG: That is very true, Your Honor,
22 but then again --

23 QUESTION: You might have been able to solicit
24 in the meantime.

25 MR. GOLDBERG: You don't have to -- When a

1 statute is being challenged on First Amendment grounds,
2 you don't have to have a violation of that statute. We
3 have what is generally referred to in these cases as a
4 chilling effect which gives us the right to come in and
5 test these statutes.

6 Here, Your Honor, as an example, an advocacy
7 group -- An advocacy group doesn't want to run the risk of
8 challenging that statute. They don't want to have the
9 stigma of fraud pointed in their face because they have
10 violated the statute, have now come back and have now
11 asked --

12 QUESTION: I understand all that, but it doesn't
13 explain to me why you wouldn't have applied for the
14 exemption. Maybe you don't have to, but I am just kind of
15 curious.

16 MR. GOLDBERG: Well, Your honor, we didn't apply
17 for the exemption, because frankly, sir, we didn't feel we
18 had to. We felt that the statute was wrong, the statute
19 was unconstitutional, and, therefore, we did not apply for
20 the exemption on those grounds. We weren't required to
21 apply for that exemption, and, in fact, did not, no more
22 than one would have to apply for a permit when they were
23 out in the street canvassing books in connection with
24 particular types of religious beliefs.

25 I believe, if my memory serves me, a case comes

1 to mind, the Cantwell case -- No, a more recent case, the
2 Hynes case versus Oradell. Mr. Hynes could have gone and
3 sought a permit, but he didn't. He went out door to door
4 and solicited for his particular campaign because that
5 statute, he felt, was overly broad and facially uncon-
6 stitutional and, therefore, he wasn't required to do so.
7 And, Your Honor, that is exactly the position in this
8 particular matter.

9 Now, I think perhaps I have -- by Your Honor's
10 questions -- I have covered most of the ground that I
11 intended to try and cover here this morning.

12 QUESTION: Mr. Goldberg, may I ask a question?

13 MR. GOLDBERG: Certainly, sir.

14 QUESTION: The stipulation states that the
15 Fraternal Order of Police that you represent is engaged in
16 advocating causes. I am generally familiar with the
17 Orders of Police and in my State of Virginia they serve
18 their useful purpose. Tell me specifically what causes
19 your client --

20 MR. GOLDBERG: Well, Your Honor, the Fraternal
21 Order of Police has evolved in the past two years, I would
22 suppose, in as much as a voice of the police officers in
23 connection with work-related activities that is almost in
24 the form of a union chapter, if you will, expressing
25 the views of the police officers as to working conditions,

1 as to benefits that might be obtainable by them, and in an
2 area that is terribly important --

3 QUESTION: So the cause is to improve employment
4 conditions of police?

5 MR. GOLDBERG: Not entirely, Your Honor. Also,
6 they spend a good deal of time in connection with the
7 field of relations between the Police Department and the
8 public establishing better relationships, working
9 together so that the police officer is not looked upon as
10 this onerous person in a blue uniform, but really as he
11 had been looked upon in years gone by.

12 QUESTION: As a public relations program?

13 MR. GOLDBERG: Sir?

14 QUESTION: As a public relations program?

15 MR. GOLDBERG: Public relations program.

16 QUESTION: How is that put on, by radio,
17 television, newspaper ads, or what?

18 MR. GOLDBERG: Your Honor, each chapter does it,
19 I would presume, in their own way. They promote certain
20 local affairs. They go out and participate in local
21 affairs. I believe that is how it is done. With any
22 particularity I am sure I cannot answer as for each
23 chapter.

24 QUESTION: Mr. Goldberg, are any of the funds
25 used directly to benefit aged police or police whose

1 disability benefits are not adequate to take care of them?

2 MR. GOLDBERG: Yes, Your Honor, that is another
3 area.

4 QUESTION: Tell me this. Do you have to file
5 any report at all of how the money is expended?

6 MR. GOLDBERG: As of this time, whether or not
7 the Montgomery County Chapter has filed such report, I
8 cannot answer, because --

9 QUESTION: I am asking about Maryland law.

10 MR. GOLDBERG: Sir?

11 QUESTION: Does Maryland law require the filing
12 of any report to anyone?

13 MR. GOLDBERG: I can tell you that my client,
14 the Respondent, the Munson organization, has not filed
15 such a report.

16 QUESTION: But you don't know what Maryland law
17 provides?

18 MR. GOLDBERG: As to the filing of a report?

19 QUESTION: Yes.

20 MR. GOLDBERG: Absolutely I do. The filing of a
21 report --

22 QUESTION: I am not talking about this statute.
23 I am thinking, for example, about reports that
24 corporations have to file, certain corporations that have
25 listed stock, that disclose their assets and liabilities

1 and their income each year and a vast amount of informa-
2 tion. I was wondering whether, in Maryland, for example,
3 that is a stated issue, any report of any kind is required
4 to be filed by a charitable organization? Is the answer
5 no?

6 MR. GOLDBERG: Well, Your Honor, the answer -- I
7 am not saying the answer is no, but what I am saying is
8 that I am not familiar with it.

9 QUESTION: You don't know.

10 MR. GOLDBERG: I do know that under the statute
11 which we have here before us there is a requirement of
12 filing of complete financial information, yes.

13 QUESTION: Would you object to that?

14 MR. GOLDBERG: No, absolutely not.

15 QUESTION: And, do you know, for example, what
16 percentage of the funds raised by your client go to the
17 direct benefit of police who are needy or otherwise need
18 the money?

19 MR. GOLDBERG: Sir, I am --

20 QUESTION: I am thinking about the distinction
21 between advocating causes and providing relief for needy
22 policemen.

23 MR. GOLDBERG: Your Honor, I don't know what the
24 variation is, what the percentage is between how much goes
25 to the policeman who is incapacitated and how much goes to

1 the public relations or just where the line is or what
2 percentage on what part of the line.

3 QUESTION: So, you are not able to tell us with
4 any figures or even with any rough estimates as to what
5 extent this organization is a cause advocacy organization?
6 I am talking now in terms of percent of money raised.

7 MR. GOLDBERG: Your Honor, I --

8 QUESTION: If you don't know, just say so.

9 MR. GOLDBERG: I don't now, sir, and I don't
10 want to speculate, sir.

11 QUESTION: Mr. Goldberg --

12 MR. GOLDBERG: Yes, sir.

13 QUESTION: The one thing clear is that your
14 client is not a charitable organization.

15 MR. GOLDBERG: The Munson organization?

16 QUESTION: That is right.

17 MR. GOLDBERG: No question about it, sir.

18 QUESTION: It is not?

19 MR. GOLDBERG: It is not, sir, that is quite
20 correct.

21 But, I would suggest, Your Honor, that not only
22 does this statute reach advocacy organizations such as the
23 FPO, but reaches all advocacy organizations. We are not
24 here today merely talking about or seeking the assistance
25 of this Court in connection with the Fraternal Order of

1 Police. Our whole position is that this statute sweeps so
2 broadly that it sweeps into it all advocacy organizations
3 just as did the Schaumburg case and that the "limited
4 exception" or the exception limitation doesn't cleanse it
5 and once more, not only does it not cleanse it -- Again, I
6 refer to Justice Rehnquist's dissent in the Schaumburg
7 case -- it makes it worse, because it leaves discretion in
8 a place where discretion should be when you are testing
9 the constitutionality of a statute to the First Amendment
10 standards. It simply cannot be there.

11 The -- I would --

12 CHIEF JUSTICE BURGER: Your time has expired,
13 Mr. Goldberg.

14 MR. GOLDBERG: Thank you.

15 CHIEF JUSTICE BURGER: Do you have anything
16 further, Ms. Motz?

17 MS. MOTZ: I have just one point, Your Honor.

18 CHIEF JUSTICE BURGER: You have two minutes
19 remaining.

20 MS. MOTZ: Thank you very much.

21 ORAL ARGUMENT OF DIANA G. MOTZ -- Rebuttal
22 ON BEHALF OF THE PETITIONER

23 MS. MOTZ: I would like to make one point about
24 the interests that the State is asserting here and I feel
25 that I maybe unfortunately mislead the Court.

1 The interests we are asserting here are somewhat
2 different, I think, than the interests that were asserted
3 in the Schaumburg case. You will remember in Schaumburg,
4 the Village asserted that defraud interest, and they
5 asserted that those people who spent more than 25 percent
6 on non-charity expenses were fraudulent in representing
7 themselves as a charity.

8 The State of Maryland makes no such contention.
9 Indeed, what this statute is trying to reach is the use of
10 charitable contributions for non-charitable purposes,
11 something which may not necessarily be and which probably
12 in many instances is not criminal, fraudulent misrepre-
13 sentation under an ordinary fraud statute.

14 What it is, we submit, is something which
15 entitles the state to be on notice as to the activities of
16 the organization and to scrutinize those activities when
17 their fundraising expenses are more than 25 percent. And,
18 that is precisely what the Maryland statute does. It does
19 not assume that those activities are fraudulent. What it
20 does is assume that they are entitled to be scrutinized by
21 the state and if the charity makes a showing that, indeed,
22 those expenses are reasonable, it may go out and continue
23 to solicit provided it discloses that to the public. And,
24 if it does not make that showing then it is not entitled
25 to solicit. Of course, that decision goes to judicial

1 review.

2 We believe in that way, without imposing any
3 great burden on the charity, we have protected the
4 potential donor, the intended beneficiary, and we have, in
5 general, benefited charity by insuring the appearance as
6 well as the reality of integrity charitable organizations.

7 Thank you very much.

8 CHIEF JUST BURGER: Thank you, counsel.

9 The case is submitted.

10 We will hear arguments next in Equal Opportunity
11 Commission against Shell Oil Company.

12 (Whereupon, at 11:02 a.m., the case in the
13 above-entitled matter was submitted.)
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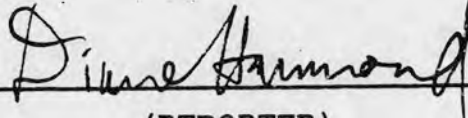
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82-766 -- SECRETARY OF STATE OF MARYLAND, Petitioner v. JOSEPH H. MUNSON COMPANY, INC.

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