LARSON v. VALENTE
SUPREME COURT OF THE UNITED STATES
456 U.S. 228
April 21, 1982
[5 - 4]

OPINION: BRENNAN...**Whether a Minnesota statute, imposing certain registration and reporting requirements upon only those religious organizations that solicit more than fifty per cent of their funds from nonmembers, discriminates against such organizations in violation of the Establishment Clause of the First Amendment?**

I

Appellants are John R. Larson, Commissioner of Securities, and Warren Spannaus, Attorney General, of the State of Minnesota. They are, by virtue of their offices, responsible for the implementation and enforcement of the Minnesota Charitable Solicitation Act. **This Act, in effect since 1961, provides for a system of registration and disclosure respecting charitable organizations, and is designed to protect the contributing public and charitable beneficiaries against fraudulent practices in the solicitation of contributions for purportedly charitable purposes.** A charitable organization subject to the Act must register with the Minnesota Department of Commerce before it may solicit contributions within the State. With certain specified exceptions, all charitable organizations registering under § 309.52 must file an extensive annual report with the Department, detailing their total receipts and income from all sources, their costs of management, fundraising, and public education, and their transfers of property or funds out of the State, along with a description of the recipients and purposes of those transfers. The Department is authorized by the Act to deny or withdraw the registration of any charitable organization if the Department finds that it would be in "the public

interest" to do so and if the organization is found to have engaged in fraudulent, deceptive, or dishonest practices. Further, a charitable organization is deemed ineligible to maintain its registration under the Act if it expends or agrees to expend an "unreasonable amount" for management, general, and fundraising costs, with those costs being presumed unreasonable if they exceed thirty per cent of the organization's total income and revenue.

From 1961 until 1978, all "religious organizations" were exempted from the requirements of the Act. But effective March 29, 1978, the Minnesota Legislature amended the Act so as to include a "fifty per cent rule" in the exemption provision covering religious organizations. This fifty per cent rule provided that only those religious organizations that received more than half of their total contributions from members or affiliated organizations would remain exempt from the registration and reporting requirements of the Act.

Shortly after the enactment of [the 50% rule], the Department notified appellee Holy Spirit Association for the Unification of World Christianity (Unification Church) that it was required to register under the Act because of the newly enacted provision. Appellees Valente, Barber, Haft, and Korman, claiming to be followers of the tenets of the Unification Church, responded by bringing the present action in the United States District Court for the District of Minnesota. Appellees sought a declaration that the Act, on its face and as applied to them through [the 50% rule], constituted an abridgment of their First Amendment rights of expression and free exercise of religion, as well as a denial of their right to equal protection of the laws, guaranteed by the Fourteenth Amendment...

After obtaining a preliminary injunction, appellees moved for summary judgment. Appellees' evidentiary support for this motion included a "declaration" of appellee Haft, which described in some detail the origin, "religious principles," and practices of the Unification Church. The declaration stated that among the activities emphasized by the Church were "door-to-door and public-place proselytizing and solicitation of funds to support the Church" and that the application of the Act to the Church through [the 50% rule] would deny its members their "religious freedom." Appellees also argued that by discriminating among religious organizations, [the 50% rule] violated the Establishment Clause.

Appellants replied that the Act did not infringe appellees' freedom to exercise their religious beliefs. Appellants sought to distinguish the present case from *Murdock v. Pennsylvania*[1], where this Court invalidated a municipal ordinance that had required the licensing of Jehovah's Witnesses who solicited donations in exchange for religious literature, by arguing that unlike the activities of the petitioners in *Murdock*, appellees' solicitations bore no substantial relationship to any religious expression, and that they were therefore outside the protection of the First Amendment. Appellants also contended that the Act did not violate the Establishment Clause. Finally, appellants argued that appellees were not entitled to challenge the Act until they had demonstrated that the Unification Church was a religion and that its fundraising activities were a religious practice.

[1] Case 1A-R-017 on this website.

The Magistrate determined, however, that it was not necessary for him to resolve the questions of whether the Unification Church was a religion, and whether appellees' activities were religiously motivated, in order to reach the merits of appellees' claims. Rather, he found that the "overbreadth" doctrine gave appellees standing to challenge the Act's constitutionality. On the merits, the Magistrate held that the Act was facially unconstitutional with respect to religious organizations, and was therefore entirely void as to such organizations, because [the 50% rule] failed the second of the three Establishment Clause "tests" set forth by this Court in *Lemon v. Kurtzman*[2]. The Magistrate also held on due process grounds that certain provisions of the Act were unconstitutional as applied to any groups or persons claiming the religious-organization exemption from the Act. The Magistrate therefore recommended that appellees be granted the declarative and permanent injunctive relief that they had sought namely, a declaration that the Act was unconstitutional as applied to religious organizations and their members, and an injunction against enforcement of the Act as to any religious organization. Accepting these recommendations, the District Court entered summary judgment in favor of appellees on these issues.

On appeal, the United States Court of Appeals for the Eighth Circuit affirmed in part and reversed in part. On the issue of standing, the Court of Appeals affirmed the District Court's application of the overbreadth doctrine for the proposition that "a litigant whose own activities are unprotected may nevertheless challenge a statute by showing that it substantially abridges the First Amendment rights of other parties not before the court." On the merits, the Court of Appeals affirmed the District Court's holding that the "inexplicable religious classification" embodied in the fifty per cent rule, violated the Establishment Clause...But the court disagreed with the District Court's conclusion that appellees and others should enjoy the religious-organization exemption from the Act merely by claiming to be such organizations: The court held that proof of religious-organization status was required in order to gain the exemption, and left the question of appellees' status "open . . . for further development." The Court of Appeals accordingly vacated the judgment of the District Court and remanded the action for entry of a modified injunction and for further appropriate proceedings. We [accepted certiorari.]

II

Appellants argue that appellees are not entitled to be heard on their Establishment Clause claims. Their rationale for this argument has shifted, however, as this litigation has progressed. Appellants' position in the courts below was that the Unification Church was not a religion, and more importantly that appellees' solicitations were not connected with any religious purpose. From these premises appellants concluded that appellees were not entitled to raise their Establishment Clause claims until they had demonstrated that their activities were within the protection of that Clause. The courts below rejected this conclusion, instead applying the overbreadth doctrine in order to allow appellees to raise their Establishment Clause claims. In this Court, appellants have taken an entirely new tack. They now argue that the Unification Church is not a "religious organization" within the meaning of Minnesota Charitable Solicitation Act, and that the Church therefore would not be entitled to an exemption under [the 50% rule] even if the fifty per cent rule were declared unconstitutional. From this new premise appellants

[2] Case 1A-R-042 on this website.

conclude that the courts below erred in invalidating [the 50% rule] without first requiring appellees to demonstrate that they would have been able to maintain their exempt status but for that rule, and thus that its adoption had caused them injury in fact. We have considered both of appellants' rationales, and hold that neither of them has merit.

"The essence of the standing inquiry is whether the parties seeking to invoke the court's jurisdiction have 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' " This requirement of a "personal stake" must consist of "a 'distinct and palpable injury . . .' to the plaintiff" and "a 'fairly traceable' causal connection between the claimed injury and the challenged conduct." Application of these constitutional standards to the record before us and the factual findings of the District Court convince us that the Art. III requirements for standing are plainly met by appellees.

Appellants argue in this Court that the Unification Church is not a "religious organization" within the meaning of the Act, and therefore that appellees cannot demonstrate injury in fact. We note at the outset, however, that in the years before 1978 the Act contained a general exemption provision for all religious organizations, and that during those years the Unification Church was not required by the State to register and report under the Act. It was only in 1978, shortly after the addition of the fifty per cent rule to the religious-organization exemption, that the State first attempted to impose the requirements of the Act upon the Unification Church. And when the State made this attempt, it deliberately chose to do so in express and exclusive reliance upon the newly enacted fifty per cent rule. The present suit was initiated by appellees in direct response to that attempt by the State to force the Church's registration. It is thus plain that appellants' stated rationale for the application of the Act to appellees was that [the 50% rule] *did* apply to the Unification Church. But [the 50% rule], by its terms applies only to religious organizations. It follows, therefore, that an essential premise of the State's attempt to require the Unification Church to register under the Act by virtue of the fifty per cent rule, is that the Church *is* a religious organization. It is logically untenable for the State to take the position that the Church is not such an organization, because that position destroys an essential premise of the exercise of statutory authority at issue in this suit.

In the courts below, the State joined issue precisely on the premise that the fifty per cent rule was sufficient authority in itself to compel appellees' registration. The adoption of that premise precludes the position that the Church is not a religious organization. And it remains entirely clear that if we were to uphold the constitutionality of the fifty per cent rule, the State would, without more, insist upon the Church's registration. In this Court, the State has changed its position, and purports to find independent bases for denying the Church an exemption from the Act. Considering the development of this case in the courts below, and recognizing the premise inherent in the State's attempt to apply the fifty per cent rule to appellees, we do not think that the State's change of position renders the controversy between these parties any less concrete. The fact that appellants chose to apply [the] fifty per cent rule as the sole statutory authority requiring the Church to register under the Act compels the conclusion that, at least for purposes of this suit challenging that State application, the Church is indeed a religious organization within the meaning of the Act.

With respect to the question of injury in fact, we again take as the starting point of our analysis the fact that the State attempted to use [the 50% rule] in order to compel the Unification Church to register and report under the Act. That attempted use of the fifty per cent rule as the State's instrument of compulsion necessarily gives appellees standing to challenge the constitutional validity of the rule. The threatened application of [the 50% rule] to the Church surely amounts to a distinct and palpable injury to appellees: It disables them from soliciting contributions in the State of Minnesota unless the Church complies with registration and reporting requirements that are hardly *de minimis.* Just as surely, there is a fairly traceable causal connection between the claimed injury and the challenged conduct here, between the claimed disabling and the threatened application of [the 50% rule].

Of course, the Church cannot be assured of a continued religious-organization exemption even in the absence of the fifty per cent rule. Appellees have not yet shown an entitlement to the entirety of the broad injunctive relief that they sought in the District Court—namely, a permanent injunction barring the State from subjecting the Church to the registration and reporting requirements of the Act. But that fact by no means detracts from the palpability of the particular and discrete injury caused to appellees by the State's threatened application of [the 50% rule]. The Church may indeed be compelled, ultimately, to register under the Act on some ground other than the fifty per cent rule, and while this fact does affect the nature of the relief that can properly be granted to appellees on the present record, it does not deprive this Court of jurisdiction to hear the present case. In sum, contrary to appellants' suggestion, appellees have clearly demonstrated injury in fact.

Justice REHNQUIST's dissent attacks appellees' Art. III standing by arguing that appellees "have failed to show that a favorable decision of this Court will redress the injuries of which they complain." This argument follows naturally from the dissent's premise that the only meaningful relief that can be given to appellees is a total exemption from the requirements of the Act. But the argument, like the premise, is incorrect. This litigation began after the State attempted to compel the Church to register and report under the Act solely on the authority of [the 50% rule]. If that rule is declared unconstitutional, as appellees have requested, then the Church cannot be required to register and report under the Act by virtue of that rule. Since that rule was the sole basis for the State's attempt to compel registration that gave rise to the present suit, a discrete injury of which appellees now complain will indeed be completely redressed by a favorable decision of this Court.

Furthermore, if the fifty per cent rule is declared unconstitutional, then the Church cannot be compelled to register and report under the Act unless the Church is determined not to be a religious organization. And as the Court of Appeals below observed:

> "A considerable burden is on the state, in questioning a claim of a religious nature. Strict or narrow construction of a statutory exemption for religious organizations is not favored.

At the very least, then, a declaration that [the 50% rule] is unconstitutional would put the State to the task of demonstrating that the Unification Church is not a religious organization within the meaning of the Act—and such a task is surely more burdensome than that of demonstrating that the Church's proportion of nonmember contributions exceeds fifty per cent. Thus appellees will be given substantial and meaningful relief by a favorable decision of this Court.

Since we conclude that appellees have established Art. III standing, we turn to the merits of the case.

III

A

The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another. Before the Revolution, religious establishments of differing denominations were common throughout the Colonies. But the Revolutionary generation emphatically disclaimed that European legacy, and "applied the logic of secular liberty to the condition of religion and the churches:" If Parliament had lacked the authority to tax unrepresented colonists, then by the same token the newly independent States should be powerless to tax their citizens for the support of a denomination to which they did not belong. The force of this reasoning led to the abolition of most denominational establishments at the state level by the 1780's, and led ultimately to the inclusion of the Establishment Clause in the First Amendment in 1791.

This constitutional prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause. Madison once noted: "Security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests and in the other in the multiplicity of sects." Madison's vision—freedom for all religion being guaranteed by free competition between religions naturally assumed that every denomination would be equally at liberty to exercise and propagate its beliefs. But such equality would be impossible in an atmosphere of official denominational preference. Free exercise thus can be guaranteed only when legislators—and voters—are required to accord to their own religions the very same treatment given to small, new, or unpopular denominations. As Justice Jackson noted in another context, "there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally."

Since *Everson v. Board of Education*[3], this Court has adhered to the principle, clearly manifested in the history and logic of the Establishment Clause, that no State can "pass laws which aid one religion" or that "prefer one religion over another." This principle of denominational neutrality has been restated on many occasions. In *Zorach v. Clauson*[4], we said that "the government must be neutral when it comes to competition between sects." In *Epperson v. Arkansas*[5], we stated unambiguously: "The First Amendment mandates governmental neutrality between religion and religion. . . . The State may not adopt programs or practices . . . which 'aid or oppose' any religion. . . . This prohibition is absolute." And Justice Goldberg cogently articulated the relationship between the Establishment Clause and the Free Exercise Clause when he said that "the fullest realization of true religious liberty requires that government . . . effect no favoritism among sects . . . and that it work deterrence of no religious belief." *Abington School District*[6]. In

[3] Case 1A-R-022 on this website.
[4] Case 1A-R-025 on this website.
[5] Case 1A-R-038 on this website.
[6] Case 1A-R-034 on this website.

short, **when we are presented with a state law granting a denominational preference, our precedents demand that we treat the law as suspect and that we apply strict scrutiny in adjudging its constitutionality.**

B

The fifty per cent rule...clearly grants denominational preferences of the sort consistently and firmly deprecated in our precedents. Consequently, that rule must be invalidated unless it is justified by a compelling governmental interest, *Widmar v. Vincent*[7], and unless it is closely fitted to further that interest, *Murdock v. Pennsylvania*. With that standard of review in mind, we turn to an examination of the governmental interest asserted by appellants.

Appellants assert, and we acknowledge, that the State of Minnesota has a significant interest in protecting its citizens from abusive practices in the solicitation of funds for charity, and that this interest retains importance when the solicitation is conducted by a religious organization. We thus agree with the Court of Appeals that the Act, "viewed as a whole, has a valid secular purpose," and we will therefore assume, *arguendo*, that the Act generally is addressed to a sufficiently "compelling" governmental interest. But our inquiry must focus more narrowly, upon the distinctions drawn by [the 50% rule] itself: Appellants must demonstrate that the challenged fifty per cent rule is closely fitted to further the interest that it assertedly serves.

Appellants argue that [the 50% rule]'s distinction between contributions solicited from members and from nonmembers is eminently sensible. They urge that members are reasonably assumed to have significant control over the solicitation of contributions from themselves to their organization, and over the expenditure of the funds that they contribute, as well. Further, appellants note that as a matter of Minnesota law, members of organizations have greater access than nonmembers to the financial records of the organization. Appellants conclude:

> "Where the safeguards of membership funding do not exist, the need for public disclosure is obvious. . . . As public contributions increase as a percentage of total contributions, the need for public disclosure increases. . . . The particular point at which public disclosure should be required . . . is a determination for the legislature. In this case, the Act's 'majority' distinction is a compelling point, since it is at this point that the organization becomes predominantly public-funded."

We reject the argument, for it wholly fails to justify the only aspect of [the statute] under attack—the selective fifty per cent rule. Appellants' argument is based on three distinct premises: that members of a religious organization can and will exercise supervision and control over the organization's solicitation activities when membership contributions exceed fifty per cent; that membership control, assuming its existence, is an adequate safeguard against abusive solicitations of the public by the organization; and that the need for public disclosure rises in proportion with the *percentage* of nonmember contributions. Acceptance of all three of these

[7] Case 1A-R-059 on this website.

premises is necessary to appellants' conclusion, but we find no substantial support for any of them in the record.

Regarding the first premise, there is simply nothing suggested that would justify the assumption that a religious organization will be supervised and controlled by its members simply because they contribute more than half of the organization's solicited income. Even were we able to accept appellants' doubtful assumption that members will *supervise* their religious organization under such circumstances, the record before us is wholly barren of support for appellants' further assumption that members will effectively *control* the organization if they contribute more than half of its solicited income. Appellants have offered no evidence whatever that members of religious organizations exempted by [the] fifty per cent rule in fact control their organizations. Indeed, the legislative history...indicates precisely to the contrary. In short, the first premise of appellants' argument has no merit.

Nor do appellants offer any stronger justification for their second premise—that membership control is an adequate safeguard against abusive solicitations of the public by the organization. This premise runs directly contrary to the central thesis of the entire Minnesota charitable solicitations Act—namely, that charitable organizations soliciting contributions from the public cannot be relied upon to regulate themselves, and that state regulation is accordingly necessary. Appellants offer nothing to suggest why religious organizations should be treated any differently in this respect. And even if we were to assume that the members of religious organizations have some incentive, absent in non-religious organizations, to protect the interests of nonmembers solicited by the organization, appellants' premise would still fail to justify the fifty per cent rule: Appellants offer no reason why the members of religious organizations exempted under the fifty per cent rule should have any *greater* incentive to protect nonmembers than the members of nonexempted religious organizations have. Thus we also reject appellants' second premise as without merit.

Finally, we find appellants' third premise—that the need for public disclosure rises in proportion with the *percentage* of nonmember contributions—also without merit. The flaw in appellants' reasoning here may be illustrated by the following example. Church A raises $10 million, 20 per cent from nonmembers. Church B raises $50,000, 60 per cent from nonmembers. Appellants would argue that although the public contributed $2 million to Church A and only $30,000 to Church B, there is less need for public disclosure with respect to Church A than with respect to Church B. We disagree; the need for public disclosure more plausibly rises in proportion with the *absolute amount*, rather than with the *percentage*, of nonmember contributions. The State of Minnesota has itself adopted this view elsewhere in § 309.515: With qualifications not relevant here, charitable organizations that receive annual nonmember contributions of less than $10,000 are exempted from the registration and reporting requirements of the Act.

We accordingly conclude that appellants have failed to demonstrate that the fifty per cent rule... is "closely fitted" to further a "compelling governmental interest."

C

In *Lemon v. Kurtzman*, we announced three "tests" that a statute must pass in order to avoid the prohibition of the Establishment Clause.

"First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion. Finally, the statute must not foster 'an excessive governmental entanglement with religion.'" *Walz v. Tax Comm'n*.[8]

As our citations of *Board of Education v. Allen*[9] and *Walz v. Tax Comm'n* indicated, the *Lemon v. Kurtzman* "tests" are intended to apply to laws affording a uniform benefit to *all* religions, and not to provisions, like [this] fifty per cent rule, that discriminate *among* religions. Although application of the *Lemon* tests is not necessary to the disposition of the case before us, those tests do reflect the same concerns that warranted the application of strict scrutiny to [this] fifty per cent rule. The Court of Appeals found that rule to be invalid under the first two *Lemon* tests. We view the third of those tests as most directly implicated in the present case. Justice Harlan well described the problems of entanglement in his separate opinion in *Walz*, where he observed that governmental involvement in programs concerning religion "may be so direct or in such degree as to engender a risk of politicizing religion. . . . Religious groups inevitably represent certain points of view and not infrequently assert them in the political arena, as evidenced by the continuing debate respecting birth control and abortion laws. Yet history cautions that political fragmentation on sectarian lines must be guarded against. . . . Government participation in certain programs, whose very nature is apt to entangle the state in details of administration and planning, may escalate to the point of inviting undue fragmentation."

The Minnesota statute challenged here is illustrative of this danger. By their "very nature," the distinctions drawn by [this] fifty per cent rule "engender a risk of politicizing religion"—a risk, indeed, that has already been substantially realized.

It is plain that the principal effect of the fifty per cent rule...is to impose the registration and reporting requirements of the Act on some religious organizations but not on others. It is also plain that, as the Court of Appeals noted, "the benefit conferred by exemption constitutes a substantial advantage; the burden of compliance with the Act is certainly not *de minimis.*" We do not suggest that the burdens of compliance with the Act would be intrinsically impermissible if they were imposed evenhandedly. But this statute does not operate evenhandedly, nor was it designed to do so: **The fifty per cent rule...effects the *selective* legislative imposition of burdens and advantages upon particular denominations.** The "risk of politicizing religion" that inheres in such legislation is obvious, and indeed is confirmed by the provision's legislative history [which] demonstrates that the provision was drafted with the explicit intention of including particular religious denominations and excluding others. For example, the second sentence of an early draft...read: "A religious society or organization which solicits from its religious affiliates who are qualified under this subdivision and who are represented in a body or convention *that elects and controls the governing board of the religious society or organization* is exempt from the requirements of . . . Sections 309.52 and 309.53." The legislative history discloses that the legislators perceived that the italicized language would bring a Roman Catholic Archdiocese within the Act, that the legislators did not want the amendment to have that effect, and that an amendment deleting the italicized clause was passed in committee for the sole

[8] Case 1A-R-039 on this website.
[9] Case 1A-R-037 on this website.

purpose of exempting the Archdiocese from the provisions of the Act. On the other hand, there were certain religious organizations that the legislators did not want to exempt from the Act. One State Senator explained that the fifty per cent rule was "an attempt to deal with the religious organizations which are soliciting on the street and soliciting by direct mail, but who are not substantial religious institutions in . . . our state." Another Senator said, "what you're trying to get at here is the people that are running around airports and running around streets and soliciting people and you're trying to remove them from the exemption that normally applies to religious organizations." Still another Senator, who apparently had mixed feelings about the proposed provision, stated, "I'm not sure why we're so hot to regulate the Moonies anyway."

In short, the fifty per cent rule's capacity—indeed, its express design—to burden or favor selected religious denominations led the Minnesota Legislature to discuss the characteristics of various sects with a view towards "religious gerrymandering." *Gillette v. United States*[10]. As THE CHIEF JUSTICE stated in *Lemon*, "This kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids. It is a relationship pregnant with dangers of excessive government direction . . . of churches."

IV

In sum, we conclude that the fifty per cent rule...is not closely fitted to the furtherance of any compelling governmental interest asserted by appellants, and that the provision therefore violates the Establishment Clause. Indeed, we think [it] sets up precisely the sort of official denominational preference that the Framers of the First Amendment forbade. Accordingly, we hold that appellees cannot be compelled to register and report under the Act on the strength of that provision.

The judgment of the Court of Appeals is *Affirmed.*

CONCURRENCE: STEVENS. [Not Provided.]

DISSENT: WHITE/REHNQUIST...I concur in the dissent of Justice REHNQUIST with respect to standing. I also dissent on the merits.

I

It will be helpful first to indicate what occurred in the lower courts and what the Court now proposes to do. Based on two reports of a Magistrate, the District Court held unconstitutional the Minnesota limitation denying an exemption to religious organizations receiving less than 50 percent of their funding from their own members. The Magistrate recommended this action on the ground that the limitation could not pass muster under the second criterion set down in *Lemon v. Kurtzman* for identifying an unconstitutional establishment of religion—that the principal or primary effect of the statute is one that neither enhances nor inhibits religion. The 50-percent limitation failed this test because it subjected some churches to far more rigorous requirements than others, the effect being to "severely inhibit plaintiff's religious activities." This

[10] Case 1A-R-041 on this website.

created a preference offensive to the Establishment Clause. The Magistrate relied on the inhibiting effect of the 50-percent rule without reference to whether or not it was the principal or primary effect of the limitation. In any event, the Magistrate recommended, and the District Court agreed, that the exemption from registration be extended to all religious organizations.

The Court of Appeals agreed with the District Court that the 50-percent rule violated the Establishment Clause. Its ruling, however, was on the ground that the limitation failed to satisfy the first *Lemon* criterion—that the statute have a secular rather than a religious purpose. The court conceded that the Act as a whole had the valid secular purpose of preventing fraudulent or deceptive practices in the solicitation of funds in the name of charity. The court also thought freeing certain organizations from regulation served a valid purpose because for those organizations public disclosure of funding would not significantly enhance the availability of information to contributors. Patriotic and fraternal societies that limit solicitation to voting members and certain charitable organizations that do not solicit in excess of $10,000 annually from the public fell into this category. But the court found no sound secular legislative purpose for the 50-percent limitation with respect to religious organizations because it "appears to be designed to shield favored sects, while continuing to burden other sects." The challenged provision, the Court of Appeals said, "expressly separates two classes of religious organizations and makes the separation for no valid secular purpose that has been suggested by defendants. Inexplicable disparate treatment will not generally be attributed to accident; it seems much more likely that at some stage of the legislative process special solicitude for particular religious organizations affected the choice of statutory language. The resulting discrimination is constitutionally invidious." The Court of Appeals went on to say that if it were necessary to apply the second part of the *Lemon* test, the provision would also fail to survive that examination because it advantaged some organizations and disadvantaged others.

In this Court, the case is given still another treatment. The *Lemon v. Kurtzman* tests are put aside because they are applicable only to laws affording uniform benefit to all religions, not to provisions that discriminate among religions. Rather, in cases of denominational preference, the Court says that "our precedents demand that we treat the law as suspect and that we apply strict scrutiny in adjudging its constitutionality." The Court then invalidates the challenged limitation.

It does so by first declaring that the 50-percent rule makes explicit and deliberate distinctions between different religious organizations. The State's submission that the 50-percent limitation is a law based on secular criteria which happens not to have an identical effect on all religious organizations is rejected. The Court then holds that the challenged rule is not closely fitted to serve any compelling state interest and rejects each of the reasons submitted by the State to demonstrate that the distinction between contributions solicited from members and from nonmembers is a sensible one. Among others, the Court rejects the proposition that membership control is an adequate safeguard against deceptive solicitations of the public. The ultimate conclusion is that the exemption provision violates the Establishment Clause.

II

I have several difficulties with this disposition of the case. First, the Court employs a legal standard wholly different from that applied in the courts below. The premise for the Court's

standard is that the challenged provision is a deliberate and explicit legislative preference for some religious denominations over others. But there was no such finding in the District Court. That court proceeded under the second *Lemon* test and then relied only on the disparate impact of the provision. There was no finding of a discriminatory or preferential legislative purpose. If this case is to be judged by a standard not employed by the courts below and if the new standard involves factual issues or even mixed questions of law and fact that have not been addressed by the District Court, the Court should not itself purport to make these factual determinations. It should remand to the District Court.

In this respect, it is no answer to say that the Court of Appeals appeared to find, although rather tentatively, that the state legislature had acted out of intentional denominational preferences. That court was no more entitled to supply the missing factual predicate for a different legal standard than is this Court. It is worth noting that none of the Court of Appeals' judges on the panel in this case is a resident of Minnesota.

Second, apparently realizing its lack of competence to judge the purposes of the Minnesota Legislature other than by the words it used, the Court disposes in a footnote of the State's claim that the 50-percent rule is a neutral, secular criterion that has disparate impact among religious organizations. The limitation, it is said, "is not simply a facially neutral statute" but one that makes "explicit and deliberate distinctions between different religious organizations." The rule itself, however, names no churches or denominations that are entitled to or denied the exemption. It neither qualifies nor disqualifies a church based on the kind or variety of its religious belief. Some religions will qualify and some will not, but this depends on the source of their contributions, not on their brand of religion.

To say that the rule on its face represents an explicit and deliberate preference for some religious beliefs over others is not credible. The Court offers no support for this assertion other than to agree with the Court of Appeals that the limitation might burden the less well organized denominations. This conclusion, itself, is a product of assumption and speculation. It is contrary to what the State insists is readily evident from a list of those charitable organizations that have registered under the Act and of those that are exempt. It is claimed that both categories include not only well-established, but also not so well-established, organizations. The Court appears to concede that the Minnesota law at issue does not constitute an establishment of religion merely because it has a disparate impact. An intentional preference must be expressed. To find that intention on the face of the provision at issue here seems to me to be patently wrong.

Third, I cannot join the Court's easy rejection of the State's submission that a valid secular purpose justifies basing the exemption on the percentage of external funding. Like the Court of Appeals, the majority accepts the prevention of fraudulent solicitation as a valid, even compelling, secular interest. Hence, charities, including religious organizations, may be required to register if the State chooses to insist. But here the State has excused those classes of charities it thought had adequate substitute safeguards or for some other reason had reduced the risk which is being guarded against. Among those exempted are various patriotic and fraternal organizations that depend only on their members for contributions. The Court of Appeals did not question the validity of this exemption because of the built-in safeguards of membership funding. The Court of Appeals, however, would not extend the same reasoning to permit the State to exempt religious organizations receiving more than half of their contributions from their

members while denying exemption to those who rely on the public to a greater extent. This Court, preferring its own judgment of the realities of fundraising by religious organizations to that of the state legislature, also rejects the State's submission that organizations depending on their members for more than half of their funds do not pose the same degree of danger as other religious organizations. In the course of doing so, the Court expressly disagrees with the notion that members in general can be relied upon to control their organizations.

I do not share the Court's view of our omniscience. The State has the same interest in requiring registration by organizations soliciting most of their funds from the public as it would have in requiring any charitable organization to register, including a religious organization, if it wants to solicit funds. And if the State determines that its interest in preventing fraud does not extend to those who do not raise a majority of their funds from the public, its interest in imposing the requirement on others is not thereby reduced in the least. Furthermore, as the State suggests, the legislature thought it made good sense, and the courts, including this one, should not so readily disagree.

Fourth, and finally, the Court agrees with the Court of Appeals and the District Court that the exemption must be extended to all religious organizations. The Court of Appeals noted that the exemption provision, so construed, could be said to prefer religious organizations over nonreligious organizations and hence amount to an establishment of religion. Nevertheless, the Court of Appeals did not further address the question, and the Court says nothing of it now. Arguably, however, there is a more evident secular reason for exempting religious organizations who rely on their members to a great extent than there is to exempt all religious organizations, including those who raise all or nearly all of their funds from the public.

Without an adequate factual basis, the majority concludes that the provision in question deliberately prefers some religious denominations to others. Without an adequate factual basis, it rejects the justifications offered by the State. It reaches its conclusions by applying a legal standard different from that considered by either of the courts below.

I would reverse the judgment of the Court of Appeals.

DISSENT: REHNQUIST/BURGER/WHITE/O'CONNOR...From the earliest days of the Republic it has been recognized that this Court is without power to give advisory opinions. The logical corollary of this limitation has been the Court's "long . . . considered practice not to decide abstract, hypothetical or contingent questions, or to decide any constitutional question in advance of the necessity for its decision." Such fundamental principles notwithstanding, the Court today delivers what is at best an advisory constitutional pronouncement. The advisory character of the pronouncement is all but conceded by the Court itself, when it acknowledges in the closing footnote of its opinion that appellees must still "prove that the Unification Church is a religious organization within the meaning of the Act" before they can avail themselves of the Court's extension of the exemption contained in the Minnesota statute. Because I find the Court's standing analysis wholly unconvincing, I respectfully dissent.

I

Part II of the Court's opinion concludes that appellees have standing to challenge...the Minnesota Charitable Solicitation Act (Act), because they have "plainly met" the case-or-controversy

requirements of Art. III. This conclusion is wrong. Its error can best be demonstrated by first reviewing three factual aspects of the case which are either misstated or disregarded in the Court's opinion.

First, the Act applies to appellees not by virtue of the "fifty percent rule," but by virtue of [the broader statute which] requires "charitable organizations" to register with the Securities and Real Estate Division of the Minnesota Department of Commerce. The Holy Spirit Association for the Unification of World Christianity (Association) constitutes such a "charitable organization" because it "engages in or purports to engage in solicitation" for a "religious . . . purpose." Only after an organization is brought within the coverage of the Act...does the question of exemption arise. The exemption provided by the fifty percent rule..., one of several exemptions within the Act, applies only to "religious organizations." Thus, unless the Association is a "religious organization" within the meaning of the Act, the fifty percent rule has absolutely nothing to do with the Association's duty to register and report as a "charitable organization" soliciting funds in Minnesota. This more-than-semantic distinction apparently is misunderstood by the Court, for it repeatedly asserts that the Association is required to register "under the Act *by virtue of* the fifty percent rule..."

Second, the State's effort to enforce the Act against the Association was based upon the Association's status as a "charitable organization" within the meaning of [the Act]. The State initially sought registration from the Association by letter: "From the nature of your solicitation it appears that the Association must complete a Charitable Organization Registration Statement and submit it to the Minnesota Department of Commerce." When the Association failed to register within the allotted time, the State commenced "routine enforcement procedures" by filing a complaint in Minnesota state court. The complaint alleges that "charitable organizations" are required by [the Act] to register with the State, that the Association comes within the [definition of charitable organizations, and that "the Association has failed to file a registration statement and financial information with the Minnesota Department of Commerce, resulting in a violation of the Act.] This complaint, which never once mentions the fifty percent rule...nor characterizes the Association as a "religious organization," is still pending in Minnesota District Court, having been stayed by stipulation of the parties to this lawsuit. Because today's decision does nothing to impair the statutory basis of the complaint, or the State's reason for filing it, the State may proceed with its enforcement action before the ink on this Court's judgment is dry.

Third, appellees have never proved, and the lower courts have never found, that the Association is a "religious organization" for purposes of the fifty percent rule. The District Court expressly declined to make such a finding—"This court is not presently in a position to rule whether the Association is, in fact, a religious organization within the Act" —and the Court of Appeals was content to decide the case despite the presence of this " 'unresolved factual dispute concerning the true character of appellees' organization.' " The absence of such a finding is significant, for it is by no means clear that the Association would constitute a "religious organization" for purposes of the...exemption. The appellees' assertion in the District Court that their actions were religious was "directly contradicted" by a "heavy testimonial barrage against the Association's claim that it is a religion."

II

The Court's opinion recognizes that the proper standing of appellees in this case is a constitutional prerequisite to the exercise of our Art. III power. To invoke that power, appellees must satisfy Art. III's case-or-controversy requirement by showing that they have a personal stake in the outcome of the controversy, consisting of a distinct and palpable injury. I do not disagree with the Court's conclusion that the threatened application of the Act to appellees constitutes injury in fact.

But injury in fact is not the only requirement of Art. III. The appellees must also show that their injury "fairly can be traced to the challenged action of the defendant." The Court purports to find such causation by use of the following sophism: "there is a fairly traceable causal connection between the claimed injury and the challenged conduct—here, between the claimed disabling and the threatened application of [the] fifty per cent rule."

As was demonstrated above, the statute and the State require the Association to register because it is a "charitable organization", not because of the fifty percent requirement contained in the exemption for religious organizations. Indeed, at this point in the litigation the fifty percent rule is entirely inapplicable to appellees because they have not shown that the Association is a "religious organization." Therefore, any injury to appellees resulting from the registration and reporting requirements is *caused* by [the Act], not, as the Court concludes, by "the . . . threatened application of [the] fifty per cent rule." Having failed to establish that the fifty percent rule is causally connected to their injury, appellees at this point lack standing to challenge it.

The error of the Court's analysis is even more clearly demonstrated by a closely related and equally essential requirement of Art. III. In addition to demonstrating an injury which is caused by the challenged provision, appellees must show "that the exercise of the Court's remedial powers would redress the claimed injuries." The importance of redressability, an aspect of standing which has been recognized repeatedly by this Court, is of constitutional dimension:

> "When a plaintiff's standing is brought into issue the relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision. Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III limitation."

Appellees have failed to show that a favorable decision of this Court will redress the injuries of which they complain. By affirming the decision of the Court of Appeals, the Court today extends the exemption of [the 50% rule] to all "religious organizations" soliciting funds in Minnesota. But because appellees have not shown that the Association is a "religious organization" under that provision, they have not shown that they will be entitled to this newly expanded exemption. This uncertainty is expressly recognized by the Court:

> "We agree with the Court of Appeals that appellees and others claiming the benefits of the religious-organization exemption should not automatically enjoy those benefits. Rather, in order to receive them, appellees may be required by the State to prove that the Unification Church is a religious organization within the meaning of the Act."

If the appellees fail in this proof—a distinct possibility given the State's "heavy testimonial barrage against the Association's claim that it is a religion," this Court will have rendered a purely advisory opinion. In so doing, it will have struck down a state statute at the behest of a party without standing, contrary to the undeviating teaching of the cases previously cited. Those cases, I believe, require remand for a determination of whether the Association is a "religious organization" as that term is used in the Minnesota statute.

III

There can be no doubt about the impropriety of the Court's action this day. "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." Nowhere does this doctrine have more force than in cases such as this one, where the defect is a possible lack of Art. III jurisdiction due to want of standing on the part of the party which seeks the adjudication.

"Considerations of propriety, as well as long-established practice, demand that we refrain from passing upon the constitutionality of legislative Acts unless obliged to do so in the proper performance of our judicial function, when the question is raised by a party whose interests entitle him to raise it." *Blair v. United States.*

The existence of injury in fact does not alone suffice to establish such an interest. "The necessity that the plaintiff who seeks to invoke judicial power stand to profit in some personal interest remains an Art. III requirement. A federal court cannot ignore this requirement without overstepping its assigned role in our system of adjudicating only actual cases and controversies."

IV

In sum, the Court errs when it finds that appellees have standing to challenge the constitutionality of [the 50% rule]. Although injured to be sure, appellees have not demonstrated that their injury was caused by the fifty percent rule or will be redressed by its invalidation. This is not to say that appellees can never prove causation or redressability, only that they have not done so at this point. The case should be remanded to permit such proof. Until such time as the requirements of Art. III clearly have been satisfied, this Court should refrain from rendering significant constitutional decisions.