

The Burger Court Opinion Writing Database

Larson v. Valente

456 U.S. 228 (1982)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

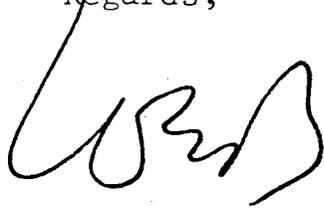
February 16, 1982

Re: No. 80-1666 - Larson v. Valente

Dear Bill:

I join your February 10 separate opinion
concurring in the judgment.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

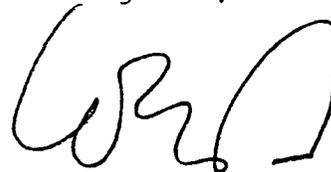
April 15, 1982

RE: 80-1666 - Larson, etc., et al. v. Valente

Dear Bill:

Please show me joining your dissenting opinion.

Regards,



Justice Rehnquist

Copies to the Conference

M

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 11, 1981.

Dear Chief,

Re: No. 80-1666 -- Larson v. Valente.

I'll try my hand at the Court opinion in
this case.

Sincerely,


William J. Brennan, Jr.

The Chief Justice.
Copies to the Conference.

WLB
1/20/82

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

From: Justice Brennan

Circulated: 9 February 1982

Recirculated: _____

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1666

JOHN R. LARSON, ETC., ET AL., APPELLANTS v.
PAMELA VALENTE, ET AL.

2/1/82
Tom

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[February —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

The principal question presented by this appeal is whether a Minnesota statute, imposing certain registration and reporting requirements only upon religious organizations soliciting more than fifty per cent of their funds from non-members, discriminates against such organizations in violation of the Establishment Clause of the First Amendment.¹

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 Minnesota's charitable solicitations Act, Minn. Stat. §§ 309.50-309.61 (1969 & Supp. 1980). 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 raising of money for purportedly charitable purposes. A charitable organization subject to the Act must

¹The Clause provides that "Congress shall make no law respecting an establishment of religion . . ." It is applied to the States by the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, 303 (1940).

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 11, 1982.

No. 80-1666 -- Larson v. Valente.

In response to Bill Rehnquist's circulation of February 10, I propose to change my opinion as follows: (1) by deleting the second reference to City of Newport v. Fact Concerts, Inc., 101 S. Ct. 2748 (1981), and the reference to Orr v. Orr, 440 U.S. 268 (1979), on page 9; and (2) by adding the following footnote at the end of the full paragraph on that page:

"In Mt. Healthy, petitioner argued that since respondent's substantive constitutional claim arose under 42 U.S.C. §1983, federal jurisdiction under 28 U.S.C. §1331 was limited by the provisions of §1983, and that since petitioner was not a 'person' for the purposes of §1983, §1331 jurisdiction was improperly founded. The Court recognized that this was a "jurisdictional" claim,' 429 U.S., at 277, and then assumed the correctness of petitioner's argument that a '§1331 action is limited by the restrictions of §1983,' id., at 279. But the Court then held that respondent's 'claim that [petitioner] ... is a "person" under §1983 is not so patently without merit as to fail the test of Bell v. Hood' Id. (emphasis added). The Court proceeded to consider the merits of respondent's constitutional claims under the First and Fourteenth Amendments. Id., at 281-287. Similarly, in the present case, we hold that respondents' claim that the Unification Church is a religious organization within the meaning of the Minnesota Act satisfies the jurisdictional test of Bell v. Hood, and that our consideration of the merits of respondents' Establishment Clause claims is therefore appropriate.

"In Steffel, the Court was presented, 'at the threshold,' with the question of 'whether peti-

tioner present[ed] an "actual controversy," a requirement imposed by Art. III of the Constitution' 415 U.S., at 458. Petitioner had attempted to protest American involvement in Vietnam by passing out handbills at a private shopping center. By the time the case reached this Court, 'the Nation's involvement in that part of the world' had been reduced. Id., at 460. The Court recognized that it would 'be for the District Court on remand to determine if subsequent events have so altered petitioner's desire to engage in handbilling at the shopping center that it can no longer be said that this case presents a "substantial controversy" Id. Nevertheless, the Court did not then simply remand the case for that determination of a jurisdictional prerequisite. Rather, it turned to the merits of petitioner's claim. Id., at 460-475."

Sincerely,

W.J.B., Jr.

The Conference.

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

February 17, 1982

MEMORANDUM TO THE CONFERENCE

RE: No. 80-1666 Larson v. Valente

I have in process a significant revision of the
previous circulation. I hope to send it around shortly.



W.J.B. Jr.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 10, 1982.

No. 80-1666 -- Larson v. Valente -- A Revised Draft.

The attached draft in Larson v. Valente includes a substantially revised treatment of the standing issue. The original circulation was based only upon an examination of the briefs and appendix lodged with this Court. Those papers made it appear that there had been no pleading or showing in the courts below respecting injury in fact, and gave the false impression that the courts below had improperly relied upon the overbreadth doctrine in order to replace a finding of injury in fact. But after sending for and examining the District Court and Court of Appeals records, it became clear that injury in fact was not a contested issue below. A letter in those records (copy attached), not available until we sent for them, showed that appellants sought to compel appellees to register and report under the Act by virtue of §309.515-1(b), and appellees challenged that provision in their original complaint. Injury in fact was thus pleaded and proved below. Appellants only challenged injury in fact when they arrived in this Court: Below, they had focused on attacking appellees' standing to raise Establishment Clause claims before they proved that the Unification Church was a religion. It was this argument that the courts below rejected by reliance upon the overbreadth doctrine.

The draft has been revised to correct our earlier misinterpretation, and to incorporate what was apparent to the courts below. Additions have been made to Part I, discussing the proceedings below; Part II, which addresses the standing issue, has been wholly revised. The discussion of the merits, in Part III, remains basically the same, but Part IV, the conclusion, reflects the alterations in Part II: Since injury in fact has been found, there is no need for a remand, and so the judgment of the court below is simply affirmed.

Sincerely,

W.J.B., Jr.

The Conference.

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

From: Justice Brennan

Circulated: _____

Recirculated: 10 March 82

2nd PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1666

JOHN R. LARSON, ETC., ET AL., APPELLANTS *v.*
 PAMELA VALENTE, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE EIGHTH CIRCUIT

[March —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

The principal question presented by this appeal is 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 non-members, discriminates against such organizations in violation of the Establishment Clause of the First Amendment.¹

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's charitable solicitations Act, Minn. Stat. §§ 309.50-309.61 (1969 and Supp. 1980). 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

¹The Clause provides that "Congress shall make no law respecting an establishment of religion. . . ." It is applied to the States by the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, 303 (1940).

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 19, 1982.

No. 80-1666 -- Larson v. Valente.

Dear John,

As you will see, the attached draft in Larson v. Valente revises the treatment of standing again. One of the particular purposes of this revision has been to address your concerns, as I understood them from your letter of March 12. You will thus note that the overbreadth argument, which you doubted that you could join, has been taken out. In addition, I have expanded the injury-in-fact discussion that appeared in Part II-A of the previous draft, in order to take into account the procedural configuration of this case, which has been of concern to you. For the same purpose I have also addressed Bill Rehnquist's redressability argument at some length. Otherwise the new draft is identical to the old, except for footnote renumbering.

Needless to say, I'd welcome any suggestions of wording changes that you think should be made.

Sincerely,



W.J.B., Jr.

Justice Stevens.



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 19, 1982.

No. 80-1666 -- Larson v. Valente.

The attached draft in Larson v. Valente revises the treatment of the standing issue in that case again. Feeling the force of Bill Rehnquist's dissent, I have come to the conclusion that overbreadth argument made in Part II-B of the previous draft is indeed superfluous. I have therefore omitted that argument in the current draft. I have also expanded the injury-in-fact discussion that appeared in Part II-A of the previous draft, in order to address some of the points in Bill's dissent. Otherwise the new draft is identical to the old, except for footnote renumbering.

Sincerely,
W.J.B., Jr.

The Conference.

*Substantial Revisions
on pages 9-16.*

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

From: Justice Brennan

Circulated: _____

Recirculated: 10 March 1982

3rd PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1666

JOHN R. LARSON, ETC., ET AL., APPELLANTS v.
PAMELA VALENTE, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[March —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

The principal question presented by this appeal is 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 non-members, discriminates against such organizations in violation of the Establishment Clause of the First Amendment.¹

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's charitable solicitations Act, Minn. Stat. §§ 309.50-309.61 (1969 and Supp. 1980). 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

¹The Clause provides that "Congress shall make no law respecting an establishment of religion. . . ." It is applied to the States by the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, 303 (1940).

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 12, 1982

RE: No. 80-1666 Larson v. Valente

Dear Harry:

Thank you very much for your note. I will shortly be circulating a new draft that will incorporate all of your suggestions.

Sincerely,



Justice Blackmun

cc: Justice Marshall
Justice Powell

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

Pages 11, 15, 27

From: **Justice Brennan**

Circulated: _____

Recirculated: *16 April 1982*

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1666

JOHN R. LARSON, ETC., ET AL., APPELLANTS, *v.*
 PAMELA VALENTE ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE EIGHTH CIRCUIT

[April —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

The principal question presented by this appeal is 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 non-members, discriminates against such organizations in violation of the Establishment Clause of the First Amendment.¹

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's charitable solicitations Act, Minn. Stat. §§ 309.50-309.61 (1969 and Supp. 1980). 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

¹The Clause provides that "Congress shall make no law respecting an establishment of religion. . . ." It is applied to the States by the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, 303 (1940).

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

Stylistic Changes Throughout.

From: Justice Brennan

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

Circulated: _____

Recirculated: 4-20-82

SUPREME COURT OF THE UNITED STATES

No. 80-1666

JOHN R. LARSON, ETC., ET AL., APPELLANTS, v.
PAMELA VALENTE ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[April 21, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

The principal question presented by this appeal is 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 non-members, discriminates against such organizations in violation of the Establishment Clause of the First Amendment.¹

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's charitable solicitations Act, Minn. Stat. §§ 309.50-309.61 (1969 and Supp. 1980). 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

¹The Clause provides that "Congress shall make no law respecting an establishment of religion. . . ." It is applied to the States by the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, 303 (1940).

HA

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 21, 1982.

Memorandum to Conference

Hold for No. 80-1666 -- Larson v. Valente

No. 80-1207 -- Rusk v. Espinoza

This case was originally held for No. 80-795, Heffron v. ISKCON, and later for No. 80-1666, Larson v. Valente. See Byron's memorandum of June 22, 1981, on cases held for Heffron.

In order to prevent deception and fraud in charitable solicitations, the City of Albuquerque enacted a licensing ordinance requiring door-to-door solicitors to file an extensive and rather intrusive permit application before they could solicit in the City. Solicitors for "religious organizations" were exempt from this requirement if their solicitations were "solely for evangelical, missionary, or religious but not secular purposes." The term "secular" was defined to mean "not spiritual or ecclesiastical but rather relating to the affairs of the present world, such as providing food, clothing and counselling." When the Seventh-day Adventist Church inquired about soliciting in the City, it was told that its solicitations were in large part for activities defined as "secular" by the City, and that it would therefore have to apply for a permit.

The Church and some of its members sued under §1983 for a declaration that the Albuquerque ordinance violated the First Amendment, as well as for an injunction against enforcement of the ordinance against the Church's solicitations. The District Court granted the Church the relief requested, and the Tenth Circuit affirmed. The Tenth Circuit held that Cantwell v. Connecticut, 310 U.S.

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

From: **Justice White**

Circulated: 13 APR 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1666

JOHN R. LARSON, ETC., ET AL., APPELLANTS *v.*
 PAMELA VALENTE, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE EIGHTH CIRCUIT

[April —, 1982]

JUSTICE WHITE, dissenting.

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*, 403 U. S. 602 (1971), 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.” App. 63. This created a preference offensive to the Establishment Clause. App. 33.¹ The magistrate relied on the inhibiting effect of the 50

¹The magistrate also recommended and the District Court agreed that

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 11, 1982

Re: No. 80-1666 - Larson v. Valente

Dear Bill:

Please join me.

Sincerely,

J.M.

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 12, 1982

Re: No. 80-1666 - Larson v. Valente

Dear Bill:

I am about ready to join your third printed draft circulated March 19, but I have two minor reservations.

1. Note 13 on page 11 closes with the statement that we have no occasion to question the choice of proper remedy made by the Court of Appeals in this case. Yet, note 30 on page 27 states that we agree with the Court of Appeals as to the proper disposition of the case, that is, to extend the exemption to all religious organizations. Is there not an inconsistency here?

2. I wonder generally how necessary it is to have the discussion in the last paragraph of note 13 on page 11. I may be missing something, but it seems to me that what is being said here is that the appellees would have had standing had the Act contained a nonseverability provision, but then we go on to observe that the Act has no such provision.

The net result of this, I think, is that I would be happier if the last paragraph of note 13 were omitted and if the second sentence of note 30 could also be removed, with such changes in the third sentence as the omission would occasion.

Sincerely,



Justice Brennan

cc: Justice Marshall
Justice Powell

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 14, 1982

Re: No. 80-1666 - Larson v. Valente

Dear Bill:

I appreciate your willingness to go along with the suggestions I have about your third printed draft. With those changes being made, you have my joinder.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 22, 1982

80-1666 Larson v. Valente

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

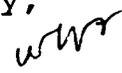
February 9, 1982

Re: No. 80-1666 Larson v. Valente

Dear Bill:

In due course I hope to circulate an opinion concurring in the judgment and in Parts I and II of your circulating draft opinion. I think that Part III is unnecessary to the decision of the case, and is contrary to the generally accepted idea that we will decide constitutional issues only when we are required to do so.

Sincerely,



Justice Brennan

Copies to the Conference

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

From: Justice Rehnquist

Circulated: FEB 16 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1666

JOHN R. LARSON, ETC., ET AL., APPELLANTS, *v.*
 PAMELA VALENTE, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE EIGHTH CIRCUIT

[February —, 1982]

JUSTICE REHNQUIST, concurring in the result.

For the reasons stated in Part II of the Court's opinion, I agree that "appellees still must prove their allegation of a 'personal stake' in a manner sufficient to permit the permanent injunctive relief ordered by the Court of Appeals." *Ante*, at 8. Since this is a question which must be decided upon remand after receipt of such evidence as the parties choose to submit, the existence *vel non* of standing remains properly alleged but as yet unproven. This being the case, I am at a loss to know why the Court does not follow its own suggestion that "[w]e might at this stage simply vacate the judgment below, and remand the action for further proceedings to determine whether the Unification Church is a 'religious organization' within the meaning of the Act. By taking that course we could avoid addressing the merits of the constitutional question presented in this case. . . ." *Ante*, at 9.

The Court declines to act on its own counsel of prudence, and because the constitutional question "was addressed and decided by both the District Court and the Court of Appeals," and because "it was the principal question tendered in the Jurisdictional Statement [and] has been fully briefed and argued here," proceeds to decide the merits of the First Amendment question. *Ante*, at 9. I do not believe any of

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall

Pg 3,4

FEB 18 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1666

JOHN R. LARSON, ETC., ET AL., APPELLANTS, v.
PAMELA VALENTE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[February —, 1982]

JUSTICE REHNQUIST, concurring in the result.

For the reasons stated in Part II of the Court's opinion, I agree that "appellees still must prove their allegation of a 'personal stake' in a manner sufficient to permit the permanent injunctive relief ordered by the Court of Appeals." *Ante*, at 8. Since this is a question which must be decided upon remand after receipt of such evidence as the parties choose to submit, the existence *vel non* of standing remains properly alleged but as yet unproven. This being the case, I am at a loss to know why the Court does not follow its own suggestion that "[w]e might at this stage simply vacate the judgment below, and remand the action for further proceedings to determine whether the Unification Church is a 'religious organization' within the meaning of the Act. By taking that course we could avoid addressing the merits of the constitutional question presented in this case. . . ." *Ante*, at 9.

The Court declines to act on its own counsel of prudence, and because the constitutional question "was addressed and decided by both the District Court and the Court of Appeals," and because "it was the principal question tendered in the Jurisdictional Statement [and] has been fully briefed and argued here," proceeds to decide the merits of the First Amendment question. *Ante*, at 9. I do not believe the

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

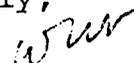
March 11, 1982

Re: No. 80-1666 Larson v. Valente -- A Revised Draft

Dear Bill:

In view of your new circulation in the above entitled case, I shall now probably end up dissenting rather than simply concurring in the result. In due course I will circulate an opinion to that effect. It will doubtless differ from my original concurrence, just as your new draft works a virtually Orwellian transformation from your earlier draft.

Sincerely,



Justice Brennan

cc: The Conference

Stylistic changes throughout
see pp. 1-6, 8

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

From: Justice Rehnquist

Circulated: _____

Recirculated: _____
MAR 23 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1666

JOHN R. LARSON, ETC., ET AL., APPELLANTS *v.*
PAMELA VALENTE, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[March —, 1982]

JUSTICE REHNQUIST, dissenting.

From the earliest days of the Republic it has been recognized that “[t]his Court is without power to give advisory opinions. *Hayburn’s Case*, 2 Dall. 409 [(1792)].” *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450, 461 (1944). 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.” *Id.* (citations omitted). 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 § 309.515-1(b) of the Minnesota Chari-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 15, 1982

Re: No. 80-1666 Larson v. Valente

Dear Byron:

Please join me in your dissent.

Sincerely,



Justice White

Copies to the Conference

STYLISTIC CHANGES THROUGHOUT

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Justice Rehnquist

No. 80-1666

Circulated: _____

Recirculated: APR 21 1982

JOHN R. LARSON, ETC., ET AL., APPELLANTS v.
PAMELA VALENTE, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[April 21, 1982]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE,
JUSTICE WHITE, and JUSTICE O'CONNOR join, dissenting.

From the earliest days of the Republic it has been recognized that "[t]his Court is without power to give advisory opinions. *Hayburn's Case*, 2 Dall. 409 [(1792)]." *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450, 461 (1944). 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." *Id.* (citations omitted). 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

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

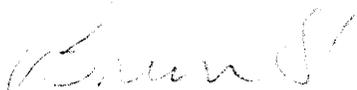
March 12, 1982

Re: 80-1666 - Larson v. Valente

Dear Bill:

Part II of your proposed opinion continues to trouble me. I agree that appellees have demonstrated Article III standing to challenge the 50 percent rule. I would not, however, rely too heavily upon the letter threatening enforcement of the statute as a basis for finding injury in fact. Rather, I would rely upon the positions taken by the parties in this litigation. Appellees alleged that their organization was a religious organization within the meaning of the statute and that they collected more than 50 percent of their revenues from non-members, and they contended that the 50 percent rule is unconstitutional. The State defended the constitutionality of the 50 percent rule, and also denied the allegation that appellees' organization was a religious organization. To obtain redress, appellees must overcome both aspects of the State's defense. Appellees moved for partial summary judgment on the constitutional issue, and their motion was granted. The fact that this victory did not itself provide the redress they seek does not deprive them of the standing that justifies the District Court's jurisdiction.

I am more troubled with Part B, in which you explain why, as a matter of prudence, this Court should decide the constitutional issue notwithstanding the absence of a finding below that appellees represent a religious organization. I must confess that I really do not understand the "overbreadth" analysis and doubt that I will be able to subscribe to it. The overbreadth doctrine generally is invoked by a party when a law is constitutional as applied to him but arguably unconstitutional as applied to certain third parties. We have permitted such a party nonetheless to



mount the constitutional challenge because of the fear that those third parties will be chilled by the existence of the law. But not coincidentally in those cases the result of a successful challenge is that the law is struck down in its entirety, and the party, to whom the law could have been applied constitutionally had the law not been overbroad, prevails. In this case, however, unless appellees' organization is a religious organization, they are not going to prevail even if the 50 percent rule is unconstitutional.

It does seem to me that appellees correctly were awarded a preliminary injunction, for the record demonstrates a likelihood that their organization is a religious organization within the meaning of the statute and that the 50 percent rule is unconstitutional. If the case had come to this Court in the posture of a Court of Appeals affirmance of the grant of a preliminary injunction, then surely this Court could reach the merits issue even though ultimately, after a trial on whether appellees' organization is otherwise entitled to an exemption, appellees might be refused permanent injunctive relief. But it seems to me that, in reviewing the final judgment of the District Court on the constitutionality of the 50 percent rule, the Court of Appeals should have declined to review the merits issue until appellees had proved that they were a religious organization within the meaning of the statute. Like this Court, the Court of Appeals should avoid decision of a constitutional issue unless that issue is necessarily presented.

Before this Court, the State argues that the Court of Appeals incorrectly decided the constitutional question. It also argues that the Court of Appeals should not have even reached that issue. Both arguments, if correct, would vitiate the grant of the permanent injunction, but only the first would vitiate the grant of the preliminary injunction. It seems to me that review on the merits is therefore justified on the ground that the State is entitled to know not only whether a permanent injunction was properly granted but also whether the preliminary injunction was properly

granted. I believe a proper disposition of the appeal in this Court would permit the State to attempt to avoid a permanent injunction if it wishes to challenge in this litigation the status of appellees' organization as a religious organization, and also would require that a preliminary injunction remain in effect while that challenge is resolved.

I should add that apart from the knotty problem of standing, I have no difficulty with the opinion you have circulated.

Respectfully,



Justice Brennan

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

From: **Justice Stevens**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1666

JOHN R. LARSON, ETC., ET AL., APPELLANTS *v.*
 PAMELA VALENTE, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE EIGHTH CIRCUIT

[April —, 1982]

JUSTICE STEVENS, concurring.

As the Court points out, *ante*, at 14-15, invalidation of the fifty percent rule would require the State to shoulder the considerable burden of demonstrating that the Unification Church is not a religious organization if the State persists in its attempt to require the Church to register and file financial statements. The burden is considerable because the record already establishes a *prima facie* case that the Church is a religious organization,¹ and because a strict construction of a statutory exemption for religious organizations is disfavored and may give rise to constitutional questions.² JUSTICE REHNQUIST therefore is plainly wrong when he asserts in

¹The Church has been incorporated in California as a religious corporation and has been treated as a religious organization for tax purposes by the Federal Government and by the State of Minnesota. App. to Juris. Statement A-37. The Church was treated as a religious organization by the State prior to the enactment of the fifty percent rule in 1978. According to the Magistrate, the respondents "have submitted substantial, although not uncontroverted, evidence of the religious nature of the Unification Church and of their solicitations." *Id.*, at A-23; see *id.*, at A-47.

²See *Washington Ethical Society v. District of Columbia*, 249 F. 2d 127, 129 (CADC 1959) (BURGER, J.) ("To construe exemptions so strictly that unorthodox or minority forms of worship would be denied the exemption benefits granted to those conforming to the majority beliefs might well raise constitutional issues.").

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

From: **Justice Stevens**

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1666

JOHN R. LARSON, ETC., ET AL., APPELLANTS *v.*
PAMELA VALENTE, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[April —, 1982]

JUSTICE STEVENS, concurring.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 9, 1982

No. 80-1666 Larson v. Valente

Dear Bill,

I shall await Bill Rehnquist's opinion concurring in the judgment because I agree with him that Part III of your opinion may decide the constitutional issue unnecessarily.

Sincerely,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 11, 1982

No. 80-1666 Larson v. Valente

Dear Bill,

 Please join me in your concurrence
in the result in the referenced case.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 25, 1982

80-1666 Larson v. Valente

Dear Bill,

Please join me in your dissent in this case.

Sincerely,



Justice Rehnquist

Copies to the Conference