Federal Jurisdiction
Spring 2015
Professor Yablon


Assignment for Wednesday, January 21:
1. Casebook pp. cvii-cix (Articles III and VI, § 2 of the U.S. Constitution), 49-52, 80-83
2. Hollingsworth v. Perry (abridged; available below and on course Moodle page)
Hollingsworth v. Perry (2013)

Chief Justice ROBERTS delivered the opinion of the Court.

The public is currently engaged in an active political debate over whether same-sex couples should be allowed to marry. That question has also given rise to litigation. In this case, petitioners, who oppose same-sex marriage, ask us to decide whether the Equal Protection Clause "prohibits the State of California from defining marriage as the union of a man and a woman." Pet. for Cert. i. Respondents, same-sex couples who wish to marry, view the issue in somewhat different terms: For them, it is whether California — having previously recognized the right of same-sex couples to marry — may reverse that decision through a referendum.

Federal courts have authority under the Constitution to answer such questions only if necessary to do so in the course of deciding an actual "case" or "controversy." As used in the Constitution, those words do not include every sort of dispute, but only those "historically viewed as capable of resolution through the judicial process." This is an essential limit on our power: It ensures that we act as judges, and do not engage in policymaking properly left to elected representatives.

For there to be such a case or controversy, it is not enough that the party invoking the power of the court have a keen interest in the issue. That party must also have "standing," which requires, among other things, that it have suffered a concrete and particularized injury. Because we find that petitioners do not have standing, we have no authority to decide this case on the merits, and neither did the Ninth Circuit.

I

In 2008, the California Supreme Court held that limiting the official designation of marriage to opposite-sex couples violated the equal protection clause of the California Constitution. Later that year, California voters passed the ballot initiative at the center of this dispute, known as Proposition 8. That proposition amended the California Constitution to provide that "[o]nly marriage between a man and a woman is valid or recognized in California." Cal. Const., Art. I, § 7.5. ...

Respondents, two same-sex couples who wish to marry, filed suit in federal court, challenging Proposition 8 under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Federal Constitution. The complaint named as defendants California's Governor, attorney general, and various other state and local officials responsible for enforcing California's marriage laws. Those officials refused to defend the law, although they have continued to enforce it throughout this litigation. The District Court allowed petitioners — the official proponents of the initiative — to intervene to defend it. After a 12-day bench trial, the District Court declared Proposition 8 unconstitutional, permanently enjoining the California officials named as defendants from enforcing the law, and "directing the official defendants that all persons under their control or supervision" shall not enforce it.
Those officials elected not to appeal the District Court order. When petitioners did, the Ninth Circuit asked them to address "why this appeal should not be dismissed for lack of Article III standing." After briefing and argument, the Ninth Circuit certified a question to the California Supreme Court:

"Whether under Article II, Section 8 of the California Constitution, or otherwise under California law, the official proponents of an initiative measure possess either a particularized interest in the initiative's validity or the authority to assert the State's interest in the initiative's validity, which would enable them to defend the constitutionality of the initiative upon its adoption or appeal a judgment invalidating the initiative, when the public officials charged with that duty refuse to do so."

The California Supreme Court agreed to decide the certified question, and answered in the affirmative. Without addressing whether the proponents have a particularized interest of their own in an initiative's validity, the court concluded that "[i]n a postelection challenge to a voter-approved initiative measure, the official proponents of the initiative are authorized under California law to appear and assert the state's interest in the initiative's validity and to appeal a judgment invalidating the measure when the public officials who ordinarily defend the measure or appeal such a judgment decline to do so."

Relying on that answer, the Ninth Circuit concluded that petitioners had standing under federal law to defend the constitutionality of Proposition 8. California, it reasoned, "has standing to defend the constitutionality of its [laws]." and States have the "prerogative, as independent sovereigns, to decide for themselves who may assert their interests." All a federal court need determine is that the state has suffered a harm sufficient to confer standing and that the party seeking to invoke the jurisdiction of the court is authorized by the state to represent its interest in remedying that harm.

On the merits, the Ninth Circuit affirmed the District Court....Proposition 8, in the court's view, violated the Equal Protection Clause because it served no purpose "but to impose on gays and lesbians, through the public law, a majority's private disapproval of them and their relationships."

We granted certiorari to review that determination, and directed that the parties also brief and argue "Whether petitioners have standing under Article III, § 2, of the Constitution in this case."

II

Article III of the Constitution confines the judicial power of federal courts to deciding actual "Cases" or "Controversies." § 2. One essential aspect of this requirement is that any person invoking the power of a federal court must demonstrate standing to do so. This requires the litigant to prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision....
The doctrine of standing, we recently explained, "serves to prevent the judicial process from being used to usurp the powers of the political branches." In light of this "overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere, we must put aside the natural urge to proceed directly to the merits of [an] important dispute and to 'settle' it for the sake of convenience and efficiency."

Most standing cases consider whether a plaintiff has satisfied the requirement when filing suit, but Article III demands that an "actual controversy" persist throughout all stages of litigation. That means that standing "must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." We therefore must decide whether petitioners had standing to appeal the District Court's order.

Respondents initiated this case in the District Court against the California officials responsible for enforcing Proposition 8. The parties do not contest that respondents had Article III standing to do so. Each couple expressed a desire to marry and obtain "official sanction" from the State, which was unavailable to them given the declaration in Proposition 8 that "marriage" in California is solely between a man and a woman.

After the District Court declared Proposition 8 unconstitutional and enjoined the state officials named as defendants from enforcing it, however, the inquiry under Article III changed. Respondents no longer had any injury to redress — they had won — and the state officials chose not to appeal.

The only individuals who sought to appeal that order were petitioners, who had intervened in the District Court. But the District Court had not ordered them to do or refrain from doing anything....Their only interest in having the District Court order reversed was to vindicate the constitutional validity of a generally applicable California law.

We have repeatedly held that such a "generalized grievance," no matter how sincere, is insufficient to confer standing. A litigant "raising only a generally available grievance about government — claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large — does not state an Article III case or controversy."

Petitioners argue that the California Constitution and its election laws give them a "'unique,' 'special,' and 'distinct' role in the initiative process — one 'involving both authority and responsibilities that differ from other supporters of the measure.'" True enough — but only when it comes to the process of enacting the law....

[O]nce Proposition 8 was approved by the voters, the measure became "a duly enacted constitutional amendment or statute." Petitioners have no role — special or otherwise — in the enforcement of Proposition 8. They therefore have no "personal
stake” in defending its enforcement that is distinguishable from the general interest of every citizen of California.

Article III standing "is not to be placed in the hands of 'concerned bystanders,' who will use it simply as a 'vehicle for the vindication of value interests.'" No matter how deeply committed petitioners may be to upholding Proposition 8 or how "zealous [their] advocacy," post, at 2669 (KENNEDY, J., dissenting), that is not a "particularized" interest sufficient to create a case or controversy under Article III.

III

A

Without a judicially cognizable interest of their own, petitioners attempt to invoke that of someone else. They assert that even if they have no cognizable interest in appealing the District Court's judgment, the State of California does, and they may assert that interest on the State's behalf. It is, however, a "fundamental restriction on our authority" that "[i]n the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties." There are "certain, limited exceptions" to that rule. But even when we have allowed litigants to assert the interests of others, the litigants themselves still "must have suffered an injury in fact, thus giving [them] a sufficiently concrete interest in the outcome of the issue in dispute."

...

B

Petitioners contend that this case is different, because the California Supreme Court has determined that they are "authorized under California law to appear and assert the state's interest" in the validity of Proposition 8.... As petitioners put it, they "need no more show a personal injury, separate from the State's indisputable interest in the validity of its law, than would California's Attorney General or did the legislative leaders held to have standing in Karcher v. May (1987)."

In Karcher, we held that two New Jersey state legislators — Speaker of the General Assembly Alan Karcher and President of the Senate Carmen Orechio — could intervene in a suit against the State to defend the constitutionality of a New Jersey law, after the New Jersey attorney general had declined to do so. "Since the New Jersey Legislature had authority under state law to represent the State's interests in both the District Court and the Court of Appeals," we held that the Speaker and the President, in their official capacities, could vindicate that interest in federal court on the legislature's behalf.

Far from supporting petitioners' standing, however, Karcher is compelling precedent against it. The legislators in that case intervened in their official capacities as Speaker and President of the legislature. ...
What is significant about *Karcher* is what happened after the Court of Appeals decision in that case. Karcher and Orechio lost their positions as Speaker and President, but nevertheless sought to appeal to this Court. We held that they could not do so. We explained that while they were able to participate in the lawsuit in their official capacities as presiding officers of the incumbent legislature, "since they no longer hold those offices, they lack authority to pursue this appeal."

.... Petitioners here hold no office and have always participated in this litigation solely as private parties.

...

C

...

Petitioners argue that, by virtue of the California Supreme Court's decision, they are authorized to act "as agents of the people' of California." But that Court never described petitioners as "agents of the people," or of anyone else....

And petitioners are plainly not agents of the State — "formal" or otherwise....

....[T]he most basic features of an agency relationship are missing here....

"If the relationship between two persons is one of agency ..., the agent owes a fiduciary obligation to the principal." But petitioners owe nothing of the sort to the people of California. Unlike California's elected officials, they have taken no oath of office. ... They are free to pursue a purely ideological commitment to the law's constitutionality without the need to take cognizance of resource constraints, changes in public opinion, or potential ramifications for other state priorities.

....

IV

The dissent eloquently recounts the California Supreme Court's reasons for deciding that state law authorizes petitioners to defend Proposition 8. We do not "disrespect[]" or "disparage[]" those reasons. Nor do we question California's sovereign right to maintain an initiative process, or the right of initiative proponents to defend their initiatives in California courts, where Article III does not apply. But as the dissent acknowledges, standing in federal court is a question of federal law, not state law. And no matter its reasons, the fact that a State thinks a private party should have standing to seek relief for a generalized grievance cannot override our settled law to the contrary.

The Article III requirement that a party invoking the jurisdiction of a federal court seek relief for a personal, particularized injury serves vital interests going to the role of the Judiciary in our system of separated powers....States cannot alter that role
simply by issuing to private parties who otherwise lack standing a ticket to the federal courthouse.

* * *

We have never before upheld the standing of a private party to defend the constitutionality of a state statute when state officials have chosen not to. We decline to do so for the first time here.

Because petitioners have not satisfied their burden to demonstrate standing to appeal the judgment of the District Court, the Ninth Circuit was without jurisdiction to consider the appeal. The judgment of the Ninth Circuit is vacated, and the case is remanded with instructions to dismiss the appeal for lack of jurisdiction.

It is so ordered.

Justice KENNEDY, with whom Justice THOMAS, Justice ALITO, and Justice SOTOMAYOR join, dissenting.

The Court's opinion is correct to state, and the Supreme Court of California was careful to acknowledge, that a proponent's standing to defend an initiative in federal court is a question of federal law. Proper resolution of the justiciability question requires, in this case, a threshold determination of state law. The state-law question is how California defines and elaborates the status and authority of an initiative's proponents who seek to intervene in court to defend the initiative after its adoption by the electorate. Those state-law issues have been addressed in a meticulous and unanimous opinion by the Supreme Court of California.

Under California law, a proponent has the authority to appear in court and assert the State's interest in defending an enacted initiative when the public officials charged with that duty refuse to do so. The State deems such an appearance essential to the integrity of its initiative process. Yet the Court today concludes that this state-defined status and this state-conferred right fall short of meeting federal requirements because the proponents cannot point to a formal delegation of authority that tracks the requirements of the Restatement of Agency. But the State Supreme Court's definition of proponents' powers is binding on this Court. And that definition is fully sufficient to establish the standing and adversity that are requisites for justiciability under Article III of the United States Constitution.

In my view Article III does not require California, when deciding who may appear in court to defend an initiative on its behalf, to comply with the Restatement of Agency or with this Court's view of how a State should make its laws or structure its government. The Court's reasoning does not take into account the fundamental principles or the practical dynamics of the initiative system in California, which uses this mechanism to control and to bypass public officials — the same officials who would not defend the initiative, an injury the Court now leaves unremedied.... In my
submission, the Article III requirement for a justiciable case or controversy does not prevent proponents from having their day in court.

....

I

As the Court explains, the State of California sustained a concrete injury, sufficient to satisfy the requirements of Article III, when a United States District Court nullified a portion of its State Constitution. ....

... It is for California, not this Court, to determine whether and to what extent the Elections Code provisions are instructive and relevant in determining the authority of proponents to assert the State's interest in postenactment judicial proceedings. ...

This Court, in determining the substance of state law, is "bound by a state court's construction of a state statute." And the Supreme Court of California ... has held that proponents do have authority "under California law to appear and assert the state's interest in the initiative's validity and appeal a judgment invalidating the measure when the public officials who ordinarily defend the measure or appeal such a judgment decline to do so."

The reasons the Supreme Court of California gave for its holding have special relevance in the context of determining whether proponents have the authority to seek a federal-court remedy for the State's concrete, substantial, and continuing injury. As a class, official proponents are a small, identifiable group. Because many of their decisions must be unanimous, they are necessarily few in number. Their identities are public. Their commitment is substantial. ...

... They "have a unique relationship to the voter-approved measure that makes them especially likely to be reliable and vigorous advocates for the measure and to be so viewed by those whose votes secured the initiative's enactment into law." *Ibid.* ...

II

A

The Court concludes that proponents lack sufficient ties to the state government. It notes that they "are not elected," "answer to no one," and lack "'a fiduciary obligation'" to the State. But what the Court deems deficiencies in the proponents' connection to the State government, the State Supreme Court saw as essential qualifications to defend the initiative system. The very object of the initiative system is to establish a lawmaking process that does not depend upon state officials. .... The initiative's "primary purpose" ... "was to afford the people the ability to propose and to adopt constitutional amendments or statutory provisions that their elected public officials had refused or declined to adopt."
The California Supreme Court has determined that this purpose is undermined if the very officials the initiative process seeks to circumvent are the only parties who can defend an enacted initiative when it is challenged in a legal proceeding.

Yet today the Court demands that the State follow the Restatement of Agency. See *ante*, at 2666-2667. There are reasons, however, why California might conclude that a conventional agency relationship is inconsistent with the history, design, and purpose of the initiative process. The State may not wish to associate itself with proponents or their views outside of the "extremely narrow and limited" context of this litigation, or to bear the cost of proponents' legal fees. The State may also wish to avoid the odd conflict of having a formal agent of the State (the initiative's proponent) arguing in favor of a law's validity while state officials (e.g., the attorney general) contend in the same proceeding that it should be found invalid.

And if the Court's concern is that the proponents are unaccountable, that fear is neither well founded nor sufficient to overcome the contrary judgment of the State Supreme Court. It must be remembered that both elected officials and initiative proponents receive their authority to speak for the State of California directly from the people.

B

Contrary to the Court's suggestion, this Court's precedents do not indicate that a formal agency relationship is necessary. In *Karcher v. May*, the Court looked to New Jersey law to determine whether Karcher and Orechio "had authority under state law to represent the State's interest in both the District Court and Court of Appeals." The Court concluded that they did.

C

The Court's approach in this case is also in tension with other cases in which the Court has permitted individuals to assert claims on behalf of the government or others. For instance, Federal Rule of Criminal Procedure 42(a)(2) allows a court to appoint a private attorney to investigate and prosecute potential instances of criminal contempt. Under the Rule, this special prosecutor is not the agent of the appointing judge. They are "appointed solely to pursue the public interest in vindication of the court's authority," an interest that — like California's interest in the validity of its laws — is "unique to the sovereign."...

.... In short, the Court today unsettles its longtime understanding of the basis for jurisdiction in representative-party litigation, leaving the law unclear and the District Court's judgment, and its accompanying statewide injunction, effectively immune from appellate review.
There is much irony in the Court's approach to justiciability in this case. A prime purpose of justiciability is to ensure vigorous advocacy, yet the Court insists upon litigation conducted by state officials whose preference is to lose the case. The doctrine is meant to ensure that courts are responsible and constrained in their power, but the Court's opinion today means that a single district court can make a decision with far-reaching effects that cannot be reviewed. And rather than honor the principle that justiciability exists to allow disputes of public policy to be resolved by the political process rather than the courts, here the Court refuses to allow a State's authorized representatives to defend the outcome of a democratic election.

The Court's opinion disrespects and disparages both the political process in California and the well-stated opinion of the California Supreme Court in this case.... The California Supreme Court's opinion reflects a better understanding of the dynamics and principles of Article III than does this Court's opinion.

Of course, the Court must be cautious before entering a realm of controversy where the legal community and society at large are still formulating ideas and approaches to a most difficult subject. But it is shortsighted to misconstrue principles of justiciability to avoid that subject....

***

In the end, what the Court fails to grasp or accept is the basic premise of the initiative process. And it is this. The essence of democracy is that the right to make law rests in the people and flows to the government, not the other way around. Freedom resides first in the people without need of a grant from government.... In California and the 26 other States that permit initiatives and popular referendums, the people have exercised their own inherent sovereign right to govern themselves. The Court today frustrates that choice by nullifying, for failure to comply with the Restatement of Agency, a State Supreme Court decision holding that state law authorizes an enacted initiative's proponents to defend the law if and when the State's usual legal advocates decline to do so. The Court's opinion fails to abide by precedent and misapplies basic principles of justiciability. Those errors necessitate this respectful dissent.