Dennis HOLLINGSWORTH et al., Petitioners

v.

Kristin M. PERRY et al.

Supreme Court of the United States

No. 12–144. | Decided June 26, 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." 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." *Flast v. Cohen*, 392 U.S. 83, 95 (1968). 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. *In re Marriage Cases*, 183 P.3d 384. 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. Shortly thereafter, the California Supreme Court rejected a procedural challenge to the amendment, and held that the Proposition was properly enacted under California law.

According to the California Supreme Court, Proposition 8 created a "narrow and limited exception" to the state constitutional rights otherwise guaranteed to same-sex couples. Under California law, same-sex couples have a right to enter into relationships recognized by the State as "domestic partnerships," which carry "the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and

duties under law ... as are granted to and imposed upon spouses." Cal. Fam. Code Ann. § 297.5(a) (West 2004). In *In re Marriage Cases*, the California Supreme Court concluded that the California Constitution further guarantees same-sex couples "all of the constitutionally based incidents of marriage," including the right to have that marriage "officially recognized" as such by the State. Proposition 8, the court explained in *Strauss*, left those rights largely undisturbed, reserving only "the official *designation* of the term 'marriage' for the union of opposite-sex couples as a matter of state constitutional law."

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. 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. *Perry v. Schwarzenegger*, 704 F.Supp.2d 921, 1004 (N.D.Cal.2010).

Those officials elected not to appeal the District Court order. When petitioners [the official proponents of the initiative] did, the Ninth Circuit asked them to address "why this appeal should not be dismissed for lack of Article III standing." *Perry v. Schwarzenegger*, Civ. No. 10–16696 (C.A.9, Aug. 16, 2010), p. 2, 2010 WL 3212786. After briefing and argument, the Ninth Circuit certified a question to the California Supreme Court. [Discussion of question of justiciability].***

On the merits, the Ninth Circuit affirmed the District Court. The court held the Proposition unconstitutional under the rationale of our decision in *Romer v. Evans*, 517 U.S. 620 (1996). In the Ninth Circuit's view, *Romer* stands for the proposition that "the Equal Protection Clause requires the state to have a legitimate reason for withdrawing a right or benefit *from one group but not others*, whether or not it was required to confer that right or benefit in the first place." 671 F.3d, at 1083–1084. The Ninth Circuit concluded that "taking away the official designation" of "marriage" from same-sex couples, while continuing to afford those couples all the rights and obligations of marriage, did not further any legitimate interest of the State. 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." *Ibid.*

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." ***

[The Supreme Court then addresses the justiciability question and the Court finds that the petitioners do not have standing]. ***

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.

*** 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, see, *e.g., Allen v. Wright*, 468 U.S. 737 (1984), 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, not this Court, expresses concern for vigorous representation; the California Supreme Court, not this Court, recognizes the necessity to avoid conflicts of interest; the California Supreme Court, not this Court, comprehends the real interest

at stake in this litigation and identifies the most proper party to defend that interest. 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. As the California Supreme Court recognized, "the question before us involves a fundamental procedural issue that may arise with respect to *any* initiative measure, without regard to its subject matter." If a federal court must rule on a constitutional point that either confirms or rejects the will of the people expressed in an initiative, that is when it is most necessary, not least necessary, to insist on rules that ensure the most committed and vigorous adversary arguments to inform the rulings of the courts.

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. The California initiative process embodies these principles and has done so for over a century. "Through the structure of its government, and the character of those who exercise government authority, a State defines itself as sovereign." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). 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.