

## Sec. 2—Judicial Power and Jurisdiction

## Cl. 1—Cases and Controversies

agency to the relationship. In *Hollingsworth v. Perry*,<sup>416</sup> the Court considered the question of whether the official proponents of Proposition 8,<sup>417</sup> a state proposition which amended the California Constitution to define marriage as a union between a man and a woman, had standing to defend the constitutionality of the provision. Although the proponents were authorized by California law to defend the proposition,<sup>418</sup> the Court found that this authorization, by itself, was insufficient to create standing. The concern, according to the Court, was that, despite the state's provision of such authority to the proponents, the proponents were still acting as private individuals, not as state officials<sup>419</sup> or as agents of the state.<sup>420</sup> Because the proponents had no official role in enforcing of California law, the Court held that they had no "personal stake" that was distinguishable from the general interest of every citizen of California.<sup>421</sup>

In a number of cases, the Court has denied standing apparently in the belief that the assertion of harm is too speculative or too remote to credit.<sup>422</sup> This limitation seems particularly challeng-

<sup>416</sup> 570 U.S. \_\_\_, No. 12–144, slip op. (2013).

<sup>417</sup> Under Cal. Elec. Code Ann. §342, "[p]roponents of an initiative or referendum measure' means . . . the elector or electors who submit the text of a proposed initiative or referendum to the Attorney General . . . ; or . . . the person or persons who publish a notice or intention to circulate petitions, or, where publication is not required, who file petitions with the elections official or legislative body."

<sup>418</sup> California's governor and state and local officials declined to defend Proposition 8 in federal district court, so the proponents were allowed to intervene. After the district court held the proposition unconstitutional, the government officials elected not to appeal, so the proponents did. The federal court of appeals certified a question to the California Supreme Court as to whether the official proponents of the proposition had the authority to assert the state's interest in defending the constitutionality of Proposition 8, which the was answered in the affirmative.

<sup>419</sup> See *Karcher v. May*, 484 U.S. 72 (1987) (holding that New Jersey state legislators, as authorized by state law, could intervene in a suit to defend the constitutionality of a New Jersey law).

<sup>420</sup> The Court noted that an essential feature of agency is the principal's right to control the agent's actions. Here, the proponents "decided what arguments to make and how to make them." *Hollingsworth*, 570 U.S. \_\_\_, No. 12–144, slip op. at 15. The Court also noted that the proponents were not elected to their position, took no oath, had no fiduciary duty to the people of California, and were not subject to removal. *Id.*

<sup>421</sup> As noted previously, the Court has been wary of granting standing to persons who alleged threats or harm to interests that they share with members of the community at large. See "Generalized or Widespread Injuries," *supra*.

<sup>422</sup> *E.g.*, *Laird v. Tatum*, 408 U.S. 1 (1972) ("allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm."). See also *O'Shea v. Littleton*, 414 U.S. 488, 497 (1974) (no "sufficient immediacy and reality" to allegations of future injury that rested on the likelihood that plaintiffs will again be subjected to racially discriminatory enforcement and administration of criminal justice); *California Bankers Ass'n v. Shultz*, 416 U.S. 21, 73 (1974) (plaintiffs allege that they intend to engage in currency transactions that the Secretary of the Treasury's regulations will require them to report,