Citizens making law

Aliki Moncrief

Nov. 1, 2013
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Florida Water and Land Conservation Amendment

- Allocate 33% of existing documentary stamp tax revenues to conservation and outdoor recreation.
- Raise an estimated $641 million a year over the 20 year lifetime of the amendment.
- Ensure that doc stamp dollars continue to fund conservation and not be diverted to other purposes.
- Less than 5% of Florida overall budget.
Overview

Methods of direct democracy

Initiative
Referendum
Recall

Constitutional Amendment
18 states

Statute
21 states

Popular
Legislative

Direct
Proposed amendment or statute is placed directly on the ballot and submitted to voters.

Indirect
Proposal is first submitted to the legislature.
States with initiative/referendum processes in place
Direct
Proposed amendment or statute is placed directly on the ballot and submitted to voters.

Indirect
Proposal is first submitted to the legislature.
Popular Legislative
Debated issues

Do outcomes reflect the will of "the people" or special interests?

Majority rule - cuts both ways

The role of money and whether too much is spent

Are voters sufficiently informed?

"Constitutional clutter"

The question of enforcement

Petition gathering and First Amendment rights

Florida: "polluter pays amendment"
PRO

Check on unresponsive, unaccountable lawmakers

- Allow citizens to overcome influence of special interests on state legislatures
- Increased citizen engagement
- Increased confidence in government
- Educate voters on issues

CON
CON

Undermine representative democracy

Oversimplify complex public policy

Tyranny of the majority

Tyranny of the wealthy minority/special interests

Costly

Unlimited campaign contributions
Debated issues

Do outcomes reflect the will of "the people" or special interests?

  Majority rule - cuts both ways
  The role of money and whether too much is spent

Are voters sufficiently informed?

"Constitutional clutter"

The question of enforcement

Petition gathering and First Amendment rights

Case examples:  
Florida: "polluter pays amendment"
California: "Prop 8"
Florida's Citizen Initiative Process

Qualifying for the ballot:

embrace but one subject and matter directly connected therewith

signed by 8% of voters statewide

signed by 8% of voters in at least 1/2 of Florida's congressional districts
Fiscal Impact Statement

Supreme Court Approval
Florida Supreme Court Approves Water & Land Conservation Amendment

BALLOT TITLE: Water and Land Conservation - Dedicates funds to acquire and restore Florida conservation and recreation lands

BALLOT SUMMARY: Funds the Land Acquisition Trust Fund to acquire, restore, improve, and manage conservation lands including wetlands and forests; fish and wildlife habitat; lands protecting water resources and drinking water sources, including the Everglades; and the water quality of rivers, lakes, and streams; beaches and shores; outdoor recreational lands, working farms and ranches; and historic or geologic sites, by dedicating 33 percent of the proceeds from the existing excise tax on documents for 20 years.

FULL TEXT OF THE PROPOSED AMENDMENT:

SECTION 28. Land Acquisition Trust Fund.

a) Effective on July 1 of the year following passage of this amendment by the voters, and for a period of 20 years after that effective date, the Land Acquisition Trust Fund shall receive not less than 33 percent of net revenues derived from the existing excise tax on documents, as defined in the statutes in effect on January 1, 2012, as amended from time to time, or any successor or replacement tax, after the Department of Revenue first deducts a service charge to pay the costs of the collection and enforcement of the excise tax on documents.

b) Funds in the Land Acquisition Trust Fund shall be expended only for the following purposes:

1) As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property
60%

Election Day
<table>
<thead>
<tr>
<th>Year</th>
<th>Change Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>Supermajority (60%) required for passage ¹</td>
</tr>
<tr>
<td>2004</td>
<td>Signature qualification by February 1 ²</td>
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<tr>
<td>2002</td>
<td>Economic Impact Statement required ³</td>
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<tr>
<td>1996</td>
<td>Supermajority (2/3) required for new state taxes or fees ⁴</td>
</tr>
<tr>
<td>1994</td>
<td>Single subject rule not applicable to initiatives limiting government power to raise revenue ⁵</td>
</tr>
<tr>
<td>1986</td>
<td>Supreme court review, opinion required by April 1 ⁶</td>
</tr>
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1978 - 2012

Citizen-initiated

26
6
32
24%

Legislative

74
27
101
76%

Amendments placed on the ballot
Florida adopts citizen initiative process

1968
1976

Term limits
77% approval

1992

Everglades "polluter pays"
68% approval

Minimum Wage
71% approval

1994

Everglades sugar tax
Defeated 54%

2002

2004

Ban Commercial Net Fishing
72% approval

Ban Workplace Smoking
71% approval

Ban Confinement Crates
55% approval

2008

Marriage domestic partnership
62% approval

Sunshine Amendment
Transparency and open government
Almost 80% approval
Everglades
"polluter pays"

68 % approval

Everglades sugar tax

Defeated 54 %
Florida Water and Land Conservation Amendment

- Allocate 33% of existing documentary stamp tax revenues to conservation and outdoor recreation.
- Raise an estimated $645 million a year over the 20 year lifetime of the amendment.
- Ensure that doc stamp dollars continue to fund conservation and not be diverted to other purposes.
- Less than 1% of Floridians overall budget.
Florida Water and Land Conservation Amendment

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- Ensure that doc stamp dollars continue to fund conservation and not be diverted to other purposes.

- Less than 1% of Florida’s overall budget.
Constitutional amendments in Florida

- Citizens have the right to initiate constitutional amendments. Approval by at least 60% of the vote is required. (Article XI, Section 3, Florida Constitution) Only Florida and Illinois required a supermajority.

- State Legislature can place a proposed amendment on the ballot if 60 percent or more of the legislators in each chamber agree to do so in a joint resolution. (Article XI, Section 1, Florida Constitution)

Requirements for Citizen Initiatives
Applicable laws and rules (available at http://election.dos.state.fl.us/constitutional-amendments/legal-references.shtml)

1. The sponsor must register as a political committee with the Division of Elections, and must comply with campaign finance reporting requirements.

2. The petition form must be approved by the Department of State, Division of Elections. Once approved, proponents can begin circulating the petition.
   a. Only registered Florida voters may sign. A signer must be a registered voter at the time he/she signed the petition as well as when the local Supervisor of Elections verifies the signature. The form requires name, address, voter registration number OR date of birth, signature and date of signature.
   b. Only one signature is permitted per form.
   c. Signatures are valid for only 2 years. (Petition collection is no longer permitted over an unlimited time period, and has been steady decrease over the years from unlimited to 10, 4 and now 2 years.)
   d. The local Supervisors 30 days to (1) verify signatures submitted by the sponsor and (2) provide verification certificates indicating the total number of signatures verified and the distribution by congressional district to the Division of Elections.  

Legal References
- Article IV, Section 10, Constitution of the State of Florida
- Article XI, Section 3, Constitution of the State of Florida
- Article XI, Section 5, Constitution of the State of Florida
- Section 15.21, Florida Statutes
- Section 16.061, Florida Statutes
- Section 100.371, Florida Statutes
- Section 101.161, Florida Statutes
- Section 104.185, Florida Statutes
- Section 106.19(3), Florida Statutes

Rules, Fla. Admin. Code
- 1S-2.0011 - Constitutional Amendment Ballot Position
- 1S-2.009 - Constitutional Amendment by Initiative Petition
  - DS-DE 19 - Constitutional Amendment Petition Form
- 1S-2.0091 - Constitutional Amendment Initiative Petition; Submission Deadline; Signature Verification

1 The sponsor must pay ten cents, for each signature checked, to the Supervisor of Elections. If the sponsor is unable to pay the charges without incurring an “undue burden,” a written certification of such inability, given under oath, may be submitted to the Division of Elections to have signatures verified at no charge (Affidavit of Undue Burden).

2 If the committee pays any person to solicit signatures, the “undue burden” provision does not apply (see Section 106.191, Fla. Stat.).
3. To qualify for the ballot, at least 8% of the number of voters who turned out in the previous presidential elections must sign the petition (683,149 to qualify for the 2014 ballot). The signatures must also be geographically distributed in that the petition must be signed by 8% of voters in at least half (14) of Florida’s 28 congressional districts. (Article XI, Section 3, Florida Constitution) The constitutionally required number of verified signatures must be verified and reported to the Division of Elections by February 1 of the year in which the amendment is to appear on the general election ballot. (Article IV, Section 10 and Article XI, Section 5)

4. Once the sponsor obtains 10% of the required number of signatures from at least 25% of Florida’s congressional districts, the Division of Elections forwards the petition to both the Fiscal Impact Estimating Conference and the Attorney General. (§15.21(3), Fla. Stat.)

5. Within 45 days after receipt of a petition from the Division of Elections, the Financial Impact Estimating Conference (FIEC) must prepare an “analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative.” (Article XI, Section 5; § 100.371(5)(a), Fla. Stat. (2013)) Ultimately, if the amendment qualifies for the ballot, the financial impact statement will be placed after the summary of the amendment.

6. The Attorney General must, within 30 days of receiving the 10% notification described above, petition the Florida Supreme Court for an advisory opinion. The court considers two key issues: (a) does the amendment meet the single subject requirement (Article XI, Section 3) and (b) does the ballot summary and title express the chief purpose of the proposed amendment in plain and unambiguous language. (§101.161(1), Fla. Stat.)
   a. During the Supreme Court’s review, the court may allow the Attorney General and other interested parties to file briefs and participate in oral argument.
   b. The court must render a written opinion by April 1 of the year of which the initiative is to be submitted to the voters. (Article XI, Section 5, Florida Constitution)

Once the Secretary of State determines that the sponsor has obtained the requisite number and distribution of valid signatures, the Secretary shall issue a certificate of ballot position for that proposed amendment and shall assign a designating number.
Reference:

Article II, Section 7

Ballot Title:

Responsibility for Paying Costs of Water Pollution Abatement in the Everglades

Ballot Summary:

The Constitution currently provides the authority for the abatement of water pollution. This proposal adds a provision to provide that those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution.

Full Text:

(a) The Constitution currently provides, in Article II, Section 7, the authority for the abatement of water pollution. It is the intent of this amendment that those who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area shall be primarily responsible for paying the costs of abatement of that pollution.

(b) Article II, Section 7 is amended by inserting (a) immediately before the current text, and adding a new subsection (b) at the end thereof, to read:

(b) Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996.
Reference:
Article VII, Section 9

Ballot Title:
Fee on Everglades Sugar Production

Ballot Summary:
Provides that the South Florida Water Management District shall levy an Everglades Sugar Fee of 1 per pound on raw sugar grown in the Everglades Agricultural Area to raise funds to be used, consistent with statutory law, for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades. The fee is imposed for twenty-five years.

Full Text:
(a) Article VII, Section 9 is amended by a new subsection (c) at the end thereof, to read:

(c) The South Florida Water Management District, or its successor agency, shall levy a fee, to be called the Everglades Sugar Fee, of one cent per pound of raw sugar, assessed against each first processor, from sugarcane grown in the Everglades Agricultural Area. The Everglades Sugar Fee is imposed to raise funds to be used, consistent with statutory law, for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and the Everglades Agricultural Area, pursuant to the policy of the state in Article II, Section 7.

(2) The Everglades Sugar Fee shall expire twenty-five years from the effective date of this subsection.

(3) For purposes of this subsection, the terms "South Florida Water Management District," "Everglades Agricultural Area," and "Everglades Protection Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

(b) This subsection shall take effect on the day after approval by the electors. If any portion or application of this measure is held invalid for any reason, the remaining portion or application, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.
Florida Attorney General
Advisory Legal Opinion

Number: AGO 96-92
Date: November 12, 1996
Subject: Constitutional Amendment, Everglades Water Pollution

Mr. Samuel E. Poole III
Executive Director
South Florida Water Management District
Post Office Box 24680
West Palm Beach, Florida 33416-4680

RE: WATER MANAGEMENT DISTRICT--CONSTITUTIONS--LEGISLATURE--
TAXATION--SPECIAL DISTRICTS--constitutional amendments regarding
liability for water pollution and creating trust fund.

Dear Mr. Poole:

You ask the following questions:

1. Does constitutional Amendment #5, requiring those in the
   Everglades Agricultural Area who cause water pollution to be
   primarily responsible for paying the costs of pollution abatement
   require implementing legislation?

2. Does constitutional Amendment #6, creating the Everglades Trust
   Fund, require implementing legislation?

In sum:

1. While the Legislature may enact provisions implementing Amendment
   #5, the amendment itself establishes a primary obligation on
   polluters to pay the costs of abating Everglades pollution
   regardless of legislative action. The district's duties and
   responsibilities in ensuring the abatement of water pollution within
   the Everglades make it the proper party to enforce the rights
   created by the amendment. The district, therefore, has the duty to
   require those who are responsible for water pollution within the
   Everglades Agricultural Area or Everglades Protection Area to be
   primarily responsible for paying the costs of pollution abatement.
2. Constitutional Amendment #6 does not require implementing legislation since it contains sufficient direction for carrying its purpose into effect without the aid of legislative enactment.

The Supreme Court of Florida has developed the following test for determining whether a constitutional provision is self-executing:

"The basic guide, or test, in determining whether a constitutional provision should be construed to be self-executing, or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment."[1]

The language used in the constitutional provision itself is the principle criterion to be considered in determining this issue.[2] For example, if the language of the Constitution is directed to the Legislature, or if it appears from the language used and the circumstances of its adoption that subsequent legislation was contemplated to carry it into effect, such a provision would not be self-executing.[3]

The will of the people, however, is paramount in determining whether a constitutional provision is self-executing.[4] As stated by the Supreme Court of Florida in Gray v. Bryant,[5]

"[T]he modern doctrine favors the presumption that constitutional provisions are intended to be self-operating. This is so because in the absence of such a presumption the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people."

QUESTION ONE

Constitutional Amendment #5 amends Article II, Section 7, Florida Constitution, by inserting an (a) immediately before the current text, and by adding a new subsection (b), which reads:

"(b) Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996."
With passage of constitutional Amendment #5, the people of Florida have overwhelmingly dictated that those who have polluted the Everglades must be primarily responsible for paying the costs of cleaning up the Everglades.

As discussed above, it is presumed that constitutional amendments are self-executing, the rationale being that the Legislature could otherwise defeat the will of the people. This is particularly so where, as here, the constitutional amendment is proposed by citizen initiative. Therefore, while the Legislature may enact provisions implementing Amendment #5, the amendment itself establishes an obligation on polluters of the Everglades to pay the costs of abating such pollution irrespective of legislative action.

Moreover, the general rule that wherever the law recognizes a right it gives a remedy applies to rights conferred by statutory or constitutional provisions.[6] Thus, where a statute or the constitution creates a new right or obligation and does not prescribe any particular remedy for its enforcement, the party entitled to the benefit of the provision may resort to any common law or statutory remedy that will afford adequate and proper redress. If an appropriate and adequate remedy is not present, the court may fashion a suitable remedy to accomplish the purpose of the law.[7]

This amendment, imposing an obligation on polluters of the Everglades to pay the costs of their pollution, creates an attendant remedy for enforcement of that obligation. Such a remedy may be enforced by any beneficiary of the fulfillment of that obligation.

The South Florida Water Management District (SFWMD) is responsible for administering the Everglades Trust Fund, created by Amendment #6, to be used for the conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and the Everglades Agricultural Area. Moreover, the Legislature has identified SFWMD as the entity authorized "to proceed expeditiously with implementation of" the state's comprehensive program to revitalize the Everglades, including programs and projects to improve water quality and "to pursue comprehensive and innovative solutions to issues of water quality . . . which face the Everglades ecosystem."[8] Section 373.4592, Florida Statutes, specifically makes it the responsibility of SFWMD to "aggressively pursue implementation" of the state's program to restore and protect the Everglades.[9]

Clearly, the district's duties and responsibilities in ensuring the abatement of water pollution within the Everglades make it the
proper party to enforce the rights created by Amendment #5. It is
the district's responsibility, therefore, to implement the
constitutional mandate consonant with its statutory duties to
promote Everglades restoration and protection.

Accordingly, I am of the opinion that the South Florida Water
Management District has the duty to effectuate the constitutional
mandate that those responsible for polluting the Everglades
Agricultural Area or Everglades Protection Area pay for the
abatement of their pollution.

QUESTION TWO

Constitutional Amendment #6 creates a new section 17 at the end of
Article X providing:

"SECTION 17, Everglades Trust Fund.

(a) There is hereby established the Everglades Trust Fund, which
shall not be subject to termination pursuant to Article III, Section
19(f). The purpose of the Everglades Trust Fund is to make funds
available to assist in conservation and protection of natural
resources and abatement of water pollution in the Everglades
Protection Area and the Everglades Agricultural Area. The trust fund
shall be administered by the South Florida Water Management
District, or its successor agency, consistent with statutory law.

(b) The Everglades Trust Fund may receive funds from any source,
including gifts from individuals, corporations or other entities;
funds from general revenue as determined by the Legislature; and any
other funds so designated by the Legislature, by the United States
Congress or by any other governmental entity.

(c) Funds deposited to the Everglades Trust Fund shall be expended
for purposes of conservation and protection of natural resources and
abatement of water pollution in the Everglades Protection Area and
Everglades Agricultural Area.

(d) For purposes of this subsection, the terms "Everglades
Protection Area," "Everglades Agricultural Area" and "South Florida
Water Management District" shall have the meanings as defined in
statutes in effect on January 1, 1996."

Amendment #6 establishes the Everglades Trust Fund and provides for
the funding of the trust fund. It further designates who administers
the fund and relates the purpose for which trust funds may be used.
Thus, the amendment contains sufficient direction for its
implementation without further action by the Legislature.

Accordingly, I am of the opinion that Amendment #6 is self-executing.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk


[3] Id. Cf. Plante v. Smathers, 372 So. 2d 933 (Fla. 1979); and Williams v. Smith, 360 So. 2d 417 (Fla. 1978). And see Op. Att'y Gen. Fla. 91-8 (1991), in which this office concluded that the three-day waiting period for the purchase of handguns was not self-executing since the constitutional provision itself required the Legislature to enact legislation implementing the provision.


[6] Reynolds v. State, 224 So. 2d 769 (Fla. 2d DCA 1969), cert. discharged, 238 So. 2d 598 (Fla. 1970); 1A C.J.S. Actions s. 11c.

[7] Century Village, Inc., v. Wellington, Etc., 361 So. 2d 128 (Fla. 1978); 1A C.J.S. Actions s. 11d.

[8] Section 373.4592(1)(b) and (1)(e), Fla. Stat.

Butterworth: Water District Decides Who Pays

But Everglades Cleanup Issue May Go To Court

November 13, 1996 | By NEIL SANTANELLO Staff Writer

Water managers alone can determine whether sugar farmers need to write larger Everglades cleanup checks to comply with voter-approved Constitutional Amendment 5, Florida Attorney General Bob Butterworth said on Tuesday.

But the issue may also fall to a court to decide, he said.

The environmental group Save Our Everglades hailed Butterworth’s interpretation of the South Florida Management District’s role under Amendment 5 as vindication the ballot initiative could undo the 1994 Everglades Forever Act, which obligates sugar farmers to pay one-third of cleanup costs in its first phase, and increase the amount they must contribute.

“I think that this opinion sets the stage for very fast action to change the Everglades Forever Act, either directly or indirectly,” said Charles Lee of the Florida Audubon Society.

Save Our Everglades said it expects a lawsuit to be filed early next year that would contend the Everglades Forever Act is unconstitutional under Amendment 5.

Amendment 5 holds Everglades polluters in the farming area south of Lake Okeechobee “primarily responsible” for cleaning up their dirty Everglades-bound water.

Sugar growers campaigned against Amendment 4, the proposed penny-per-pound sugar tax, but did not oppose Amendment 5.

They have vowed to file a countersuit to block attempts to invalidate the Everglades Forever Act, to which they have already agreed.

Besides overwhelmingly approving Amendment 5, the "make the polluter pay" initiative, voters also endorsed a related ballot initiative, Amendment 6, which establishes a trust fund to accept Everglades cleanup funds from a variety of sources.

Butterworth told the South Florida Water Management District, in a six-page legal opinion the district had requested, that both amendments are "self-executing."

That means the district does not need legislative action to carry out its mandates, which take effect on Jan. 14.

The amendments also offer a legal remedy for those seeking to enforce them, Butterworth said. "The people have spoken. It was very simple: polluters shall pay, period," Butterworth said. "As it stands now,
Do Heat appreciate magnitude of Game 5?

Dead woman's dad: 'She told me everything was fine'

the ball is in the district's court."

During the next two months, the water district must define what "primarily responsible" means and determine who is meeting or not meeting that standard, said its chief attorney, Barbara Markham.

"I think it's going to be very complicated," Markham said, adding that the agency plans to hire consultants to help answer those questions.

Save Our Everglades says farmers now shoulder only one-third of the $680 million cost to reduce phosphorous in their runoff during the first phase of the Everglades cleanup. Taxpayers are stuck for twice that sum, the group says.

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Based on pollution-reduction practices they are currently using, Everglades Agricultural Area growers face a $230 million cleanup bill in the first stage, a program that entails construction of 40,000 acres of pollution-absorbing marshes.

Once Amendment 5 becomes law, "my gut feeling is [farmers) are going to pay more," Butterworth said. Others could, too, because the act applies to other waters polluters in the Everglades, not just farmers.

If the district concludes farmers do owe more for the cleanup, it could not collect on the difference until 2007 under the Everglades Forever Act, Markham said.

That is when the Everglades restoration's second phase is supposed to be in place, and additional cleanup payments cannot be sought until then, according to the current cleanup agreement, she said. "If it turns out they were paying too little for Phase 1 we would have to add that to Phase 2," she said.

So are Amendment 5 and the Everglades Forever Act at odds? Markham said "I think you can harmonize the two."

Butterworth said he expects the issue is courtroom-bound.

"I think that somebody will take this to court no matter what," he said. "If the South Florida Water Management District sends out a bill, I'm sure sugar is going to sue. If they don't do anything, I assume those who believe they should would take action."

U.S. Sugar vice president Bob Buker said he is disappointed that Butterworth said affected parties can file suit to assure enforcement of Amendment 5.

"It's really an unfortunate turn of events if the act is undone and the restoration stops," Buker said. "He invites them to do that ..."

After losing a bid to tax sugar production and make legislators see their view of Everglades cleanup cost-sharing, "the only thing [environmentalists] have left is to get the courts to do what the [voters] did not want to do," Buker said.

He said farmers are paying what they should toward the cleanup, but Audubon's Lee said "it is blatantly obvious they are not."

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Dead woman's dad: 'She told me everything was fine'
PER CURIAM.

We have for review Barley v. South Florida Water Management District, 766 So. 2d 433 (Fla. 5th DCA 2000), a decision of the Fifth District Court of Appeal which expressly declared a Florida statute valid and expressly construed a provision of the Florida Constitution. We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.

Petitioners are property owners within an area designated by section 373.0693(10), Florida Statutes (1993), as the Okeechobee Basin. This basin is
within an area regulated by respondent South Florida Water Management District (District). Respondent is authorized under article VII, section 9 of the Florida Constitution and sections 373.503 and 373.0697, Florida Statutes (1993), to levy ad valorem taxes on property within the District.

Section 373.4592, Florida Statutes (Supp. 1994), is known as the Everglades Forever Act (EFA). The Everglades Agricultural Area (EAA) is an area of property described in section 373.4592(15). The Everglades Protection Area (EPA) refers to certain areas described in section 373.4592(2)(h). The Everglades Construction Project (ECP) is a project described in section 373.4592(2)(f).

Section 373.4592(4)(a) provides for implementation of the ECP. This section also provides: “The district shall not levy ad valorem taxes in excess of 0.1 mill within the Okeechobee Basin for the purpose of the design, construction, and acquisition of the Everglades Construction Project.” Id. Section 373.4592(6) provides for the imposition of an annual Everglades Agricultural Privilege Tax. Section 373.4592(8), in respect to special assessments, provides that special assessments may be created for property not subject to the Everglades Agricultural Privilege Tax.

Petitioners filed an action in the Circuit Court of the Ninth Judicial Circuit in and for Orange County. That action sought a declaration that respondent’s levy of
a 0.1 mill ad valorem tax pursuant to section 373.4592(4)(a) to abate pollution in the EAA and the additional ad valorem taxes levied under respondent’s ad valorem taxing authority for other pollution abatement costs attributable to polluters in the EAA violate article II, section 7(b), Florida Constitution,¹ as applied to petitioners and other similarly situated property owners within the Okeechobee Basin. The petitioners alleged that they were non-polluters and that the polluters within the EAA were not at that time paying for 100 percent of the costs of abating the pollution they caused. Petitioners also sought a declaration that section 373.4592(8)(a) violates article II, section 7(b), because section 373.4592(8)(a) prohibited respondent from raising additional revenues from EAA polluters who were not paying for 100 percent of the costs of abating the pollution they caused.

This case presents to us the issue of the application of the EFA-authorized 0.1 mill ad valorem tax subsequent to the adoption by the voters of the initiative known as Amendment 5, which is now article II, section 7(b), Florida Constitution.

1. Article II, section 7(b) provides:

Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For purposes of this subsection, the terms “Everglades Protection Area” and “Everglades Agricultural Area” shall have the meanings as defined in statutes in effect on January 1, 1996.
Our review begins with the history of the EFA and of article II, section 7(b).

HISTORY

The EFA was passed by the Legislature in its regular session in 1994. The purpose and intent of the legislation in enacting the EFA are set forth at length in section 373.4592(1)(a)-(h). The goal of the EFA includes reducing pollution flowing from the EAA into the EPA.

Also in 1994, this Court considered a citizens’ initiative to amend the Constitution so as to include provisions concerning the restoration and protection from pollution of the Everglades. See In re Advisory Opinion to the Attorney General.

2. The full text of the citizens’ initiative provided:

(a) The people of Florida believe that protecting the Everglades Ecosystem helps assure clean water and a healthy economy for future generations. The sugarcane industry in the Everglades Ecosystem has profited while damaging the Everglades with pollution and by altering the water supply. Therefore, the sugarcane industry should help pay to clean up the pollution and to restore clean water. To that end, the people hereby establish a Trust, controlled by Florida citizens, dedicated to restoring the Everglades Ecosystem, and funded initially by a fee on raw sugar from sugarcane grown in the Everglades Ecosystem.

(b) Article X, Florida Constitution, is hereby amended to add the following:

Section 16. Save Our Everglades Trust Fund.

(a) There is established the Save Our Everglades Trust Fund (Trust). The sole purpose of the Trust is to
expend funds to recreate the historical ecological functions of the Everglades Ecosystem by restoring water quality, quantity, timing and distribution (including pollution clean up and control, exotic species removal and control, land acquisition, restoration and management, construction and operation of water storage and delivery systems, research and monitoring).

(b) The Trust shall be administered by five Trustees. Trustees shall be appointed by the governor, subject to confirmation by the Senate, within thirty days of a vacancy. Trustees' appointments shall be for five years; provided that the terms of the first Trustees appointed may be less than five years so that each Trustee's term will end during a different year. Trustees shall be residents of Florida with experience in environmental protection, but Trustees shall not hold elected governmental office during service as a Trustee. Trustees may adopt their own operating rules and regulations, subject to generally-applicable law. Disputes arising under this Section shall be first brought to a hearing before the Trustees, and thereafter according to generally-applicable law. Trustees shall serve without compensation but may be reimbursed for expenses.

(c) The Trust shall be funded by revenues which shall be collected by the State and deposited into the Trust, all of which funds shall be appropriated by the Legislature to the Trustees to be expended solely for the purpose of the Trust. Revenues collected by the State shall come from a fee on raw sugar from sugarcane grown within the Everglades Ecosystem. The fee shall be assessed against each first processor of sugarcane at the rate of $.01 per pound of raw sugar, increased annually by any inflation measured by the Consumer Price Index for all urban consumers (U.S. City Average, All Items), or successor reports of the United States Department of Labor, Bureau of Labor Statistics or its
successor, and shall expire twenty-five years after the effective date of this Section.

(d) For purposes of this Section, the Everglades Ecosystem is defined as Lake Okeechobee, the historical Everglades watershed west, south and east of Lake Okeechobee, Florida Bay and the Florida Keys Coral Reef, provided that the Trustees may refine this definition.

(e) Implementing legislation is not required for this Section, but nothing shall prohibit the establishment by law or otherwise of other measures designed to protect or restore the Everglades. If any portion of this Section is held invalid for any reason, the remaining portion of this Section shall be severed from the void portion and given the fullest possible force and application. This Section shall take effect on the day after approval by the electors.

Gen.–Save Our Everglades, 636 So. 2d 1336 (Fla. 1994). The initiative had the following summary:

Creates the Save Our Everglades Trust to restore the Everglades for future generations. Directs the sugarcane industry, which polluted the Everglades, to help pay to clean up pollution and restore clean water supply. Funds the Trust for twenty-five years with a fee on raw sugar from sugarcane grown in the Everglades Ecosystem of one cent per pound, indexed for inflation. Florida citizen trustees will control the Trust.

Id. at 1338. In reviewing the proposed amendment, this Court stated that we were “limited to two inquiries: whether the amendment addresses but a single subject, and whether the amendment’s title and summary are sufficiently clear.” Id. at 1339. We concluded that the initiative was in violation of the single subject
requirement because the initiative performed functions of each branch of
government creating “a virtual fourth branch of government with authority to
exercise the powers of the other three on the subject of remedying Everglades
pollution.” Id. at 1340. Therefore, the initiative did not proceed to the ballot.

In 1996, this Court had for review three separate initiative petitions
concerning the Everglades, which we addressed in one opinion. See Advisory
Opinion to Attorney Gen.–Fee on Everglades Sugar Prod., 681 So. 2d 1124 (Fla.
1996).³

³. The other two initiative petition cases were styled Advisory Opinion to
the Attorney General–Everglades Trust Fund and Advisory Opinion to the
Attorney General–Responsibility for Paying Costs of Water Pollution Abatement
in the Everglades. The full text of the Fee on Everglades Sugar Production
initiative provided:

(a) Article VII, Section 9 is amended by a new subsection(c) at
the end thereof, to read:

(c) The South Florida Water Management District,
or its successor agency, shall levy a fee, to be called the
Everglades Sugar Fee, of one cent per pound of raw
sugar, assessed against each first processor, from
sugarcane grown in the Everglades Agricultural Area.
The Everglades Sugar Fee is imposed to raise funds to be
used, consistent with statutory law, for purposes of
conservation and protection of natural resources and
abatement of water pollution in the Everglades Protection
Area and Everglades Agricultural Area, pursuant to the
policy of the state in Article II, Section 7.

(2) The Everglades Sugar Fee shall expire twenty-
five years from the effective date of this subsection.

(3) For purposes of this subsection, the terms "South Florida Water Management District," "Everglades Agricultural Area," and "Everglades Protection Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

(b) This subsection shall take effect on the day after approval by the electors. If any portion or application of this measure is held invalid for any reason, the remaining portion or application, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

The full text of the Everglades Trust Fund initiative provided:

(a) Article X is amended by adding a new section 17 at the end thereof, to read:

SECTION 17, Everglades Trust Fund.

   (a) There is hereby established the Everglades Trust Fund, which shall not be subject to termination pursuant to Article II, Section 19(f). The purpose of the Everglades Trust Fund is to make funds available to assist in conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and the Everglades Agricultural Area. The trust fund shall be administered by the South Florida Water Management District or its successor agency, consistent with statutory law.

   (b) The Everglades Trust Fund may receive funds from any source, including gifts from individuals, corporations or other entities, funds from general revenue as determined by the Legislature; and any other funds so designated by the Legislature, by the United States Congress or by any other governmental entity.
(c) Funds deposited to the Everglades Trust Fund shall be expended for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades Protection Area and Everglades Agricultural Area.

(d) For purposes of this subsection, the terms “Everglades Protection Area”, “Everglades Agricultural Area” and “South Florida Water Management District” shall have the meanings as defined in statutes in effect on January 1, 1996.

(b) If any portion or application of this measure is held invalid for any reason, the remaining portion or application, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and effect.

The full text of the Responsibility for Paying Costs of Water Pollution Abatement in the Everglades initiative provided:

(a) The Constitution currently provides, in Article II, Section 7, the authority for the abatement of water pollution. It is the intent of this amendment that those who cause water pollution within the Everglades Agricultural Area or the Everglades Protection Area shall be primarily responsible for paying the costs of abatement of that pollution.

(b) Article II, Section 7 is amended by inserting (a) immediately before the current text, and adding a new subsection (b) at the end thereof, to read:

(b) Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings
as defined in statutes in effect on January 1, 1996. The title and summary for the first petition concerning the proposed fee was:

**TITLE: FEE ON EVERGLADES SUGAR PRODUCTION**

**SUMMARY:** Provides that the South Florida Water Management District shall levy an Everglades Sugar Fee of 1 [cent] per pound on raw sugar grown in the Everglades Agricultural Area to raise funds to be used, consistent with statutory law, for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades. The fee is imposed for twenty-five years.

*Id.* at 1127. The title and summary for the second petition concerning the Trust Fund was:

**TITLE: EVERGLADES TRUST FUND**

**SUMMARY:** Establishes an Everglades Trust Fund to be administered by the South Florida Water Management District for purposes of conservation and protection of natural resources and abatement of water pollution in the Everglades. The Everglades Trust Fund may be funded through any source, including gifts and state or federal funds.

*Id.* at 1129. The title and summary for the third petition, concerning the proposed responsibility amendment, was:

**TITLE: RESPONSIBILITY FOR PAYING COSTS OF WATER POLLUTION ABATEMENT IN THE EVERGLADES**

**SUMMARY:** The Constitution currently provides the authority for the abatement of water pollution. This proposal adds a provision to
provide that those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution.

Id. at 1130.

Again, the two issues before this Court were whether the amendments addressed but a single subject and whether the amendments’ titles and summaries were sufficiently clear. In this 1996 decision, we held that each of the initiatives met these requirements, and the initiatives proceeded to the ballot.

Regarding the Fee on Everglades Sugar Production initiative, we held that the initiative proposed a clear, single question to the voters: “Should the sugar industry pay a penny a pound towards Everglades restoration?” Id. at 1128.

Regarding the Everglades Trust Fund initiative, we held that the initiative had “a single, limited purpose: the creation of a trust to receive and disperse funds for Everglades conservation.” Id. at 1130.

We likewise upheld the Responsibility for Paying Costs of Water Pollution Abatement in the Everglades initiative against the contention that the initiative violated the single subject requirement. We stated:

The initiative has a limited and focused objective: Those who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. We also conclude that the ballot title and summary are not misleading. The Responsibility
initiative makes clear that those in the Everglades Protection Area or the Everglades Agricultural Area who cause water pollution will pay for their pollution.

Id. at 1130-31 (emphasis added).

The three initiatives were on the ballot in the general election in 1996. The fee initiative was not approved by the voters. The trust fund initiative was approved and is now article X, section 17, Florida Constitution. The responsibility initiative was approved and is now article II, section 7(b), which we consider here.

The adopted article II, section 7(b), was, in March 1997, the subject of a request from the Governor for an advisory opinion pursuant to article IV, section 1(c). We responded to the Governor in Advisory Opinion to the Governor–1996 Amendment 5 (Everglades), 706 So. 2d 278 (Fla. 1997) (hereinafter 1997 Advisory Opinion). In his request to us, the Governor wrote:

As background, it should be noted that the "Everglades Forever Act" was enacted after many years of litigation involving the United States of America, the State of Florida, the South Florida Water Management District, the Department of Environmental Protection, and certain large agricultural interests to determine how and at whose expense pollution of the Everglades should be abated. s. 373.4592, Fla. Stat.

The Everglades Forever Act established two funding sources for pollution abatement in the Everglades Agricultural Area (EAA); that is, the Everglades agricultural privilege tax, and the levy of a 0.1 mill ad valorem tax on property within the Okeechobee Basin. Ss. 373.4592(6) and (4)(a). Therefore, the law in effect at the time of the adoption of Amendment 5 was designed to divide the burden of the costs of pollution abatement on the public by the 0.1 mill tax and the
agricultural users by the privilege tax of $24.89 per acre.

I.

Prior to the time that the debate on these issues rose to the current pitch, the Attorney General opined that Amendment 5 was self-executing. Op. Att'y Gen. Fla. 96-92 (1996). Other government entities have suggested an opinion that the amendment is not self-executing; that too many policy determinations remain unanswered. These entities question any agency's ability to determine rights and responsibilities, the purposes intended to be accomplished, and the means by which the purposes may be accomplished.

Due to the uncertainty created by the unclear language of Amendment 5, the South Florida Water Management District and the Department of Environmental Protection, the governmental entities charged with enforcing the Everglades pollution abatement initiatives, are unable to move forward to enforce this amendment without a clear interpretation as to its meaning and effect. As Governor, I am responsible for providing these executive agencies with direction as to their enforcement responsibilities, to see that the law is faithfully executed, and to report on the state's progress in restoring the Everglades System.

II.

Several divergent interpretations have been suggested by interested parties as to the meaning of "primarily responsible." Some government agencies believe that "primarily responsible" could mean something in excess of fifty percent. Therefore, polluters within the EAA are chiefly, but not totally, responsible for the costs of abatement. They also believe that whether these costs are to be apportioned according to the amount of pollution contributed, and whether and to what extent other entities not described in Amendment 5 are responsible for pollution abatement costs, is not clear from the text of Amendment 5 and is subject to clarification.

Proponents of Amendment 5 have opined that the amendment imposes the entire cost of abatement on polluters within the EAA. Only upon failure of the primarily responsible parties to satisfy the
costs of abatement would a secondarily responsible party (the public) be called upon to satisfy the obligation. As the state's chief administrative officer responsible for planning and budgeting, I am in doubt as to my duties in seeing that Amendment 5 is being faithfully executed.

CONCLUSION

The consequences of these determinations are substantial and of immense importance to the well-being of the state and of the future of the Florida Everglades. Years of litigation have transpired, which has delayed implementation of the necessary steps to clean up this international treasure. The lack of clarity in Amendment 5 promises to engender further litigation absent an expeditious resolution of the questions I am posing.

For the foregoing reasons, I respectfully request the opinion of the Justices of the Supreme Court on the following questions affecting my executive duties and responsibilities:

1. Is the 1996 Amendment 5 to the Florida Constitution self-executing, not requiring any legislative action considering the existing Everglades Forever Act? Or is the Legislature required to enact implementing legislation in order to determine how to carry out its intended purposes and defining any rights intended to be determined, enjoyed, or protected?

2. What does the term "primarily responsible" as used in 1996 Amendment 5 to the Florida Constitution, mean? Does it mean responsible for more than half of the costs of abatement, or responsible for a substantial part of the costs of abatement, or responsible for the entire costs of the abatement, or does it mean something different not suggested here?

1997 Advisory Opinion, 706 So. 2d at 279-80 (quoting Governor Lawton Chiles’s letter dated March 6, 1997).

Before answering the Governor’s questions, “To ensure full and fair
consideration of the issues raised, we permitted interested persons to file briefs and to present oral argument before the Court.\textsuperscript{4} \textsuperscript{4} Id. at 281. We then specifically answered the questions the Governor presented to us:

As to your first question, that is, whether Amendment 5 is self-executing, we are guided by the test set forth in Gray v. Bryant, 125 So. 2d 846 (Fla. 1960), which stated that whether a constitutional provision should be construed to be self-executing, or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment.

\textsuperscript{4} Id. at 851. Applying the aforementioned test, we conclude that Amendment 5 is not self-executing \textsuperscript{n.4} and cannot be implemented without the aid of legislative enactment because it fails to lay down a sufficient rule for accomplishing its purpose. As you suggest in your letter, "too many policy determinations remain unanswered . . . [such as the various] rights and responsibilities, the purposes intended to be accomplished, and the means by which the purposes may be accomplished." Amendment 5 raises a number of questions such as what constitutes "water pollution"; how will one be adjudged a polluter; how will the cost of pollution abatement be assessed; and by whom might such a claim be asserted.

\textsuperscript{n.4} We disagree with the opinion of the Attorney General. Op. Att’y Gen. Fla. 96-92 (1996) (Opining that Amendment 5 is self-executing.)

4. Counsel who appear on behalf of petitioners in this case appeared on behalf of Save Our Everglades, Inc., an interested party in the 1996 case.
The second part of your first question asks whether legislative action is required in light of the pre-existing Everglades Forever Act.\[n.5\] We answer in the affirmative. In cases where the constitutional provision is not self-executing, such as the instant case, "all existing statutes which are consistent with the amended Constitution will remain in effect until repealed by the Legislature." In re Advisory Opinion to the Governor, 132 So. 2d 163, 169 (Fla. 1961). We find no inconsistency between the Everglades Forever Act and Amendment 5. As you noted in your letter, the "Everglades Forever Act was enacted . . . to determine how and at whose expense pollution of the Everglades should be abated." Amendment 5 was adopted for a similar purpose—to require polluters to pay for the abatement of their pollution. Notwithstanding the mutuality of subject matter, we do not construe the Everglades Forever Act to be the enabling legislation for Amendment 5.


Based on our review of the pre-election publicity and promotion, most of which focused on Amendment 4, the “sugar tax” amendment, and some of which included discussion of the Everglades Forever Act, we conclude that the voters intended to defeat the penny per pound sugar tax and adopt Amendment 5, which requires polluters to pay "the costs of abatement of that pollution." We believe the voters adopted Amendment 5 to effect a change, and construing the Everglades Forever Act as Amendment 5's implementing legislation would effect no change, nullify the Amendment, and frustrate the will of the people. We therefore glean that in adopting Amendment 5, the voters expected the legislature to enact supplementary legislation to make it effective, to carry out its intended purposes, and to define any rights intended to be determined, enjoyed, or protected.

Your second question asks us to construe the phrase "primarily responsible" as used in Amendment 5. . . . In the context of the amendment, we find that the voters contemplated the phrase "primarily responsible" to be a recognition that no one person or entity
is responsible for 100% of the pollution in the Everglades Agricultural Area (EAA) or the Everglades Protection Area (EPA), but those within the EAA who are determined to be responsible must pay their share of the costs of abating that pollution. Voters reading the ballot summary or the entire amendment would most likely understand that the words "primarily responsible" would be applied in accordance with their ordinary meaning to require that individual polluters, while not bearing the total burden, would bear their share of the costs of abating the pollution found to be attributable to them.

In conclusion, we answer your inquiries by finding that (1) Amendment 5 is not self-executing; (2) the amendment requires implementing legislation, notwithstanding the existence of the Everglades Forever Act; and (3) the words “primarily responsible” require those in the EAA who cause water pollution in the EPA or EAA to bear the costs of abating that pollution.

Advisory Opinion to the Governor–1996 Amendment 5 (Everglades), 706 So. 2d 278, 281-83 (Fla. 1997) (emphasis added) (second alteration and first and third omissions in original) (some footnotes omitted).

THE INSTANT CASE

In the circuit court, respondent answered the petitioner’s amended complaint and thereafter moved for a judgment on the pleadings. The circuit court granted respondent’s motion and held the following in its order:

10. In the Florida Supreme Court’s advisory opinion to Florida’s Governor on Amendment 5, Advisory Opinion to the Governor–1996 Amendment 5 (Everglades), 706 So. 2d 278 (Fla. 1997) (“Advisory Opinion-Amendment 5”), the supreme court addressed three questions posed by the Governor: (1) is Amendment 5 self-executing or does it require enabling legislation?; (2) assuming Amendment 5 is not self-executing, is legislative action required to
make it effective in light of the pre-existing Everglades Forever Act?; and (3) what is the meaning of “primarily responsible” as used in Amendment 5? In summary, the supreme court ultimately determined that Amendment 5 is not self-executing, that legislative action is required to implement Amendment 5 and that the Act could not be deemed the implementing legislation, and that “primarily responsible” in Amendment 5 should be given its ordinary meaning, to wit: “individual polluters, while not bearing the total burden, would bear their share of the costs abating the pollution found to be attributable to them.” Id. at 283.

11. Specifically relevant to the instant motion, the Florida Supreme Court considered the consistency between Amendment 5 and the Act in question. In discussing whether legislative action was required in light of the pre-existing Everglades Forever Act, the court reaffirmed its earlier holding in In re Advisory Opinion to the Governor, 132 So. 2d 163 (Fla. 1961), and expressly found that there was no inconsistency between the Everglades Forever Act and Amendment 5. While the court then noted the similarity in purpose between the Everglades Forever Act and Amendment 5, it is obvious that the court reviewed the totality of the Act to determine that the Act was not the enabling legislation for Amendment 5.

12. Based on the standard for reviewing the impact of non self-executing constitutional provisions and the Florida Supreme Court’s discussion of the consistency of the Everglades Forever Act and Amendment 5 in Advisory Opinion to the Governor–1996 Amendment 5 (Everglades), 706 So. 2d 278 (Fla. 1997), this Court finds that a cause of action would not be established by proving plaintiff’s allegations.

Barley v. South Florida Water Mgmt. Dist., No. CI 97-10228, order at 5-6 (Fla. 9th Cir. Ct. order filed Oct. 22, 1998).

Petitioners appealed the circuit court’s order granting the respondent’s motion for judgment on the pleadings. In a divided decision, the Fifth District affirmed the circuit court’s order. See Barley v. South Florida Water Mgmt. Dist.,
766 So. 2d 433 (Fla. 5th DCA 2000). The Fifth District determined that in 1997 Advisory Opinion, this Court answered the issues presented by the petitioner’s petition for declaratory judgment. See id.

Before us, petitioners argue that this is not 1997 Advisory Opinion revisited. Petitioners contend that, unlike the issues of facial consistency with the EFA and article II, section 7(b), which were considered in 1997 Advisory Opinion, the instant case presents factual issues and an as-applied constitutional challenge to the respondent’s discretionary 0.1 mill tax levy on the owners of property within the Okeechobee Basin who are non-polluters. Petitioners claim that since 1997 Advisory Opinion held that the meaning of primarily responsible in article II, section 7(b), was that polluters are to pay the costs related to the pollution the polluters cause, it necessarily follows that non-polluters are constitutionally protected from paying any of the costs of pollution abatement. Thus, petitioners contend that this Court’s interpretation of article II, section 7(b), in 1997 Advisory Opinion establishes an implied right to not have to contribute for pollution abatement in the EPA or EAA. We disagree.

We agree with the Fifth District that our 1997 Advisory Opinion has

5. Petitioners’ argument in this regard is similar to the opinion set forth by Judge Harris in his dissent. See Barley v. South Florida Water Mgmt. Dist., 766 So. 2d 433, 434 (Fla. 5th DCA 2000) (Harris, J., dissenting).
answered the fundamental issues in this case and that the circuit court’s following
our 1997 Advisory Opinion is to be affirmed. We have consistently stated that
“[w]hile advisory opinions to the Governor are not binding judicial precedents,
they are frequently very persuasive and usually adhered to.”  Lee v. Dowda, 19 So.
2d 570, 572 (Fla. 1944). Regarding advisory opinions concerning initiative
opinions, we recently reiterated in Ray v. Mortham, 742 So. 2d 1276, 1285 (Fla.
1999), that “although our advisory opinions are not strictly binding precedent in
the most technical sense, only under extraordinary circumstances will we revisit an
issue decided in our earlier advisory opinions.”  Regarding article II, section 7(b),
we have issued an advisory opinion regarding the validity of the initiative which
resulted in article II, section 7(b), being placed on the ballot, and we have issued an
advisory opinion to the Governor regarding the consistency between the EFA and
article II, section 7(b), after the initiative was approved by the voters.

In 1997 Advisory Opinion, we specifically determined that article II, section
7(b), is not self-executing and then expressly reiterated our precedent:

In cases where the constitutional provision is not self-executing, such
as the instant case, "all existing statutes which are consistent with the
amended Constitution will remain in effect until repealed by the
Legislature."  In re Advisory Opinion to the Governor, 132 So. 2d
163, 169 (Fla. 1961).

1997 Advisory Opinion, 706 So. 2d at 281-82. We then expressly found “no
inconsistency between the Everglades Forever Act and Amendment 5.” Id. at 282.

We made these determinations in response to the Governor’s letter, which stated that the need for the advisory opinion was:

Due to the uncertainty created by the unclear language of Amendment 5, the South Florida Water Management District and the Department of Environmental Protection, the governmental entities charged with enforcing the Everglades pollution abatement initiatives, are unable to move forward to enforce this amendment without a clear interpretation as to its meaning and effect.

1997 Advisory Opinion, 706 So. 2d at 280 (quoting Governor Lawton Chiles’ letter dated March 6, 1997). Thus, the need for the 1997 Advisory Opinion contemplated the issues that are now presented in the framework of the instant case.

Additionally, there is no express language in Amendment 5 creating for the petitioners a prohibition against being required to contribute for pollution abatement in the EPA or EAA. Although the 1997 Advisory Opinion stated that “the words ‘primarily responsible’ require those in the EAA who cause water pollution in the EPA or EAA to bear the costs of abating that pollution,” we further stated that the words “primarily responsible” would be applied within their ordinary meaning, which includes a recognition that individual polluters would not bear “the total burden.” Id. at 283. The corollary to this is that other persons or entities continue to have responsibility for EPA or EAA pollution abatement. The
lack of guiding principles in Amendment 5 concerning this division of responsibility is precisely why we held that legislative action was needed. See id. at 282.

Therefore, we again hold that the EFA remains in effect. Respondent’s levy of 0.1 mill tax and other ad valorem taxes in conformity with the EFA is not unconstitutional as applied to petitioners. The decision of the district court of appeal is approved.

It is so ordered.

WELLS, C.J., and SHAW, HARDING, and ANSTEAD, JJ., concur. WELLS, C.J., concurs with an opinion. LEWIS, J., concurs in result only. PARIENTE, J., dissents with an opinion, in which QUINCE, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

WELLS, C.J., concurring.

I concur with the majority decision that our decision in Advisory Opinion to the Governor–1996 Amendment 5 (Everglades), 706 So. 2d 278 (Fla. 1997) (hereinafter 1997 Advisory Opinion), compels us to affirm the circuit court’s ruling below.

I write to explain that I believe this decision is also consistent with the history of the amendment which resulted in article II, section 7(b) of the Florida
Constitution. The majority’s setting out in detail this Court’s cases concerning the Everglades initiatives is helpful in putting article II, section 7(b), in proper context. What the history shows is that this section was presented to this Court and to the voters as part of a comprehensive plan to establish a trust fund to be used for restoration and protection of the Everglades against pollution. The proponents of the initiatives intended that the trust fund be funded by a fee imposed on sugar growers in the Everglades Agricultural Area (EAA). The responsibility amendment was to lend support to the application of the fee to those who were doing the polluting. But, of course, what happened along the way was that the fee amendment was defeated while the other two amendments passed.

It must be noted that nothing in either the 1994 initiative, which was struck by this Court, or in the 1996 responsibility initiative, which was allowed by this Court to proceed, limited in any way or even referred to the ad valorem taxes which the South Florida Water Management District is authorized by the Constitution and general law to levy. To the contrary, this Court specifically stated that the responsibility initiative had a limited and focused objective, which was to have those who cause water pollution within the Everglades Protection Area (EPA) or the EAA pay the cost of the abatement of that pollution. See Advisory Opinion to Attorney Gen.–Fee on Everglades Sugar Prod., 681 So. 2d 1124, 1130 (Fla.)
1996). Fixing primary responsibility for these payments is not an express limitation on the government’s power to levy a tax on property within the area.

In 1930, this Court stated, in Amos v. Mathews, 126 So. 308, 315 (Fla. 1930), that “[t]he state therefore possesses, as an attribute of sovereignty, the inherent power to impose all taxes not expressly or by clear implication inhibited by State or Federal Constitutions.” This is an important principle, and clearly the only way to reach the conclusion that article II, section 7(b), limits the levy of the ad valorem tax is to conclude that it does so by “implication,” which our precedent would not support in this situation. See Amos, 126 So. at 315; see also In re Advisory Opinion to the Governor, 132 So. 2d 163, 169 (Fla. 1961) (“Implied repeals of statutes by later constitutional provisions is not favored and the courts require that in order to produce a repeal by implication the repugnancy between the statute and the Constitution must be obvious or necessary.”).

Further, I would be very concerned about the effect that a judicially imposed limitation on the Everglades Forever Act’s (EFA) 0.1 mill levy would have on the present restoration plan of the EFA. I recognize that the petitioners seek for this Court to declare that “the Everglades Construction Project . . . be permitted to continue while the Legislature is granted ‘a reasonable period of time’ to reallocate the relative contribution by innocent ad valorem taxpayers and EAA polluters”
and, if the Legislature does not act by the conclusion of the next legislative session, that this Court should provide for that reallocation. However, I agree with the Fifth District that the courts have no authority to do this. See Barley v. South Florida Water Mgmt. Dist., 766 So. 2d 433, 434 (Fla. 5th DCA 2000).

I do conclude that the Legislature is under a constitutional mandate to pass legislation implementing Amendment 5. In our 1997 Advisory Opinion, we noted this by stating that “the voters expected the legislature to enact supplementary legislation to make it effective, to carry out its intended purpose, and to define any rights intended to be determined, enjoyed, or protected.” 1997 Advisory Opinion, 706 So. 2d at 282. I urge the Legislature to carry out the will of the voters.

PARIENTE, J., dissenting.

Although I agree with the majority that the enactment of article VII, section 9, of the Florida Constitution did not render the EFA unconstitutional on its face, I would quash the Fifth District's decision because I conclude that the portion of the declaratory judgment action seeking a determination that the EFA is unconstitutional as applied would not be prohibited. Thus, I agree with Judge ________________

6. For example, the petitioners' prayer for relief included the following:

2. Declaring that the 0.1 mill ad valorem tax levied by

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Harris's dissenting opinion that the amendment represents a clear mandate from the citizens of our State protecting non-polluters within the EAA and EPA from paying polluters' clean-up costs. See Barley v. South Florida Mgmt. Dist., 766 So. 2d 433, 435-36 (Fla. 5th DCA 2000) (Harris, J., dissenting). As Judge Harris explained:

Appellants argue that even though the legislature has failed to enact legislation defining water pollution and determining what constitutes a polluter and hence may not be in a position to carry out the mandate of the amendment by making the polluters pay, this does not affect their rights as non-polluters, also granted by the amendment, not to pay any of the costs of abating pollution caused by others since the amendment. This portion of the amendment, they urge, is self executing. No legislative action is necessary to implement the constitutional right to be free from paying a tax to abate others' pollution. This is a current, organic right granted by the people. I agree. The legislature cannot by inaction repeal the will of the people.

Id. (footnote omitted).

the SFWMD pursuant to section 373.4592(4)(a), Florida Statutes (1994) of the EFA to abate EAA pollution and the additional ad valorem taxes levied under the SFWMD's general ad valorem taxing authority for other pollution abatement costs attributable to EAA polluters, violate the Polluter Pays Amendment as applied to the Plaintiffs and other ad valorem taxpayers within the Okeechobee Basin because the polluters within the EAA as a group are not presently not paying for 100% of the costs to abate the pollution they cause, thereby resulting in non-EAA ad valorem taxpayers paying a significant portion of the EAA polluters' clean-up costs.
In fact, in defining the phrase "primarily responsible" as used in the amendment, we concluded in Advisory Opinion to the Governor, 706 So. 2d 278, 283 (Fla. 1997), that the phrase "require[s] those in the EAA who cause water pollution in the EPA or EAA to bear the costs of abating that pollution." (Emphasis supplied.) If non-polluters in the EPA or EAA are paying for the costs of the abatement of water pollution within the EPA and the EAA, this would violate the clear language of the amendment. No additional legislation is necessary to effectuate non-polluters' rights to be free from the clean-up costs associated with polluters--as opposed to the necessity for legislation to ensure that polluters pay the cost of the abatement of water pollution that they cause. Thus, I conclude that this constitutional amendment vests certain rights that can be enforced through a declaratory judgment action. Accordingly, I would quash the Fifth District's decision.

QUINCE, J., concurs.

Application for Review of the Decision of the District Court of Appeal - Statutory Validity

Fifth District - Case No. 5D98-3178

(Orange County)

for Petitioners

Paul L. Nettleton of Carlton Fields, P.A., Miami, Florida; and Ruth P. Clements of South Florida Water Management District, Office of Counsel, West Palm Beach, Florida,

for Respondent

Roy C. Young, General Counsel, Young, van Assenderp, Varnadoe & Anderson, P.A., Tallahassee, Florida; and William H. Green, David L. Powell, and Gary V. Perko, Special Counsel, Hopping Green & Sams, P.A., Tallahassee, Florida,

for Florida Chamber of Commerce, Inc., Amicus Curiae

William L. Hyde of Gunster, Yoakley & Stewart, P.A., Tallahassee, Florida; and Daniel S. Pearson and Brett A. Barfield of Holland & Knight LLP, Miami, Florida,

for United States Sugar Corporation, Amicus Curiae

Mary Jill Hanson of Hanson, Perry & Jensen, P.A., West Palm Beach, Florida,

for International Association of Machinists and Aerospace Workers, AFL-CIO, Amicus Curiae
Thursday, April 11, 2002

Story last updated at 6:15 p.m. on Thursday, April 11, 2002

High court: Non-polluters still must pay for Everglades cleanup

By DAVID ROYSE
Associated Press Writer

TALLAHASSEE, Fla. - Voters decided in 1996 that polluters should pay to clean up what they've done to the Everglades, but that doesn't mean non-polluters shouldn't also pay, the state Supreme Court ruled Thursday.

In a 5-2 decision the court said a South Florida Water Management District tax that goes for anti-pollution measures in the Everglades is valid, even if polluters don't pay their fair share as required by the voters.

Florida voters approved in 1996 Amendment 5, known as the "polluter pays" amendment, saying that agricultural companies that foul the Everglades should be "primarily responsible" for paying to clean that pollution up. The amendment primarily affects the sugar industry.

Voters failed, however, to pass a sugar tax that would have provided the means by which the industry would have paid. And the Legislature never put into law exactly how it should be done or said what "primarily responsible" for cleanup meant.

A group of property owners in the Okeechobee Basin argued that since they aren't polluters, and the polluters are supposed to be responsible for cleanup, they shouldn't have to pay a tax specifically levied for pollution abatement.

The Supreme Court disagreed, although its chief justice urged lawmakers to come up with legislation giving force to the polluter pay amendment.
"There is no express language in Amendment 5 creating ... a prohibition against being required to contribute for pollution abatement," the court said in its unsigned majority opinion.

"Fixing primary responsibility for these payments is not an express limitation on the government's power to levy a tax on property within the area," wrote Chief Justice Charles Wells in a separate opinion agreeing with the majority.

"It's a great day for the Everglades," said Paul Nettleton, who represented the water management district in the case, because cleaning up pollution would suffer without the money the tax brings in.

"My sense is that most taxpayers out there don't mind paying the small amounts to save a great treasure like the Everglades," Nettleton said.

Polluters have never been made to pay for the majority of cleanup, despite the amendment, because lawmakers never acted to clarify several questions left open by the vague ballot language.

The Supreme Court addressed that issue back in 1997 in an advisory opinion to then-Gov. Lawton Chiles. The court said then that the amendment couldn't really be implemented without the Legislature clarifying important issues, such as "what constitutes water pollution, how will one be adjudged a polluter, how will the cost of pollution abatement be assessed?"

In the decision released Thursday, Wells referred back to the 1997 opinion, noting that since voters didn't pass the sugar tax, which was a companion ballot question in 1996, lawmakers still should address the situation.

"Voters expected the Legislature to enact supplementary legislation to make it effective," Wells wrote. "I urge the Legislature to carry out the will of the voters."

The issue was brought to the court by Mary Barley, an Orlando developer who pushed the constitutional amendment five years ago and who pays the tax in question.

The tax - up to 10 cents per $1,000 of taxable property - is paid by some 6 million property owners in 16 counties from central Florida to the Keys. The owner of a property with a taxable value
of $100,000 pays $10 annually; on a property with a $1 million taxable value the levy is $100 annually.

Agricultural landowners pay about $25 per acre toward cleanup.

"In the world of redoing the Everglades, that's just a small, small amount of money," said Thom Rumberger, a lawyer who represented the property owners. He said the main focus now for supporters of the polluter pay idea would be to keep pressing the Legislature to act.

Justices Barbara Pariente and Peggy Quince dissented from the majority.

Pariente said the voters spoke clearly with the 1996 amendment.

"The amendment represents a clear mandate from the citizens of our state protecting non-polluters ... from paying polluters' cleanup costs," Pariente wrote.

She then cited part of the opinion of the lower court, which found that "'the Legislature cannot by inaction repeal the will of the people.'"

The sugar industry praised the court's decision.

"Special interest groups have tried repeatedly to manipulate the law and the Florida Constitution to make agriculture the sole culprit of these (pollution) problems," said Robert E. Coker, vice president of United States Sugar Corporation. "The supreme court's decision today hopefully will put an end to further efforts to place all the burden on a single industry."

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SUPREME COURT OF THE UNITED STATES

HOLLINGSWORTH ET AL. v. PERRY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT


After the California Supreme Court held that limiting marriage to opposite-sex couples violated the California Constitution, state voters passed a ballot initiative known as Proposition 8, amending the State Constitution to define marriage as a union between a man and a woman. Respondents, 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, and naming as defendants California’s Governor and other state and local officials responsible for enforcing California’s marriage laws. The officials refused to defend the law, so the District Court allowed petitioners—the initiative’s official proponents—to intervene to defend it. After a bench trial, the court declared Proposition 8 unconstitutional and enjoined the public officials named as defendants from enforcing the law. Those officials elected not to appeal, but petitioners did. The Ninth Circuit certified a question to the California Supreme Court: whether official proponents of a ballot initiative have authority to assert the State’s interest in defending the constitutionality of the initiative when public officials refuse to do so. After the California Supreme Court answered in the affirmative, the Ninth Circuit concluded that petitioners had standing under federal law to defend Proposition 8’s constitutionality. On the merits, the court affirmed the District Court’s order.

Held: Petitioners did not have standing to appeal the District Court’s order. Pp. 5–17.

(a) 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. In oth-
er words, the litigant must seek a remedy for a personal and tangible harm. Although most standing cases consider whether a plaintiff has satisfied the requirement when filing suit, Article III demands that an “actual controversy” persist throughout all stages of litigation. Already, LLC v. Nike, Inc., 568 U. S. ___, ___. Standing “must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance.” Arizonans for Official English v. Arizona, 520 U. S. 43, 64. The parties do not contest that respondents had standing to initiate this case against the California officials responsible for enforcing Proposition 8. But once the District Court issued its order, respondents no longer had any injury to redress, and the state officials chose not to appeal. The only individuals who sought to appeal were petitioners, who had intervened in the District Court, but they had not been ordered to do or refrain from doing anything. Their only interest was to vindicate the constitutional validity of a generally applicable California law. As this Court has repeatedly held, such a “generalized grievance”—no matter how sincere—is insufficient to confer standing. See Lujan v. Defenders of Wildlife, 504 U. S. 555, 573–574. Petitioners claim that the California Constitution and election laws give them a “ ‘unique,’ ‘special,’ and ‘distinct’ role in the initiative process,” Reply Brief 5, but that is only true during the process of enacting the law. Once Proposition 8 was approved, it became a duly enacted constitutional amendment. Petitioners have no role—special or otherwise—in its enforcement. They therefore have no “personal stake” in defending its enforcement that is distinguishable from the general interest of every California citizen. No matter how deeply committed petitioners may be to upholding Proposition 8, that is not a particularized interest sufficient to create a case or controversy under Article III. Pp. 5–9.

(b) Petitioners’ arguments to the contrary are unpersuasive. Pp. 9–16.

(1) They claim that they may assert the State’s interest on the State’s behalf, but it is a “fundamental restriction on our authority” that “[i]n the ordinary course, a litigant . . . cannot rest a claim to relief on the legal rights or interests of third parties.” Powers v. Ohio, 499 U. S. 400, 410. In Diamond v. Charles, 476 U. S. 54, for example, a pediatrician engaged in private practice was not permitted to defend the constitutionality of Illinois’ abortion law after the State chose not to appeal an adverse ruling. The state attorney general’s “letter of interest,” explaining that the State’s interest in the proceeding was “ ‘essentially co-terminous with’ ” Diamond’s position, id., at 61, was insufficient, since Diamond was unable to assert an injury of his own, id, at 65. Pp. 9–10.

(2) Petitioners contend the California Supreme Court’s determi-
nation that they were authorized under California law to assert the State’s interest in the validity of Proposition 8 means that 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*, 484 U. S. 72 (1987).” Reply Brief 6. But far from supporting petitioners’ standing, *Karcher* is compelling precedent against it. In that case, after the New Jersey attorney general refused to defend the constitutionality of a state law, leaders of New Jersey’s Legislature were permitted to appear, in their official capacities, in the District Court and Court of Appeals to defend the law. What is significant about *Karcher*, however, is what happened after the Court of Appeals decision. The legislators lost their leadership positions, but nevertheless sought to appeal to this Court. The Court held that they could not do so. Although they could participate in the lawsuit in their official capacities as presiding officers of the legislature, as soon as they lost that capacity, they lost standing. *Id.*, at 81. Petitioners here hold no office and have always participated in this litigation solely as private parties. Pp. 10–13.

(3) Nor is support found in dicta in *Arizonans for Official English v. Arizona*, supra. There, in expressing “grave doubts” about the standing of ballot initiative sponsors to defend the constitutionality of an Arizona initiative, the Court noted that it was “aware of no Arizona law appointing initiative sponsors as agents of the people of Arizona to defend, in lieu of public officials, the constitutionality of initiatives made law of the State.” *Id.*, at 65. Petitioners argue that, by virtue of the California Supreme Court’s decision, they are authorized to act as “agents of the people of California.” Brief for Petitioners 15. But that Court never described petitioners as “agents of the people.” All the California Supreme Court’s decision stands for is that, so far as California is concerned, petitioners may “assert legal arguments in defense of the state’s interest in the validity of the initiative measure” in federal court. 628 F. 3d 1191, 1193. That interest is by definition a generalized one, and it is precisely because proponents assert such an interest that they lack standing under this Court’s precedents. Petitioners are also plainly not agents of the State. As an initial matter, petitioners’ newfound claim of agency is inconsistent with their representations to the District Court, where they claimed to represent their own interests as official proponents. More to the point, the basic features of an agency relationship are missing here: Petitioners are not subject to the control of any principal, and they owe no fiduciary obligation to anyone. As one amicus puts it, “the proponents apparently have an unelected appointment for an unspecified period of time as defenders of the initiative, however and to
(c) The Court does not question California’s sovereign right to maintain an initiative process, or the right of initiative proponents to defend their initiatives in California courts. But standing in federal court is a question of federal law, not state law. 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 this Court’s settled law to the contrary. Article III’s 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 the federal 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. Pp. 16–17.

671 F. 3d 1052, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, GINSBURG, BREYER, and KAGAN, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which THOMAS, ALITO, and SOTOMAYOR, JJ., joined.
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." Flast v. Cohen, 392 U. S. 83, 95 (1968). This is an essential
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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, 43 Cal. 4th 757, 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. Strauss v. Horton, 46 Cal. 4th 364, 474–475, 207 P. 3d 48, 122 (2009).

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. Id., at 388, 207 P. 3d, at 61. 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. 43 Cal. 4th, at 829, 183 P. 3d, at 433–434. 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.” 46 Cal. 4th, at 388, 207 P. 3d, at 61.

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, see Cal. Elec. Code Ann. §342 (West 2003)—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. Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 1004 (ND Cal. 2010).

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.” Perry v. Schwarzenegger, Civ. No. 10–16696 (CA9, Aug. 16, 2010), p. 2. After brief-
ing 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.” Perry v. Schwarzenegger, 628 F. 3d 1191, 1193 (2011).

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.” Perry v. Brown, 52 Cal. 4th 1116, 1127, 265 P. 3d 1002, 1007 (2011).

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.” Perry v. Brown, 671 F. 3d 1052, 1070, 1071 (2012) (quoting Diamond v. Charles, 476 U.S. 54, 62 (1986)). “All a federal court need determine is that the
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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.” 671 F. 3d, at 1072.

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). 671 F. 3d, at 1076, 1095. 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. Id., at 1095. 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.” 568 U. S. ___ (2012).

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 deci-
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sion. *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992). In other words, for a federal court to have authority under the Constitution to settle a dispute, the party before it must seek a remedy for a personal and tangible harm. “The presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself to meet Art. III’s requirements.” *Diamond*, *supra*, at 62.

The doctrine of standing, we recently explained, “serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Clapper v. Amnesty Int’l USA*, 568 U. S. __, ___ (2013) (slip op., at 9). 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.” *Raines v. Byrd*, 521 U. S. 811, 820 (1997) (footnote omitted).

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. *Already, LLC v. Nike, Inc.*, 568 U. S. __, ___ (2013) (slip op., at 4) (internal quotation marks omitted). 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.” *Arizonans for Official English v. Arizona*, 520 U. S. 43, 64 (1997). 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. App. 59.

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. To have standing, a litigant must seek relief for an injury that affects him in a “personal and individual way.” *Defenders of Wildlife*, *supra*, at 560, n. 1. He must possess a “direct stake in the outcome” of the case. *Arizonans for Official English*, *supra*, at 64 (internal quotation marks omitted). Here, however, petitioners had no “direct stake” in the outcome of their appeal. 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.” *Defenders of Wildlife*, *supra*, at 573–574; see *Lance v. Coffman*, 549 U. S. 437, 439 (2007) (per curiam) (“Our refusal to serve as a forum for generalized grievances has a lengthy pedigree.”); *Allen v. Wright*, 468 U. S. 737, 754 (1984) (“an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court”); *Massachusetts v. Mellon*, 262 U. S. 447, 488 (1923) (“The party who invokes
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the [judicial] power must be able to show . . . that he has sustained or is immediately in danger of sustaining some direct injury . . . and not merely that he suffers in some indefinite way in common with people generally.

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.’” Reply Brief 5 (quoting 52 Cal. 4th, at 1126, 1142, 1160, 265 P. 3d, at 1006, 1017–1018, 1030). True enough—but only when it comes to the process of enacting the law. Upon submitting the proposed initiative to the attorney general, petitioners became the official “proponents” of Proposition 8. Cal. Elec. Code Ann. §342 (West 2003). As such, they were responsible for collecting the signatures required to qualify the measure for the ballot. §§9607–9609. After those signatures were collected, the proponents alone had the right to file the measure with election officials to put it on the ballot. §9032. Petitioners also possessed control over the arguments in favor of the initiative that would appear in California’s ballot pamphlets. §§9064, 9065, 9067, 9069.

But once Proposition 8 was approved by the voters, the measure became “a duly enacted constitutional amendment or statute.” 52 Cal. 4th, at 1147, 265 P. 3d, at 1021. Petitioners have no role—special or otherwise—in the enforcement of Proposition 8. See id., at 1159, 265 P. 3d, at 1029 (petitioners do not “possess any official authority . . . to directly enforce the initiative measure in question”). They therefore have no “personal stake” in defending its enforcement that is distinguishable from the general interest of every citizen of California. Defenders of Wildlife, supra, at 560–561.

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.’” Diamond, 476
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U. S., at 62. No matter how deeply committed petitioners may be to upholding Proposition 8 or how “zealous [their] advocacy,” post, at 4 (KENNEDY, J., dissenting), that is not a “particularized” interest sufficient to create a case or controversy under Article III. *Defenders of Wildlife*, 504 U. S., at 560, and n. 1; see *Arizonans for Official English*, 520 U. S., at 65 (“Nor has this Court ever identified initiative proponents as Article-III-qualified defenders of the measures they advocated.”); *Don’t Bankrupt Washington Committee v. Continental Ill. Nat. Bank & Trust Co. of Chicago*, 460 U. S. 1077 (1983) (summarily dismissing, for lack of standing, appeal by an initiative proponent from a decision holding the initiative unconstitutional).

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.” *Powers v. Ohio*, 499 U. S. 400, 410 (1991). There are “certain, limited exceptions” to that rule. *Ibid.* 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.” *Id.,* at 411 (internal quotation marks omitted).

In *Diamond v. Charles*, for example, we refused to allow Diamond, a pediatrician engaged in private practice in Illinois, to defend the constitutionality of the State’s abortion law. In that case, a group of physicians filed a con-
institutional challenge to the Illinois statute in federal court. The State initially defended the law, and Diamond, a professed “conscientious object[or] to abortions,” intervened to defend it alongside the State. 476 U. S., at 57–58.

After the Seventh Circuit affirmed a permanent injunction against enforcing several provisions of the law, the State chose not to pursue an appeal to this Court. But when Diamond did, the state attorney general filed a “letter of interest,” explaining that the State’s interest in the proceeding was “essentially co-terminous with the position on the issues set forth by [Diamond].” Id., at 61. That was not enough, we held, to allow the appeal to proceed. As the Court explained, “[e]ven if there were circumstances in which a private party would have standing to defend the constitutionality of a challenged statute, this [was] not one of them,” because Diamond was not able to assert an injury in fact of his own. Id., at 65 (footnote omitted). And without “any judicially cognizable interest,” Diamond could not “maintain the litigation abandoned by the State.” Id., at 71.

For the reasons we have explained, petitioners have likewise not suffered an injury in fact, and therefore would ordinarily have no standing to assert the State’s interests.

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. 52 Cal. 4th, at 1127, 265 P. 3d, at 1007. The court below agreed: “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.” 671 F. 3d, at 1072. As petitioners
put it, they “need no more show a personal injury, separate from the State’s indubitable 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, 484 U. S. 72 (1987).” Reply Brief 6.

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. 484 U. S., at 75, 81–82. “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. Id., at 82.

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. No one doubts that a State has a cognizable interest “in the continued enforceability” of its laws that is harmed by a judicial decision declaring a state law unconstitutional. Maine v. Taylor, 477 U. S. 131, 137 (1986). To vindicate that interest or any other, a State must be able to designate agents to represent it in federal court. See Poindexter v. Greenhow, 114 U. S. 270, 288 (1885) (“The State is a political corporate body [that] can act only through agents”). That agent is typically the State’s attorney general. But state law may provide for other officials to speak for the State in federal court, as New Jersey law did for the State’s presiding legislative officers in Karcher. See 484 U. S., at 81–82.

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.” Id., at 81.

The point of *Karcher* is not that a State could authorize private parties to represent its interests; Karcher and Orechio were permitted to proceed only because they were state officers, acting in an official capacity. As soon as they lost that capacity, they lost standing. Petitioners here hold no office and have always participated in this litigation solely as private parties.

The cases relied upon by the dissent, see *post*, at 11–12, provide petitioners no more support. The dissent’s primary authorities, in fact, do not discuss standing at all. See *Young v. United States ex rel. Vuitton et Fils S. A.*, 481 U. S. 787 (1987); *United States v. Providence Journal Co.*, 485 U. S. 693 (1988). And none comes close to establishing that mere authorization to represent a third party’s interests is sufficient to confer Article III standing on private parties with no injury of their own.

The dissent highlights the discretion exercised by special prosecutors appointed by federal courts to pursue contempt charges. See *post*, at 11 (citing *Young*, *supra*, at 807). Such prosecutors do enjoy a degree of independence in carrying out their appointed role, but no one would suppose that they are not subject to the ultimate authority of the court that appointed them. See also *Providence Journal, supra*, at 698–707 (recognizing further control exercised by the Solicitor General over special prosecutors).

The dissent’s remaining cases, which at least consider standing, are readily distinguishable. See *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U. S. 765, 771–778 (2000) (justifying *qui tam* actions
based on a partial assignment of the Government’s damages claim and a “well nigh conclusive” tradition of such actions in English and American courts dating back to the 13th century); *Whitmore v. Arkansas*, 495 U. S. 149, 162–164 (1989) (justifying “next friend” standing based on a similar history dating back to the 17th century, requiring the next friend to prove a disability of the real party in interest and a “significant relationship” with that party); *Gollust v. Mendell*, 501 U. S. 115, 124–125 (1990) (requiring plaintiff in shareholder-derivative suit to maintain a financial stake in the outcome of the litigation, to avoid “serious constitutional doubt whether that plaintiff could demonstrate the standing required by Article III’s case-or-controversy limitation”).

C

Both petitioners and respondents seek support from dicta in *Arizonans for Official English v. Arizona*, 520 U. S. 43. The plaintiff in *Arizonans for Official English* filed a constitutional challenge to an Arizona ballot initiative declaring English “the official language of the State of Arizona.” *Id.*, at 48. After the District Court declared the initiative unconstitutional, Arizona’s Governor announced that she would not pursue an appeal. Instead, the principal sponsor of the ballot initiative—the Arizonans for Official English Committee—sought to defend the measure in the Ninth Circuit. *Id.*, at 55–56, 58. Analogizing the sponsors to the Arizona Legislature, the Ninth Circuit held that the Committee was “qualified to defend [the initiative] on appeal,” and affirmed the District Court. *Id.*, at 58, 61.

Before finding the case mooted by other events, this Court expressed “grave doubts” about the Ninth Circuit’s standing analysis. *Id.*, at 66. We reiterated that “[s]tanding to defend on appeal in the place of an original defendant . . . demands that the litigant possess ‘a direct
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stake in the outcome.’” *Id.*, at 64 (quoting *Diamond*, 476 U. S., at 62). We recognized that a legislator authorized by state law to represent the State’s interest may satisfy standing requirements, as in *Karcher*, *supra*, at 82, but noted that the Arizona committee and its members were “not elected representatives, and we [we]re aware of no Arizona law appointing initiative sponsors as agents of the people of Arizona to defend, in lieu of public officials, the constitutionality of initiatives made law of the State.” *Arizonans for Official English*, *supra*, at 65.

Petitioners argue that, by virtue of the California Supreme Court’s decision, they *are* authorized to act “‘as agents of the people’ of California.” Brief for Petitioners 15 (quoting *Arizonans for Official English*, *supra*, at 65). But that Court never described petitioners as “agents of the people,” or of anyone else. Nor did the Ninth Circuit. The Ninth Circuit asked—and the California Supreme Court answered—only whether petitioners had “the authority to assert the State’s interest in the initiative’s validity.” 628 F. 3d, at 1193; 52 Cal. 4th, at 1124, 265 P. 3d, at 1005. All that the California Supreme Court decision stands for is that, so far as California is concerned, petitioners may argue in defense of Proposition 8. This “does not mean that the proponents become de facto public officials”; the authority they enjoy is “simply the authority to participate as parties in a court action and to assert legal arguments in defense of the state’s interest in the validity of the initiative measure.” *Id.*, at 1159, 265 P. 3d, at 1029. That interest is by definition a generalized one, and it is precisely because proponents assert such an interest that they lack standing under our precedents.

And petitioners are plainly not agents of the State—“formal” or otherwise, see *post*, at 7. As an initial matter, petitioners’ newfound claim of agency is inconsistent with their representations to the District Court. When the proponents sought to intervene in this case, they did not
purport to be agents of California. They argued instead that “no other party in this case w[ould] adequately rep-
resent their interests as official proponents.” Motion to Intervene in No. 09–2292 (ND Cal.), p. 6 (emphasis added). It was their “unique legal status” as official proponents—not an agency relationship with the people of California—that petitioners claimed “endow[ed] them with a significantly protectable interest” in ensuring that the District Court not “undo[ ] all that they ha[d] done in obtaining . . . enactment” of Proposition 8. Id., at 10, 11.

More to the point, the most basic features of an agency relationship are missing here. Agency requires more than mere authorization to assert a particular interest. “An essential element of agency is the principal’s right to control the agent’s actions.” 1 Restatement (Third) of Agency §1.01, Comment f (2005) (hereinafter Restatement). Yet petitioners answer to no one; they decide for themselves, with no review, what arguments to make and how to make them. Unlike California’s attorney general, they are not elected at regular intervals—or elected at all. See Cal. Const., Art. V, §11. No provision provides for their removal. As one amicus explains, “the proponents apparently have an unelected appointment for an unspecified period of time as defenders of the initiative, however and to whatever extent they choose to defend it.” Brief for Walter Dellinger 23.

“If the relationship between two persons is one of agency . . . , the agent owes a fiduciary obligation to the principal.” 1 Restatement §1.01, Comment e. But petitioners owe nothing of the sort to the people of California. Unlike California’s elected officials, they have taken no oath of office. E.g., Cal. Const., Art. XX, §3 (prescribing the oath for “all public officers and employees, executive, legislative, and judicial”). As the California Supreme Court explained, petitioners are bound simply by “the same ethical constraints that apply to all other parties in a legal
proceeding.” 52 Cal. 4th, at 1159, 265 P. 3d, at 1029. 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.

Finally, the California Supreme Court stated that “[t]he question of who should bear responsibility for any attorney fee award . . . is entirely distinct from the question” before it. Id., at 1161, 265 P. 3d, at 1031. (emphasis added). But it is hornbook law that “a principal has a duty to indemnify the agent against expenses and other losses incurred by the agent in defending against actions brought by third parties if the agent acted with actual authority in taking the action challenged by the third party’s suit.” 2 Restatement §8.14, Comment d. If the issue of fees is entirely distinct from the authority question, then authority cannot be based on agency.

Neither the California Supreme Court nor the Ninth Circuit ever described the proponents as agents of the State, and they plainly do not qualify as such.

IV

The dissent eloquently recounts the California Supreme Court’s reasons for deciding that state law authorizes petitioners to defend Proposition 8. See post, at 3–5. We do not “disrespect[]” or “disparage[]” those reasons. Post, at 12. 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, see post, at 1, 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. “Refusing to entertain generalized grievances ensures that . . . courts exercise power that is judicial in nature,” Lance, 549 U. S., at 441, and ensures that the Federal Judiciary respects “the proper—and properly limited—role of the courts in a democratic society,” DaimlerChrysler Corp. v. Cuno, 547 U. S. 332, 341 (2006) (internal quotation marks omitted). 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.
KENNEDY, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 12–144

DENNIS HOLLINGSWORTH, ET AL., PETITIONERS v. KRISTIN M. PERRY ET AL.

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

[June 26, 2013]

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 bind-
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ing 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. The Court’s decision also has implications for the 26 other States that use an initiative or popular referendum system and which, like California, may choose to have initiative proponents stand in for the State when public officials decline to defend an initiative in litigation. See M. Waters, Initiative and Referendum Almanac 12 (2003). In my submission, the Article III requirement for a justiciable case or controversy does not prevent proponents from having their day in court.

These are the premises for this respectful dissent.

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. See ante, at 11 (citing Maine v. Taylor, 477 U. S. 131, 137 (1986)). To determine whether justiciability continues in appellate proceedings after the State Executive acquiesced in the District Court’s adverse judgment, it is necessary to ascertain what persons, if any, have “authority under state law to represent the State’s interests” in federal court. Karcher v. May, 484
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As the Court notes, the California Elections Code does not on its face prescribe in express terms the duties or rights of proponents once the initiative becomes law. Ante, at 8. If that were the end of the matter, the Court's analysis would have somewhat more force. But it is not the end of the matter. 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. And it is likewise not for this Court to say that a State must determine the substance and meaning of its laws by statute, or by judicial decision, or by a combination of the two. See Sweezy v. New Hampshire, 354 U. S. 234, 255 (1957) (plurality opinion); Dreyer v. Illinois, 187 U. S. 71, 84 (1902). That, too, is for the State to decide.

This Court, in determining the substance of state law, is “bound by a state court's construction of a state statute.” Wisconsin v. Mitchell, 508 U. S. 476, 483 (1993). And the Supreme Court of California, in response to the certified question submitted to it in this case, has determined that State Elections Code provisions directed to initiative proponents do inform and instruct state law respecting the rights and status of proponents in postelection judicial proceedings. Here, in reliance on these statutes and the California Constitution, the State Supreme Court 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.” Perry v. Brown, 52 Cal. 4th 1116, 1127, 265 P. 3d 1002, 1007 (2011).

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. See Cal. Elec. Code Ann. §9001(a) (West Cum. Supp. 2013). Because many of their decisions must be unanimous, see §§9001(b)(1), 9002(b), they are necessarily few in number. Their identities are public. §9001(b)(2). Their commitment is substantial. See §§9607–9609 (West Cum. Supp. 2013) (obtaining petition signatures); §9001(c) (monetary fee); §§9065(d), 9067, 9069 (West 2003) (drafting arguments for official ballot pamphlet). They know and understand the purpose and operation of the proposed law, an important requisite in defending initiatives on complex matters such as taxation and insurance. Having gone to great lengths to convince voters to enact an initiative, they have a stake in the outcome and the necessary commitment to provide zealous advocacy.

Thus, in California, proponents play a “unique role . . . in the initiative process.” 52 Cal. 4th, at 1152, 265 P. 3d, at 1024. 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.; see also id., at 1160, 265 P. 3d, at 1030 (because of “their special relationship to the initiative measure,” proponents are “the most obvious and logical private individuals to ably and vigorously defend the validity of the challenged measure on behalf of the interests of the voters who adopted the initiative into law”). Proponents’ authority under state law is not a contrivance. It is not a fictional construct. It is the product of the California Constitution and the California Elections Code. There is no basis for this Court to set aside the California Supreme Court’s determination of state
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law.

The Supreme Court of California explained that its holding was consistent with recent decisions from other States. *Id.*, at 1161–1165, 265 P. 3d, at 1031–1033. In *Sportsmen for I–143 v. Fifteenth Jud. Ct.*, 2002 MT 18, 308 Mont. 189, 40 P. 3d 400, the Montana Supreme Court unanimously held that because initiative sponsors “may be in the best position to defend their interpretation” of the initiative and had a “direct, substantial, legally protectable interest in” the lawsuit challenging that interpretation, they were “entitled to intervene as a matter of right.” *Id.*, at 194–195, 40 P. 3d, at 403. The Alaska Supreme Court reached a similar unanimous result in *Alaskans for a Common Language Inc., v. Kritz*, 3 P. 3d 906 (2000). It noted that, except in extraordinary cases, “a sponsor’s direct interest in legislation enacted through the initiative process and the concomitant need to avoid the appearance of [a conflict of interest] will ordinarily preclude courts from denying intervention as of right to a sponsoring group.” *Id.*, at 914.

For these and other reasons, the Supreme Court of California held that the California Elections Code and Article II, §8, of the California Constitution afford proponents “the authority . . . to assert the state’s interest in the validity of the initiative” when State officials decline to do so. 52 Cal. 4th, at 1152, 265 P. 3d, at 1024. The court repeated this unanimous holding more than a half-dozen times and in no uncertain terms. See *id.*, at 1126, 1127, 1139, 1149, 1151, 1152, 1165, 256 P. 3d, at 1006, 1007, 1015, 1022, 1024, 1025, 1033; see also *id.*, at 1169–1170, 265 P. 3d, at 1036–1037 (Kennard, J., concurring). That should suffice to resolve the central issue on which the federal question turns.
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. *Ante*, at 15 (quoting 1 Restatement (Third) of Agency § 1.01, Comments e, f (2005)). 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. In California, the popular initiative is necessary to implement “the theory that all power of government ultimately resides in the people.” 52 Cal. 4th, at 1140, 265 P. 3d, at 1016 (internal quotation marks omitted). The right to adopt initiatives has been described by the California courts as “one of the most precious rights of [the State’s] democratic process.” *Ibid.* (internal quotation marks omitted). That historic role for the initiative system “grew out of dissatisfaction with the then governing public officials and a widespread belief that the people had lost control of the political process.” *Ibid.* The initiative's “primary purpose,” then, “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.” *Ibid.*

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. See *id.*, at 1160, 265 P. 3d, at 1030; cf. *Alaskans for a Common Language, supra*, at 914 (noting that proponents must be allowed to defend an enacted initiative in order to avoid the perception, correct or not, “that the interests of [the proponents] were not being
defended vigorously by the executive branch”). Giving the Governor and attorney general this *de facto* veto will erode one of the cornerstones of the State’s governmental structure. See 52 Cal. 4th, at 1126–1128, 265 P. 3d, at 1006–1007. And in light of the frequency with which initiatives’ opponents resort to litigation, the impact of that veto could be substantial. K. Miller, Direct Democracy and the Courts 106 (2009) (185 of the 455 initiatives approved in Arizona, California, Colorado, Oregon, and Washington between 1900 and 2008 were challenged in court). As a consequence, California finds it necessary to vest the responsibility and right to defend a voter-approved initiative in the initiative’s proponents when the State Executive declines to do so.

Yet today the Court demands that the State follow the Restatement of Agency. See *ante*, at 15–16. 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, 52 Cal. 4th, at 1159, 265 P. 3d, at 1029, 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.

Furthermore, it is not clear who the principal in an agency relationship would be. It would make little sense if it were the Governor or attorney general, for that would frustrate the initiative system’s purpose of circumventing elected officials who fail or refuse to effect the public will. *Id.*, at 1139–1140, 265 P. 3d, at 1016. If there is to be a principal, then, it must be the people of California, as the ultimate sovereign in the State. See *ibid.*, 265 P. 3d, at
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1015–1016 (quoting Cal. Const., Art. II, §1) ("All political power is inherent in the people"). But the Restatement may offer no workable example of an agent representing a principal composed of nearly 40 million residents of a State. Cf. 1 Restatement (Second) of Agency, p. 2, Scope Note (1957) (noting that the Restatement "does not state the special rules applicable to public officers"); 1 Restatement (First) of Agency, p. 4, Scope Note (1933) (same).

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. The Court apparently believes that elected officials are acceptable "agents" of the State, see ante, at 11–12, but they are no more subject to ongoing supervision of their principal—i.e., the people of the State—than are initiative proponents. At most, a Governor or attorney general can be recalled or voted out of office in a subsequent election, but proponents, too, can have their authority terminated or their initiative overridden by a subsequent ballot measure. Finally, proponents and their attorneys, like all other litigants and counsel who appear before a federal court, are subject to duties of candor, decorum, and respect for the tribunal and co-parties alike, all of which guard against the possibility that initiative proponents will somehow fall short of the appropriate standards for federal litigation.

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, 484 U. S. 72 (1987), the Speaker of the New Jersey Assembly (Karcher) and President of the New Jersey Senate (Orechio) intervened in
support of a school moment-of-silence law that the State’s Governor and attorney general declined to defend in court. In considering the question of standing, 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.” *Id.*, at 82. The Court concluded that they did. Because the “New Jersey Supreme Court ha[d] granted applications of the Speaker of the General Assembly and the President of the Senate to intervene as parties-respondent on behalf of the legislature in defense of a legislative enactment,” the *Karcher* Court held that standing had been proper in the District Court and Court of Appeals. *Ibid.* By the time the case arrived in this Court, Karcher and Orechio had lost their presiding legislative offices, without which they lacked the authority to represent the State under New Jersey law. This, the Court held, deprived them of standing. *Id.*, at 81. Here, by contrast, proponents’ authority under California law is not contingent on officeholder status, so their standing is unaffected by the fact that they “hold no office” in California’s Government. *Ante*, at 12.

*Arizonans for Official English v. Arizona*, 520 U. S. 43 (1997), is consistent with the premises of this dissent, not with the rationale of the Court’s opinion. See *ante*, at 13–14. There, the Court noted its serious doubts as to the aspiring defenders’ standing because there was “no Arizona law appointing initiative sponsors as agents of the people of Arizona to defend, in lieu of public officials, the constitutionality of initiatives made law of the State.” 520 U. S., at 65. The Court did use the word “agents”; but, read in context, it is evident that the Court’s intention was not to demand a formal agency relationship in compliance with the Restatement. Rather, the Court used the term as shorthand for a party whom “state law authorizes” to “represent the State’s interests” in court. *Ibid.*
Both the Court of Appeals and the Supreme Court of California were mindful of these precedents and sought to comply with them. The state court, noting the importance of *Arizonans for Official English*, expressed its understanding that “the high court’s doubts as to the official initiative proponents’ standing in that case were based, at least in substantial part, on the fact that the court was not aware of any ‘Arizona law appointing initiative sponsors as agents of the people of Arizona to defend . . . the constitutionality of initiatives made law of the State.’” 52 Cal. 4th, at 1136–1137, 265 P. 3d, at 1013–1014 (quoting 520 U. S., at 65). Based on this passage, it concluded that “nothing in [*Arizonans for Official English*] indicates that if a state’s law does authorize the official proponents of an initiative to assert the state’s interest in the validity of a challenged state initiative when the public officials who ordinarily assert that interest have declined to do so, the proponents would not have standing to assert the state’s interest in the initiative’s validity in a federal lawsuit.” *Id.*, at 1137, 265 P. 3d, at 1014.

The Court of Appeals, too, was mindful of this requirement. *Perry v. Brown*, 671 F. 3d 1052, 1072–1073 (CA9 2012). Although that panel divided on the proper resolution of the merits of this case, it was unanimous in concluding that proponents satisfy the requirements of Article III. Compare *id.*, at 1070–1075 (majority opinion), with *id.*, at 1096–1097 (N. R. Smith, J., concurring in part and dissenting in part). Its central premise, ignored by the Court today, was that the “State’s highest court [had] held that California law provides precisely what the *Arizonans* Court found lacking in Arizona law: it confers on the official proponents of an initiative the authority to assert the State’s interests in defending the constitutionality of that initiative, where state officials who would ordinarily assume that responsibility choose not to do so.” *Id.*, at 1072 (majority opinion). The Court of Appeals and the
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State Supreme Court did not ignore *Arizonaans for Official English*; they were faithful to it.

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; indeed, the prosecutor’s “determination of which persons should be targets of the investigation, what methods of investigation should be used, what information will be sought as evidence,” whom to charge, and other “decisions . . . critical to the conduct of a prosecution, are all made outside the supervision of the court.” *Young v. United States ex rel. Vuitton et Fils S. A.*, 481 U. S. 787, 807 (1987). Also, just as proponents have been authorized to represent the State of California, “[p]rivate attorneys appointed to prosecute a criminal contempt action represent the United States,” *United States v. Providence Journal Co.*, 485 U. S. 693, 700 (1988). They are “appointed solely to pursue the public interest in vindication of the court’s authority,” *Young, supra*, at 804, an interest that—like California’s interest in the validity of its laws—is “unique to the sovereign,” *Providence Journal Co., supra*, at 700. And, although the Court dismisses the proponents’ standing claim because initiative proponents “are not elected” and “decide for themselves, with no review, what arguments to make and how to make them” in defense of the enacted initiative, *ante*, at 15, those same charges could be leveled with equal if not greater force at the special prosecutors just discussed. See *Young, supra*, at 807.

Similar questions might also arise regarding *qui tam*
actions, see, e.g., Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U. S. 765, 771–778 (2000); suits involving “next friends” litigating on behalf of a real party in interest, see, e.g., Whitmore v. Arkansas, 495 U. S. 149, 161–166 (1990); or shareholder-derivative suits, see, e.g., Gollust v. Mendell, 501 U. S. 115, 125–126 (1991). There is no more of an agency relationship in any of these settings than in the instant case, yet the Court has nonetheless permitted a party to assert the interests of another. That qui tam actions and “next friend” litigation may have a longer historical pedigree than the initiative process, see ante, at 12–13, is no basis for finding Article III’s standing requirement met in those cases but lacking here. 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.

III

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, 750–752 (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.” 52 Cal. 4th, at 1124, 265 P. 3d, at 1005 (emphasis in original). 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
KENNEDY, J., dissenting

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.
SCOTUS’s Prop 8 ruling will complicate ballot initiative process

July 1, 2013 @ 8:28 pm

By Alison Frankel

On Friday, two days after the U.S. Supreme Court announced its ruling in Hollingsworth v. Perry [1], marriage equality came back to California [2]. Governor Jerry Brown, who had refused to appeal U.S. District Judge Vaughn Walker’s beautiful 2010 decision [3] that the state’s bar on same-sex marriage was unconstitutional, ordered county clerks to begin issuing licenses to gay and lesbian couples. California Attorney General Kamala Harris performed the first wedding under the new regime, the San Francisco marriage of Kristin Perry and Sandy Stier, whose challenge to California’s ballot-initiative ban on same-sex marriage led to the Supreme Court’s decision last Wednesday. In Los Angeles, Mayor Antonio Villaraigosa married the other plaintiffs in the original case, Paul Katami and Jeff Zarrillo. Opponents of same-sex marriage filed an emergency petition [4] at the U.S. Supreme Court over the weekend, seeking a temporary halt to the weddings, but Justice Anthony Kennedy, who oversees the 9th Circuit, denied it [5] on Sunday. Marriage equality is now officially the law in California.

The means to that end, as you’ve probably heard, were not the equal rights of same-sex couples, at least not as far as the Supreme Court majority was concerned. An unusual five-judge coalition of Chief Justice John Roberts and Justices Antonin Scalia, Ruth Bader Ginsburg, Stephen Breyer and Elena Kagan found that the private proponents of the ballot initiative barring gay marriage, known as Proposition 8, did not have standing to appeal Judge Walker’s 2010 ruling, even though the public officials originally named as defendants by Kristin Perry and her fellow plaintiffs declined to ask for review from the 9th Circuit Court of Appeals. You won’t find any soaring language on equal rights in the Perry opinion. (For that, you have to look to Justice Anthony Kennedy’s companion decision in United States v. Windsor [6], striking down the federal Defense of Marriage Act.) Hollingsworth v. Perry is instead a technical ruling on one of the Chief Justice’s favorite subjects, standing under Article III of the U.S. Constitution.

And for all the wedding hoopla right now in California, Hollingsworth v. Perry will live on in legal citations not for what it says about the marriage-equality rights of gays and lesbians but for its rejection of the rights of private ballot initiative proponents to appear in court in place of public officials who don’t support their law. I predicted [7] after oral arguments in the case that the justices’ ruling could end up “better remembered for setting precedent on standing, stage agency and ballot initiatives than for civil rights.” I’m sticking with that prediction. Sooner than later, same-sex marriage will be the right of people across America, and for that we can count among those we thank the lawyers who took up the Proposition 8 challenge four years ago, David Boies of Boies, Schiller & Flexner and Theodore Olson of Gibson, Dunn & Crutcher. But this opinion’s holding that private citizens do not have standing to defend the constitutionality of ballot initiatives when state officials refuse to do so is also going to affect whether voters can override their elected officials.

Here’s why. The sponsors of Proposition 8 argued that by dint of their role in getting the initiative approved by voters, they had distinct authority and responsibilities to defend it. They
also argued that because the California Supreme Court, acting at the request of the 9th Circuit, expressly held that they are authorized to assert the state’s interest on appeal, they are essentially agents of the state. But the Supreme Court majority said that neither sponsorship of the ballot initiative nor the state high court’s ruling give Prop 8 proponents the “personal and tangible harm” and “direct stake in the outcome” required by Article III.

"Their only interest in having the district court order reversed was to vindicate the constitutional validity of a generally applicable California law," the majority said. "We have repeatedly held that such a 'generalized grievance,' no matter how sincere, is insufficient to confer standing. A litigant ... 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.”

The court said that states have a right to designate an agent to represent them in federal court, a role typically filled by state AGs but sometimes by other state officers, as in the court’s 1987 ruling in Karcher v. May [8]. But private citizens cannot assume that role, according to the majority, because they do not have an agency relationship with the citizens of the state. "Agency requires more than mere authorization to assert a particular interest,” the court held. "Petitioners answer to no one; they decide for themselves, with no review, what arguments to make and how to make them. Unlike California’s attorney general, they are not elected at regular intervals – or elected at all. No provision provides for their removal.” The majority noted that its holding was presaged by dicta in the 1997 decision in Arizonans for Official English v. Arizona [9], in which Justice Ginsburg expressed “grave doubts” that the sponsor of a ballot initiative declaring English to be the official language of Arizona had standing to appeal a lower-court finding that the voter-passed law was unconstitutional.

You can see how the majority’s holding in Perry could play out in cases in which state officials, however reluctantly, enforce ballot initiatives directing them to adopt policies they disagree with. As in the Perry and Arizonans cases, plaintiffs affected by the voter-adopted laws can sue in federal court to block their enforcement. If they win – and if state officials then decline to appeal – ballot initiative sponsors are stuck with the adverse ruling of the trial court. The Perry ruling, in other words, gives state officials in certain circumstances what amounts to back-door veto power over ballot initiatives.

The dissent in the Perry case, written by Justice Kennedy, argues that the majority opinion undermines the entire rationale for the ballot initiative process. “The very object of the initiative system is to establish a lawmaking process that does not depend upon state officials,” Kennedy wrote. “Giving the governor and attorney general this de facto veto will erode one of the cornerstones of the state’s governmental structure.” And that de facto veto power is more than theoretical, according to the dissent, which noted that 185 of the 455 voter initiatives approved in Arizona, California, Colorado, Oregon, and Washington between 1900 and 2008 were challenged in court. The California high court’s determination that Prop 8 proponents have the right to assert an appeal on behalf of the state, the dissent said, should have satisfied any concerns about the standing of the ballot initiative proponents.

In a video interview [10] with Reuters opinion editor James Ledbetter, David Boies said that the court’s holding on standing won’t impede the will of voters because ballot initiative proponents have the power to bring suits to force states to comply with voter-passed laws. (They’d have standing as injured plaintiffs in that circumstance.) “You’ve had this rule forever in terms of standing,” Boies said. “And referendums and initiatives keep going.” But after the video interview, Boies told me that in situations like those the Supreme Court faced in Perry and Arizonans, when state officials are defendants in the lower court and refuse to appeal findings of unconstitutionality, ballot proponents can’t appeal in federal court.

There are ways ballot initiative sponsors can work around the majority’s holding. Voters can, for instance, demand laws requiring state officials to designate a state representative to appeal the
invalidation of ballot initiatives they don’t like. Or sponsors of voter initiatives can build provisions into the ballot offerings requiring the state to defend the law. And obviously, if a ballot initiative challenge plays out in state court, Article III standing isn’t an issue at all.

But standing for ballot initiative appeals is sufficiently serious an issue that it has already figured in three Supreme Court cases. The next time you see a citation for Hollingsworth v. Perry, it’s probably going to be in a standing dispute.

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PER CURIAM.

The Attorney General of Florida has requested an opinion from this Court as to the validity of an initiative petition circulated pursuant to article XI, section 3, Florida Constitution, and as to the validity of the corresponding financial impact statement. We have jurisdiction. See art. IV, § 10; art. V, § 3(b)(10), Fla. Const. For the reasons explained below, we conclude that the proposed amendment
complies with the single-subject requirement of article XI, section 3 of the Florida Constitution; the ballot title and summary comply with section 101.161, Florida Statutes (2012); and the financial impact statement complies with section 100.371, Florida Statutes (2012). Accordingly, we approve the proposed amendment and financial impact statement for placement on the ballot.

I. BACKGROUND

On April 18, 2013, the Attorney General petitioned this Court for an opinion as to the validity of an initiative petition sponsored by Florida’s Water and Land Legacy, Inc., and circulated pursuant to article XI, section 3 of the Florida Constitution. The Attorney General requested this Court’s opinion as to whether the proposed amendment complies with the single-subject requirement of article XI, section 3, and as to whether the ballot title and summary comply with section 101.161, Florida Statutes (2012). The sponsor has submitted a brief supporting the validity of the initiative petition. No opposing briefs or comments have been submitted to the Court.

The amendment would add a new section 28 to article X of the Florida Constitution. The full text of the proposed amendment states:

SECTION 28. Land Acquisition Trust Fund.—
 a) Effective on July 1 of the year following passage of this amendment by the voters, and for a period of 20 years after that effective date, the Land Acquisition Trust Fund shall receive no less than 33 percent of net revenues derived from the existing excise tax on documents, as defined in the statutes in effect on January 1, 2012,
as amended from time to time, or any successor or replacement tax, after the Department of Revenue first deducts a service charge to pay the costs of the collection and enforcement of the excise tax on documents.

b) Funds in the Land Acquisition Trust Fund shall be expended only for the following purposes:

1) As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.

2) To pay the debt service on bonds issued pursuant to Article VII, Section 11(e).

c) The moneys deposited into the Land Acquisition Trust Fund, as defined by the statutes in effect on January 1, 2012, shall not be or become commingled with the General Revenue Fund of the state.

The ballot title for the proposed amendment is “Water and Land Conservation—Dedicates Funds to Acquire and Restore Florida Conservation and Recreation Lands.” The summary for the proposed amendment states:

Funds the Land Acquisition Trust Fund to acquire, restore, improve, and manage conservation lands including wetlands and forests; fish and wildlife habitat; lands protecting water resources and drinking water sources, including the Everglades, and the water quality of rivers, lakes, and streams; beaches and shores; outdoor recreational lands; working farms and ranches; and historic or
geologic sites, by dedicating 33 percent of net revenues from the existing excise tax on documents for 20 years.

In addition, on June 5, 2013, the Attorney General petitioned this Court for an opinion as to whether the financial impact statement accompanying this initiative petition complies with section 100.371, Florida Statutes (2012). The financial impact statement, which was prepared by the Financial Impact Estimating Conference, states:

This amendment does not increase or decrease state revenues. The state revenue restricted to the purposes specified in the amendment is estimated to be $648 million in Fiscal Year 2015-16 and grows to $1.268 billion by the twentieth year. Whether this results in any additional state expenditures depends upon future legislative actions and cannot be determined. Similarly, the impact on local government revenues, if any, cannot be determined. No additional local government costs are expected.

No briefs or comments have been submitted in response to the sponsor’s argument that the financial impact statement complies with the statute.

II. ANALYSIS

When this Court renders an advisory opinion concerning a proposed constitutional amendment arising through the citizen initiative process, the Court limits its inquiry to two issues: (1) whether the amendment itself satisfies the single-subject requirement of article XI, section 3, Florida Constitution; and (2) whether the ballot title and summary satisfy the clarity requirements of section 101.161, Florida Statutes. Advisory Op. to the Att’y Gen. re Protect People.
Especially Youth, from Addiction, Disease & Other Health Hazards of Using Tobacco, 926 So. 2d 1186, 1190 (Fla. 2006). This Court reviews the corresponding financial impact statement for compliance with section 100.371, Florida Statutes. Id. at 1194.

A. Single-Subject Requirement

Article XI, section 3, Florida Constitution, sets forth the single-subject requirement for a proposed constitutional amendment arising through the citizen initiative process. The single-subject rule is intended to prevent an amendment from engaging in either of two practices: (a) logrolling; or (b) substantially altering or performing the functions of multiple branches of state government. “A proposed amendment meets this test when it ‘may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test.’” Advisory Op. to the Att’y Gen. re Fairness Initiative Requiring Legislative Determination that Sales Tax Exemptions & Exclusions Serve a Public Purpose (Fairness Initiative), 880 So. 2d 630, 634 (Fla. 2004) (quoting Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984)).

We conclude that the proposed amendment in this case properly “embrace[s] but one subject.” Art. XI, § 3, Fla. Const. The proposed amendment will have only one effect: it will constitutionally establish the proportion of an existing
revenue stream that is to be dedicated to an existing trust fund. Because the amendment would make a single change—establishing the percentage of documentary tax revenue credited to the Land Acquisition Trust Fund—and does not contain any unrelated provisions, the amendment does not engage in logrolling.

The amendment also satisfies the prohibition against substantially altering or performing the functions of multiple branches of state government. The proposed amendment does not seek to create a new tax or alter the purpose or management of the Land Acquisition Trust Fund. Because it impacts only the legislative function of determining the amount of tax revenue that is credited to the trust fund, the proposed amendment is similar to the amendment approved in Advisory Opinion to the Attorney General re Funding for Criminal Justice (Criminal Justice), 639 So. 2d 972, 973-74 (Fla. 1994), which sought to create a trust funded by sales taxes and is even narrower in scope than the amendment approved in Advisory Opinion to the Attorney General—Fee on the Everglades Sugar Production (Everglades Sugar Production), 681 So. 2d 1124, 1127-28 (Fla. 1996), which proposed to levy a new fee and to direct the use of that new state revenue. As in Criminal Justice and Everglades Sugar Production, the instant amendment addresses “a specific tax designed to produce revenue for which the amendment would allocate uses” and therefore satisfies the single-subject rule. Advisory Op.
to the Att’y Gen. re Requirement for Adequate Pub. Educ. Funding, 703 So. 2d 446, 450 (Fla. 1997).

B. Ballot Title and Summary

Section 101.161(1), Florida Statutes (2012), sets forth the requirements for the ballot title and summary of a proposed constitutional amendment:

The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure . . . . The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

When reviewing the validity of a ballot title and summary under section 101.161(1), the Court asks two questions:

First, the Court asks whether “the ballot title and summary . . . fairly inform the voter of the chief purpose of the amendment.” Right to Treatment and Rehabilitation for Non-Violent Drug Offenses, 818 So. 2d [491, 497 (Fla. 2002)]. Second, the Court asks “whether the language of the title and summary, as written, misleads the public.” Advisory Op. to Att’y Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 566 (Fla. 1998).

Fairness Initiative, 880 So. 2d at 635-36. “[I]t is not necessary to explain every ramification of a proposed amendment, only the chief purpose.” Advisory Op. to the Att’y Gen. re Additional Homestead Tax Exemption, 880 So. 2d 646, 651 (Fla. 2004) (quoting Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986)).

In this case, the ballot title and summary comply with the respective word limitations and fairly inform the voters of the chief purpose of the proposed
amendment. Both the title and summary state that the proposed amendment will dedicate documentary tax revenue to the Land Acquisition Trust Fund. The title includes the language “Dedicates Funds to Acquire and Restore Florida Conservation and Recreation Lands,” and the summary begins with the clause “Funds the Land Acquisition Trust Fund,” describes the uses of the Fund, and explains that the funds will be obtained “by dedicating 33 percent of net revenues from the existing excise tax on documents for 20 years.” The title and summary are straightforward and accurate.

C. Financial Impact Statement

Article XI, section 5(c), Florida Constitution, directs that “[t]he legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.” Section 100.371(5)(a), Florida Statutes (2012), requires that this financial impact statement address the estimated increase or decrease in any revenues or costs to the state or local governments resulting from the proposed initiative, and section 100.371(5)(c)2 requires that the statement be clear and unambiguous and consist of no more than seventy-five words.

This Court’s review of financial impact statements is narrow. The Court has “limited itself only to address whether the statement is clear, unambiguous,
consists of no more than seventy-five words, and is limited to address the estimated increase or decrease in any revenues or costs to the state or local governments.” Advisory Op. to the Att’y Gen. re Referenda Required for Adoption & Amend. of Local Gov’t Comprehensive Land Use Plans, 963 So. 2d 210, 214 (Fla. 2007). The instant financial impact statement satisfies these requirements.

The financial impact statement is exactly seventy-five words and limited to the subject of the estimated increase or decrease in revenues or costs to the state or local governments. It plainly states that the proposed amendment will not increase or decrease state revenues and estimates the amount of documentary tax revenues that will be dedicated to the Land Acquisition Trust Fund as a result of the proposed amendment. As for costs, the financial impact statement explains—again in plain language—that the Financial Estimating Conference cannot predict how the Legislature will choose to spend or save the documentary tax revenue allocated to the Land Acquisition Trust Fund. See Advisory Op. to the Att’y Gen. re Fla. Growth Mgmt. Initiative Giving Citizens the Right to Decide Local Growth Mgmt. Plan Changes, 2 So. 3d 118, 124 (Fla. 2008) (“Overall, the financial impact statement is necessarily indefinite but not unclear or ambiguous.”). Accordingly, the financial impact statement complies with section 100.371(5), Florida Statutes (2012).
III. CONCLUSION

The initiative petition and proposed title and summary meet the legal requirements of article XI, section 3, Florida Constitution, and section 101.161(1), Florida Statutes (2012). In addition, the financial impact statement is in accordance with section 100.371(5), Florida Statutes (2012). We therefore approve the proposed amendment and financial impact statement for placement on the ballot.

It is so ordered.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

Two Cases:
Original Proceeding – Advisory Opinion – Attorney General

Pamela Jo Bondi, Attorney General and Joslyn Wilson, Assistant Attorney General, Tallahassee, Florida,

for Petitioner,

Jon L. Mills of Boies Schiller & Flexner, LLP, Miami, Florida; Benjamin F. Diamond of Akerman Senterfitt, Tampa, Florida; Timothy McLendon, Gainesville, Florida; and Clay Henderson of Holland & Knight, Orlando, Florida,

for Florida’s Water and Land Legacy, Inc., Sponsor