

Overturing State Court Blocking of a Ballot Initiative

Anderson v. Gale

(Richard G. Kopf, D. Neb. 4:02-cv-3257)

On September 23, 2002, supporters of a proposed gaming initiative filed a federal complaint in the District of Nebraska against Nebraska's secretary of state, seeking relief from a state court invalidation of the initiative as concerning more than one subject.¹

The petition sought to accomplish the following:

- (1) Revise the Nebraska Constitution to allow electronic gaming devices under local control;
- (2) Provide limitations on the manner income from the gaming could be spent;
- (3) Limit the ability of the Legislature to tax the gaming; and
- (4) Require the creation of a gaming commission.²

With their complaint, the plaintiffs filed a motion for a temporary restraining order.³ On the day the action was filed, Judge Richard G. Kopf held a conference call with the parties and then scheduled a hearing for two days later.⁴ When Judge Kopf receives a motion for a temporary restraining order, it is his practice to have chambers contact plaintiffs' counsel immediately to obtain contact information for defense counsel, if possible.⁵

On September 24, the director of Gambling With the Good Life, which opposed expansion of gambling in Nebraska and which obtained the state court order blocking the initiative's inclusion on the general election ballot, sought to intervene as a defendant.⁶

On September 25, Judge Kopf granted intervention and denied immediate injunctive relief.⁷ Judge Kopf was reluctant to interfere with the impending election: "Properly run elections are not like faucets. They cannot be turned on and off at will."⁸ Also, Nebraska's supreme court had yet to rule on the case's merits but it had indicated that if the lower court judge's ruling was in error then the initiative

1. [Complaint](#), *Anderson v. Gale*, No. 4:02-cv-3257 (D. Neb. Sept. 23, 2002), D.E. 1; *see* Butch Mabin, *Gambling Supporters File Federal Lawsuit*, Lincoln J. Star, Sept. 24, 2002, at A1.

2. [Loontjer v. Robinson](#), 266 Neb. 902, 903, 670 N.W.2d 301, 303 (2003).

3. [Docket Sheet](#), *Anderson*, No. 4:02-cv-3257 (D. Neb. Sept. 23, 2002).

4. [Order](#), *id.* (Sept. 23, 2002), D.E. 4.

Tim Reagan interviewed Judge Kopf for this report by telephone on September 10, 2013.

5. Interview with Hon. Richard G. Kopf, Sept. 10, 2013.

6. [Intervention Motion](#), *Anderson*, No. 4:02-cv-3257 (D. Neb. Sept. 24, 2002), D.E. 5; *see* Leslie Reed, *Gambling Foes Seek to Intervene in Suit*, Omaha World-Herald, Sept. 25, 2002, at 2B.

7. [Opinion](#), *Anderson*, No. 4:02-cv-3257 (D. Neb. Sept. 25, 2002), D.E. 12; [Minutes](#), *id.* (Sept. 25, 2002), D.E. 11; *see* Butch Mabin, *Judge Denies Gaming Petition*, Lincoln J. Star, Sept. 26, 2002, at A1; Leslie Reed, *Ruling Ends Slot Fans' 2002 Effort*, Omaha World-Herald, Sept. 26, 2002, at 1A.

8. [Opinion](#), *supra* note 7, at 2.

could be placed on a subsequent ballot.⁹ Perhaps most importantly, Judge Kopf found no constitutional violation in restricting ballot initiatives to one subject.¹⁰

On November 8, Judge Kopf granted the plaintiffs' October 16 motion to dismiss their complaint without prejudice.¹¹

On October 24, 2003, Nebraska's supreme court determined that "the petition was legally insufficient because the sponsors failed to include a sworn statement of their names and street addresses."¹² Three of the court's seven justices also opined that the initiative violated the single-subject rule.¹³

9. *Id.* at 1–2.

10. *Id.* at 2–3.

11. **Judgment**, *Anderson*, No. 4:02-cv-3257 (D. Neb. Nov. 8, 2002), D.E. 17; see **Motion**, *id.* (Oct. 16, 2002), D.E. 16.

12. **Loontjer v. Robinson**, 266 Neb. 902, 903, 670 N.W.2d 301, 303 (2003); see Leslie Reed, *High Court Keeps Slots Off Ballot*, *Omaha World-Herald*, Oct. 24, 2003, at 1A.

13. **Loontjer**, 266 Neb. at 912–20, 670 N.W.2d at 309–14 (Hendry, concurring in the result); *id.* at 920–27, 670 N.W.2d at 314–19 (Wright and Gerrard, concurring); see Robynn Tysver, *Court Kills Gambling Petition*, *Omaha World-Herald*, Oct. 25, 2003, at 1A.