

Breaking an Initiative Into Separate Subjects Is Content Neutral

Committee to Impose Term Limits on the Ohio Supreme Court and to Preclude Special Legal Status for Members and Employees of the Ohio General Assembly v. Ohio Ballot Board (James L. Graham, S.D. Ohio 2:16-cv-1030)

Proponents of a state constitutional-amendment initiative filed a federal complaint alleging that the state's breaking the two provisions of the proposed initiative into separate initiatives was impermissibly content based. The district court and the court of appeals held that it was content neutral.

Subject: Ballot measures. *Topics:* Ballot language; ballot measure.

The Committee to Impose Term Limits on the Ohio Supreme Court and to Preclude Special Legal Status for Members and Employees of the Ohio General Assembly and three members of the committee filed a federal complaint in the Southern District of Ohio on Wednesday, October 26, 2016, challenging the constitutionality of government review of their proposed constitutional amendment to (1) impose term limits on the state's supreme-court justices and (2) apply Ohio laws to members of the state's general assembly, specifically challenging the authority of Ohio election officials to separate the proposal into two separate initiatives.¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction, noting that they had submitted their proposed initiative that day, and a ten-day review period was therefore beginning.²

Judge James L. Graham set the case for a telephone conference on Friday.³ Following the conference, Judge Graham ordered briefing completed by Tuesday.⁴ On Thursday, November 3, Judge Graham denied the plaintiffs immediate relief.⁵ "Here, no material facts are in dispute; the Court need not make any

1. Complaint, *Comm. to Impose Term Limits on the Ohio Supreme Court & to Preclude Special Legal Status for Members and Emps. of the Ohio Gen. Assembly v. Ohio Ballot Bd.*, No. 2:16-cv-1030 (S.D. Ohio Oct. 26, 2016), D.E. 1; *Comm. to Impose Term Limits on the Ohio Supreme Court & to Preclude Special Legal Status for Members and Emps. of the Ohio Gen. Assembly v. Ohio Ballot Bd.*, 275 F. Supp. 3d 849, 853–54 (S.D. Ohio 2017); *Comm. to Impose Term Limits on the Ohio Supreme Court & to Preclude Special Legal Status for Members and Emps. of the Ohio Gen. Assembly v. Ohio Ballot Bd.*, 218 F. Supp. 3d 589, 590 (S.D. Ohio 2016).

2. Motion, *Committee*, No. 2:16-cv-1030 (S.D. Ohio Oct. 26, 2016), D.E. 2; *Committee*, 275 F. Supp. 3d at 853–54; *Committee*, 218 F. Supp. 3d at 590–92.

3. Docket Sheet, *Committee*, No. 2:16-cv-1030 (S.D. Ohio Oct. 26, 2016) (notice, D.E. 7); *see Committee*, 218 F. Supp. 3d at 592.

4. Order, *Committee*, No. 2:16-cv-1030 (S.D. Ohio Oct. 28, 2016), D.E. 8.

5. *Committee*, 218 F. Supp. 3d 589.

credibility determinations. Neither Plaintiffs nor Defendants request a hearing. Therefore, the Court will decide the motion for [temporary restraining order] and preliminary injunction on the briefs.”⁶

Although a decision by election officials to break a proposed initiative into separate initiatives for its separate provisions considers the content of the proposed initiative, it is content neutral and not unconstitutional.⁷

On July 28, 2017, Judge Graham dismissed an amended complaint.⁸ The court of appeals affirmed this decision on March 20, 2018.⁹

6. *Id.* at 592.

7. *Id.* at 592–96.

8. *Comm. to Impose Term Limits on the Ohio Supreme Court & to Preclude Special Legal Status for Members and Emps. of the Ohio Gen. Assembly v. Ohio Ballot Bd.*, 275 F. Supp. 3d 849 (S.D. Ohio 2017); *see Committee*, No. 2:16-cv-1030 (S.D. Ohio Dec. 6, 2016), D.E. 14 (adding a petition signer as a plaintiff).

9. *Comm. to Impose Term Limits on the Ohio Supreme Court & to Preclude Special Legal Status for Members and Emps. of the Ohio Gen. Assembly v. Ohio Ballot Bd.*, 885 F.3d 443 (6th Cir. 2018).