

Overturning State-Court Blocking of a Ballot Initiative

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

Supporters of a ballot initiative filed a federal complaint seeking relief from a state-court invalidation of the initiative as concerning more than one subject. On the day that the complaint was filed, the federal judge held a conference call with the parties and scheduled a hearing for two days later. The judge denied immediate relief so as to not interfere unduly with the coming election and because he found no constitutional problem with the one-subject rule.

Subject: Ballot measures. *Topics:* Ballot measure; getting on the ballot; intervention; matters for state courts.

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 that 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 received a motion for a temporary restraining order, it was 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

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.

On September 25, Judge Kopf granted intervention and denied immediate injunctive relief.⁷ He 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 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

Nebraska’s supreme court determined on October 24, 2003, 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

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.

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 (Chief Justice John V. Hendry, concurring in the result); *id.* at 920–27, 670 N.W.2d at 314–19 (Justices John F. Wright and John Gerrard, concurring); see Robynn Tysver, *Court Kills Gambling Petition*, Omaha World-Herald, Oct. 25, 2003, at 1A.