

## State v. Gideon2020-Ohio-5635

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# Ohio Northern University Law Review

## Student Case Notes

### State v. Gideon 2020-Ohio-5635

#### I. INTRODUCTION

Under the United States Constitution, citizens have the right to be free from self-incrimination.<sup>1</sup> Case law regarding criminal suits in which confessions from the accused arise from coercive situations suggest that these confessions should not be admissible based on a violation of the Fifth Amendment.<sup>2</sup> Courts have decided that during investigations or interrogations, an investigator engages in coercion when using “interrogation practices which are likely to exert such pressure upon an individual as to disable him from making a free and rational choice.”<sup>3</sup> Because involuntary confessions from the criminally accused reflect a deprivation of their constitutional rights at the hands of a public official, courts will find coercion present when this public official physically or severely emotionally harms the accused in order to obtain a confession.<sup>4</sup>

If courts cannot find these concrete instances of coercion, however, they still will not automatically assume that an accused confessed to wrongdoing

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1. U.S. CONST., amend. V.

2. *See also* *Garrity v. State of New Jersey*, 385 U.S. 493, 494, 500 (1967) (holding that a public official who threatened police officers with loss of employment for invoking their Fifth Amendment privilege from self-incrimination engaged in coercion and deprived the officers of their Due Process rights).

3. *Miranda v. Arizona*, 384 U.S. 436, 464-65 (1966).

4. *Miranda*, 384 U.S. at 508 (Harlan, J., dissenting).

voluntarily.<sup>5</sup> Rather, a court may find that threatening an employee's job or even failing to tell the accused of their rights may constitute coercion so as to justify suppressing confessions in subsequent criminal trials.<sup>6</sup> The Supreme Court of Ohio heard such a claim on appeal in *State v. Gideon*,<sup>7</sup> wherein the convicted Defendant challenged the Court to find his confession of wrongdoing inadmissible because the state's medical-board investigator allegedly coerced the Defendant into making this confession.<sup>8</sup> Although the Court did agree that the investigator's interactions with the Defendant were subjectively coercive to the defendant, the Court held that the investigator's actions were not objectively coercive enough to rise to the level of a constitutional violation that would render the defendant's confession inadmissible.<sup>9</sup>

## II. FACTUAL AND PROCEDURAL BACKGROUND

Dr. James Gideon, a rheumatologist, was accused the misdemeanor crime of sexual imposition by three of his patients.<sup>10</sup> The state's medical-board and local police conducted separate investigations, and while Gideon denied misconduct to the police, he admitted to the allegations to the medical-board investigator.<sup>11</sup> Because the medical-board possessed the authority to report findings to the police, the police used the defendant's confession to the investigator against him during trial.<sup>12</sup> Although Gideon moved for suppression of his confession under the theory that it was obtained coercively, the trial court denied this motion.<sup>13</sup> Subsequently, the court found him guilty of the charges against him.<sup>14</sup>

On appeal, the Third District reversed the decision because the Defendant alleged he made his confession of sexually touching his patients because he believed that failing to answer the investigator's questions would result in his losing his license.<sup>15</sup> Using the United States Supreme Court's decision *Garrity v. State of New Jersey*, the court determined that a public official such as the medical-board investigator who received a confession from the defendant "under threat of job loss" had coerced the defendant into giving

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5. See also *Garrity*, 385 U.S. at 497-98 (suggesting that state actors may still coerce the accused into confessions by threatening economic or property loss rather than threatening physical or emotional harm).

6. *Id.* at 497, 500; *Garrity*, 385 U.S. at 505 (Harlan J., dissenting).

7. *State v. Gideon*, Slip Opinion No. 2020-Ohio-5635, ¶ 1.

8. *Id.*

9. *Id.* at ¶ 16, 24.

10. *Id.* at ¶ 3.

11. *Gideon*, slip op. at ¶ 3.

12. *Id.*

13. *Id.* at ¶ 4.

14. *Id.*

15. *Gideon*, slip op. at ¶ 5.

such a confession.<sup>16</sup> The court made this determination despite the fact that the investigator did not explicitly tell the defendant that he would lose his medical license for failure to answer the investigator's questions.<sup>17</sup>

### III. MAJORITY OPINION

In its reexamination of the case, the Court separately addressed the defendant's two issues on appeal.<sup>18</sup> The first issue addressed the constitutionality of the medical-board investigator's methods for obtaining the defendant's confession during the state's investigation of the allegations against the defendant.<sup>19</sup> Essentially, the Defendant argued that the medical-board unconstitutionally obtained his confession because he only gave it to the investigator under the notion that he had a "statutory duty" to answer the investigator's questions.<sup>20</sup> This coercion, the Defendant suggested, was a violation of his Fifth Amendment privilege from self-incrimination.<sup>21</sup>

While the Court noted that the right to silence was one that typically must be claimed by a defendant, it acknowledged that "an assertion of the privilege against self-incrimination is not required" when constitutional rights are at issue.<sup>22</sup> If the Defendant had been coerced into giving a confession then he did not necessarily have to assert his right to be silent because his constitutional rights would have been violated.<sup>23</sup> Thus, the Court first had to address whether the Defendant had been coerced into his confession.<sup>24</sup> In its analysis, the Court acknowledged that the defendant's answers or lack thereof to the medical-board investigator's questions could result in the termination or suspension of the defendant's medical license.<sup>25</sup> Had the investigator told the Defendant that a failure to answer questions could affect the defendant's employment status, these actions would undoubtedly have been coercive in nature.<sup>26</sup> This suggestion is especially apparent from the Supreme Court's holding in *Garrity*, in which the defendant police officers had been warned that refusing to cooperate in an investigation of their conduct would result in termination of employment.<sup>27</sup> Because this threat was a form of coercion that violated the officers' Fifth Amendment privileges against self-incrimination,

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16. *Id.* (citing *Garrity*, 385 U.S. at 500).

17. *Id.* at ¶ 15.

18. *Id.* at ¶ 7.

19. *Gideon*, slip op. at ¶ 8.

20. *Id.* at ¶ 5.

21. *Id.* at ¶ 7.

22. *Id.* at ¶ 10 (citing *Chavez v. Martinez*, 538 U.S. 760, 770 (2003)).

23. *Gideon*, slip op. at ¶¶ 10-11.

24. *Id.* at ¶ 10.

25. *Id.* at ¶ 13.

26. *Id.* at ¶ 14.

27. *Gideon*, slip op. at ¶ 11.

the Supreme Court held that these confessions were inadmissible in trials against the defendants.<sup>28</sup>

Because the medical-board investigator did not make such a threat, however, the Court could not directly apply the *Garrity* holding to the current case.<sup>29</sup> In fact, the Supreme Court of Ohio differentiated the case at bar from *Garrity* in a number of ways, including the fact that Gideon as a private physician was not a “public employee,” that he had not been threatened with loss of his job for failure to participate in the medical-board’s investigation, and that the state nonetheless had a right to revoke his license based on his answers to the medical-board investigator’s questions.<sup>30</sup> Although the Defendant argued that *Garrity* was the proper case to compare to his on appeal, the Court instead decided that a different case, *State v. Graham*,<sup>31</sup> would be more applicable given the circumstances.<sup>32</sup> Because that case used “an ‘objectively reasonable’ ‘subjective belief’ test,” the Court determined that Gideon’s confession to the medical-board investigator was only inadmissible if he had both a subjective belief that a failure to answer the investigator’s questions could result in the revocation of his medical license and that this belief was “objectively reasonable.”<sup>33</sup>

The Court acknowledged that the Defendant did possess a subjective belief that his medical license was at risk if he did not answer the medical-board investigator’s questions, but found that he did not present evidence of having an objectively reasonable belief that this result would occur.<sup>34</sup> The Court noted that the investigator never told the Defendant that a failure to cooperate with the investigation or a decision to remain silent during questioning would lead to the loss of his medical license.<sup>35</sup> While the Defendant argued that his knowledge of his statutory duty to comply with the medical-board’s investigation was coercive given the disciplinary measures the statute prescribed for a failure to cooperate with the investigation, the Court rejected this argument because the statute did not automatically impose a penalty for a doctor’s failure to comply with statutory guidelines.<sup>36</sup> While not dispositive of the defendant’s mindset during the investigation, the Court

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28. *Id.*

29. *Id.* at ¶¶ 12, 15.

30. *Id.* at ¶ 12-13, 15.

31. *State v. Graham*, 136 Ohio St.3d 125, 2020-Ohio-6961, 991 N.E.2d 1116 (2013).

32. *Gideon*, slip op. at ¶ 15.

33. *Graham*, 136 Ohio St.3d at 130-31, 2020-Ohio-6961, 991 N.E.2d at 1122 (2013); *Gideon*, slip op. at ¶ 15.

34. *Id.* at ¶ 18.

35. *Id.*

36. *Id.* at ¶ 19.

finally noted that the Defendant chose not to reschedule his meeting with the investigator and that he quickly confessed to the allegations against him.<sup>37</sup>

Despite these considerations, the Court concluded this first issue on appeal by repeating that under different circumstances, a threat to revoke one's employment if they remained silent during an investigation would be coercive in nature.<sup>38</sup> Moreover, the defendant's medical license was technically property, and threats to deprive him of said property would be a Fourteenth Amendment violation.<sup>39</sup> And the inadmissibility of his confession would have been appropriate had the defendant's fear of losing his medical license for refusing to answer the investigator's questions been objectively reasonable.<sup>40</sup> Because the defendant's subjective belief was not objectively reasonable, the Court reversed the Third District's decision in order to reinstate the trial court's decision to deny the defendant's motion to suppress his confession.<sup>41</sup>

Because the Court of Appeals reversed the trial court's decision based on the defendant's appeal regarding his motion to suppress, it did not consider his second point of appeal—that one count of sexual imposition did not have enough evidence to properly convict the defendant.<sup>42</sup> Because the Supreme Court of Ohio believed that there may not have been enough evidence regarding this claim to prove that the Defendant was guilty beyond a reasonable doubt, it likewise reversed the Third District's dismissal of this point of appeal.<sup>43</sup>

#### IV. DISSENT

The dissenting opinion argued that the defendant's subjective belief that invoking his right to remain silent would result in the loss of his medical license was one that was likewise objectively held.<sup>44</sup> Instead, the dissent suggested that the medical-board investigator's actions were coercive on a subjective and objective level, thus invoking the need for suppression of the defendant's confessions.<sup>45</sup>

Using the Court of Appeal's opinion to bolster this argument, the dissent emphasized the fact that the medical-board investigator worked closely with local police during his own investigation.<sup>46</sup> Additionally, the investigator

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37. *Gideon*, slip op. at ¶ 21.

38. *Id.* at ¶ 24.

39. *Id.* at ¶ 14, 24.

40. *Id.* at ¶ 24.

41. *Gideon*, slip op. at ¶ 1.

42. *Id.* at ¶ 2.

43. *Id.* at ¶ 29.

44. *Gideon*, slip op. at ¶ 31 (Donnelly, J., dissenting).

45. *Id.* at ¶¶ 31-32.

46. *Id.* at ¶ 32.

appeared to conduct his investigation, not only to further his own work for the state medical board, but also to help the local police secure a conviction against the defendant.<sup>47</sup> According to the Court of Appeals' opinion, the medical-board investigator strongly encouraged the Defendant to work with the local police and to provide law enforcement with the same confessional information that the Defendant provided to the investigator during the separate medical-board investigation.<sup>48</sup> The dissent argued that the medical-board investigator was within his statutory rights to "share information with" the local police but still acted coercively by participating in a "joint investigation" with the local police.<sup>49</sup> Because of these various observations, the dissent would instead have affirmed the Third District's granting of the motion to suppress the defendant's confessions given during the medical-board investigation.<sup>50</sup>

## V. ANALYSIS

### a. Introduction

The majority opinion correctly concluded that in this particular instance, a reasonable person in the defendant's position could not have objectively believed that invoking the privilege against self-incrimination during a state-regulated medical-board investigation would automatically result in the loss of one's medical license.<sup>51</sup> This conclusion especially appears to be accurate when considering other cases regarding similar circumstances in which those filing motions for suppression never experienced express threats on their employment statuses.<sup>52</sup> However, while appropriate in this situation, the analyses employed by the Supreme Court of Ohio in this decision could prove to be too restrictive in future cases, and it may instead be appropriate for Ohio to adopt a different test for analyzing cases involving the right to be free from self-incrimination.<sup>53</sup>

The importance of the right to remain silent cannot be overstated. However, the majority rightly reversed the Third Circuit's holding that the Defendant in *Gideon* has been coerced into his confession.<sup>54</sup> A state

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47. *Id.*

48. *Gideon*, slip op. at ¶ 33 (Donnelly, J., dissenting).

49. *Id.* at ¶ 34.

50. *Id.* at ¶ 36.

51. *Gideon*, slip op. at ¶ 24 (majority opinion).

52. See also *People v. Sapp*, 934 P.2d 1367, 1372 (1997) (stating that "in non-automatic penalty situations. . . ordinary job pressures, such as the possibility of discipline or discharge for subordination, are not sufficient to support an objectively reasonable expectation for discharge.").

53. *Gideon*, slip op. at ¶ 20 (referencing the "totality of the circumstances" test for possible Fifth Amendment violation cases).

54. *Id.* at ¶ 1.

investigator who does not expressly threaten an individual’s employment status for failure to cooperate in an investigation is not acting objectively coercively.<sup>55</sup> That being said, the implication drawn from this case’s conclusion is a sobering one—the fact that one could possess the statutory authority to enact such a punishment and encourage an employee to confess to unlawful actions in order to avoid further criminal charges without violating this employee’s Fifth Amendment rights is not necessarily a logical nor a seemingly fair result.<sup>56</sup> Rather, it may prove to be harmful to the individual rights of citizens.<sup>57</sup> This note addresses these concerns and agrees that (1) the defendant’s confession was not received as a result of the investigator’s coercive actions under the *Graham* “objectively reasonable subjective belief” test,<sup>58</sup> but that (2) a “totality of the circumstances” test rather than the ““objectively reasonable” “subjective belief”“ test may be more appropriate when analyzing possible Fifth Amendment claims.<sup>59</sup>

*1. The defendant’s confession was not received as a result of the investigator’s coercive actions under the Graham “subjective-objective” test.*

The Supreme Court of Ohio noted in its analysis that the Defendant possessed a subjective belief that deciding to invoke his right to remain silent during the medical-board’s investigation could result in the loss of his medical license.<sup>60</sup> This belief, however, did not rise to the level of “objectively reasonable” so as to justify suppressing the evidence of his confession during the criminal proceedings against him.<sup>61</sup> Based on the circumstances of this specific case, as well as prior case law regarding similar subject material, the Court came to the correct conclusion.<sup>62</sup> As noted

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55. *Id.* at ¶ 18.

56. *Id.* at ¶ 19.

57. *Gideon*, slip op. at ¶ 10.

58. *Id.* at ¶ 15 (quoting *Graham*, 136 Ohio St.3d at 125, 2020-Ohio-6961, 991 N.E.2d at 1116 (2013)).

59. Compare with *State v. Aiken*, 646 S.E.2d 222, 225 (2007) (finding that *Garrity*’s treatment of Fifth Amendment coercion cases, in which courts examine the totality of the circumstances surrounding the interrogation of an employee, is more appropriate than a two-prong test examining the subjectivity and objectivity of an employee’s belief that coercion exists); *Garrity*, 385 U.S. at 500 (holding that the threat of job loss in response to an employee’s silence during questioning is sufficient to find coercion); and *Zeigler v. State*, 830 S.E.2d 256, 259-60 (2019) (echoing *Aiken*’s assertion that an employee’s notice of a statute prescribing disciplinary measures for invocation of one’s Fifth Amendment rights is evidence of coercive measures under a totality of the circumstances).

60. *Gideon*, slip op. at ¶ 16.

61. See also *id.* (noting the fact that the Defendant chose not to leave the interview early and refused to reschedule the interview when he was free to do so indicated that he did not feel coerced into giving a confession).

62. *Id.* at 21. Compare with *Aiken*, 646 S.E.2d at 227 (holding that threatening an employee’s employment, refusing to read the employee their *Miranda* rights, and not telling employee that they were



previously, the Court found little indication that the Defendant felt coerced into giving his confession to the investigator.<sup>63</sup> Not only did the Defendant willingly give his confession within the first twenty minutes of his interview with the investigator, but he also declined offers to postpone the questioning.<sup>64</sup> Although the defendant's conduct during the interview could not be the only indicator for a lack of coercion, the Court used this evidence to strengthen its belief that another reasonable person in the defendant's situation would not have believed that they were being forced to answer questions in order to keep their employment.<sup>65</sup>

In addition to the specific circumstances surrounding this case which pointed to a lack of coercive action on the part of the medical-board investigator, the Court likewise took prior case law into consideration during its analysis.<sup>66</sup> The Supreme Court of Ohio found *Graham* to be the most applicable case to the case at bar, using the test introduced in that case for its analysis of *Gideon*.<sup>67</sup> In that case, the Court determined that the statements made by the defendant during an investigation regarding his unlawful issuance of a state hunting license to an out-of-state individual had to be suppressed during a separate criminal proceeding.<sup>68</sup> The Court made this determination because the defendant only confessed to this action when he was told that answers to the investigation could result in criminal charges against him.<sup>69</sup> In its reasoning, the Court explained that a threat of coercion that is objectively reasonable may be satisfied by "evidence of an express threat of termination or a statute, rule, or policy demanding termination."<sup>70</sup>

The Supreme Court of Ohio correctly concluded that this objective standard of review was not met in *Gideon*.<sup>71</sup> Although the Court acknowledged that the Defendant was aware that he had a statutory duty to comply with investigations, the mere presence of a statutory duty did not compel him to confess to the allegations against him.<sup>72</sup> According to the Court, "discipline" for violating the statute "is not automatic," and must instead be invoked by a medical-board vote.<sup>73</sup> In the event that discipline for a statutory violation is appropriate, revocation of a medical license is not the

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free to leave the interview, were actions that rose to the level of coercion so as to justify suppressing the employee's confession).

63. *Gideon*, slip op. at ¶ 21.

64. *Id.*

65. *Id.* at ¶ 24.

66. *Id.* at ¶ 15.

67. *Id.* at ¶ 15.

68. *Graham*, 136 Ohio St.3d at 125, 133, 2020-Ohio-6961, 991 N.E.2d at 1117, 1124.

69. *Id.* at 126, 2020-Ohio-6961, 991 N.E.2d at 1118.

70. *Id.* at 131, 2020-Ohio-6961, 991 N.E.2d at 1122.

71. *Gideon*, slip op. at ¶ 24.

72. *Id.* at ¶¶ 5, 19.

73. *Id.* at ¶ 19.

only possible punishment.<sup>74</sup> Based on the Court’s treatment of prior cases handling similar issues, it appears as if the mere presence of a statute that could punish an employee for invoking the privilege against self-incrimination does not rise to the level of coercion that the Defendant in *Gideon* suggested it did.<sup>75</sup>

Moreover, the Court’s differentiation of the present case from *Garrity* emphasized the fact that the Defendant in *Gideon* experienced a lesser degree of pressuring than those in *Garrity* felt.<sup>76</sup> While the *Graham* test used in this case was not used in *Garrity*, it is nonetheless true that the defendants in *Garrity* would have satisfied the “subjective-objective belief” test found in *Graham*.<sup>77</sup> For example, the Attorney General in *Garrity* explicitly told the defendants that while they had the right to remain silent, their silence would leave them “subject to removal from office.”<sup>78</sup> The Supreme Court noted that when a situation such as this arises, an employee no longer possesses the right to be free from self-incrimination.<sup>79</sup> It specifically wrote, “[t]he choice given to [defendants] was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent.”<sup>80</sup>

At no point during the medical-board investigator’s questioning of the Defendant in *Gideon* did the Defendant hear that he could lose his medical license for his failure to cooperate in the investigation.<sup>81</sup> While it was possible that the Defendant believed this outcome to be implied from the investigator’s conduct during their interactions, the Court reiterated its belief that coercion justifying suppression of a confession was only objectively reasonable if the investigator told the Defendant that he could lose his employment status based on the defendant’s answers during the questioning.<sup>82</sup> Because the subjective-objective belief test was the one the Supreme Court of Ohio chose to employ during this analysis, the defendant’s failure to meet both prongs of this test necessarily meant that he had not been coerced into confessing to the allegations against him.<sup>83</sup>

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74. *Id.*

75. *Gideon*, slip op. at ¶ 17. *See also Graham*, 136 Ohio St.3d at 125, 130, 2020-Ohio-6961, 991 N.E.2d at 1117, 1122 (suggesting that more concrete evidence of coercion, aside from the possibility that an employee may be punished for uncooperating, is needed before a court will find that coercion is present in a confession).

76. *Id.* at ¶ 15.

77. *Garrity*, 385 U.S. at 494.

78. *Id.*

79. *Id.* at 497-98.

80. *Id.* 497.

81. *Gideon*, slip op. at ¶ 15.

82. *Id.* at ¶ 24.

83. *Id.*

2. A “totality of the circumstances” test rather than a “subjective-objective belief” test may be more appropriate when analyzing possible Fifth Amendment violation claims.

Despite the Court’s well-reasoned explanation as to why the Defendant in *Gideon* had not experienced a level of coercion that would have deprived him of his Fifth Amendment privilege against self-incrimination, the Court’s application of the subjective-objective belief test may prove to be too restrictive an approach in future analyses.<sup>84</sup> Instead, the Supreme Court of Ohio could have followed the example of the Supreme Court of the United States and other state courts—as well as its own—and applied a “totality of the circumstances” analysis to a possible Fifth Amendment violation claim.<sup>85</sup> This approach, which would ask the Court to take into consideration a number of factors, such as “whether the State actor made an overt threat to the defendant of the loss of his job if he did not speak with investigators,” whether a statutory violation would lead to loss of employment, whether the employee believed they would lose their job based on communication with an investigator, and whether the employee felt as if they were free to leave during the investigation.<sup>86</sup> This test would also help to quell concerns about whether an employee even realizes they have a right to be from self-incrimination,<sup>87</sup> as courts could take other factors into consideration other than the explicit conduct of public officials during investigations.<sup>88</sup>

Facially, though, this “totality of the circumstances” test appears similar to the “subjective-objective belief” test employed in *Gideon*.<sup>89</sup> However, the Supreme Court of Georgia specifically chose to adopt the former test because of its adherence to the SCOTUS reasoning in *Garrity*.<sup>90</sup> Additionally, this Court noted that the totality of the circumstances test would give courts “the discretion . . . historically enjoyed in determining whether a defendant’s statement is voluntary.”<sup>91</sup>

In Ohio, the Supreme Court adopted the “subjective-objective” test in *Graham*.<sup>92</sup> Of note, however, the Court still took the “totality of the

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84. See also *Aiken*, 646 S.E.2d at 225 (adopting the totality of the circumstances test rather than the two-prong test requiring subjective and objective belief of coercion because the former test was less “narrow”).

85. *Gideon*, slip op. at ¶¶ 20-21; *Garrity*, 385 U.S. at 497-98; *Aiken*, 646 S.E.2d at 226; *Graham*, 136 Ohio St.3d at 131, 2020-Ohio-6961, 991 N.E.2d at 1122.

86. *Aiken*, 646 S.E.2d at 225.

87. Peter Westen, Case Note, *Answer Self-Incriminating Questions or Be Fired*, 37 AM. J. CRIM. L. 97, 154 (2010).

88. *Gideon*, slip op. at ¶ 15.

89. See also *id.* at ¶¶ 20-21 (noting that the trial court considered the “totality of the circumstances” when deciding to deny the defendant’s motion to suppress).

90. *Aiken*, 646 S.E.2d at 225.

91. *Id.* at 226.

92. *Graham*, 136 Ohio St.3d at 130-31, 2020-Ohio-6961, 991 N.E.2d at 1122.

circumstances” into consideration during its analysis even though it claimed to be adopting a two-prong test from a D.C. Circuit Court of Appeals case.<sup>93</sup> In the opinion, the Ohio Supreme Court stated that it was adopting this test because it considered the “totality of the circumstances.”<sup>94</sup> Within its analysis, the Court in *Graham* did examine various factors such as explicit statements made by a state official during an investigation as well as the presence of a statute the violation of which would deprive one of their employment.<sup>95</sup> In fact, the Supreme Court in *Graham* chose to grant a motion of suppression because the defendants had received investigation notices that informed the defendants that failing to comply with the investigator could lead to the loss of their employment.<sup>96</sup> The Court chose to suppress confessions on that basis alone, even though the investigator had never threatened the employees’ job statuses.<sup>97</sup>

With the Supreme Court of Ohio’s decision in *Gideon*, the “subjective-objective” test was extended to what may be an unintended reach. As noted previously in this note, neither the statute in question nor the medical-board investigator in *Gideon* explicitly threatened the defendant’s medical license or employment.<sup>98</sup> Because of this fact, denial of the defendant’s motion to suppress was appropriate.<sup>99</sup> However, the Court’s reference to a “totality of the circumstances” analysis occurred only once in the opinion and only in relation to the defendant’s own conduct during the investigation, not in relation to the presence of a statute or the investigator’s conduct as prior case law would prescribe.<sup>100</sup>

Of course, had the Court considered additional factors from the “totality of the circumstances” test, it would have likely come to the same conclusion, that the defendant did not feel coerced into making a confession.<sup>101</sup> Applying this different standard of review may only serve to benefit future analyses of Fifth Amendment concerns regarding coercion. At present, the “subjective-objective belief” test faces the risk of being too restrictive.<sup>102</sup> In *Gideon*, for example, the Court’s main reasoning as to why the Defendant had not been coerced into making his confession was due to the lack of explicit threats to his employment.<sup>103</sup> While the Court only mentioned these facts briefly, a

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93. *Id.* at 131, 2020-Ohio-6961, 991 N.E.2d at 1122 (adopting *United States v. Friedrich*, 842 F.2d 382 (1988)).

94. *Id.* at 131, 2020-Ohio-6961, 991 N.E.2d at 1122.

95. *Id.* at 131, 2020-Ohio-6961, 991 N.E.2d at 1122.

96. *Graham*, 136 Ohio St.3d at 127-28, 2020-Ohio-6961, 991 N.E.2d at 1119.

97. *Id.* at 128, 2020-Ohio-6961, 991 N.E.2d at 1120.

98. *Gideon*, slip op. at ¶ 18.

99. *Id.* at ¶ 24.

100. *Id.* at ¶ 20-21; *Graham*, 136 Ohio St.3d at 131, 2020-Ohio-6961, 991 N.E.2d at 1122.

101. *Gideon*, slip op. at ¶ 24.

102. *Aiken*, 646 S.E.2d at 225.

103. *Gideon*, slip op. at ¶¶ 15, 18.

more convincing argument to disprove coercion would include facts such as that the Defendant refused to reschedule a meeting and that he quickly confessed to allegations against him.<sup>104</sup>

Under the “totality of the circumstances” test, these factors would be weighed more evenly with the ones used for the “objective” prong of the *Graham* test.<sup>105</sup> This somewhat more lenient standard would give courts the ability to make determinations based on the specific and relevant set of facts at bar rather than on a rigid test.<sup>106</sup> Perhaps more importantly, an adoption of this test would also give courts the liberty to find coercion in circumstances in which a state official does not explicitly threaten punishment for silence but certainly implies it.<sup>107</sup> This test appears to be the one that would give citizens the greatest amount of protection regarding one of their most important constitutional rights.<sup>108</sup>

## VI. CONCLUSION

The Supreme Court of Ohio’s decision to deny a motion to suppress the defendant’s confession in *Gideon* was not an unimaginable application of principles already employed by the state in cases with similar issues.<sup>109</sup> Indeed, the Court almost certainly came to the correct conclusion that the Defendant had not been coerced into giving his testimony to the medical-board investigator.<sup>110</sup> However, the decision raises a possible concern that the Court is leaning toward a more restrictive approach when analyzing claims alleging violations of the privilege against self-incrimination.<sup>111</sup> Because the right to remain silent is one that is vulnerable to exploitation or nonconsensual waiver when employees are concerned that their jobs are at stake, a more lenient approach to analyzing these claims may be more fitting.<sup>112</sup>

The differences between the “subjective-objective belief” test, a two-prong test, and the “totality of the circumstances” test, a multi-factored test, are not extensive.<sup>113</sup> The biggest change from the former to the latter would simply be a more case-specific approach to analyzing motions to suppress

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104. *Id.* at ¶ 21.

105. *See also Aiken*, 646 S.E.2d at 225 (listing factors for courts to take under consideration when employing the totality of the circumstances test for coercion).

106. *Id.* at 226 (“A trial court, of course, is free to consider any other factor that it determines is relevant to the determination of voluntariness”).

107. *Id.* at 224, 226.

108. *Gideon*, slip op. at ¶ 10.

109. *Id.* at ¶ 15-17, 24.

110. *Id.* at ¶ 24.

111. *Gideon*, slip op. at ¶ 31 (Donnelly, J., dissenting).

112. *Gideon*, slip op. at ¶ 11 (majority opinion).

113. *Id.* at ¶¶ 20-21.

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confessions.<sup>114</sup> The risk of employees taking advantage of their Fifth Amendment rights does not appear to outweigh the benefits of taking more factors into consideration when weighing an employee’s claim. Ultimately, the “totality of the circumstances” test seems to be the fairer approach, and a transition to it—or rather, a return to it—would not be difficult to accomplish.<sup>115</sup>

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114. *Aiken*, 646 S.E.2d at 225-26.

115. *Graham*, 136 Ohio St.3d at 131, 2020-Ohio-6961, 991 N.E.2d at 1122.