

Unions Fight Back Against Missouri Right-to-Work Law

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On February 6, 2017, [Missouri Governor Eric Greitens signed Senate Bill 19](#), making Missouri our nation's 28th right-to-work state. Senate Bill 19, codified as Section 290.590 of the Missouri Revised Statutes (RSMo), was scheduled to take effect on August 28, 2017. The unions, fearing significant revenue losses, mounted petition drives to reverse the actions of the legislature and governor. On Friday, August 18, 2017, Missouri Secretary of State Jay Ashcroft's office reported that the unions filed one type of petition: a referendum intended to submit approval of the statute to the voters in November 2018. Meanwhile, attempts to also submit state constitutional amendments to the voters, by initiative petition, appear to remain ongoing.

Referendum Petition

Referendum Petition 2018-R002 has the objective of submitting to Missouri voters the ballot question of whether to ratify the right-to-work statute. With the referendum petition now on the desk of Secretary of State Ashcroft, per Section 116.120 of RSMo, he must determine whether the referendum petition complies with the Missouri Constitution and with Chapter 116 of RSMo. For example, among other requirements and options, Ashcroft:

- must ascertain whether five percent of the registered voters in six of Missouri's eight congressional districts appear to have signed the referendum petition;
- must ascertain whether the solicitor of the signatures was properly registered with the secretary of state;
- may verify signatures by random sampling; and
- may forward petition pages to local election authorities to verify both that the signatories are indeed registered voters and that the signatures match.

Under Section 116.150, RSMo, after the completion of this process, the secretary of state must issue a certificate approving or rejecting the sufficiency of the referendum petition.

Given the statutory obligations of the secretary of state, this certification process could take some time. As per Missouri Constitution Article III, Section 52(b), once the referendum is “referred to the people,” the right-to-work law only takes effect when the voters have ratified the new law. Given the time it could take for the secretary of state to issue the certification and given the ambiguity of the term “referred to the people,” there may be some question as to what happens during and after the secretary of state’s certification process. There are at least three possibilities:

1. If the certification approving the referendum petition is issued promptly, the right-to-work law will be frozen and will take effect only if the voters approve it in November 2018.
2. If the certification rejecting the referendum petition is issued promptly, the referendum petition will never be “referred to the people,” so right-to-work will be the law of the state as of August 28, 2017.
3. If the certification process drags on for a lengthy time or the approval or rejection of the referendum petition is promptly issued but the secretary of state’s action is challenged in court, citizens would be left in a position of doubt, as there are no cases on the point.

These questions aside, Referendum Petition 2018-R002 seeks placement on the November 6, 2018 general election ballot. If the certification approving the referendum petition is issued promptly and the voters ratify right-to-work, the law’s effectiveness will be delayed for 15 months beyond the intent of the legislature. It is, however, important to note that Missouri Constitution Article III, Section 52(b), specifically provides that the legislature may order a special election. Stated somewhat differently, the legislature could order an expedited election.

The legislature might well order a special, expedited election on the referendum petition for one of two reasons: first, in order to shorten the long 15-month delay before right-to-work can become effective; and secondly, in order to force organized labor to raise money sooner than it might like and to spend it before the 2018 general elections.

Litigation is pending over the language of the ballot title for the referendum petition. The litigation will determine the language voters see at the ballot box if the referendum petition is certified, which may some influence votes but otherwise will not practically impact right-to-work.

Initiative Petitions

The other type of petition pursued by the unions is an initiative petition. Several different versions of initiative petitions are being circulated. Although they vary from one another, each has the objective of amending the Missouri Constitution to nullify the right-to-work law and to prevent the legislature, in the future, from passing right-to-work legislation. Just as with respect to the referendum petition, the initiative petitions have engendered litigation. Unlike the referendum petition, however, the initiative petitions would not freeze the effectiveness of the statute if filed; instead, the constitutional amendments will be submitted to the voters on November 6, 2018, and, if approved by the voters, the constitution will be deemed amended effective December 6, 2018.

At this point, the initiative petitions may or may not gain sufficient support to also be filed with Secretary of State Ashcroft. If any are filed, the Secretary of State will, as with the referendum petition, determine whether the initiative petitions comply with the Missouri Constitution and Chapter 116 of RSMo. In so doing, he would engage in the same certification procedures as he will for the

referendum petition, with one primary exception: for an initiative petition to be sufficient, it must contain valid signatures from eight percent (not five percent) of the registered voters in six of Missouri's eight congressional districts.

Looking Ahead

The fight over right-to-work in Missouri is far from over. The upcoming weeks and months will see the law's supporters and opponents clash in Jefferson City, in the courts, and in counties all over Missouri. Despite uncertainty in the meantime, ultimately the voters themselves likely will decide whether the state's workers should be compelled to pay union dues in order to keep their jobs.

Harrison Kuntz has contributed to this post.

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