

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

NO BANS ON CHOICE, AMERICAN CIVIL
LIBERTIES UNION OF MISSOURI, and
SARA E. BAKER,

Plaintiffs,

v.

JOHN R. ASHCROFT, in his official capacity
as Missouri Secretary of State, 600 West Main
Street, Jefferson City, MO 65101,

Defendant.

Case No. _____

Division: _____

PETITION FOR DECLARATORY RELIEF

Plaintiffs No Bans on Choice, American Civil Liberties Union of Missouri, and Sara E. Baker, bring this action for declaratory relief:

INTRODUCTION

1. On May 28, 2019, Sara E. Baker, on behalf of the American Civil Liberties Union of Missouri, submitted a proposed Referendum Petition to the Missouri Secretary of State seeking to place HB126 on the ballot for 2020 general election. Baker, ACLU-MO, and No Bans on Choice have expended significant time and resources to plan and coordinate a campaign to circulate the HB126 Referendum Petition and collect signatures thereon from legal voters.

2. Secretary Ashcroft illegally rejected the proposed Referendum Petition, and Baker and ACLU-MO filed suit. On July 8, 2019, the Missouri Court of Appeals, Western District, held that the rejection had been unlawful and ordered Secretary Ashcroft to approve the Referendum Petition for circulation. After 4 PM on August 14, 2019, in accordance with the Court's order but

only after using all of his statutorily allotted time to certify an official ballot title and complete other administrative tasks, Ashcroft approved the HB126 Referendum Petition for circulation.

3. While Secretary Ashcroft's earlier illegal rejection of the proposed HB126 Referendum Petition caused a delay not contemplated by law, the statutes he relied upon in July and August 2019 to further postpone the certification of a ballot title are available even under normal circumstances.

4. Although the Missouri Constitution reserves to the people at least 90 days for the collection of signatures on a proposed referendum petition, those statutes take away that constitutional power reserved to the people and award it to the State: they permit State officials to seize up to 51 of those days for completion of their own administrative duties.

5. In particular, RSMo. §§ 116.180 and 116.334.2, which prohibit the people from collecting countable signatures until State officials have finished their referendum-related administrative duties, place impediments on the referendum power that are inconsistent with the reservation set forth in the Missouri Constitution.

6. The right of referendum serves as the people's check on the legislature. The General Assembly may not circumscribe that fundamental right by means of legislation inconsistent with the language of the Constitution. Sections §§ 116.180 and 116.334.2 are inconsistent with Mo. Const. art. III, §§ 49 and 52(a) and should be declared unconstitutional.

JURISDICTION AND VENUE

7. This Court maintains original subject-matter jurisdiction over this action under Missouri Supreme Court Rule 87.01 and RSMo. § 527.010.

8. Venue is proper in this Court because Secretary of State John R. Ashcroft maintains an office in Cole County, Missouri.

PARTIES

9. Plaintiff No Bans on Choice is a 501(c)(4) nonprofit organization created and operating under the laws of the State of Missouri. Amongst its activities is the education of the public on issues of public concern, including reproductive justice, access to health care services for women, and abortion rights.

10. Plaintiff American Civil Liberties Union of Missouri (ACLU-MO) is a 501(c)(4) nonprofit organization created and operating under the laws of the State of Missouri. Amongst its activities is advocacy to protect and advance civil liberties within Missouri in accordance with the federal and Missouri Constitutions.

11. Plaintiff Sara E. Baker is a resident of the State of Missouri.

12. Plaintiffs intend to call a referendum by citizen petition on HB126 and have demonstrated that intent by submitting a valid referendum petition form to the Secretary of State on May 28, 2019; expending considerable time and resources to plan how to collect signatures from voters who desire that HB126 should be referred to the people; coordinating with and training hundreds of volunteers; and circulating the Referendum Petition and collecting signatures after certification of an official ballot title on August 14, 2019.

13. Defendant John R. Ashcroft is sued in his official capacity as the Missouri Secretary of State. As Secretary of State, among other things, Ashcroft is responsible for certifying the official ballot title of a proposed referendum petition.

FACTUAL ALLEGATIONS

14. On May 17, 2019, the Missouri General Assembly passed HB126, which *inter alia* imposes new abortion restrictions.

15. On May 24, 2019, HB126 was signed into law by Governor Parson.

16. On May 28, 2019, Plaintiffs Baker and ACLU-MO submitted a proposed Referendum Petition on HB126.

17. In Art. III, §§ 49 and 52(a), the Missouri Constitution reserves to the people of this State a right of referendum.

18. The right of referendum is fundamental to a functioning democracy.

19. The Missouri Constitution confers upon citizens the right to approve or reject any law passed by the General Assembly except for emergency measures (i.e., those “necessary for the immediate preservation of the public peace, health or safety”) and certain appropriation bills. Mo. Const. art. III, §§ 49, 52(a).

20. Art. III, § 49 of the Missouri Constitution provides that: “The people reserve power to propose and enact or reject laws and amendments to the constitution by the initiative, independent of the general assembly, and also reserve power to approve or reject by referendum any act of the general assembly, except as hereinafter provided.”

21. Art. III, § 52(a) of the Missouri Constitution provides that:

A referendum may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety, and laws making appropriations for the current expenses of the state government, for the maintenance of state institutions and for the support of public schools) either by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state, or by the general assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded.

22. By declaring that the people reserve the referendum power “except as hereinafter provided,” the Missouri Constitution, Art. III, § 49, rejects the notion that the legislature may encumber the people’s referendum power beyond what is contemplated in the Constitution.

23. By setting forth the deadline for filing of a proposed referendum petition with the Secretary of State (“not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded”), the Missouri Constitution, Art. III, § 52(a), ordains that the people will have a specific minimum period of time available for the circulation of a referendum petition and the procurement of signatures.

24. The Missouri Constitution does not contemplate that the people will be required to present their demand for a referendum to the State government *before* circulating a proposed referendum petition or collecting signatures from legal voters.

25. However, under certain provisions of Chapter 116 of the Missouri Revised Statutes, a person who wishes to exercise her fundamental right of referendum must present her proposed referendum petition to the State government twice: *first*, **before** circulating the petition and collecting signatures, she must submit her proposed referendum petition to the Missouri Secretary of State in order to trigger various State administrative actions and ultimately obtain an official ballot title; and *second*, **after** circulating the petition and collecting signatures, she must file her referendum petition with the Missouri Secretary of State in order to verify that the signatures obtained are from legal voters and are sufficient in number.

26. Certain provisions of Chapter 116 provide that State officials—including the Secretary of State, Attorney General, and Auditor—must complete various administrative tasks upon receipt of a proposed referendum petition. These include approval of the petition’s form (up to 15 days), the preparation of a fiscal note and fiscal note summary (up to 20 days), the issuance of a summary statement (up to 23 days), approval of the fiscal note and summary (up to 10 days), and the certification of an official ballot title (up to 3 days).

27. The last of the administrative tasks set out by statute—which cannot be done until the other tasks are also completed—is the certification of an official ballot title by the Secretary of State. *See* RSMo. § 116.180; *see also* § 116.332.2; § 116.334.1.

28. These provisions of Chapter 116 permit State officials to seize 51 signature-collection days from the people and use those days instead to do their administrative duties.

29. By statute, a person is prohibited from collecting signatures that will count toward the constitutionally required total before the Secretary of State certifies an official ballot title. *See* Mo. Const. art. III, § 52(a) (requiring that signatures be obtained from “five percent of the legal voters in each of two-thirds of the congressional districts in the state”); RSMo. § 116.180 (providing that “signatures should not be counted if the official ballot title is not affixed to the page containing [voter] signatures”); RSMo. § 116.334.2 (providing that signatures collected before ballot title obtained “shall not be counted”).

30. Because of RSMo. § 116.180 and § 116.334.2, forbidding signatures collected before certification of a ballot title to be counted, State officials can prevent a referendum on a favored piece of legislation simply by using all of their statutorily allotted time to complete their administrative tasks and thereby delaying certification of a ballot title for 51 days after a proposed referendum petition is submitted.

31. After his earlier rejection of Baker and ACLU-MO’s proposed Referendum Petition was declared unlawful by the Missouri Court of Appeals, Western District, on July 8, 2019, Secretary of State Ashcroft went on to use all of the time allotted to him by Chapter 116 and did not certify a ballot title until August 14, 2019.

32. Therefore, even setting aside the exceptional disruption to the referendum process caused by Ashcroft's earlier rejection, Plaintiffs were prohibited by operation of §§ 116.180 and 116.334.2 from collecting countable signatures for more than a month.

33. Given the amount of time taken from the people and awarded to State officials by Chapter 116, Sections 116.180 and 116.334.2 place an impediment on the referendum power that is inconsistent with the reservation found in Mo. Const. art. III, §§ 49 and 52(a).

34. Indeed, Sections 116.180 and 116.334.2 make the referendum right unavailable.

35. If the people are afforded their constitutionally allotted time to circulate a referendum petition, they must collect, on average, roughly 1195 valid signatures per day for a referendum to be ordered. By contrast, if State officials use all of their statutorily appropriated time, the people must collect, on average, more than 2750 valid signatures per day for a referendum to be ordered.

36. Plaintiffs intend to call a referendum by citizen petition as to HB126. To that end, Plaintiffs have sought the advice of people who have exercised their referendum right, coordinated more than 800 volunteers, marshaled financial resources, and put forth substantial effort to plan in detail how their Referendum Petition could be circulated and a constitutionally sufficient number of signatures could be collected and verified within the restricted time frame imposed by Secretary of State Ashcroft and the operation of Sections §§ 116.180 and 116.334.2.

37. In addition, upon receipt of Secretary of State Ashcroft's certification of the official ballot title on August 14, 2019, Plaintiffs began to circulate their HB126 Referendum Petition and collect valid signatures but it quickly became evident that it was logistically impossible to effectuate the referendum right in the time allotted, even presuming Plaintiffs had access to sufficient funds.

38. But for RSMo. §§ 116.180 and 116.334.2, Plaintiffs would have collected countable signatures on their Referendum Petition before August 14, 2019.

39. Plaintiffs have no alternative method to vindicate their fundamental constitutional right to call a referendum by citizen petition as to HB126.

COUNT I

Declaratory Judgment

40. Plaintiffs incorporate by reference all of the preceding paragraphs of this Petition as though fully set forth herein.

41. Certain parts of Chapter 116, Missouri Revised Statutes, award to State officials 51 days of the minimum 90 days constitutionally reserved to the people for the purpose of referendum petition circulation and signature collection. *Compare* RSMo. §§ 116.332, 116.334, 116.180, *with* Mo. Const. art. III, §§ 49, 52(a).

42. These statutes are inconsistent with the people's explicit reservation of the referendum right as provided by Mo. Const. art. III, § 49 and the minimum time frame for signature collection set forth explicitly in Mo. Const. art. III, § 52(a).

43. In particular, Sections 116.180 and 116.334.2 prohibit any signatures collected before State officials finish certain referendum-petition-related administrative tasks, including the certification of an official ballot title by the Secretary of State, from being counted toward the constitutionally mandated total.

44. These statutes place an impediment on the referendum power that is inconsistent with the reservation found in Mo. Const. art. III, §§ 49 and 52(a).

45. Indeed, these statutes make the referendum right unavailable.

46. Missouri Revised Statutes § 116.180 and § 116.334.2 are unconstitutional.

WHEREFORE Plaintiffs pray this Court:

- A. Enter judgment that the provisions of RSMo. §§ 116.180 and 116.334.2 that prohibit the counting of signatures collected before certification of a ballot title are unconstitutional because they conflict with Mo. Const. art. III §§ 49 and 52(a).
- B. Allowing such other and further relief as is proper under the circumstances.

Respectfully submitted,

/s/ Anthony E. Rothert
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