Summary of SC98879, *No Bans on Choice, American Civil Liberties Union of Missouri, and Sara E. Baker v. John R. Ashcroft, in his official capacity as Missouri Secretary of State*

Appeal from the Cole County circuit court, Judge Jon E. Beetem
Argued and submitted September 29, 2021; opinion issued February 8, 2022

Attorneys: The state was represented by D. John Sauer and Jason K. Lewis of the attorney general's office in Jefferson City, (573) 751-3321. The challengers were represented by Anthony E. Rothert, Jessie Steffan and Molly Carney of the ACLU Of Missouri Foundation in St. Louis, (314) 652-3114, and Gillian R. Wilcox of the ACLU of Missouri Foundation in Kansas City, (816) 470-9933.

Citizens in Charge, which filed a brief as a friend of the Court, was represented by Charles W. Hatfield and Alixandra S. Cossette of Stinson LLP in Jefferson City, (573) 636-6263.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The state appeals from the circuit court's judgment finding statutes prohibiting the collection of referendum petition signatures before the secretary of state has certified the referendum's official ballot title and affixed it to the petition violates the state constitution by interfering with and impeding the right of referendum. In a 5-2 decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the judgment. The prohibition against collecting referendum petition signatures prior to the secretary of state's certification of the official ballot title interferes with and impedes the constitutional right of referendum reserved to the people by unreasonably shortening the timeframe for petition circulation.

Judge W. Brent Powell dissents. He would hold a facial challenge to the statutes' constitutional validity must be rejected because circumstances exist in which the statutes requiring the ballot title to be affixed before the collection of signatures can be applied without interfering with or impeding the constitutional right to referendum.

Facts: In May 2019, the legislature passed House Bill No. 126. The American Civil Liberties Union of Missouri and Sara Baker filed a referendum petition regarding HB 126 with the secretary of state's office. The state rejected the referendum petition because the bill contained an emergency clause, making some of its provisions effective immediately. Following litigation, the state was ordered to draft the referendum's official ballot title. The referendum petition was approved for circulation in mid-August 2019, leaving Baker and the ACLU 14 days to circulate the petition and collect the requisite signatures. No Bans on Choice, together with the ACLU and Baker (collectively, the challengers), then filed a declaratory judgment action against the state, alleging sections 116.180 and 116.334.2, RSMo, are unconstitutional in that they interfere with the people's right of referendum guaranteed by article III, sections 49 and 52(a) of the state constitution. The statutes prohibit the collection of countable signatures on a referendum petition until after the secretary of state has certified the referendum's official ballot title. The secretary of state has 51 days to certify the ballot title. The challengers contended that, if a law is passed at

the end of a legislative session, the 51-day waiting period significantly impedes their ability to timely collect enough signatures before the 90-day referendum deadline. Baker and the ACLU ultimately failed to collect the requisite signatures, and the referendum regarding HB 126 was not placed on the ballot. Following a bench trial (before the judge, rather than a jury) on the challengers' declaratory judgment action, the circuit court concluded the statutes interfere with and impede the right to referendum guaranteed by the Missouri Constitution. The state appeals.

AFFIRMED.

Court en banc holds: Sections 116.180 and 116.334.2's prohibition against collecting referendum petition signatures prior to the secretary of state's certification of the official ballot title interferes with and impedes the constitutional right of referendum reserved to the people by unreasonably shortening the timeframe for petition circulation. The referendum right acts as a check on the legislature and ensures that the people who have no access to or influence with elected representatives may take their cause directly to the people. Laws enacted to implement the referendum process must be invalidated, therefore, when they interfere with or impede that right. An official ballot title is not necessary to prevent individuals from being deceived at the petition-signing stage, and the pre-circulation ballot title requirement has proved to be a hinderance to the referendum process. Although the legislature inherently can reduce the time for circulating a referendum petition by passing the legislation at the end of session, permitting the legislature to reduce the allotted circulation period even further affords the legislature the opportunity to interfere and impede the referendum right. The legislature must not be permitted to use procedural formalities to interfere with or impede this constitutional right that is so integral to Missouri's democratic system of government.

Dissenting opinion by Judge Powell: The author would find the challengers failed to demonstrate sections 116.180 and 116.334.2 are facially invalid and, therefore, would reverse the circuit court's judgment. He would conclude the challengers' facial challenge seeking to invalidate the statutes must be rejected because circumstances exist – such as if the legislature passes a bill earlier in its session – in which sections 116.180 and 116.334.2 may be applied without interfering with or impeding the constitutional right of referendum guaranteed in article III, sections 49 and 52(a).