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Understanding Arizona's Propositions: Prop 113

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Proposition 113 – Secret Ballot for Union Elections

Proposition 113 is a legislative referral to amend the Arizona Constitution to include a "right to vote by secret ballot for employee representation," specifically addressing union elections in Arizona.

The ballot language further clarifies that this right is guaranteed when federal law permits or requires elections, designations or authorizations for employee representation. This language addresses some legislators' concerns that Prop 113 could open the door to establishing a clear right for employees to call for union elections. Legislative staff clarified Prop 113 would just provide for the secret ballot provision in those instances where an election is required.

Legislative staff also indicated that if Prop 113 were successful, it would not invalidate existing union election outcomes or employment contracts.

> Prop 113 would add the language below to the Arizona constitution:
>
> "The right to vote by secret ballot for employee representation is fundamental and shall be guaranteed where local, state or federal law permits or requires elections, designations or authorizations for employee representation."
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> Source: SCR1001

Proposition 113 is the second iteration of this legislative referral. Originally filed as Proposition 108, the initial ballot measure would have guaranteed a right to a secret ballot for employee representation elections, in addition to any public election. The Arizona Supreme Court, however, ruled Aug. 3 that Prop. 108 violated the "single subject requirement" for ballot initiatives and tossed the measure. Two days later, Governor Jan Brewer called a special session for Aug. 9 to focus solely on the employee issue so it could be referred back to voters in time for the November ballot.

This measure, much like the proposition designed to respond to federal health care reform, is a preemptive response to potential federal legislation. The Employee Free Choice Act was introduced last March in Congress, which proposes to change the way in which employees currently vote for union representation.[i]

Currently, employees interested in forming a labor union must first sign petitions, or "cards," and if 30% of employees sign them, the National Labor Relations Board (NLRB) can then conduct a secret ballot election. If more than 50% favor representation in the vote, a union can form.[ii] Either employers or employees can initiate a secret ballot.

The proposed federal law would require the NLRB to recognize a workplace union if the card check was successful with a majority; no subsequent vote would be necessary. Proposition 113 seeks to override that action and maintain secret ballot elections for employee representation.

The effort to have a secret ballot provision addressed in state constitutions is spearheaded by a non-profit group, Save Our Secret Ballot (SOS), which is based in Las Vegas. SOS has provided more than $380,000 in support of the measure, with a contribution of $55,000 as recently as mid-August.[iii]

Clint Bolick of the Phoenix-based Goldwater Institute crafted the wording of the ballot measure that SOS is driving in every state. Bolick sits on SOS's national advisory board.[iv] Additionally, the Goldwater Institute participated in defending the original proposition in the courts.[v]

South Carolina, South Dakota and Utah will be considering a similar measure in November.[vi]

Proponents and opponents are characterizing the impending debate as "Big Labor" versus "Big Business."

Yes on Proposition 113?

Proponents of Proposition 113, including 17 Arizona chambers of commerce, cite what they believe is the fundamental right to a secret ballot. In issuing the call for a special session to refer Proposition 113 for the November General Election, Governor Brewer stated: "The right to cast your vote without fear or intimidation is a fundamental tenant of our democracy. I believe that Arizona voters should be provided the opportunity to support and protect the constitutional right to a secret ballot for Arizona employees."[vii]

They also believe Prop 113 does not really make the process more difficult than it is today; it just guarantees the provision of a secret ballot.

Supporters say that allowing unionization with only a card check would open the process to possible intimidation – including "threats, assault"[viii] against those who don't support a union, which could unfairly result in a successful union election. As Bolick states: "With card check, it allows coercion by union organizers and therefore increases the odds that a union would be formed where it would not be formed if it were put to a secret ballot."[ix]

Supporters also point to the removal of a secret ballot as not only an infringement on the rights of employees, but also of employers to respond to a request for employee representation in a fair and balanced manner. They also note Arizona's strong history as a right-to-work state, and believe that the protections of Prop 113 fit this model.

Some even cite the possibility that such a measure could force some businesses, especially small businesses, to close their doors. "Countless struggling businesses simply will not stay in business if the unions have greater power of intimidation in their shops, restaurants and manufacturing facilities," said Save Our Secret Ballot Arizona chairman Roy Miller.[x]

No on Proposition 113?

Opponents point out that this is in direct response to a proposed, but not established, federal law. Much like Proposition 106, which seeks in part to pre-empt the future possibility of a public option for health care, and Proposition 109, which seeks to protect hunting and fishing from a possible future threat to ban both practices, Proposition 113 is a solution looking for a problem, opponents argue.

Additionally, charges of intimidation are a concern of Prop 113 opponents. However, their concern is that the current system, which starts with a card check and then progresses to a secret ballot, allows

employers time to coerce and intimidate employees into resisting a union. According to Rebecca Friend of the AFL-CIO: "What card check would do is eliminate the employer harassment of workers who want to form unions."[xi]

Finally, those calling for votes against Prop 113 note that even if this measure were successful, and the federal government did pass legislation that provided for a public process, federal law would supersede any state law. According to Senate Assistant Minority Leader Rebecca Rios, D-Apache Junction, "My colleagues [at the Legislature] keep thinking that Arizona is our own little country, that we can pass laws that don't take into account what federal law says."[xii]

Ultimately, the measure would be ruled unconstitutional, but only after lengthy and costly litigation, Prop 113 opponents say. "Doesn't federal law preempt anything we do? I feel like this is just a set-up for litigation," said Rep. Chad Campbell of Phoenix, who is the House Democratic Whip.[xiii]

The Bottom Line

A "yes" vote would amend the Arizona Constitution to include a "right to vote by secret ballot for employee representation," specifically addressing union elections in Arizona.

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[i] House of Representatives Fact Sheet: SCR1001
[ii] *Ibid.*
[iii] http://www.azsos.gov/election/2010/General/ballotmeasurenotifications.htm
[iv] http://www.sosballot.org/about.php & http://www.sosballot.org/faq.php
[v] http://www.goldwaterinstitute.org/mclaughlinvbennett
[vi] http://www.stateline.org/live/details/story?contentId=479649
[vii] http://www.azgovernor.gov/dms/upload/PR_080510_GovernorJanBrewerIssuesSpecialSessionCall.pdf
[viii] Fischer, Howard. "Floor action ahead on union bill; Dems call for private prison debate." *Arizona Guardian.* August 9, 2010. Quote attributed to Senator Russell Pearce.
[ix] *Ibid.*
[x] del Puerto, Luige. "Lawmakers advance secret-ballot measure – Day 1." *Arizona Capitol Times.* August, 9, 2010.
[xi] Fischer, Howard. "Floor action ahead on union bill; Dems call for private prison debate." *Arizona Guardian.* August 9, 2010.
[xii] del Puerto, Luige. "Lawmakers advance secret-ballot measure – Day 1." *Arizona Capitol Times.* August, 9, 2010.
[xiii] *Ibid.*