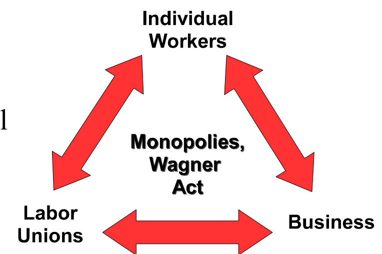
Nullify the Wagner Act, But First Pass Right To Work Law

Missouri should declare the federal Wagner Act null and void, since the federal government has no jurisdiction in our state's labor relations law.

As is often the case, an unconstitutional federal "law" places Missouri in a constitutional quandary. The 1935 National Labor Relations Act (Wagner Act) forces the state to favor one private interest over others in its labor relations policy.

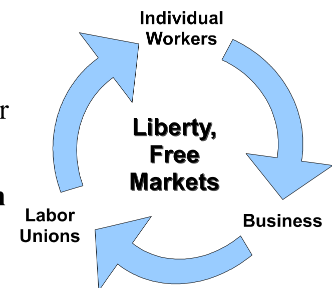
If the state does nothing, the status quo favors unions at the expense of the individual workers as well as the expense of businesses who don't want to associate with a union.



On the other hand, as everyone knows, a "right to work" law protects individual workers' right to freedom of association at the expense of unions, who are forced to represent workers who are neither members nor dues payers. **What's not usually considered are the diminished rights of any business which *prefers* union membership as a condition of employment.**

Some Businesses May Prefer Unions

Why would a business want to require union membership? It doesn't really matter what their reasons are, but they may, for instance, choose to employ their own right to freedom of association to simplify the demands on their Human Resources department. When new workers are needed, it would be handy to be able to call the union local and ask them to send pre-qualified people. Or a business may simply prefer to negotiate with one agent rather than a multitude of individual employees.



So even a "right to work" law designed to respect the freedom of association of *some* damages the right to freedom of association of *others*.

The state is damned if it does and damned if it doesn't – all because the Wagner Act paints the state into an uncomfortable corner.

Main provisions of the 1935 Wagner Act:

- Established the National Labor Relations Board, giving the federal government control over that which was previously the purview of the states or the private sector.
- Requires workers and business to recognize unions upon either a majority secret vote, overseen by the NLRB, or a majority of workers publicly signing a card.
- Makes it an "unfair labor practice" for a business to attempt to influence their employees' decision whether or not to unionize.
- Once a union is established, the question of union representation is never raised again, essentially binding the workers and company to the union perpetually.
- A single certified bargaining agent is forced upon all parties. Employees can't select another.
- Obligates all workers to pay union dues, even if they don't want to associate with the union.
- Requires employers to bargain in "good faith" – must accept the bargaining agent.

World Without the Wagner Act

Consider a world without a Wagner Act. Business owners would be free to choose who they hire and under what conditions they would employ them. Union membership, which is half what is was in the early 1970s, might very well rebound as unions re-invent their purpose.

Like successful businesses which provide temp services or man-power, the unions could train and otherwise pre-qualify workers as well as be a one-stop negotiation point. For businesses who choose to use their services, it would be like out-sourcing their human resourcing needs – a load off their shoulders. Since a business relationship with a union would be voluntary, free market forces would optimize their interaction, resulting in a rising tide of efficiency that would raise all the boats.

Perhaps of greatest importance are the benefits to individual workers in a post Wagner Act world. They would be free to fully express their freedom of association by choosing a union shop, open shop or mixed shop.

State's Authority to Nullify

Clearly, the Wagner Act damages the liberty of all the parties involved, but does that really mean the state has the authority to nullify it? The answer is “yes”, because the federal government had no authority to enact it in the first place. It's sordid history bears that out.

The 1935 Wagner Act was, perhaps, the most ambitious of president Franklin Delano Roosevelt's “New Deal” measures. In an epic constitutional battle with the U.S. Supreme Court, one after another of the New Deal laws leading up to the Wagner Act were declared unconstitutional. By 1937 the challenge to the Wagner Act itself had worked its way through the court system and was before the high court. Unless FDR could pull a rabbit out of his hat, that act would fall like those preceding it. (See *National Labor Relations Board v. Jones & Laughlin Steel Corp.*)

The “Switch in Time That Saved Nine”

The wily president may not have pulled a rabbit, but he pulled a “fast one”. What historians call his “Court-packing Plan” threatened the makeup of the Supreme Court. Using a congress favorable to him, FDR planned to increase the number of court justices and appoint the new ones himself – new judges that would favor his New Deal plan. Under the cloud of that threat, two judges switched their positions, greatly expanding the application of the Interstate Commerce Clause and ushering in both the Wagner Act and the balance of the New Deal.

If not for coercion, the cause of Missouri's labor relations quandary would have been found unconstitutional back in 1937. It truly was unconstitutional then and it is still unconstitutional. Missouri not only has the *right* to nullify the Wagner Act, it has the *responsibility* to nullify it!

That responsibility stems from one of the most coveted clauses in the Missouri Bill of Rights – Article I, § 2. There, the principal role of our state government is defined as “giv[ing] security” to our basic individual civil liberties. One of those liberties is defined in Article I § 29, where it says, “That employees shall have the right to organize and to bargain collectively through representatives of their own choosing.” Since the Wagner Act forces representation by a union formed by 51% of an employee's fellow workers and not necessarily a representative of his *own* choosing, it violates Article I § 29.

Right to Work Bill is a Necessary Stop Gap Measure

That brings us to the General Assembly's primary responsibility at this time. Clearly, it must work to nullify or otherwise eliminate the Wagner Act, but that will take time. In the mean time the state must, unfortunately, make a choice about whose rights it will protect – workers, union, or business.

The decision must fall to the only one of the three parties recognized as being vested with “all political power” by the Missouri Constitution – that is, the “natural person” – and that's the individual worker.

Until it can nullify the source of everyone's problem, Missouri must enact “right to work” legislation that protects the rights of the most important element of society, the people.

For more information, contact:

Ron Calzone: ron@mofirst.org – (573) 368-1344 Paul Hamby: paul@mofirst.org – (816) 632-0602

Missouri First, Inc., is a think tank with an emphasis on constitutional governance and economic freedom.