

At the risk of being marginalized by every state legislator and even other lobbying interests, here are my thoughts on Amendment 1.

I have been told that the foremost intent of Amendment 1 is to prevent the legislature from repealing the state's "right to work" statute. That statute allows a prospective employee or an existing employee to sue an employer who requires that person to join the union and pay dues.

**Practical thoughts:**

Everything I am about to say under this heading could have been discussed and addressed by the legislature. I am merely drawing attention to what I, as a lawyer, would have thought had the amendment been presented to me when I was a state Senator.

1. Putting aside the other weightier considerations below, I do not believe the amendment prevents the legislature from repealing the right to work statute.

Notice that the action to be prohibited ("unlawful") is directed at employers, not at the state or the legislature. "It is unlawful" for an employer to do certain things.

That does not mean the legislature cannot repeal the right to work statute. *Nothing is directed to state legislature.* For example, notice how the TN constitution is worded when a law is either required or prohibited and you will see the difference.

**Article 1, Section 1:**

**Section 11:** "no *ex post facto* law shall be made"

**Section 18.** The Legislature shall pass no law authorizing imprisonment for debt in civil cases.

**Section 20.** That no retrospective law, or law impairing the obligations of contracts, shall be made.

**Section 25.** That no citizen of this state, except such as are employed in the army of the United States, or militia in actual service, shall be subjected to punishment under the martial or military law.

**Section 34.** The General Assembly shall make no law recognizing the right of property in man.

All of them are directed at what the legislature can and cannot do, at what kind of law can and cannot be enacted. Amendment 1 is **not** drafted that way.

2. Saying **in a Constitution** that something *an employer does* is unlawful does not create any cause of action by the prospective employee or existing employee against an employer. For that unlawful act in a constitution to result in a damage claim against an employer, **the legislature would need to enact a statute providing for that cause of action.**

Now think about this: A legislature that **repeals** the right to work **statute** (because not prohibited from doing so, Point No. 1) is sure **not going to pass a statute** that creates a cause of action against the business owner who is an all-union shop. *That would defeat the purpose of repealing the right to work statute.*

3. Even if the law had said the legislature “shall create” a right to work statute, the Tennessee Supreme Court has rightly held that it has no power to compel the legislature to enact any statute. That would be a violation of the separation of powers.

I personally don't think the amendment does what its proponents think it does. I don't think it really does anything. Vote for it if you want, and if it's adopted, maybe the court will not agree with my analysis, but don't be surprised if the Amendment doesn't do what it is intended to do.

### **Weightier Thoughts:**

1. If there really is a right to work, then putting this amendment in the constitution doesn't create such a right any more than not putting it in the constitution precludes its existence. If “rights” come from Constitutions, then we have no real rights.
2. Thinking that adoption of this amendment is critical for economic prosperity or its defeat is necessary to ensure fair wages for workers says, to me, that God cannot be trusted in His providential direction of all things to do that which accomplishes *His purposes* and provides for the economic conditions that *He thinks* best serve *His greater purposes*. Do we live in a purely mechanical cause and effect world or one in which God is free to operate against or even beyond what either side of the business/labor equation might think? Where is our trust?
3. The right to work law interferes with the right of a business owner to decide that he wants to support unions and, therefore, he or she wants to require all his employees to be union members and provide dues that support union positions.
4. You may like that, but here is why I am not sure I do. Sometimes we like to interfere with business owner's rights (like with no smoking laws, COVID regulations, and any number of other issues) and sometimes we don't. What bothers me is I can't find among our citizenry any enduring principle by which those varied decisions are to be guided.
5. The right to work law does support the right of a prospective or current employee to be free to not join a union (even though it does not allow the business owner to decide what he or she wants). **Given that unions can by law be forced on a business owner, I like that.**

However, to my knowledge, no state or federal law requires anyone to work for an all-union business any more than it requires anyone to work for a non-union business. By analogy, no one is required to work for Hobby Lobby. So, when persons complained that it did not provide abortion benefits, the Republican response was to tell people to go work for a business that provides what they want, no one makes you work for Hobby Lobby. Here the response is to tell the business it cannot support the union-only position it prefers. I'm not sure I understand the principled reason, assuming there is one, behind the distinction.

6. Points 3 and 4 show out how much the government interferes in private economic relations and, having taken one side, it now has to take another side to adjust for the possible wrongs brought about by the original interference, and back and forth it goes. Going back to the original problem and trying to address it seems unthinkable. That's the kind of thing the three young men I mentioned would want to do.

### **My Personal Position:**

Because I don't think the amendment does what its proponents say it does, because I can find no principled line by which to decide why this must or must not go into our constitution, and because I trust God to give us what is just and right, I'm not voting on the amendment. I am not so much against the amendment (which is why I am not voting no) but I know it not a necessary prerequisite or impediment to God bringing economic success for management and labor alike. I'll be "voting" for more pastors and more Christians developing a theology of work that encompasses owners and employees and a right relation between them.